This Sale and Purchase Agreement (this ‘Agreement’) is made on Click or tap to enter a date. between:

[       ] (as ‘**Seller**’)

[      ] (as ‘**Purchaser**’)

Relating to interests in [      ] ‘The Transaction’

1. The Seller is [the legal and beneficial owner / is acting solely in its capacity as agent for and on behalf of the beneficial owner] of the interests / units (‘**Subject Interests’**) set out in Part A of Schedule 1 to this Agreement in respect of each of the real estate funds (**‘Funds’**).
2. The Seller shall sell the Subject Interests together with the rights, benefits, interests, duties and obligations therein (including the assumption of liability to fund any undrawn subscription amount or undrawn commitment in relation to the Funds as set out in Part C of Schedule 1 to this Agreement) and relating thereto to the Purchaser and the Purchaser shall purchase such Subject Interests (and assume liability to fund such undrawn subscription amount or undrawn commitment) subject to the terms and conditions set out in this Agreement.
3. The purchase price (**‘Purchase Price’**) in respect of the Subject Interests shall be calculated in accordance with Schedule 1 of the Agreement and being the amount set out at the end of Part B of Schedule 1.
4. The Purchase Price, in respect of the Subject Interest of each relevant Fund, shall be paid by the Purchaser to the Seller, in full, by electronic transfer, to the Seller’s bank account as detailed in Schedule 2 at completion of the sale of the Subject Interest of each relevant Fund on the Effective Date.
5. The Effective Date for the purposes of the Transaction and this letter shall be Click or tap to enter a date. The Effective Date can be amended by written consent by both the Purchaser and Seller.
6. The sale and purchase of all of the Subject Interests hereby contemplated is conditional upon the satisfaction of the following conditions precedent (the ‘Conditions Precedent’):
	1. obtaining proper execution of transfer documentation – if necessary - and all necessary consents, waivers and approvals (the ‘Consents’) from the [managing trustee of the Fund] (the [‘Managing Trustee’]) to effect the sale and purchase of the Subject Interests and the recognition of the Purchaser as the transferee of the Subject Interests and the entry by (as necessary) the Seller, the Purchaser and the [Managing Trustee] into those Consents.
	2. a legally binding third parties’ waiver in case of possible pre-emption rights.
7. If the relevant Conditions Precedent are not satisfied in respect of the Subject Interests on or before the Effective Date, the Purchaser shall be entitled to terminate this Agreement by serving written notice to that effect on the other provided that the termination of this Agreement shall be without prejudice to any rights either party may have in respect of prior breaches of this Agreement. The Seller and the Purchaser may (but shall not be obliged to) agree to close on a date other than the Effective Date on a like basis as contained in clause 5.
8. In consideration of the Purchaser transferring the Purchase Price (after adjustments) of [      ], which equals Part B of Schedule 1 to the account of the Seller or other representative, the Seller confirms:
	1. the Seller will deliver a valid and completed transfer instrument, and any relevant unit certificate(s), in respect of the Subject Interests on or before the Effective Date (as defined below) to the Purchaser;
	2. if necessary, the Seller will instruct the Managing Trustee or the custodian bank, as appropriate, sufficiently in advance to transfer the Subject Interests on or before the Effective Date to the Purchaser; and
	3. that the full legal and benefit interest in the Subject Interests will be transferred free from all encumbrances to the Purchaser as at the Effective Date;
9. Furthermore, the Sellers confirm that the following statements are correct, as at the Effective Date:
	1. the Seller has not, in accordance with any document by which the Fund is constituted or otherwise, served any notice or request to sell or redeem the Units or any of them;
	2. the Seller is duly incorporated and validly existing under the laws of the jurisdiction in which it is incorporated and is fully qualified and empowered to own its assets and carry out its business;
	3. the Seller has power to enter into the transfer instrument, this letter and any other documents it executes in connection with the Transaction, to exercise its rights and perform its obligations under each of them and has taken all necessary corporate and other action to authorise the execution of any documents executed by it in connection with the Transaction;
	4. the Seller confirms that the Subject Interests are free of any lien, claim, charge or other encumbrance or third parties’ rights.
10. The Purchaser confirms that the following statements are correct, as at the Effective Date:
	1. the Purchaser is duly incorporated and validly existing under the laws of the United Kingdom and is fully qualified and empowered to own its assets and carry out its business;
	2. the Purchaser has the power to enter into the transfer instrument, this letter and any documents to be executed in connection with the Transaction, to exercise its rights and perform its obligations under each of them and has taken all necessary corporate and other action to authorise the execution, delivery and performance of the transfer instrument, this agreement and any other documents to be executed in connection with the Transaction;
	3. the Purchaser has not relied on any statement, fact, warranty, comment or representation made by or on behalf of the Sellers other than the express confirmations of the Sellers set out in their entirety in this letter.
11. After the Effective Date, the Seller shall be relieved from any and all obligations towards the relevant fund and the management companies, and the Purchaser shall take over any such obligations, as well as any and all rights and privileges.
12. Neither the Seller nor the Purchaser shall be entitled to assign their rights and obligations arising under or pursuant to this Agreement [unless agreed in writing].
13. Each Party hereto shall bear all of its legal, accounting, and other costs, taxes and expenses incidental to the transfer of the Units, as applicable, and the performance of all transactions related thereto. *[see note 3 of Optional Entries]*
14. The liability of the Seller under this Agreement shall not, in respect of the Subject Interest of each Fund, exceed the Purchase Price paid to the Seller in respect of that Subject Interest. No liability for gross negligence, wilful misconduct or fraud is excluded or limited.
15. No modification of this Agreement will be binding on the Parties unless and until the modifications are set forth in writing specifically referencing this Agreement and signed by all of the Parties. The waiver by any Party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement.
16. The Seller and the Purchaser each shall not be liable for any breach of warranty under this Agreement (a ‘Claim’) unless the other party gives written notice of the Claim to the other containing such details of the Claim (including and as far as reasonably practicable an estimate of its anticipated value) within 12 months of the date of this Agreement.

