ESTATE AGENCY STANDARD TERMS, MARCH 2020, FOR THE SALE OF PROPERTY WITH AND WITHOUT CLOSING AGENT.

Draft A [date] of [Estate Agency] by [author]. [Estate Agency] has not examined issues relating to taxes, duties or accounting. It is recommended that these be examined by the parties’ advisors or auditors. The agreement is concluded upon signing by the Seller and the Purchaser. [Alternatively: ‘The Parties have set out those conditions arising from offer and acceptance of offer and shall not be bound until such time as those conditions are removed.’]

**SALE AND PURCHASE AGREEMENT**

**between**

**[Seller]**

**and**

**[Purchaser]**

**relating to the sale of**

**[specify the Property]**

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

[Seller], business registration no. [business registration no. of the Seller], (**the Seller**) is the owner of the property situated at land number (*gårdsnummer*) [●], title number (*bruksnummer*) [●], together with its existing buildings and facilities in the municipality of [●] (**the Property**).

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

1. PURCHASE PRICE AND THE PROPERTY’S yield AND COSTS
	1. Purchase price and costs

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

In addition, the Purchaser shall pay the stamp duty and registration fee for the deed and any documents establishing a security interest in favour of the Purchaser’s lender.

This means that the Purchaser shall pay a total of NOK [●] (**the Consideration**), calculated on the basis of applicable charges and fees at the time of signing of this Agreement.

* 1. The Property’s yield and costs

The Seller shall be entitled to the yield the Property generates until the day on which the Purchaser takes possession of the Property. Until that same time, the Seller shall be liable for the costs associated with the Property.

No later than [30] days after Closing, the Seller and the Purchaser shall directly inter se undertake a plus-minus offset settlement of income and expenses associated with the Property as at the time of Closing. If the parties do not reach agreement on that settlement by the time-limit, either of the parties may require that an auditor, appointed and the costs of whom are defrayed by the parties jointly, decide how the settlement is to be undertaken with final, binding effect for the parties.

1. CLOSING, SETTLEMENT and delays
	1. Agreed Closing

The Purchaser shall take possession of the Property on [date of Closing] (**Agreed Closing**).[[2]](#footnote-2) [[3]](#footnote-3)

* 1. Actual Closing. Settlement

The Purchaser shall take possession of the Property once the Purchase Price is available in the Closing Account and the conditions for payment in Clause 3 of the Closing Agreement in Appendix 6 have been fulfilled or waived (**Closing**). [If Closing is completed without a Closing Agent, the following is written here: ‘*The Purchaser shall take possession of the Property once the Consideration is available in the Seller’s account after Closing has been completed in accordance with the Closing Agreement in Appendix 6 (****Closing****).*’]

The Seller and the Purchaser hereby undertake to perform their respective obligations set forth in the Closing Agreement.

* 1. Delay [[4]](#footnote-4)

If Closing is completed on a date later than that of the Agreed Closing:

* + - 1. and the delay is due to factors attributable to the Purchaser, the Seller may demand completion, cancellation and damages, including overdue interest under Clauses 6.1 to 6.3;
			2. and the delay is due to factors attributable to the Seller, the Purchaser may demand completion, cancellation and damages and retain the Purchase Price under Clauses 6.1 to 6.3 and Clause 8.1;
			3. the Seller’s obligations under Clause 5 shall remain in effect until Closing and certain of the Seller’s Warranties in Clause 7.1 shall be provided as at the time of Closing; and
			4. Clause 9.1(a) shall apply in respect of damage to the Property and appurtenances thereto.
1. conditions for COMPLETION of the agreement [[5]](#footnote-5) [[6]](#footnote-6)
	1. Purchaser’s Conditions

The Purchaser’s obligation to perform its completion obligations under this Agreement shall be subject to the following conditions being fulfilled or waived by the Purchaser:

* + - 1. the Property or appurtenances thereto have not been damaged after signing of this Agreement, with the result that the costs of reconstruction/repair and loss of rent as a result of the damage amounts to over [10] % of the Purchase Price. In the determination of whether that amount threshold has been reached, regard shall not be had to costs associated with damage for which the Seller is not liable under Clause 9.1(a)(ii). [[7]](#footnote-7) [[8]](#footnote-8) [[9]](#footnote-9) [[10]](#footnote-10)
	1. Seller’s Conditions

The Seller’s obligation to perform its completion obligations under this Agreement shall be subject to the following conditions being fulfilled or waived by the Seller:

* + - 1. the Property or appurtenances thereto have not been damaged after the signing of this Agreement, with the result that those losses which the Seller itself must cover under Clause 9.1(a) exceed [10] % of the Purchase Price. The Seller may not rely on this condition if the Purchaser undertakes not to claim for damages exceeding [10] % of the Purchase Price as a result of the damage. [[11]](#footnote-11)
	1. Implications of termination of the Agreement

If the Agreement terminates as a result of the conditions on the part of the Seller or the Purchaser not being fulfilled or being waived, neither of the parties may bring a claim for coverage of costs or any other claim against the other party. However, if the Agreement terminates as a result of a party’s breach of its obligations under the Agreement, the other party may bring a claim for damages as a result of the breach of the Agreement.

1. The Seller’s obligations prior to Closing

Until Closing the Seller shall ensure:

* + - 1. that the Property is maintained properly and no less than before signing of this Agreement;
			2. that the Seller does not enter into new agreements that are of material importance for the Property, and that no agreements of material importance for the Property are cancelled, amended or terminated without written consent from the Purchaser;
			3. not to encourage or undertake anything that would constitute breach of the Seller’s Warranties under Clause 7;
			4. to keep the Property insured at full value;
			5. that the Property’s vacant areas are cleared and cleaned in the usual manner before Closing.
1. parties’ remedies in the event of breach of the agreement

Both the Seller and the Purchaser may uphold the purchase and demand that the Agreement be completed, unless the other party rightfully rescinds the Agreement or claims that a condition for the completion of the Agreement as set out in Clause 4 is not fulfilled. The Purchaser may not demand rectification under section 4-10(2) of the Norwegian Sale of Real Property Act (*avhendingsloven*), but the Seller may effect rectification under section 4-10(1) of the Sale of Real Property Act.

If the Seller breaches this Agreement, the Purchaser shall be entitled to damages under the terms set out in Clause 8 and shall be entitled to withhold the Purchase Price under section 4-15 of the Sale of Real Property Act, but the Purchaser shall not be entitled to a price reduction under section 4-12 of the Sale of Real Property Act. If the Purchaser breaches this Agreement, the Seller may claim damages under the general rules, including section 5-4 of the Sale of Real Property Act and the Norwegian Act relating to Interest on Overdue Payments (*forsinkelsesrenteloven*).

Both the Seller and the Purchaser may rescind this Agreement before Closing if circumstances arise, including delay, which amount to material breach of the other party’s obligations under this Agreement. After Closing, the Purchaser may rescind in so far as permitted to do so under the rules of the Sale of Real Property Act. [[12]](#footnote-12) [[13]](#footnote-13)

The Purchaser hereby waives, in so far as permitted to do so under applicable law, any right to invoke any claim against the Seller as a result of the sale object not being as it should pursuant to section 3-7, 3-8 and 3-9 of the Sale of Real Property Act, other rules on liability for incorrect or incomplete information and any other statutory or non-statutory basis outside this Agreement.

