SALE AND PURCHASE AGREEMENT WITH WARRANTY INSURANCE, MARCH 2020, BASED ON ESTATE AGENCY STANDARD TERMS OF MARCH 2020 FOR THE SALE OF A LIMITED LIABILITY COMPANY 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 the shares of**

**[Company]**

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

[Seller], business registration no. [business registration no. of the Seller], (**the Seller**) owns 100% of the shares (**the** **Shares**) of [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 under the terms set out in this Agreement. [[2]](#footnote-2)

The Company 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**). [[3]](#footnote-3)

1. PURCHASE PRICE
   1. 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. bank deposits as stated on the Company’s balance sheet; and
      2. receivables as stated on the Company’s balance sheet which (i) a debtor is to settle upon or following Closing, including receivables that have fallen due but not been paid prior to Closing, or (ii) are costs that have been paid in advance for goods or services delivered or provided following Closing, [[4]](#footnote-4) and
      3. [●]% of any loss carry forward (up to and including the date of Closing); [[5]](#footnote-5)

minus:

* + - 1. all liabilities as stated on the Company’s balance sheet, save for: (i) deferred tax, (ii) expenditures for future maintenance and other measures relating to the Property following Closing, and (iii) provision for matters the risk of which is transferred to the Purchaser under this Agreement upon signing hereof, [[6]](#footnote-6) and [[7]](#footnote-7)
      2. [●]% of the difference between: (i) NOK [●], corresponding to the Property Value minus the agreed value of the land, and (ii) the Property’s tax depreciation basis at the time of Closing (including calculated depreciation up to and including the date of Closing). [[8]](#footnote-8)
  1. Estimated Balance Sheet and Estimated Purchase Price together with repayment of any loans

The Purchase Price which the Purchaser is to pay upon Closing (**Estimated Purchase Price**) is to be determined on the basis of a balance sheet for the Company as it is expected to be at the time of Closing (**Estimated Balance Sheet**). The Estimated Balance Sheet is to be prepared in accordance with generally accepted accounting principles, applied consistently and otherwise as follows:

* + - 1. Anticipated profit/loss after tax up to 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 redemption of swap agreements arising at the time of Closing upon repayment of the Company’s loans.
      3. Payable tax and deferred tax benefits shall reflect: (i) the income/costs arising upon repayment of the Company’s loans; and (ii) the Company’s tax depreciation and entries from the G/L account, etc., in the year of the sale, allocated on the basis of period of ownership in the year of the sale, apportioned as a number of days, with the date of Closing being assigned 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 Company’s accountant and a calculation of the Estimated Purchase Price, which is estimated at NOK [●].

No later [[9]](#footnote-9) than [five days] [[10]](#footnote-10) prior to the Agreed Closing, the Seller shall produce Statements of Outstanding Debt from the Company’s lenders showing the exact amount of the Company’s Loans (together, **the Loans**) at the time of Closing, including loans from the Seller (**the Seller Loan**), in which the lender(s) confirm cancellation of existing security interests upon repayment of the Loans as stated in the Statements of Outstanding Debt. At the same time, the Seller shall produce an updated calculation of the Estimated Purchase Price in which the Loans are entered with the correct amount, but without changes having been made to the other entries, including payable tax and deferred tax benefit. If, for any reason, Closing is completed at another time than that of the Agreed Closing, the Seller shall, without undue delay, obtain and send to the Purchaser new Statements of Outstanding Debt and a new calculation of the Estimated Purchase Price as at the date of Closing.

At Closing, the Purchaser shall pay the Estimated Purchase Price and repay the Loans in the amounts set out in the Statements of Outstanding Debt.

The Seller and the Company hereby confirm that any and all claims between the Company and the Seller or other companies in the same group as the Seller shall be settled with final effect once any Seller Loans have been repaid and that any claims omitted in the Revised Balance Sheet shall be waived in their entirety with effect as from the time of Closing.

* 1. Revised Balance Sheet and 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 at the time of Closing (**Revised Balance Sheet**), to be prepared in accordance with the same principles as the Estimated Balance Sheet, see Clause 2.2 approved and signed by those who served as Directors of the Company immediately prior to Closing;
      2. A statement from an auditor retained by the Seller, to the effect that such auditor has conducted a simplified audit check of the Revised Balance Sheet; [[11]](#footnote-11) [[12]](#footnote-12) and
      3. A calculation of the Purchase Price (**Revised Purchase Price**) on the basis of the Revised Balance Sheet.

In the preparation of the Revised Balance Sheet, regard shall not be had to transactions undertaken by the Company on the day of Closing after the Shares have been transferred to the Purchaser. In the calculation of the Revised Purchase Price, no amount shall be added for insurance amounts or claims to insurance amounts for damage to the Property of which the Purchaser itself becomes aware after signing of this Agreement.

The Purchaser may, no later than one month 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 it has objections to the Purchase Price Calculation. If the Purchaser fails to raise any objection within the time‑limit, the Purchase Price Calculation prepared by the Seller shall become final and binding on the parties.

If the Purchaser puts forward an objection to the Purchase Price Calculation within the time-limit and the parties do not reach agreement within an additional 14 days, either of the parties may require that the dispute be resolved as provided for in Clause 14. [[13]](#footnote-13)

If the Revised Purchase Price deviates from the Estimated Purchase Price: (i) any positive difference shall be paid by the Purchaser to an account specified by the Seller; and (ii) any negative difference shall be paid by the Seller to an account specified by the Purchaser. The difference shall be paid within 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 that overdue interest pursuant to the Norwegian Act relating to Interest on Overdue Payments (*forsinkelsesrenteloven*) shall accrue after the due date.

The fact that the Purchase Price Calculation is final and binding shall not restrict the Purchaser’s right to invoke claims resulting from breach of other provisions of this Agreement. That entails, however, that the Seller and the Purchaser may not rely on another legal basis outside this Agreement in order to demand changes to the Purchase Price Calculation (e.g., as a result of hidden assets or liabilities or incorrect statement of an amount of a balance sheet item).

1. CLOSING, SETTLEMENT and delays
   1. Agreed Closing

The shares shall be transferred to the Purchaser on [date of Closing] (**Agreed Closing**). [[14]](#footnote-14) [[15]](#footnote-15)

* 1. Actual Closing. Settlement

The Shares shall be transferred to the Purchaser once the Estimated Purchase Price and any amounts corresponding to the Seller Loan are available in the Seller’s account once Closing has been completed in accordance with the Closing Agreement in Appendix 7 (**Closing**).