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts and by facsimile or email, each of which when so executed shall be deemed to be an original and all of which shall constitute one and the same Agreement.

This letter, and all ancillary documents or agreements related to it, shall be governed by and construed in accordance with the laws of [      ]. Any disputes or claims arising from or in connection with this letter shall be subject to the exclusive jurisdiction of the [      ] courts.

**IN WITNESS WHEREOF** this Agreement has been executed by the parties hereto and is intended to be delivered on the day and year first written above.

|  |  |
| --- | --- |
| The Seller: …………………………………..…….. | The Purchaser: …………………………………… |
| **Name:** …………………………………………..….. | **Name:** ……………………………………………… |
| **Title:** ……………………………………………..…. | **Title:** ………………………………………………... |

Sample information – example only

Schedule 1

**Part A**

**Schedule of Funds, Interests and Purchase Price**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Fund Name | Fund Interest | Units at QX 201X | NAV per Unit QX 201X (€) | Fund Interest QX 201X (€) | Discount / Premium Payable |
| Fund 1 | Participation | 10,000 | 100 | 10,00,000.00 | -10% |
| Fund 2 | Units | 10,000 | 200 | 20,000,000.00 | 0% |
| Fund 3 | Shares | 20,000 | 100 | 20,000,000.00 | -5% |
|  |  |  | **Total** | **50,000,000.00** |  |

**Part B**

**Purchase Price Adjustments at the date of this Agreement**

|  |  |  |  |
| --- | --- | --- | --- |
| **Fund Name** | **Distribution (€)** | **Capital Calls (€)** | **Total Purchase Price after adjustment (€)** |
| Fund 1 | 500,000 | 0 |  |
| Fund 2 | 0 | 2,000,000 |  |
| Fund 3 | 500,000 | 0 |  |
| **Total** | **1,000,000** | **2,000,000** | **49,000,000** |

**Part C**

**Undrawn Subscription Amount/Undrawn Commitment**

|  |  |
| --- | --- |
| **Fund Name** | **Undrawn Subscription Amount/Undrawn Commitment** |
| Fund 1 | [      ] |
| Fund 2 | [      ] |
| Fund 3 | [      ] |
| **Total** | [      ] |

Schedule 2

**Seller’s bank account details**

|  |  |
| --- | --- |
| Bank: | [      ] |
| SWIFT Code: | [      ] |
| Beneficiary:  | [      ] |
| Narrative:  | [      ] |
| IBAN:  | [      ] |

**Optional Entries / Further Considerations:**

1. In the case of an investment manager representing the Purchaser and / or Seller (amend as appropriate):

The Purchaser acknowledges that The Seller is entering into this Transaction solely in its capacity as agent of [      ]and not on its own behalf. Apart from instances of fraud, negligence or willful default, the Seller in its own capacity shall owe no liability the Purchaser in respect of this letter or of the Transaction as a whole.