1. The Seller’s warranties

The Seller warrants the following to the Purchaser at the time of signing this Agreement and at Closing, unless otherwise provided in the Warranties set out below:

* + - 1. The Seller has informed the Purchaser of the circumstances concerning the Property of which the Seller is aware at time of signing this Agreement, and which the Purchaser may reasonably expect to receive. The wording ‘reasonably expect to receive’ (‘*grunn til å regne med å få*’ in the Norwegian text of the Act) shall be construed in the same manner as for section 3-7 of the Sale of Real Property Act.
			2. The information about the circumstances concerning the Property received by the Purchaser from the Seller prior to signing of this Agreement is correct. This Warranty shall not include information in documents prepared by anyone other than the Seller or companies in the same group as the Seller, unless the Seller is aware that the information is incorrect at the time of signing this Agreement. [[14]](#footnote-14)
			3. The Seller owns the Property and is the title-holder thereof.
			4. There are no other existing liens or encumbrances on the Property (including pre-emptive rights) other than as set out in Appendix 2, and any liens (apart from statutory liens for unpaid debt or any leases) on the Property and the Company’s other assets will be cancelled without undue delay after Closing.
			5. The Seller is not in breach of the leases, with appurtenant addenda, specified in Appendix 3. This Warranty does not apply in respect of maintenance backlogs or other technical matters relating to the Property.
			6. At the time of signing this Agreement, the Property is leased pursuant to the leases, with appurtenant addenda, as specified in Appendix 3, and those leases are valid and include all terms that have been agreed with the lessees. At the time of signing this Agreement, the Seller is not aware that any of the lessees are in breach of the leases.
			7. At the time of signing this Agreement, there are no written orders, etc., from government authorities in relation to the Property that have not been paid or otherwise complied with.

References to matters **of which** **the Seller**[[15]](#footnote-15) **is aware** in Clause 7.1 mean circumstances of which the Seller is actually aware at the time of signing this Agreement and also circumstances of which the Seller does not have reasonable grounds to be unaware at that time. The Seller shall not be liable for incomplete information from anyone other than the Seller itself.

1. entitlement to DAMAGES and limitations of the Seller’s liability
	1. Purchaser’s entitlement to damages

If the Seller breaches this Agreement, including through delay, the Purchaser shall be entitled to damages only for the loss suffered by the Purchaser as a result of the breach of the Agreement. Entitlement to damages shall nevertheless be limited to losses that were reasonably foreseeable as a possible consequence of breach of the Agreement.

The Purchaser’s loss shall be calculated on a net basis following deduction for: (i) tax and VAT savings which can be claimed by the Purchaser; and (ii) that to which the Company is entitled to damages from a third party, including an insurance company. If a loss is contingent, the Seller may be held liable for the loss only if and when the loss must be covered by the Purchaser. The Purchaser may comply with the time-limits in Clause 8.3 by giving written notice of the contingent loss before expiry of those time-limits.

* 1. Purchaser’s knowledge

The Purchaser may not invoke as a breach of Clause 7 anything of which the Purchaser was itself aware at the time of signing this Agreement, or anything that is reasonably clear or readily apparent from the written information received by the Purchaser from the Seller prior to signing this Agreement. [[16]](#footnote-16) This limitation of the Seller’s liability shall not apply in respect of any breach of Clause 7.1(c) (*concerning ownership of the Property*). The Seller waives the right to invoke section 3-10 of the Sale of Real Property Act.

* 1. Notice of breach
		1. Notice of breach in the event of delay

A party’s claim for damages as a result of delay attributable to the other party shall lapse if that party fails to give the other party written notice no later than one month after Closing setting out its intention to claim for breach of the Agreement and what that breach of the Agreement consists of (**Notice of breach**).

* + 1. Notice of breach in the event of other breaches of the Agreement
			1. The Purchaser shall forfeit the right to claim for a breach of the Warranty in Clause 7.1(c) if the Purchaser fails to give the Seller notice of breach no later than five years after Closing. For other breaches of this Agreement, the Purchaser must give the Seller notice of breach no later than 18 months after Closing. If the Purchaser itself discovers a breach of the Agreement before expiry of one of those time-limits, but later than one month before expiry thereof, the time-limit shall be extended by one month from the expiry of that time-limit.
			2. Moreover, the Purchaser shall give the Seller notice of breach no later than one month after the Purchaser itself discovered the breach of the Agreement. Should the Purchaser fail to give notice of breach within that time-limit, the Purchaser shall forfeit its claim against the Seller only if and to the extent that such failure: (i) has increased the Purchaser’s loss; or (ii) has resulted in the Seller’s loss of the right to claim damages from a third party, including an insurance company. [[17]](#footnote-17)
	1. Financial limitation of liability

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

* + - 1. The Purchaser may not invoke any individual breach entailing a loss of less than NOK [●], [[18]](#footnote-18) and no regard shall be had to any such breach for the purposes of calculating the Purchaser’s loss, including the determination of whether the financial threshold under letter (b) below has been reached.
			2. The Purchaser may not invoke any claim unless the Purchaser’s aggregate loss exceeds NOK [●], [[19]](#footnote-19) although if the Purchaser’s aggregate loss exceeds that financial threshold, the Purchaser shall be entitled to damages for the entire amount.
			3. The Seller’s aggregate liability shall be limited to a maximum of *[10% of the Purchase Price]*.

The limitation of liability in Clause 8.4.1 shall not apply in the event of breach of the Warranty in Clause 7.1(c) (*concerning ownership of the Property*).

The Seller’s aggregate liability for breach of this Agreement (including the Warranty in Clause 7.1(c) and Clause 5 or 7) shall be limited to the Purchase Price, other than as set forth in Clause 9.2.

* 1. Liability in the event of wilful misconduct or gross negligence

The limitations of the Seller’s liability set out in Clause 8.3 and 8.4 shall not apply if the breach of the Agreement 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 been primarily responsible for completing the sale of the Property to the Purchaser.

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

The shareholders or persons defined as the Seller shall be liable, on a pro rata basis and not jointly and severally, for any claims of the Purchaser against the Seller arising from breach of this Agreement. The liability of each individual shareholder/person shall be limited to a maximum of that portion of the claim corresponding to that shareholder’s/person’s ownership stake in the Property. [Alternatively: ‘*The shareholders/persons defined as the Seller shall be jointly and severally liable for any claims of the Purchaser against the Seller arising from breach of this Agreement.*’]

1. indemnification by the seller

The Seller shall indemnify the Purchaser for losses arising from:

* + - 1. Damage to the Property or appurtenances thereto in the time period between the signing of this Agreement and 12:00 on the date of Closing. [[20]](#footnote-20) This indemnification:
				1. shall not apply if the loss is below the financial threshold set out in Clause 8.4.1(a), or if: (i) the costs of reconstruction/repair and loss of rent resulting from the damage are completely covered by an insurance policy or are covered by the Seller, or the Seller provides appropriate security for those costs and loss of rent, and (ii) all lessees of the Property are under an obligation to continue or resume their rental arrangement on without amendment to the terms after reconstruction/repair.
				2. shall not apply in respect of damage occurring in the time period from 12:00 on the date of Agreed Closing until 12:00 on the date of Closing, if the Closing is completed later than the Agreed Closing due to factors attributable to the Purchaser, unless the damage is due to negligence on the part of the Seller; for such damage attributable to negligence, the exception in this Clause 9.1(a)(ii) shall not apply.
				3. shall apply only if the Purchaser, no later than one month after Closing, gives the Seller written notice of its intention to make a claim for the damage.