The Seller, the Purchaser and the Company hereby undertake to perform their respective obligations set forth in the Closing Agreement. [[16]](#footnote-16)

* 1. Delay [[17]](#footnote-17)

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 shall send the Purchaser new Statements of Outstanding Debt and a new calculation of the Estimated Purchase Price, see Clause 2.2.3; [[18]](#footnote-18)
      4. the Revised Balance Sheet shall be calculated as at the time of Closing;
      5. 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
      6. Clause 9.1(a) shall apply in respect of damage to the Property and appurtenances thereto.

A party claiming damages for delay may demand in writing that the Company’s profits in the period from the Agreed Closing to Closing be calculated by the Company and confirmed by the Company’s auditor, so that any profits or losses from that period may be taken into account in the calculation of damages.

1. conditions for COMPLETION of the agreement [[19]](#footnote-19) [[20]](#footnote-20)
   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 Property Value. 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). [[21]](#footnote-21) [[22]](#footnote-22) [[23]](#footnote-23)  [[24]](#footnote-24)
  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 Property Value. The Seller may not rely on this condition if the Purchaser undertakes not to claim for damages exceeding [10] % of the Property Value as a result of the damage. [[25]](#footnote-25)
  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. specific obligations for the parties prior to Closing

Until Closing the Seller shall ensure:

* + - 1. that no decisions are taken to make distributions on the Shares or other total or partial consideration-free transfers to shareholders or other parties, beyond what is stated in the Estimated Balance Sheet;
      2. that the Company’s business is operated in the ordinary course, including that the Property is maintained properly and no less than before signing of this Agreement;
      3. that the Company does not enter into new agreements that are of material importance for the Company, and that none of the Company’s material agreements are cancelled, amended or terminated without written consent from the Purchaser;
      4. not to encourage or undertake anything that would constitute breach of the Seller’s Warranties under Clause 7;
      5. to keep the Property insured at full value;
      6. that, no later than the time of Closing, the Company withdraws from any Group account scheme and common registration in the Value Added Tax Register (*Merverdiavgiftsregisteret*). [[26]](#footnote-26)

Until Closing the Purchaser shall ensure that no changes are made to the Warranty Insurance as defined in Clause 10.1, and that it shall not cease to be in effect.

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 34 of the Norwegian Sale of Goods Act (*kjøpsloven*), but the Seller may effect rectification under section 36 of the Sale of Goods 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 42 of the Sale of Goods Act, but the Purchaser shall not be entitled to a price reduction under section 38 of the Sale of Goods Act. If the Purchaser breaches this Agreement, the Seller may claim damages under the general rules, including section 57 of the Sale of Goods Act and the Act relating to Interest on Overdue Payments.

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, neither of the parties may rescind this Agreement. [[27]](#footnote-27)

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 19(1)(a), (b) and (c) of the Sale of Goods Act, section 3-7, 3-8 and 3-9 of the Norwegian Sale of Real Property Act (*avhendingsloven*), 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 Key Persons have informed the Purchaser of the circumstances concerning the Company and the Property of which the Key Persons are 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 19(1)(b) of the Sale of Goods Act.
      2. The information about the circumstances concerning the Company and the Property received by the Purchaser from the Seller prior to signing of this Agreement is, as far as the Key Persons are aware, correct.
      3. The Seller owns the Shares, the Shares are transferred free of all liens and encumbrances of any kind whatsoever, the Shares are not subject to any pre-emptive rights, the Company does not have an unconditional or conditional obligation to issue further shares, and no rights relating to the Shares (including dividends, preferential rights in the event of capital increase, etc.) have been separated from the Shares.
      4. The Company is lawfully incorporated and registered in the Register of Business Enterprises (*Foretaksregisteret*) and all material (including the most recently adopted Articles of Association) required to be registered in the Register of Business Enterprises has been registered there.
      5. The Company’s annual financial statements for [year] have been adopted in compliance with the rules of the Norwegian Accounting Act (*regnskapsloven*), the Company has not provided any Warranties in respect of any third party liability, and the Company has no liabilities that the Company should have entered in its balance sheet in accordance with generally accepted accounting principles, other than what is stated in the Revised Balance Sheet.
      6. The amount of any losses that may be carried forward by the Company and the Property’s tax depreciation basis has been calculated correctly in the determination of the Revised Purchase Price. [[28]](#footnote-28)
      7. The Company has filed required, correct and complete information with the tax and VAT authorities, and there is not, nor will there arise, any tax or VAT liabilities for the Company in relation to the time period prior to Closing which are not fully covered by the provisions set out in the Revised Balance Sheet.
      8. The Company has prepared an updated adjustment specification which is complete and correct, and the Company is in possession of the documentation required under applicable VAT rules for the acquisition/production and use of capital goods. [[29]](#footnote-29)
      9. The Company’s operations consist solely of owning real property and the Company has no employees or pension liabilities.
      10. The Company owns the Property and is the title-holder thereof.
      11. There are no other existing liens or encumbrances on the Property (including pre-emptive rights) other than as set out in Appendix 4, and any liens (apart from statutory liens for unpaid debt) on the Property and the Company’s other assets will be cancelled without undue delay after Closing.
      12. The Company is not party to any dispute proceedings before any court of law or administrative body and has not received any written notice to the effect that a party will initiate or is considering initiating such proceedings against the Company. This Warranty shall be repeated at the time of the Agreed Closing and not Closing where the delay is due to reasons attributable to the Purchaser.
      13. The Company is not in breach of the leases, with appurtenant addenda, specified in Appendix 5. This Warranty does not apply in respect of maintenance backlogs or other technical matters relating to the Property.
      14. At the time of signing this Agreement, the Property is leased pursuant to the leases, with appurtenant addenda, as specified in Appendix 5, and those leases are valid and include all terms that have been agreed with the lessees. At the time of signing this Agreement, the Key Persons are not aware that any of the lessees are in breach of the leases.
      15. The Warranties or security put forward for the leases in Appendix 5 are valid and reproduce everything agreed with the guarantor.
      16. There are certificates of completion for all measures on the Property for which a certificate of completion is required by law.
      17. The Company operates and has for the past three years operated its business in accordance with applicable laws and rules, orders, permits, judgments or administrative decisions.
      18. As far as the Key Persons are aware, the Property complies with public and private law requirements.
      19. As far as the Key Persons are aware, there is no pollution on the Property or use of materials/substances hazardous to health which are not permitted on the Property.
      20. As far as the Key Persons are aware, there are no cultural heritage items on the Property.
      21. 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. [[30]](#footnote-30)

The **Key Persons** in Clause 7.1 and 7.3 refers to: (i) Directors and General Manager, if any, of the Seller or the Company; and (ii) employees of the Company, the Seller or companies in the same group as the Seller who have been involved in the preparations for signing of this Agreement. [[31]](#footnote-31)

References to matters **of which the Key Persons are aware** in Clause 7.1, mean circumstances of which the Key Persons are actually aware at the time of signing this Agreement and also circumstances of which the Key Persons do not have reasonable grounds to be unaware at that time.