1. In the case of manual apportionment of distributions being required:

The Purchase Price for the Subject Interests shall be reduced by the value of any related capital and income distributions (with in kind distributions treated as a cash distribution at the value required by the relevant Fund Documentation) made to the Seller and increased by the value of any related capital drawdowns made by the Seller (including deemed capital drawdowns) after [      ] but prior to the date of the Closing. Any distributions received by the Seller after the Closing in respect of the Subject Interest of a Fund transferred to the Purchaser in accordance with this Agreement in relation to a period prior to the date of the Closing but after [      ] shall be paid to the Purchaser within ten business days of receipt.

The Seller has received distributions to which the previous clause applies prior to the date of this Agreement. Those distributions, together with the adjustments to the Purchase Price for the Subject Interests is set out in Part B of Schedule 1. That is, however, without prejudice to any adjustments to the Purchase Price for the Subject Interest of each relevant Fund which may arise after the date of this Agreement.

1. Expenses

Each party to this Agreement agrees to bear its own costs, charges, and expenses in relation to the sale of the Subject Interests, provided that (i) stamp taxes, or transfer taxes arising as a result of the sale of the Subject Interests, shall be for the account of the Purchaser and (ii) any expenses incurred by the Funds or Management Companies in relation to the sale of the Subject Interests, will be borne 50% by the Seller and 50% by the Purchaser and they each undertake to pay each other such amounts as may be required to give effect to this.

1. Confidentiality

Each of the Seller and the Purchaser and their respective advisors and clients agree to keep confidential the terms of this Agreement and any information related to the sale, except in connection with litigation or as required by law or regulatory body.

1. Disclosure

(to be included in Section 5 – Conditions Precedent) the Seller has provided the Purchaser all legal documents relevant for the Purchaser with regard to the Funds prior to the signing of this agreement.

1. Pre-emptions

In the case of a portfolio of funds sale, consideration in the SPA must be given to any funds that can be pre-empted by another purchaser according to the appropriate pre-emption rights as set out in the underlying Fund documentation. Possible solutions to the situation of one or more holdings being pre-empted include:

* + - 1. No transfers occur and the SPA becomes null and void
			2. Remaining transfers occur at a pre-defined price across the remaining portfolio (eg a blanket discount of X)
			3. Remaining transfers occur with each fund individually priced so the remaining total is used
			4. Remaining transfers occurs at a pre-defined price for only specified holdings
1. Voting

With respect to any vote on the Subject Interests that takes place prior to the Completion Date, the Seller shall consult with the Purchaser on how to cast its vote on the Subject Interests. If the Seller decides to cast its vote not in accordance with the preference of the Purchaser, the Purchaser has the right to terminate this Agreement, not accept the transfer of the Units and not pay the Consideration.

1. Manager Statement

Form of Manager Statement (if applicable) to be attached as a schedule to the SPA. This is to be provided by the Manager on or before Closing in which the Manager makes certain statement such as

* + - 1. The pre-emption procedure has been fully completed,
			2. The Transfer shall be effective as of the Completion Date and
			3. That the Management Company shall register on the Completion Date the Transfer of the Subject Interests in the register of the Fund.
1. Deed of Adherence

Deed of Adherence in which the Investor declares that he adheres to the Fund documentation and that it will comply with and observe all of the provisions of the Fund documentation as if he had been the original party to it.

1. Other considerations

The following list contains points which some market participants would like to see covered in a SPA. This does not aim to be an exhaustive list but as a helpful reminder:

* Purchase price adjustment mechanism
* Representations and warranties
* Covenants for the period between reference date and the signing / signing and closing date
* Post-closing covenants (regarding eg distributions)
* Conditions
* Indemnities
* Survival period and limitations
* Termination