Clause 8.1 shall apply mutatis mutandis. The limitations of the Seller’s liability under Clause 8.2, 8.3 and 8.4 shall not apply in respect of the indemnification under this Clause 9.

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

As collateral for securing claims of the Purchaser against the Seller under this Agreement, NOK [●] of the Purchase Price shall be withheld and kept in an escrow account in the name of the Seller but inaccessible to both parties until the one-year anniversary after Closing. Any rightful claims the Purchaser has against the Seller shall be settled by payments from that account. If no rightful claim is made against the Seller during the period up to and including the one-year anniversary after Closing, the amount deposited in that account, including interest, shall be paid to the Seller. Any dispute as to what constitutes a rightful claim shall be resolved pursuant to Clause 14. The Seller and the Purchaser shall each cover one half of all costs payable to the bank in connection with that collateral.

1. VALUE ADDED TAX. TRANSFER OF VAT adjustment/reversal liabilities AND entitlements

The parties agree that the Seller’s adjustment/reversal liabilities and entitlements associated with the Property are to be transferred to the Purchaser with effect from Closing. Accordingly, no later than Closing, a separate agreement shall be signed on the transfer of liabilities/entitlements to adjust/reverse VAT that satisfies the requirements for such transfer under applicable VAT rules, see Appendix 5. [[21]](#footnote-21)

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

The Purchaser, on the one hand, and the Seller, on the other, each hereby waive any right to invoke any claim against closely-related parties of the other party arising from any transactions, actions or omissions undertaken by such closely-related parties to the detriment of the Property up to and including the time of Closing or in connection with the signing or completion of this Agreement.

Both the Purchaser and the Seller (each respectively **the Indemnifying Party**) shall indemnify the other party and its closely-related parties (referred to jointly hereinafter as **the Protected Parties**) in the event that closely-related parties of the Indemnifying Party invoke a claim against the Protected Parties arising from any transactions, actions or omissions undertaken by the Protected Parties to the detriment of the Property up to and including the time of Closing or in connection with the signing or completion of this Agreement.

The waiver and hold harmless and indemnification under this Clause 12 shall not apply in so far as the claim against a person arises from that person’s wilful infliction of harm or an agreement with that person entered into in connection with this Agreement.

**Closely-related party/parties** shall be construed as meaning: (i) companies in the same group (as defined in section 1-3 of the Norwegian Limited Liability Companies Act (*aksjeloven*)) as a party; (ii) a party’s shareholders (direct and indirect); (iii) current or former Directors or employees of a party or company in the same group as the party; and (iv) estate agencies, advisors or other representatives of a party.

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 up to and including the time of Closing be sent to:

[Estate Agency]: [●]

1. choice of law and dispute resolution

This Agreement is governed by Norwegian law. Under no circumstances may Norwegian choice-of-law rules lead to the choice of another country’s law.

Any dispute that may arise in relation to this Agreement shall be resolved through legal proceedings before the ordinary courts of law, with [●] as the sole legal venue. [[22]](#footnote-22) The group of courts having jurisdiction under the general rules for provisional measures shall not be limited by what is provided for herein.

1. appendices

The following are appended hereto:

1. Transcripts from the Register of Business Enterprises in respect of the Seller and the Purchaser
2. Transcripts from the Land Registry
3. Leases, with appendices
4. Prospectus, with appendices
5. Adjustment Agreement
6. Closing Agreement
7. *[Data space on memory stick]*
8. signing

This Agreement is signed on this day in triplicate, of which each of the parties and [Estate Agency] shall each retain one copy.

[place], [date of signing]

|  |  |  |
| --- | --- | --- |
| For and on behalf of [Seller] |  | For and on behalf of [Purchaser] |
| [Seller’s repr.] |  | [Purchaser’s repr.] |

APPENDIX 5
Agreement on transfer of
adjustment/reversal liabilities
between
[Seller]
and
[Purchaser]

* + 1. Parties

This Agreement is signed on [date] between

* + - 1. [Seller], [address], [postal code and place], business registration no. [business registration no. of the Seller] (**Transferor**)
			2. [Purchaser], [address], [postal code and place], business registration no. [business registration no. of the Purchaser] (**Transferee**)
		1. Background

On [date of signing] the Transferor and Transferee signed a Sale and Purchase Agreement (**the** **Sale and Purchase Agreement**) concerning the sale of a property situated at land number (*gårdsnummer*) [●], title number (*bruksnummer*) [●] in the municipality of [●] (**the Property**). Under that Sale and Purchase Agreement, the Transferee shall take possession of the Transferor’s adjustment/reversal liabilities associated with the Property, with effect from [Closing Date] (**Closing**).

* + 1. Adjustment/reversal liabilities being transferred

The following adjustment/reversal liabilities are transferred from the Transferor to the Transferee with effect from Closing:

| [Specification of which building projects have been completed] |  |
| --- | --- |
| Time of completion/time of acquisition | [Date]  |
| Acquisition cost not including VAT | NOK [..] |
| Total VAT | NOK [..] |
| VAT deducted by Transferor | NOK [..] |
| Transferor’s deduction entitlement at time of acquisition | [..]% |
| Transferor’s deduction entitlement as at Closing | [..]% |
| Transferee’s deduction entitlement as at Closing | [..] |
| Remaining adjustment amount for Transferor | NOK [..] |
| Transferred adjustment liability | NOK [..] |

*[Include one table for each building project, if there is more than one]*

*[Specify how the input value added tax is distributed among the various parts of the building project, if it is not evenly distributed. If it is evenly distributed, the following wording may be used: ‘The input value added tax is evenly distributed among the various parts of the building project.’]*

* + 1. Concluding provisions

The Transferee guarantees by its signing of this Agreement that it is a business registered in the VAT Register (*Merverdiavgiftsregisteret*) or will be registered with effect from no later than the VAT period in which Closing is completed and thus be entitled to a deduction for input value added tax as stated in the table(s) above.

Should there be changes to the information given in this Agreement after signing hereof, the Transferor shall provide the Transferee with corrected information if it has a bearing on the Transferee’s adjustment liability.

[Place], [date]

|  |  |  |
| --- | --- | --- |
| For and on behalf of[Transferor] |  | For and on behalf of[Transferee] |
| [Seller’s repr.] |  | [Purchaser’s repr.] |

APPENDIX 6
Closing Agreement with Closing Agent where the Seller’s Loan is repaid after registration of the Purchaser’s Deed [[23]](#footnote-23)

[This Appendix is to be deleted if the Seller’s loan is to be repaid upon Closing or if Closing is to be completed without a Closing Agent.]

1. Closing Agent and the Closing Account

[Seller], business registration no. [business registration no. of the Seller], (**the** **Seller**) and [Purchaser], business registration no. [business registration no. of the Purchaser], (**the Purchaser**) have signed an Agreement (**the Agreement**) today for the sale of the property situated at land number (*gårdsnummer*) [●], title number (*bruksnummer*) [●], together with its existing buildings and facilities in the municipality of [●] (**the Property**).