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 or the Company; 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 Company. 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 [name the relevant persons in the Purchaser’s deal team] was actually aware at the time of signing this Agreement, or anything that is reasonably clear or readily apparent from the documents stored in the space on the memory stick in Appendix 8. The Seller waives the right to invoke section 20 of the Sale of Goods 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 breach of Warranty
       1. The Purchaser shall forfeit the right to claim for a breach of the Warranties in Clause 7.1(g) and (h) (*concerning taxes*) or Clause 7.1(c) or (j) (*concerning ownership of the Shares and the Property*) if the Purchaser fails to give the Seller notice of breach no later than seven years after Closing. For other breaches of the Warranties in Clause 7, the Purchaser must give the Seller notice of breach no later than 24 months after Closing. If the Purchaser itself discovers a breach of Warranty 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 Warranty. 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 or the Company’s loss of the right to claim damages from a third party, including an insurance company. [[32]](#footnote-32)
    2. Notice of breach in the event of other breaches of this Agreement

For breaches of this Agreement other than delay and breach of the Warranties set out in Clause 7 and the Indemnifications in Clause 9, the Purchaser must give the Seller notice of breach no later than two months after Closing, failing which the Purchaser shall forfeit its claim.

* 1. Financial limitation of liability

The Seller’s liability for any breach of Clause 7 shall be subject to the following limitations: [[33]](#footnote-33)

* + - 1. The Purchaser may not invoke any individual breach entailing a loss of less than NOK [●], 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 [●], 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 NOK [●].

The limitation of liability in Clause 8.4.1 shall not apply in the event of breach of Clause 7.1(c) or (j) (*ownership of the Shares and the Property*).

The Seller’s aggregate liability for breach of this Agreement (including Clauses 5 and Clause 7.1(c) and (j)) shall be limited to the Revised Purchase Price or [20]% of the Property Value, whichever is higher, [[34]](#footnote-34) other than as set forth in Clause 9.2.

* 1. Liability in the event of wilful misconduct

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 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 Shares to the Purchaser.

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. [[35]](#footnote-35) 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.
      2. Non-payment of the receivables for which additions were made in the calculation of the Revised Purchase Price and which do not encompass entitlement to rent for the period after Closing. The Company shall take all necessary and reasonable legal steps to collect those receivables, unless the Company’s relationship with the Company’s contractual party gives the Company reasonable grounds to refrain from doing so. The Company may not forgive all or part of those receivables without consent from the Seller, who may not withhold such consent if the Company has reasonable grounds to forgive the receivable. The Purchaser shall forfeit the right to invoke this indemnification if the Purchaser fails to give the Seller written notification thereof no later than [●] months after Closing. [[36]](#footnote-36) [[37]](#footnote-37) [[38]](#footnote-38) [[39]](#footnote-39)

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. Warranty Insurance

The Purchaser shall take out the Warranty Insurance (**the** **Warranty Insurance**) included in Appendix 9 which covers the Purchaser’s loss caused by the Seller’s breach of the Warranties in Clause 7 (**the** **Warranties**) up to a maximum of NOK [●] (**the** **Insurance Cover**). The insurance premium shall be borne by the Seller [*and the Purchaser, with each covering 50%*]and the [*Seller’s portion of the premium*] shall be deducted from the Estimated Purchase Price.

Save as provided for in Clause 10.3, the Purchaser hereby waives any and all right to invoke a claim against the Seller as the result of a breach of the Warranties, unless the loss is due to the Seller’s fraudulent or intentional conduct. This limitation of liability shall prevail as against any other Clause in this agreement.

The Purchaser may nevertheless invoke claims against the Seller: [[40]](#footnote-40)

* + - 1. if the Purchaser is entitled to damages pursuant to Clause 9 (*Indemnification by the Seller*); or
      2. if, after the signing of this Agreement, circumstances arise constituting breach of the Warranties of which the Purchaser becomes aware before Closing; [[41]](#footnote-41) or
      3. if the Purchaser’s losses arising from breach of the Warranties in Clause 7.1(c) (*concerning* *ownership of the Shares*) or Clause 7.1(j) (*concerning* *ownership of the Property*) exceeds the Insurance Cover, the Purchaser may require the Seller to cover the excess loss up to a maximum of the difference between the Seller’s aggregate remaining liability pursuant to Clause 8.4.3 and the Insurance Cover. [[42]](#footnote-42) [[43]](#footnote-43)

1. liability of the respective sellers [to be deleted if there is only one seller]

The shareholders 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 shall be limited to a maximum of that portion of the claim corresponding to that shareholder’s ownership stake in the Company. [*Alternatively: The shareholders 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. WAIVER OF THE RIGHT TO INVOKE CLAIMS AGAINST ANYONE OTHER THAN THE parties

The Purchaser and the Company, 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 Company 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 Company 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. Nor does the waiver of liability under this Clause 12 limit the right of the Purchaser to invoke a claim under the Warranty Insurance in Clause 10.