Words with the first letter capitalised in this Agreement (**the Closing Agreement**) shall mean the same as in the Agreement.

The Seller and the Purchaser have, at the Seller’s expense, retained [Estate Agency], business registration no. [business registration no. of the Estate Agency] (**Closing Agent**) to assist with the completion of Closing as described below. The Closing Agent shall not assist with the post-Closing which shall be completed in accordance with Clause 2.2 of the Agreement.

Agreed Closing is [Closing date].

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

Any interest in the Closing Account earned as from the Closing date shall be paid to the Seller, whereas any interest earned before Closing shall be paid to the Purchaser. Interest amounting to less than half of the 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** | **Party responsible** | **Time-limit** |
| --- | --- | --- | --- |
|  | Issue and send for registration a document establishing the security interest in respect of the Property with a par value of NOK [•] in favour of the Closing Agent. The document establishing the security interest shall serve as security for any of the Purchaser or the Purchaser’s lender’s claims in connection with the Agreement (including loans to the Purchaser from the Purchaser’s lender) and forbid the Seller from disposing of, granting a security interest in or otherwise taking decisions in respect of the Property without consent from the Closing Agent. | Seller | Immediately after signing of the Agreement |
|  | Deliver to the Closing Agent a signed deed issued to the Purchaser. The Closing Agent shall not issue the deed to the Purchaser until Closing has been completed. | Seller | Immediately after signing of the Agreement |
| I | Obtain any consents necessary for registering the deed. | Seller/Closing Agent | Before Agreed Closing |
|  | Deliver to the Closing Agent a signed self-declaration on licence exemption. [[24]](#footnote-24) | Purchaser | Immediately after signing of the Agreement |
|  | Provided that Clause 2.4 has been complied with, obtain the municipality’s confirmation of the self-declaration on licence exemption. | Closing Agent | As soon as possible |
|  | Deliver to the Closing Agent correctly signed and confirmed documents establishing a security interest in the Property issued by the Purchaser to [Purchaser’s bank], business registration no. [business registration no. of the Purchaser’s bank] (the **Lender**). [[25]](#footnote-25) | Purchaser | No later than Agreed Closing |
|  | Obtain any necessary consents in order to register the documents establishing the Lender’s security interest. | Seller/Closing Agent | Before Agreed Closing |
|  | Obtain confirmations (**the** **Statements of Outstanding Debt**) from all creditors having a security interest (including registered statutory charge) in the Property to the effect that they will cancel their security interest if they receive a specified amount (**the Loans**) five business days after Closing.  | Seller/Closing Agent | Before Agreed Closing |

1. actions at the time of Closing

Provided that the conditions in Clause 4 of the Agreement have been fulfilled or waived, the Seller has delivered the deed to the Closing Agent, see Clause 2.2, and the document establishing the security interest has been registered, see Clause 2.1:

* + - 1. the Purchaser shall pay the Consideration to the Closing Account, so that the amount is available before 11:00 on the day of Closing; and
			2. provided the Consideration is paid to the Closing Account, the Closing Agent shall send the following to the Norwegian Mapping Authority (*Kartverket*) upon Closing: the deed and any documents establishing the security interest in favour of the Lender, together with any other documentation necessary for the registration of those documents.

If the amount of the Loans is higher than the Purchase Price, the Seller shall pay the difference between the amount of the Loans and the Purchase Price to the Closing Account, so that the amount is available before 11:00 on the day of Closing. [[26]](#footnote-26) If the Seller fails to comply with that obligation, the Closing Agent shall not send the documents referred to in (b) to the Mapping Authority.

1. PAYMENT OF the Purchase Price, etc.

The Closing Agent shall ensure that Closing is completed on a day (**the Closing Date**) which can be no later than three business days after the deed and the documents establishing the Lender’s security interest are registered. If the Closing Date is not five business days after Closing, the Closing Agent shall obtain an updated Statement of Outstanding Debt as at the Closing Date.

When the deed and the documents establishing the Lender’s security interest are registered, the Closing Agent shall verify whether the Seller’s creditors have seized the Property. If they have not, the Closing Agent shall do the following on the Closing Date:

* + - 1. repay the Loans in the amounts stated in the Statements of Outstanding Debt as at the Closing Date,
			2. pay agreed fees and outlays to the Closing Agent, and
			3. pay the remainder of the Purchase Price, including interest accrued in the Closing Account to the Seller’s account no. [•]

The Closing Agent shall arrange for timely payment of the stamp duty and registration fee to the Mapping Authority.

Closing shall be completed in accordance with this Closing Agreement even if the Purchaser’s creditors seize the Property after Closing.

1. withholding of the Purchase Price as security for encumbrances on the property [this clause may be deleted if deemed desirable]

If: (i) there is a monetary encumbrance on the Property which is to be cancelled under the Closing Agreement and is not covered by the Statements of Outstanding Debt; (ii) the remainder of the Purchase Price in the Closing Account provides, after repayment of the Loans, by a good margin, adequate security for full repayment of the obligation secured by the encumbrance; and (iii) all of the other conditions in Clause 4 of the Agreement and Clauses 2 and 3 (a) and (b) of the Closing Agreement have been fulfilled or waived at the time of Closing, the Closing Agent shall undertake the actions referred to in Clauses 3 (b) and 4 of Closing Agreement, but withhold an amount in the Closing Account which provides, by a good margin, adequate security for full repayment of the obligation secured by the encumbrance. The excess amount in the Closing Account shall be paid to the Seller’s account no earlier than the first business day after the deed and the documents establishing the Lender’s security interest are registered. The amount withheld (including interest in the Closing Account) shall be paid when the encumbrance has been cancelled or a bank has confirmed in writing that the encumbrance is to be cancelled.

1. Closing is not completed as agreed

If one or more of the conditions set out in Clauses 2 or 3 (a) of the Closing Agreement have not been fulfilled or waived at the time of Closing, Closing shall, save for those cases referred to in Clause 5, nevertheless be completed if and when all of the conditions have been fulfilled or waived within 30 days after: (i) Closing, or (ii) deferred Closing pursuant to a written amending agreement between the parties. If one or more of the conditions have still not been fulfilled or waived by the expiry of the aforementioned 30-day time-limit, the Closing Agent shall repay any Loan amounts received to the Lender and the remainder of the Consideration to the Purchaser. Furthermore, the Closing Agent shall, on its own initiative, arrange for cancellation of the document establishing the security interest.

1. Cancellation of the document establishing the security interest

Immediately once the deed is registered and encumbrances to be cancelled have been cancelled, the Closing Agent shall send the document establishing the security interest for cancellation, unless otherwise instructed by the Purchaser.

\*\*\*

[place], [date of signing]

|  |  |  |
| --- | --- | --- |
| For and on behalf of [Seller] |  | For and on behalf of [Purchaser] |
| [Seller’s repr.] |  | [Purchaser’s repr.] |

|  |  |
| --- | --- |
| For and on behalf of [Estate Agency] |  |
|  |  |

APPENDIX 6

Closing Agreement with Closing Agent where the Seller’s Loan is repaid upon Closing [[27]](#footnote-27)

[This Appendix is to be deleted if the Seller’s loan is to be repaid after registration of the Purchaser’s Deed or if Closing is to be completed without a Closing Agent.]