**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. [[44]](#footnote-44) 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, the Purchaser and the Company
2. Articles of Association and certificate of security interest for the Company
3. The Estimated Balance Sheet and Estimated Purchase Price calculation
4. Transcripts from the Land Registry
5. Leases, with appendices
6. Prospectus, with appendices
7. Closing Agreement
8. *[Data space on memory stick]*
9. Warranty Insurance
10. 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.] |

We acknowledge and accept our obligations under this Agreement:

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

APPENDIX 7   
Closing Agreement

1. ACTIONS PRIOR TO Closing

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

|  | **Action** | **Party responsible** | **Time-limit** |
| --- | --- | --- | --- |
|  | 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 documents establishing the security interest in respect of the Property issued in favour of the Purchaser’s lender, [Purchaser’s bank], business registration no. [business registration no. of Purchaser’s bank] (**the Lender**), and a declaration by which the Lender undertakes to deregister the documents establishing the security interest if, for whatever reason, Closing is not completed. The Purchaser shall ensure that the documents establishing the security interest may be relied on only in so far as permitted by applicable law and the Lender is aware that the documents establishing the security interest cannot be used as collateral to secure the Purchaser’s financing of the Purchase Price until such time as a notice as referred to in section 8-10(8) of the Limited Liability Companies Act has been sent to the Register of Business Enterprises. [[45]](#footnote-45) [[46]](#footnote-46) | Purchaser | No later than 10 [[47]](#footnote-47) business days before Agreed Closing |
|  | Provided that Clause 1.2 has been complied with, obtain any consent necessary to register the documents establishing the Lender’s security interest and send them for registration. | Seller/ Company | No later than 8 business days before Agreed Closing |
|  | Deliver to the Purchaser confirmations (**the** **Statements of Outstanding Debt**) from the creditors under the Loans stating the exact amount of the Loans as at the time of Agreed Closing, in which the creditors confirm that all of their security interests in the Property *[the Shares]* and other assets belonging to the Company [[48]](#footnote-48) will be cancelled upon receipt of the amounts stated in the Statement of Outstanding Debt. | Seller | 5 days before Agreed Closing [[49]](#footnote-49) |
|  | Deliver to the Purchaser an updated Estimated Purchase Price calculation as specified in Clause 2.2 of the Agreement, in which the Loans and Estimated Purchase Price are adjusted for the amounts in the Statement of Outstanding Debt. [[50]](#footnote-50) | Seller | 5 days before Agreed Closing |
|  | Deliver to the Purchaser copy of minutes of Board of Directors meeting as specified in Annex 2. [[51]](#footnote-51) | Seller/ Company | By Agreed Closing |
|  | Produce a declaration as specified in Annex 4 in which the Seller states whether the Seller has become aware of circumstances that have arisen since the signing of the Agreement which constitute breach of the Seller’s Warranties. | Seller | Upon Closing |

1. ACTIONS AT THE TIME OF CLOSING

Provided that the conditions in Clause 4 of the Agreement have been fulfilled or waived, the parties have fulfilled their obligations under Clause 1 of this Appendix and the documents establishing the security interest in favour of the Lender have been publicised (registered): see Clause 1.2, the parties shall effect Closing in accordance with the provisions below at the time of Closing:

|  | **Action** | **Party responsible** | **Time-limit** |
| --- | --- | --- | --- |
|  | Deliver to the Company a notice as specified in Annex 4 to the effect that the Shares have been transferred to the Purchaser *[and that a first-priority security interest in the Shares has been granted in favour of the Lender]*. | Seller and Purchaser | No later than 11:00 on the day of Closing |
|  | Deliver to the Purchaser the Company’s original Register of Shareholders as specified in Annex 5, in which the Purchaser is listed as owner of the Shares. | Seller/ Company | No later than 11:00 on the day of Closing |
|  | Deliver to the Lender payment instructions, as specified in Annex 6 on repayment of the Loans and payment of the Estimated Purchase Price and the premium for the Warranty Insurance. The Purchaser is responsible for ensuring that those payments are credited and available in the payee’s account the same day. | Seller and Purchaser | No later than 11:00 on the day of Closing |
|  | Deliver to the Seller a copy of the General Meeting minutes as specified in Annex 7 for changes to and releases of liability for the Board of Directors. | Purchaser | Immediately after Closing |
|  | *Deliver to the Purchaser confirmation showing that those persons who had authority to use the Company’s accounts before Closing no longer have authority to use those accounts.*[[52]](#footnote-52) | Seller/ Company | Immediately after Closing |

1. TiME OF TRANSFER OF THE SHares TO THE PURCHASER

The Shares shall be delivered to the Purchaser once the Estimated Purchase Price and any amounts corresponding to the Seller Loan are available in the Seller’s account: see Clause 3.2 of the Agreement. If, for any reason, the Estimated Purchase Price or any Seller Loan does not become available in the Seller’s account, any Register of Shareholders and notice of acquisition of shares confirming that the Purchaser has become the owner of the Shares shall be deemed not to have been issued.

1. notices of changes to the board of directors, etc., after Closing

As soon as possible after Closing, the Purchaser shall report the changes to the Board of Directors to the Register of Business Enterprises.

\*\*\*

Annexes:

1. Register of Shareholders for the Company at the time of signing of the Agreement
2. Minutes of Company Board of Directors meeting
3. Seller’s declaration re breach of Agreement
4. Notice of acquisition of the shares of the Company
5. Register of Shareholders for the Company as at time of Closing
6. Irrevocable payment instructions
7. Minutes of General Meeting for changes to the Board of Directors, etc.

Annex 1

Register of Shareholders

for

[Company]

**Business registration no. [business registration no. of the Company]**

| Shareholders in alphabetical order.  Business name and address | Business registration no. | Share Nos. | Number of shares | Liens/encumbrances/remarks | Registration date |
| --- | --- | --- | --- | --- | --- |
| [Seller]  [Business and postal address]  [E-mail] | [business registration no. of the Seller] | 1-[•]1) | [•] | 1) The Shares have been sold to [Purchaser], business registration no. [business registration no. of the Purchaser], pursuant to the Sale and Purchase Agreement dated [date of signing]. Agreed Closing is [Closing date]. [Seller] may not dispose of or grant any security interest in the shares or rights to the shares. This encumbrance shall cease to apply once the shares have been transferred to [Purchaser] or it is clear that the shares will not be transferred to [Purchaser] under the Sale and Purchase Agreement. [[53]](#footnote-53) | 1) [date of signing] |

[Place], [date of signing]

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

Annex 2

MINUTES OF MEETING

OF THE BOARD OF DIRECTORS

OF

[COMPANY]

On [•] a meeting was held of the Board of [Company], business registration no. [business registration no. of the Company], at the Company’s premises. [*Alternatively: The Chairperson of the Board deemed it appropriate to hold a Board meeting via telephone on [•]*.]

The following persons attended: [Directors]. 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 [Purchaser], business registration no. [business registration no. of the Purchaser], (**Purchaser**) acquiring all shares of the Company.