1. Closing Agent and the Closing Account

[Seller], business registration no. [business registration no. of the Seller], (**the** **Seller**) and [Purchaser], business registration no. [business registration no. of the Purchaser], (**the Purchaser**) have signed an Agreement (**the Agreement**) today for the sale of the property situated at land number (*gårdsnummer*) [●], title number (*bruksnummer*) [●], together with its existing buildings and facilities in the municipality of [●] (**the Property**).

Words with the first letter capitalised in this Agreement (**the Closing Agreement**) shall mean the same as in the Agreement.

The Seller and the Purchaser have, at the Seller’s expense, retained [Estate Agency], business registration no. [business registration no. of the Estate Agency] (**Closing Agent**) to assist with the completion of Closing as described below. The Closing Agent shall not assist with the post-Closing which shall be completed in accordance with Clause 2.2 of the Agreement.

Agreed Closing is [Closing date].

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

Any interest in the Closing Account earned as from the Closing date shall be paid to the Seller, whereas any interest earned before Closing shall be paid to the Purchaser. Interest amounting to less than half of the court fee shall not be paid.

In this Closing Agreement section 6-9(3) of the Norwegian Act relating to estate agency activities (*eiendomsmeglingsloven*) is waived, since at the time of Closing part of the Purchase Price is used to repay the Seller’s loan with a security interest in the Property. The Purchaser hereby waives the right to invoke a claim against the Closing Agent as a result of section 6-9(3) being waived. Furthermore, the Purchaser shall indemnify the Closing Agent in the event that the Purchaser’s creditors invoke a claim against the Closing Agent as a result of that waiver.

1. ACTIONS PRIOR TO Closing

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

|  | **Action** | **Party responsible** | **Time-limit** |
| --- | --- | --- | --- |
|  | Issue and send for registration a document establishing a security interest in the Property with a par value of NOK [•] in favour of Closing Agent. The document establishing the security interest shall serve as security for any of the Purchaser or the Purchaser’s lender’s claims in connection with the Agreement (including loans to the Purchaser from the Purchaser’s lender) and forbid the Seller from disposing of, granting a security interest in or otherwise taking decisions in respect of the Property without consent from the Closing Agent. | Seller | Immediately after signing of the Agreement |
|  | Deliver to the Closing Agent a signed deed issued to the Purchaser. The Closing Agent shall not issue the deed to the Purchaser until Closing has been completed. | Seller | Immediately after signing of the Agreement |
| I | Obtain any consents necessary for registering the deed. | Seller/Closing Agent | Before Agreed Closing |
|  | Deliver to the Closing Agent a signed self-declaration on licence exemption. [[28]](#footnote-28) | Purchaser | Immediately after signing of the Agreement |
|  | Provided that Clause 2.4 has been complied with, obtain the municipality’s confirmation of the self-declaration on licence exemption. | Closing Agent | As soon as possible |
|  | Deliver to the Closing Agent an original authorisation as set out in Annex 1, in which the Seller gives the Purchaser the right to grant a security interest in the Property to the Purchaser’s Lender, [Purchaser’s bank], business registration no. [business registration no. of the Purchaser’s bank], (**the Lender**). [[29]](#footnote-29) The Closing Agent shall not issue the authorisation to the Purchaser before Closing is completed. | Seller | No later than 10 [[30]](#footnote-30) business days before Agreed Closing |
|  | Deliver to the Closing Agent correctly signed and confirmed documents establishing a security interest in the Property issued to [Purchaser’s bank], business registration no. [business registration no. of the Purchaser’s bank] (**the Lender**), and a declaration in which the Lender undertakes to cancel the documents establishing the security interest if, for any reason, Closing is not completed. | Purchaser | No later than by Agreed Closing |
|  | Obtain any necessary consents in order to register the documents establishing the Lender’s security interest. | Seller/Closing Agent | Before Agreed Closing |
|  | Provided that Clause 2.6 up to and including 2.8 have been complied with, send the documents establishing the security interest in favour of the Lender for registration. | Closing Agent | No later than 7 business days before Agreed Closing |
|  | Obtain confirmations (**the** **Statements of Outstanding Debt**) from all creditors having a security interest (including registered statutory charge) in the Property to the effect that they will cancel their security interest if they receive a specified amount (**the Loans**). | Seller/Closing Agent | 5 days before Agreed Closing [[31]](#footnote-31) |

1. actions at the time of Closing

Provided that the conditions in Clause 4 of the Agreement have been fulfilled or waived, [[32]](#footnote-32) the Seller has fulfilled its obligations under Clause 2 of the Closing Agreement and the document establishing the security interest and any documents establishing a security interest for the Lender have been registered, see Clause 2.9:

* + - 1. the Purchaser shall pay the Consideration to the Closing Account, so that the amount is available before 11:00 on the day of Closing; and
			2. provided the Consideration is paid to the Closing Account, the Closing Agent shall do the following upon Closing:
				1. send the deed and any other documentation necessary for the registration of those documents to the Norwegian Mapping Authority (*Kartverket*); and
				2. repay the Loans in the amounts set out in the Statements of Outstanding Debt.

If the amount of the Loans is higher than the Purchase Price, the Seller shall pay the difference between the amount of the Loans and the Purchase Price to the Closing Account, so that the amount is available before 11:00 on the day of Closing. [[33]](#footnote-33) If the Seller fails to comply with that obligation, the Closing Agent shall not send the documents referred to in (b) to the Mapping Authority.

1. payment of the Purchase Price, etc.

When the deed is registered, Closing Agent shall verify whether the Seller’s creditors have seized the Property. If they have not, the Closing Agent shall pay the following on the Closing Date:

* + - 1. agreed fees and outlays to the Closing Agent, and
			2. the remainder of the Purchase Price, including interest accrued in the Closing Account, to the Seller’s account no. [•]

The Closing Agent shall arrange for timely payment of the stamp duty and registration fee to the Mapping Authority.

Closing shall be completed in accordance with this Closing Agreement even if the Purchaser’s creditors seize the Property after Closing.

1. partial closing where The Seller has defaulted on its obligations [this clause may be deleted if deemed desirable]

If: (i) there is a monetary encumbrance on the Property which the Seller is to have cancelled and which are not covered by the Statements of Outstanding Debt, (ii) the remainder of the Purchase Price in the Closing Account provides, after repayment of the Loans, by a good margin, adequate security for full repayment of the obligation secured by the encumbrance; and (iii) all of the other conditions in Clause 4 of the Agreement and Clauses 2 and 3(a) of Closing Agreement have been fulfilled or waived at the time of Closing, the Closing Agent shall undertake the actions referred to in Clauses 3(b) and 4 of the Closing Agreement, but withhold an amount in the Closing Account which provides, by a good margin, adequate security for full repayment of the obligation secured by the encumbrance. The excess amount in the Closing Account shall be paid to the Seller’s account no earlier than the first business day after the deed is registered. The amount withheld (including interest in the Closing Account) shall be paid when the encumbrance has been cancelled or a bank has confirmed in writing that the encumbrance is to be cancelled.