The Board of Directors consented to the share acquisition and to the Purchaser being registered in the Company’s Register of Shareholders as the owner of all shares of the Company, as and when the Purchaser has acquired the shares pursuant to the Sale and Purchase Agreement concluded with the Seller, to which the Company is also a party. The Board of Directors approved the signing of the Sale and Purchase Agreement and the related Closing Agreement and confirmed that [Company’s repr.] is authorised to conclude and sign those 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 Company’s Property in favour of the Purchaser’s lender on the terms set out in the Closing Agreement. The Board of Directors noted that that security interest will be of no effect until the transfer of the shares to the Purchaser. The Board of Directors further noted that, under the Closing Agreement, the Purchaser is to ensure that the security interest may be invoked only in so far as permitted under applicable law, and that the Purchaser’s lender is aware that the security interest cannot serve as collateral to secure the Purchaser’s financing of the Purchase price for the Shares until such time as a notice as specified in section 8-10 of the Limited Liability Companies Act has been sent to the Register of Business Enterprises.]*

The Directors undertook to vacate their Directorships and to resign on such date as may be stipulated by the General 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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
[Directors]

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

Annex 3

To [Purchaser], business registration no. [business registration no. of the Purchaser]

**DECLARATION**

Reference is made to the Sale and Purchase Agreement dated [date of signing] (**the Agreement**) between [Seller], business registration no. [business registration no. of the Seller], and [Purchaser], business registration no. [business registration no. of the Purchaser]. We hereby confirm that we are not aware of circumstances that have arisen after the signing of the Agreement that constitute or may constitute breach of the Seller’s Warranties under Clause 7 of the Agreement.

*[Alternatively: We hereby confirm that we are aware of the following circumstances that have arisen after the signing of the Agreement which constitute breach of the Seller’s Warranties under Clause 7 of the Agreement:*

*[Detailed description]*

*We are not aware of other circumstances that have arisen after the signing of the Agreement that constitute or may constitute breach of the Seller’s Warranties under Clause 7 of the Agreement.]*

[Place], [Closing date]

For and on behalf of [Seller]

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

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

Annex 4

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

NOTICE OF SHARE ACQUISITION [AND THE GRANTING OF A SECURITY INTEREST]

We hereby give notice to the effect that [Purchaser], business registration no. [business registration no. of the Purchaser], has, pursuant to the Sale and Purchase Agreement dated [date of signing] acquired all the shares of [Company].

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

We are requesting the immediate registration of [Purchaser] in the Register of Shareholders of [the Company] as the holder of all of the 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 [Purchaser] |
| [Purchaser’s repr.] |

\*\*\*

We hereby confirm that [Purchaser] has acquired all of the shares of [Company] pursuant to the Sale and Purchase Agreement dated [date of signing].

[Place], [Closing date]

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

Annex 5

Register of Shareholders

for

[Company]

**Business registration no. [business registration no. of the Company]**

| Shareholders in alphabetical order.  Business name and address | Business registration no. | Share Nos. | Number of shares | Liens/encumbrances/remarks | Registration date |
| --- | --- | --- | --- | --- | --- |
| [Purchaser]  [Business and postal address]  [E-mail] | [business registration no. of the Purchaser] | 1-[•]1) | [•] | 1) A first-priority security interest has been granted in the Shares in favour of [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 [Company] |
| [Company’s repr.] |

Annex 6

irrevocable payment instructions in connection with the acquisition of [company]

[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 and bank:** | **Message to the payee:** | **Amount in NOK:** |
| --- | --- | --- | --- | --- |
|  | [Lender] | [•] | Repayment of loan no. [•] to [Borrower] and [accrued interest and premium] | [•] |
|  | [Estate Agency],  business registration no. [business registration no. of the Estate Agency] | [•] | Fee | [•] |
|  | [•] | [•] | Premium for Warranty Insurance | [•] |
|  | [Seller],  business registration no. [business registration no. of the 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 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.] |

Annex 7

MINUTES

OF

extraordinary general meeting

OF

[COMPANY]

On [Closing date] an Extraordinary General Meeting of [Company], business registration no. [business registration no. of the Company], was held at the premises of the Company.

The Company’s shareholder, [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 [Purchaser’s repr.] [who presented a written and dated proxy]. [[54]](#footnote-54)

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

[Purchaser’s repr.] was appointed to chair the meeting. [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 General Meeting being held without the passage of any resolution by the Board of Directors: see section 5-6(3) of the Limited Liability Companies Act, and without the attendance of the Chairperson of the Board of Directors, the General Manager or any representative thereof: see the third sentence of section 5-4(1) of the Limited Liability Companies Act. [[55]](#footnote-55)

* 1. Resolution on release of liability

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

* 1. Changes to Board of Directors

The General Meeting adopted the following resolution:

*‘[Directors]* *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. Changes of auditors

The General 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. Amendments to the Articles of Association

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

*Article 1*

*Company name*

The Company’s corporate name shall be [Company].

*Article 2*

*Company’s operations*

The Company’s operations shall consist in [investing in real property or companies that own real property, as well as any activities relating thereto.]

*Article 3*

*Share capital*

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

*Article 4*

*Consent to acquisition of shares. Right of first refusal*

Acquisition of shares shall not be conditional upon the consent of the company. The shareholders shall have no right of first refusal under the Limited Liability Companies Act. [[56]](#footnote-56)

*Article 5*

*Signing*[[57]](#footnote-57)

The Company’s corporate name shall be signed by the Chairperson of the Board alone or two Directors jointly.

\* \* \*

There was no further business and the General Meeting was adjourned.

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

[Purchaser’s repr.] [[58]](#footnote-58) [Co-signor]

PROXY and CONSENT

[Purchaser], business registration no. [business registration no. of the Purchaser], hereby appoints [Purchaser’s repr.] as our proxy to attend on our behalf and vote in respect of our shares of [Company] at the next Extraordinary General Meeting of the Company, the agenda of which includes changes to the Board of Directors and auditor and amendments to the Articles of Association.

The undersigned hereby consents to:

* + - 1. the General Meeting being held with no prior Board resolution convening such meeting, see Section 5-6(3) of the Limited Liability Companies Act;
      2. the General Meeting being held without the attendance of the Chairperson of the Board of Directors, the General Manager or any representative thereof, see the third sentence of section 5-4(1) of the Limited Liability Companies Act; and
      3. the agenda of the General Meeting being dealt with pursuant to section 5-7 of the Limited Liability Companies Act, without compliance with the requirements under sections 5-8 to 5‑16 of the Limited Liability Companies Act.

[place], \_\_\_\_\_\_\_\_

For and on behalf of [Purchaser]

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

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 to* the 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’.

   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 Land Registry, and that company is owned by the Company, the following wording may be used: ‘*The Company also owns all of the shares of [●] AS, business registration no. [●], (****the Title-Holding Company****), which is registered as holding title to the Property in the Land Registry’*. [↑](#footnote-ref-3)
4. If an agreement has been entered into for a rent exemption or reduced rent for a period, then under point 7.4 of Norwegian accounting standard (*Norsk RegnskapsStandard*) NRS(V) on income accounting (*Inntektsføring*), the income is to ‘*be spread over the entire rental period, so that income is also recognised in the income statement for the period in which rent is not charged under the agreement*’. If the Company has entered into rental agreements with rent exemptions, the following passage may be added in order to prevent the Purchaser from having to pay for receivables on rent that will not be paid to the Company: ‘*, save for receivables which are recognised as rental income for a period during which rent is not to be paid or reduced rent is to be paid under a rental agreement*’. [↑](#footnote-ref-4)
5. Other assets for which consideration is payable, including any triggered right of adjustment with regard to Value Added Tax (VAT), must be specified here. If a loss is recorded in the gain/loss account of the Company, a new letter (e) may be inserted with the following wording: ‘*[●]% of the loss in the G/L account*’ or, alternatively, ‘*NOK [●], which represents an agreed, fixed addition for deferred tax consisting in loss in the G/L account.*’ [↑](#footnote-ref-5)
6. Upon signing, the Purchaser shall assume the risk of hidden defects in the Property (see Clause 6.4), subsequent ‘breaches’ of Warranties which are given only upon signing (e.g., Clause 7.1(n) and (u)), breaches of Warranties of which the Purchaser is aware (see Clause 8.2) and damage arising after the Agreed Closing where the delay is due to factors attributable to the Purchaser: see Clause 9.1(a)(ii). This provision clarifies that those factors the risk of which is transferred to the Purchaser upon signing are not to give rise to a reduction in the Purchase Price. [↑](#footnote-ref-6)
7. If a gain is recorded in the gain/loss account of the Company, a new letter (e) may be inserted with the following wording: ‘*[●] % of the gain in the G/L account*’ or, alternatively, ‘*NOK [●], which represents an agreed, fixed deduction for deferred tax consisting in gain in the G/L account.*’ [↑](#footnote-ref-7)
8. Where there is agreement as to the amount, the following may be written: ‘*NOK [●], which represents agreed, fixed consideration by way of compensation for the difference between the Property Value (minus agreed land value) and the Property’s tax depreciation basis.’* [↑](#footnote-ref-8)
9. This clause is to be deleted or amended if the Company does not have loans to be repaid. If the Company’s sole loan to be repaid was granted by the Seller and the Seller can fix that loan as at the time of the Agreed Closing, Clauses 2.2.3 and 2.2.4 may be replaced with the following text: ‘*At Closing, the Purchaser shall pay the Estimated Purchase Price. Furthermore, at the same time the Purchaser shall, on behalf of the Company, repay the Company’s debt to the Seller (****the Seller Loan****) amounting to NOK [●] including accrued interest, as at the time of Agreed Closing. If, for any reason, Closing is completed at another time than that of the Agreed Closing, the Seller shall, without undue delay, send to the Purchaser new Statements of Outstanding Debt for the Seller Loan as at the date of Closing. At the same time, the Seller shall produce an updated calculation of the Estimated Purchase Price in which the Loans are entered with the correct amount, but without changes having been made to the other entries, including payable tax and deferred tax benefit.*’ Moreover, the term ‘*the Loans*’ must be replaced with ‘*the Seller Loan*’ where applicable in the Closing Agreement. [↑](#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 Company does not have an auditor or if, for other reasons, is not deemed desirable that an auditor perform the audit, this clause may be deleted or reworded as follows: ‘*A statement from [name of the Company’s accountant], to the effect that they have conducted a simplified check of the Revised Balance Sheet, and’*. [↑](#footnote-ref-11)
12. If it is deemed desirable that an auditor conduct a more thorough check of the Revised Balance Sheet, the following wording may be used: ‘*A statement from the auditors to the effect that the Revised Balance Sheet has been prepared and audited in accordance with the rules governing annual financial statements; and*’. [↑](#footnote-ref-12)
13. An advantage of this rule is that all disputes between the parties will be dealt with by the same court. An alternative and more detailed rule involving arbitration for disputes relating to the Purchase Price Calculation is as follows:

    ‘*If the Purchaser puts forward an objection to the Purchase Price Calculation within the time-limit and the parties do not reach agreement within an additional 14 days, either of the parties may require that an arbitrator rule on whether the objection is to be upheld. If the dispute relates to an amount exceeding NOK 5 million, either of the parties may require that three arbitrators rule on whether the objection is to be upheld.*