If: (i) the conditions in Clause 4 of the Agreement have been fulfilled or waived; (ii) the Purchaser has paid the Consideration to the Closing Account and fulfilled all of its other obligations under the Closing Agreement; but (iii) one or more of the other conditions in Clause 2 of the Closing Agreement have not been fulfilled or waived at the time of Closing, the Purchaser shall be entitled but not obliged to demand in writing that Closing nevertheless be completed. In that event, the Closing Agent shall:

* + - 1. in so far as possible, immediately undertake the actions set out in Clauses 3(b) and 4(a) of the Closing Agreement;
			2. withhold in the Closing Account the amount that would otherwise have been paid under Clause 4(b) of the Closing Agreement;
			3. immediately once the conditions in Clause 2 of the Closing Agreement have been fulfilled or waived,
				1. if the Loans have not already been repaid, repay the Loans in the amounts stated in a new Statement of Outstanding Debt obtained by the Closing Agent or the Seller, and
				2. pay the remainder of the Purchase Price, including interest accrued in the Closing Account, to the Seller’s account.
1. Closing is not completed as agreed

If one or more of the conditions set out in Clauses 2 or 3.1(a)of the Closing Agreement have not been fulfilled or waived at the time of Closing, Closing shall, save for those cases referred to in Clause 5, nevertheless be completed if and when all of the conditions have been fulfilled or waived within 30 days after: (i) Closing, or (ii) deferred Closing pursuant to a written amending agreement between the parties. If one or more of the conditions have still not been fulfilled or waived by the expiry of the aforementioned 30-day time-limit, the Closing Agent shall deliver the original of the authorisation referred to in Clause 2.6to the Seller and repay any Loan amounts received to the Lender, including interest accrued in the Closing Account, provided the Lender confirms that the documents establishing the security interest registered in favour of the Lender will be cancelled*.* At the same time, the excess amount in the Closing Account which is not to be transferred to the Lender shall be repaid to the Purchaser. Furthermore, the Closing Agent shall, on its own initiative, arrange for cancellation of the document establishing the security interest, unless the Purchaser has a claim that is covered by the document establishing the security interest.

1. Cancellation of the document establishing the security interest

Immediately once the deed is registered and encumbrances to be cancelled have been cancelled, the Closing Agent shall send the document establishing the security interest for cancellation, unless otherwise instructed by the Purchaser.

\*\*\*

[place], [date of signing]

|  |  |  |
| --- | --- | --- |
| For and on behalf of [Seller] |  | For and on behalf of [Purchaser] |
| [Seller’s repr.] |  | [Purchaser’s repr.] |

|  |  |
| --- | --- |
|  | For and on behalf of [Estate Agency] |
|  |  |

Annex:

1. Authorisation to grant a security interest in the Property from the Seller to the Purchaser

Appendix 6

Closing Agreement without Closing Agent

[This Appendix is to be deleted if closing is to be completed with a Closing Agent]

1. ACTIONS PRIOR TO Closing

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

|  | **Action** | **Party responsible** | **Time-limit** | **Status** |
| --- | --- | --- | --- | --- |
|  | Issue and send for registration a document establishing a security interest in the Property with a par value of the Consideration in favour of [Estate Agency], business registration no. [business registration no. of the Estate Agency], (**the Estate Agency**). The document establishing the security interest shall serve as security for any of the Purchaser or the Purchaser’s lender’s claims arising in connection with the Agreement (including loans to the Purchaser from the Purchaser’s lender) and forbid the Seller from disposing of, granting a security interest in or otherwise taking decisions in respect of the Property without consent from the Estate Agency. | Seller | Immediately after signing of the Agreement |  |
|  | Sign self-declaration on licence exemption. [[34]](#footnote-34) | Purchaser | Immediately after signing of the Agreement |  |
|  | Provided that Clause 1.2 has been complied with, obtain the municipality’s confirmation of the self-declaration on licence exemption. | Purchaser | As soon as possible |  |
|  | Deliver to the Seller documents establishing a security interest in the Property issued to [Purchaser’s bank], business registration no. [business registration no. of the Purchaser’s bank], (**the Lender**) and a declaration in which the Lender undertakes to cancel the documents establishing the security interest if, for any reason, Closing is not completed. | Purchaser | No later than 10 [[35]](#footnote-35) business days before Closing |  |
|  | Provided that Clause 1.4 has been complied with, obtain any necessary consents in order to register the documents establishing the Lender’s security interest, and send them for registration. | Seller | No later than 8 business days before Closing |  |
|  | Deliver to the Purchaser confirmations (**the** **Statement of Outstanding Debt**) from all creditors having a security interest (including registered statutory charge) in the Property to the effect that they will cancel their security interest if they receive a specified amount (**the Loans**). | Seller | 5 days before Closing [[36]](#footnote-36) |  |

1. actions at the time of Closing

Provided that the amount of the Loans is not higher than the Purchase Price, the conditions in Clause 4 of the Agreement have been fulfilled or waived, [[37]](#footnote-37) the parties have fulfilled their obligations under Clause 1 of the Closing Agreement and the document establishing the security interest and any documents establishing the security interest in favour of the Lender have been registered, see Clause 1.5:

* + - 1. the Seller shall deliver to the Purchaser a signed deed issued to the Purchaser and any consents necessary to register the deed; and
			2. at the same time, the Seller and the Purchaser shall deliver to the Lender a payment instruction as set out in appendix 2 for the repayment of the Loans payment of the remainder of the Consideration to the Seller.
1. Time of the purchaser’s taking possession of the Property

The Purchaser shall take possession of the Property once the remainder of the Consideration after repayment of the Loans is available in the Seller’s account. If, for any reason, the remainder of the Consideration does not become available in the Seller’s account, the deed shall be delivered back to the Seller.

1. Cancellation of the document establishing the security interest

Immediately once Closing has been completed and the deed is registered, the Estate Agency shall send the document establishing the security interest for cancellation, unless otherwise instructed by the Purchaser.

\*\*\*

Annex:

1. Irrevocable payment instructions

Annex 1

authorisation for granting a security interest [THIS ANNEX IS TO BE DELETED IF CLOSING IS TO BE COMPLETED AFTER registration of the deed]

[Seller], business registration no. [business registration no. of the Seller], hereby confers on [Purchaser], business registration no. [business registration no. of the Purchaser], represented by [designated representative for the Purchaser], social security number [•], authorisation to act alone to grant a security interest in and issue a non-disposal declaration over our property bearing land number (*gårdsnummer*) [●], title number (*bruksnummer*), lease number (*festenummer*) [•], section number [*seksjonsnummer*] [•], in the municipality of [•] in favour of [Purchaser’s bank], business registration no. [business registration no. of the Purchaser’s bank].

This authorisation may be used only in the original and shall not be valid after [state a generous time-limit].

[Place], [date]

|  |
| --- |
| For and on behalf of [Seller] |
| [NB! Only persons authorised in the title-holder to sign may sign.] |

I/we confirm that [state name(s) of person in the Company authorised to sign] is/are over 18 years of age and has/have signed or acknowledged their signature(s) in my/our presence. I/we is/are of legal age and resident in Norway. [[38]](#footnote-38)

[Place], [date]

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Witness’s signature | Witness’s signature |
|  |
| Witness’s name in block letters  | Witness’s name in block letters  |
| Address | Address |

Annex 2

irrevocable payment instructions [this annex is not used if closing is completed with a Closing Agent.]