    *If the parties do not reach agreement on the appointment of arbitrator(s), either of the parties may require that the Chief District Court Judge (*sorenskriver*) of Oslo District Court undertake the appointment. In so far as the arbitrator(s), in their decision on whether the objection is to be upheld, must rule on legal issues, that decision shall be deemed to be an arbitration award subject to the rules of the Norwegian Arbitration Act (*voldgiftsloven*). The arbitrator(s) shall be made aware of this and of the final and binding effect this will have for the parties’* [↑](#footnote-ref-13)
14. NB: If Closing is conditional upon circumstances outside the control of the parties and it is uncertain when such conditions will be fulfilled, the following wording should be used instead: ‘*The shares shall be transferred [●] banking days after all conditions in Clauses 4.1 and 4.2 have been fulfilled or waived (****Agreed Closing****)’*. 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.’* Lastly, Clause 2.2.3 should be amended to read as follows: *‘The Seller shall, no later than one banking day after all conditions for completion of this Agreement have been fulfilled or waived, produce Statements of Outstanding Debt from the Company’s lender(s) showing the exact amount of the Company’s Loans from anyone other than the Seller (together, the* ***Loans****) as at the time of Closing. At the same time, the Seller shall produce an updated calculation of the Estimated Purchase Price in which the Loans and all other items are entered with updated amounts.’* [↑](#footnote-ref-14)
15. 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-15)
16. If the Seller wants the Company to change corporate name, e.g., because the Company’s corporate name forms part of the Seller’s name, the following provision may be included: ‘*No later than one month after Closing, the Purchaser shall change the Company’s corporate name to a new name that does not contain the name “[●]” and cannot be confused with that name. Neither the Purchaser nor the Company shall be permitted to use the name “[●]” in marketing or otherwise after Closing.*’ [↑](#footnote-ref-16)
17. This clause is included for informational purposes and in order to apportion the Company’s profits and losses in the event of delayed Closing. This apportionment is in accordance with what would otherwise have followed under applicable law. 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-17)
18. The text in red must be deleted if the Company’s loans from anyone other than the Seller are not to be repaid. [↑](#footnote-ref-18)
19. 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-19)
20. 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-20)
21. 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-21)
22. 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 Shares under the terms of this Agreement (including the Property Value). 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-22)
23. The following clause may be added if the Company has entered into an agreement with a provision on change of control and consent for continuation of that agreement on unamended terms is to be a condition for the Completion of the Agreement: ‘*The creditor under the Loans [or specify other contractual party] have confirmed in writing that they will not rescind, terminate or require changes to the loan agreement dated [●] [or agreement dated [●] concerning [●]] as a result of the Purchaser’s acquisition of the Shares*.’ [↑](#footnote-ref-23)
24. Note that sale of all of the shares of a company that owns 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 and section 3 of Norwegian Act No 1994/64 on pre-emptive rights (*lov om løysingsrettar 1994/64*). The following may be added if the sale of shares triggers a pre-emptive right: ‘*[specify contractual party] has confirmed in writing that they will not exercise their pre-emptive right on the Property [or the Shares] arising from the Purchaser’s acquisition of the Shares*.’ [↑](#footnote-ref-24)
25. 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 Shares under the terms of this Agreement (including the Property Value). 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-25)
26. The following clause may be added if the Seller is to take care of certain tasks prior to Closing: ‘*That the tasks referred to in Appendix [●] shall be completed prior to Closing on behalf of the Company in a professional manner and in accordance with public law requirements.*’ [↑](#footnote-ref-26)
27. 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 54(4) of the Sale of Goods 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 Shares in favour of the Seller. That security interest shall be cancelled once the Purchaser has paid the Revised Purchase Price.*’ That granting of the security interest should also be regulated in the Closing Agreement with annexes. [↑](#footnote-ref-27)
28. If the Purchaser is to pay for other assets than the Property, tax losses carry forward, receivables (see the rule in Clause 9.1(b)) or bank deposits, the Purchaser should consider requiring a separate warranty covering the Company’s entitlement to such assets. The same holds true if, for other reasons, it is important for the Purchaser that the Company owns or has the right to use such assets. [↑](#footnote-ref-28)
29. If the Company does not have VAT adjustment/reversal liabilities or entitlements, this Warranty shall be deleted and the following wording shall be used: ‘*The Company has no VAT adjustment/reversal liabilities or entitlements.*’ [↑](#footnote-ref-29)
30. If a title-holding company is the registered title-holder, a new Clause 7.3 may be added here, reading as follows: ‘*The Warranties set out in letters (a), (b), (c), (d), (e), (g) and (l) shall apply mutatis mutandis for the Title-holding Company and the shares in the Title-holding Company. In addition, it is warranted that the balance sheet of the Title-Holding Company as at the time of Closing will not contain any other assets or liabilities than approximately NOK [●] deposited in the Title-Holding Company’s account with a Norwegian bank.*’ At the same time, the following wording is to be deleted fromletter (j): *‘and is the title-holder thereof.’* [↑](#footnote-ref-30)
31. If that circle of persons has limited knowledge of the Company and 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-31)
32. 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-32)
33. The financial limitations of liability herein usually correspond to the maximum amounts in the Warranty Insurance, so that the Seller’s liability under the Warranty for breach of other obligations than the ownership Warranty is fully covered by the insurance. [↑](#footnote-ref-33)
34. A specific determination must be made as to whether this limitation of liability is suitable for the transaction in question. [↑](#footnote-ref-34)
35. 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-35)
36. If the Company is to be wound up following Closing, the time-limit for notice of breach laid down herein should take account of that. [↑](#footnote-ref-36)
37. The following clause may be added if the Company has taken part in a demerger following incorporation: ‘*Liability under section 14-11 of the Limited Liability Companies Act arising from any demerger in which the Company has taken part. The Purchaser shall forfeit the right to invoke this indemnification if the Purchaser fails to give the Seller written notification thereof no later than five years after Closing.*’ [↑](#footnote-ref-37)
38. The following clause may be added if the Company has entered into a common registration in the VAT Register (*Merverdiavgiftsregisteret*): ‘*Joint and several liability arising from the Company having entered into a common registration in the VAT Register. The Purchaser shall forfeit the right to invoke this indemnification if the Purchaser fails to give the Seller written notification thereof no later than five years after Closing.*’ [↑](#footnote-ref-38)
39. Here findings may be added from the Purchaser’s due diligence, as may anything else for which the Seller is to indemnify the Purchaser. [↑](#footnote-ref-39)
40. Unless otherwise agreed, this provision entails that the Purchaser may not claim damages for losses for which the Seller is liable under the Sale and Purchase Agreement but which fall outside the scope of cover of the Warranty Insurance. This may take on particular importance if the insurance does not cover losses arising from construction defects. [↑](#footnote-ref-40)
41. The Warranty Insurance does not usually cover such breaches of Warranties as given at the time of Closing. [↑](#footnote-ref-41)
42. Liability under this Clause 10.3(c) must be considered further if the Company is to be wound up following Closing. A number of alternative approaches could be envisaged here: (i) additional insurance is taken out covering the Seller’s Warranty liability here (and possibly also breach of the tax Warranty); (ii) a time-limit is agreed on that is so short that the Warranty liability provided for herein does not delay the winding-up (see, for example, the time-limit in Clause 8.3.3); (iii) the Purchaser consents to winding-up in return for the Seller’s owners’ taking over the Warranty liability provided for herein; or (iv) the risk of breach is deemed to be so minimal that it is deemed appropriate to wind up the Company. [↑](#footnote-ref-42)
43. If the Warranty Insurance involves a deductible for which the Seller is liable under the Agreement, a new letter (d) may be added: *‘in so far as the insurer under the Warranty Insurance makes a deduction for the deductible under the Warranty Insurance (Retention) in the event of breach of the Warranties. If so, the Purchaser may require the Seller to cover the deductible up to a maximum amount of NOK [specify deductible].’*

    If the Seller is to provide security for the deductible, the following text may be added: *‘As security for the Purchaser’s claim pursuant to letter (d), NOK [specify deductible] of the Estimated Purchase price shall be withheld and kept in an escrow account up to and including [specify the expiry of the period allowed for claims], upon which amounts deposited in the 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.’* [↑](#footnote-ref-43)
44. 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-44)
45. Clause 1.2 and Clause 1.3 may be deleted if no security interest is to be created in favour of the Purchaser’s bank prior to Closing. [↑](#footnote-ref-45)
46. Beyond registering the establishment of the security interest in favour of the Purchaser’s bank, under the Closing Agreement neither the Seller nor the current Board of the Company is under any obligation to provide assistance for the Purchaser’s financing of the Purchase Price or refinancing of the Company’s debt. If the Purchaser wishes the Company to enter into agreements for such financing, the Purchaser must ensure that this takes place after a new Board of the Company has been elected after Closing. This means inter alia that the new Board of the Company must comply with the procedural rules in section 8-10 of the Limited Liability Companies Act if the Company is to furnish collateral for the loan taken out by the Purchaser in order to finance the Purchase Price. If the current Board of the Company is to contribute to the Purchaser’s financing, it must make sure that the Company complies with all requirements of the Limited Liability Companies Act (including section 8-10 and the requirement of arm’s length consideration, etc.) and not give the Purchaser unfettered authority to enter into agreements on behalf of the Company. If such a provision is deemed desirable, the following clauses may be added in the Closing Agreement:

    |  |  |  |  |
    | --- | --- | --- | --- |
    | * 1. 2.9 | Deliver to the Seller:  1. draft minutes of the Board of Directors and General Meetings and credit assessment, report and declaration prepared in accordance with the procedural rules in section 8-10 of the Limited Liability Companies Act in which the Company furnishes the Property as collateral for the Purchaser’s financing of the Purchase Price, and 2. those agreements and documents the Lender requests the Company to sign in order to finance the Purchase Price and/or the Loans as at the time of Closing. The Purchaser shall demonstrate that the signing of those agreements or documents is not contrary to applicable law. | Purchaser | 8 days before Agreed Closing |
    | * 1. 2.10 | Provided that the Purchaser has fulfilled its obligations under Clause 2.10, deliver to the Purchaser:  1. documentation showing that the Company has granted a security interest in the Property in accordance with the procedural rules in section 8-10 of the Limited Liability Companies Act, and that the report and the declaration for the provision of collateral have been sent to the Register of Business Enterprises; and 2. those agreements and documents received by the Seller from the Purchaser, signed by a person having the relevant authority at the Company. | Seller / Company | 5 days before Agreed Closing |

    [↑](#footnote-ref-46)
47. 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-47)
48. It needs to be clarified here whether the Company has granted security interests or furnished guarantees in favour of anyone other than the creditors under the Loans. If the Company has done so, a new Clause 1.5 may be added 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 will be released, with effect from Closing, from any liability assumed by the Company in favour of [specify name of the holder of the security interest] under the guarantee agreement dated [•].*’ [↑](#footnote-ref-48)
49. If the Seller has entered into swap agreements in connection with the Loans, the Seller should check whether it is practically feasible to obtain Statements of Outstanding Debt five days before Closing. [↑](#footnote-ref-49)
50. 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-50)
51. 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 they have no outstanding claims against the Company other than those stated in the Estimated Balance Sheet.*’ For companies incorporated after 1 January 1999, the acquisition of shares of a company is conditional upon the consent of that company, unless it is stipulated in its Articles of Association that consent is not required (see section   
    4-15(2) of the Limited Liability Companies Act). For companies incorporated before 1 January 1999, the acquisition of shares of a company is conditional upon the consent of such company only in so far as its Articles of Association include provisions stipulating that transfer or other change of ownership is conditional upon the consent of the company (see section 21-2(25) of the Limited Liability Companies Act). [↑](#footnote-ref-51)
52. This Clause may be deleted if deemed desirable in order to simplify Closing. [↑](#footnote-ref-52)
53. Any existing encumbrances on the shares must be listed here in order of priority. [↑](#footnote-ref-53)
54. It is proposed here that the General Meeting be held as a meeting pursuant to the general rules of the Limited Liability Companies Act (although see Item 2 of the minutes). Under the simplified rules in section 5-7 of the Limited Liability Companies Act, the General Meeting may be held ‘*in a suitable manner’* without a physical meeting, e.g. by the circulation of draft minutes or as a meeting by telephone. If the General Meeting is to be held under the rules in section 5-7, Items 1 and 2 below should be deleted and the following wording used: ‘*The matters below were addressed pursuant to Section 5-7 of the Limited Liability Companies Act, with no prior Board resolution convening the meeting: see section 5-6(3) of the Limited Liability Companies Act. The General Meeting appointed [Purchaser’s repr.] to sign the minutes. The Directors, the General Manager and the auditors were given the opportunity to present their observations on these matters, but none of them had any comments or objections*.’ [↑](#footnote-ref-54)
55. It is not necessary to waive section 5-4 if the procedural rules of section 5-7 are complied with, since section   
    5-4 applies only to General Meetings held in the form of a physical meeting. [↑](#footnote-ref-55)
56. A specific determination must be made as to whether the acquisition of shares is to be conditional upon consent and/or subject to a right of first refusal. If the company has only one shareholder, there is not usually any reason why the provisions of the Limited Liability Companies Act on consent from the Board of Directors or a right of first refusal should apply. [↑](#footnote-ref-56)
57. It is not necessary for the Articles of Association to include any provision on authorisation to sign. In the absence of such a provision in the Articles of Association, the Board of Directors is to decide who is authorised to sign on behalf of the company: see section 6-31 of the Limited Liability Companies Act. [↑](#footnote-ref-57)
58. If the procedural rules in section § 5-7 are complied with, the minutes are to be signed by the Chairperson of the Board at the time of signing or the person designated by the General Meeting: see section 5-7a(3). [↑](#footnote-ref-58)