[Purchaser], business registration no. [business registration no. of the Purchaser], hereby gives [Purchaser’s bank], business registration no. [business registration no. of the Purchaser’s bank], irrevocable instructions immediately to make the following payments:

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

Please confirm as soon as possible by e-mail to:

[•]

Attn [•]

E-mail: [•]

that the payments under Clauses 1-[•] above have been irrevocably initiated.

Yours faithfully,

|  |
| --- |
| For and on behalf of [Purchaser]  |
| [Purchaser’s repr.] |

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

Yours faithfully,

|  |
| --- |
| For and on behalf of [Seller] |
| [Seller’s repr.] |

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

If new paragraphs are to be added, it must 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 **Error! Reference source not found** 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 tothe deletion of relevant text, failing which 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’.

Note that the ‘find and replace’ function can be used to replace [Seller], [business registration no. of the Seller], [Purchaser], [business registration no. of the Purchaser], [date of signing], [Estate Agency], [business registration no. of the Estate Agency], [Purchaser’s bank], [business registration no. of the Purchaser’s bank], [Closing date], [Seller’s repr.], and [Purchaser’s repr.] with the correct designation throughout the document.

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

1. Cursor to be placed in text

a) Press Ctrl + A (all text selected)

b) Press F9 (all cross-references updated)

2. Cursor to be placed in the footnote field

a) Carry out steps a) and b) above [↑](#footnote-ref-1)
2. NB: If completion of the sale of the Property is conditional upon circumstances outside the control of the parties and it is uncertain when the conditions will be fulfilled, the following wording should be used instead: ‘*Closing shall be completed [●] banking days after all conditions in Clause 4.1 and 4.2 have been fulfilled or waived’*. Moreover, a new Clause 4.4 should be added under the following heading: ‘*Time-limit for completion of the Agreement’: If the conditions for completion of this Agreement have not been fulfilled or waived by [●], either the Seller or the Purchaser may terminate this Agreement by written notice to the other party. If a condition has not been fulfilled as the result of breach of the Agreement by one of the parties, the party in breach shall not be entitled to terminate this Agreement.’* [↑](#footnote-ref-2)
3. Make sure that the Agreed Closing falls on a banking day, or misunderstandings may arise as to when timely payment is to take place. [↑](#footnote-ref-3)
4. This clause is included for informational purposes. If the clause is deleted, there will be no implications for entitlement to damages and overdue interest which the parties otherwise have under the standard terms, read in conjunction with applicable law. [↑](#footnote-ref-4)
5. Clause 4 may be deleted if it has not been agreed that specific conditions must be fulfilled before the Agreement is to be completed. [↑](#footnote-ref-5)
6. If the completion of the Agreement is conditional on factors which the Seller or the Purchaser are to endeavour to satisfy, a new Clause 4.3, with the heading ‘*Fulfilment of conditions*’, should be included to read as follows: ‘*The Seller and the Purchaser shall do what may be reasonably expected of them in order for the conditions for the completion of the Agreement to be fulfilled without undue delay [, although the Purchaser [and the Seller] remain entirely free to invoke the reservations in Clause* [include here the references to reservations as to Board approval, satisfactory due diligence and other factors which the Seller or the Purchaser are to be free to invoke as a ground for withdrawing from the Agreement]].’ [↑](#footnote-ref-6)
7. If a significant tenant goes bankrupt or becomes insolvent, this may constitute a material adverse effect (*bristende forutsetning* in Norwegian law) for the Purchaser and lead to the Purchaser’s bank withdrawing its commitment in relation to the financing of the purchase. In that case a determination may be made as to whether to include a new clause reading as follows: ‘*A significant tenant is not in bankruptcy proceedings and has not filed for dissolution, entered into debt negotiations of any kind, suspended its payments or acknowledged being unable to meet its obligations as and when they fall due. By “significant tenant” is meant one or more tenants who have entered into agreement(s) to lease the Property in return for a total annual rent amounting to over [10]% of the total agreed annual rent from the Property.*’ [↑](#footnote-ref-7)
8. The following clause may be added here if the Agreement is entered into with a reservation by the Purchaser as to Board approval: ‘*The Purchaser’s Board has approved the Purchaser’s acquisition of the Property under the terms of this Agreement. If the Purchaser fails to give the Seller written notice to the effect that such approval has not been given by 12:00 on [●], the Purchaser shall be bound by the Agreement*.’ [↑](#footnote-ref-8)
9. The following clause may be added here if the Purchaser is to conduct due diligence following signing of the Agreement, and the completion of the Agreement is conditional on there being no negative findings: ‘*In its technical, financial and legal due diligence, the Purchaser has not discovered factors which, in its opinion, deviate from the information given to it by the Seller about the Property. Should the Purchaser discover such factors and wishes to withdraw from the Agreement, the Purchaser must give written notice to that effect to the Seller by 12:00 on [●], failing which the Purchaser shall be bound by the Agreement.*’ [↑](#footnote-ref-9)
10. Note that sale of a property encumbered by a right of first refusal or other pre‑emptive right will trigger the pre-emptive right on the property, unless otherwise provided by the legal act establishing the pre-emptive right, see section 11 of Norwegian Act No 1994/64 on pre-emptive rights (*lov om løysingsrettar 1994/64*). The following may be added if the sale of the Property triggers a pre-emptive right: ‘*[specify contractual party] has confirmed in writing that they will not exercise their pre-emptive right on the Property arising from the Purchaser’s acquisition of the Property*.’ [↑](#footnote-ref-10)
11. The following clause may be added if the Agreement is entered into with a reservation by the Seller as to Board approval: ‘*The Seller’s Board has approved the Purchaser’s acquisition of the Property under the terms of this Agreement (including the Purchase Price). If the Seller fails to give the Purchaser written notice to the effect that such approval has not been given by 12:00 on [●], the Seller shall be bound by the Agreement.*’ [↑](#footnote-ref-11)
12. If the Seller grants the Purchaser credit and the Seller is to be able to rescind the Agreement following Closing if the Purchaser defaults on payment of the Purchase Price, the following sentence may be added here: ‘*The Seller reserves the right to rescind in those cases regulated by section 5-3(4) of the Sale of Real Property Act. By way of collateral for the Seller’s claims against the Purchaser arising from this Agreement, at Closing the Purchaser shall grant a first-priority security interest in the Property in favour of the Seller. That security interest shall be cancelled once the Purchaser has paid the Consideration.*’ That granting of the security interest should also be regulated in the Closing Agreement with annexes. [↑](#footnote-ref-12)
13. This clause means that the Seller must repay the entire Purchase Price for the Property to the Purchaser if, in the period allowed for claims under Clause 8.3, a breach of the Warranties or other obligations occurs which is deemed to be a material breach of the Seller’s obligations under the Agreement. In such an event, the Purchaser may demand repayment of the entire Purchase Price, even though it is agreed in Clause 8.4.1(c) that the Seller’s maximum liability for breaches of general Warranties is to be limited to X% of the Purchase Price. If it is deemed desirable that the Purchaser is to be deprived of the right to rescind the Agreement after Closing as well, that sentence may be replaced with the following: ‘*After Closing, neither of the parties may rescind this Agreement*.’ [↑](#footnote-ref-13)
14. Under this Warranty the Seller is liable for incorrect information, even though the Seller was not aware or ought not to have been aware that the information was incorrect. In order for the Seller to avoid such stringent and strict liability for incorrect information provided by someone for whom the Seller is liable, this Warranty may be amended to read as follows: ‘*The information about circumstances concerning the Property received by the Purchaser from the Seller prior to signing of this Agreement is, as far as the Seller is aware, correct.’* Under this Warranty, the Seller is liable only for loss incurred by the Purchaser as a result of incorrect information provided by the Seller if the Seller is aware that the information was incorrect or does not have a reasonable ground for being unaware of it. In order for the Purchaser to be entitled to damages for a matter of which the Seller has a reasonable excuse for being unaware, the Purchaser must request a specific warranty to that effect. [↑](#footnote-ref-14)
15. If the Seller is a company, the applicable law determines which natural persons are to be deemed to be ‘the Seller’ in the section on Warranties. Applicable law provides some guidance but does not answer all questions. That uncertainty can be remedied by stating with whom the Seller is to be identified. This can be done by replacing *the Seller* with *the Key Persons* in Clause 7.1 and 7.2, and by including the following definition in Clause 7.2: ‘***The Key Persons*** *refers to: (i) Directors and General Manager, if any, of the Seller; and (ii) employees of the Seller or companies in the same group as the Seller who have been involved in the preparations for signing of this Agreement.*’ If that circle of persons has limited knowledge of the Property, e.g., because an external party takes care of operations and management, a determination may be made as to whether to expand the circle of persons by adding the following wording: ‘*and also* [names of the persons for whom the Seller is to be liable]’. [↑](#footnote-ref-15)
16. If the Purchaser is to conduct due diligence after signing of the Agreement (see note 9), the following wording is added here: ‘… *or anything of which the Purchaser became aware in the course of the Purchaser’s due diligence of the Property: see Clause 4.1 …*’. [↑](#footnote-ref-16)
17. If it is deemed desirable here that the Purchaser’s failure to meet the time-limit for notice of breach here is to lead to the Purchaser’s forfeiting its claim, this sentence may be replaced with the following: ‘*If the Purchaser fails to give notice of breach within that time-limit, the Purchaser shall forfeit its claim against the Seller .*’ [↑](#footnote-ref-17)
18. In practice, this amount tends to be 0.1% of the Purchase Price, although no less than NOK 50 000 and no more than NOK 1 million. [↑](#footnote-ref-18)
19. This financial threshold is often put at 1% of the Purchase Price, but is rarely less than NOK 500 000 or more than NOK 3 million. [↑](#footnote-ref-19)
20. The Seller is liable only for damage occurring after signing of the Agreement. It can thus be a good idea for the Purchaser to inspect the Property immediately prior to signing. [↑](#footnote-ref-20)
21. An assessment must be undertaken in each individual case as to whether the conditions for transfer of adjustment/reversal liabilities and entitlements are fulfilled and, if so, whether this provision should be included. What effect the transfer of those liabilities/entitlements are to have on the Purchase Price must be specifically assessed by the parties. [↑](#footnote-ref-21)
22. The following wording may be used if arbitration is wished to be used:

*‘Any dispute that may arise in relation to this Agreement shall be resolved through arbitration pursuant to the Arbitration Act of 14 May 2004 (*lov om voldgift av 14. Mai 2004*). The arbitration tribunal shall consist of three members, of whom the parties shall appoint one arbitrator each. These two arbitrators shall appoint the third arbitrator, who shall be the Chairperson of the arbitration tribunal. The Chairperson of the arbitration 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 proceedings shall be held in [●] and the language of arbitration shall be Norwegian.*

*The arbitration proceedings shall be deemed to have commenced when one party sends a request to the other party to the effect that the dispute is to be resolved through arbitration. The arbitration proceedings and the decision of the arbitration tribunal shall be subject to a duty of confidentiality and, immediately once the arbitration proceedings have commenced, the parties shall be obliged to conclude a separate agreement confirming this.*

*The group of courts having jurisdiction under the general rules for provisional measures shall not be limited by what is provided for herein.*’ [↑](#footnote-ref-22)
23. In keeping with section 6-9(3) of the Norwegian Act relating to estate agency activities (*eiendomsmeglingsloven*), this Closing Agreement presupposes that no portion of the Purchase Price will be paid from the Closing Account before the deed is registered. The Seller must bear the cost of interest on its own loans from Closing until the loans have been repaid and runs the risk of changes in premiums and losses on the loans from Closing until repayment. [↑](#footnote-ref-23)
24. It must be ascertained whether such a self-declaration is sufficient or whether the Norwegian Law on licences for real property (*konsesjonsloven*) with accompanying regulations entails that a licence is necessary. [↑](#footnote-ref-24)
25. This Clause is to be deleted if no security interest is to be granted in the Property in connection with Closing. [↑](#footnote-ref-25)
26. If the Seller is to avoid paying that difference, new Statements of Outstanding Debt must be obtained confirming that the creditors will cancel all security interests if they receive an amount lower than the Purchase Price. [↑](#footnote-ref-26)
27. This Closing Agreement presupposes that section 6-9(3) of the Act relating to estate agency activities is waived and that the Seller’s loan with a security interest in the Property is repaid upon Closing and not after the deed is registered. [↑](#footnote-ref-27)
28. It must be ascertained whether such a self-declaration is sufficient or whether the Norwegian Law on licences for real property (*konsesjonsloven*) with accompanying regulations entails that a licence is necessary. [↑](#footnote-ref-28)
29. Clauses 2.5 to 2.8 may be deleted if no security interest is established for the Purchaser’s bank prior to Closing. [↑](#footnote-ref-29)
30. The time-limits here must be adjusted to the time available between signing of the Agreement and Closing and take account of the time needed to get the documents establishing the security interest registered. [↑](#footnote-ref-30)
31. 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-31)
32. Delete the following if the Agreement does not impose conditions for completion: *‘the conditions in Clause 4 of the Agreement have been fulfilled or waived,’*. [↑](#footnote-ref-32)
33. If the Seller is to avoid paying that difference, new Statements of Outstanding Debt must be obtained confirming that the creditors will cancel all security interests if they receive an amount lower than the Purchase Price. [↑](#footnote-ref-33)
34. It must be ascertained whether such a self-declaration is sufficient or whether the Norwegian Law on licences for real property (*konsesjonsloven*) with accompanying regulations entails that a licence is necessary. [↑](#footnote-ref-34)
35. The time-limits here must be adjusted to the time available between signing of the Agreement and Closing and take account of the time needed to get the documents establishing the security interest registered. [↑](#footnote-ref-35)
36. If the Seller has entered into swap agreements in connection with the Loans, the Seller should check whether it is practically feasible to obtain Statements of Outstanding Debt five days before Closing. [↑](#footnote-ref-36)
37. Delete the following if the Agreement does not impose conditions for completion: *‘the conditions in Clause 4 of the Agreement have been fulfilled or waived,’*. [↑](#footnote-ref-37)
38. The Norwegian Mapping Authority (*Kartverket*) requires that the title-holder’s signature must be witnessed by two witnesses of legal age resident in Norway or one lawyer, estate agent or law graduate with authorisation to act as a professional responsible and estate agent responsible, or estate agent who has authorisation to act as responsible estate agent. An Estate Agency’s authorised representative may also witness alone, as may a State authorised or registered auditor. [↑](#footnote-ref-38)