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**JIANGSU NANTONG SANJIAN INTERNATIONAL CO., LTD. 江苏南通三建国际有限公司 AND NANTONG SANJIAN OVERSEAS CO., LTD 南通三建海外有限公司 ANNOUNCE SETTLEMENT OF THE EXCHANGE OFFER FOR THE OUTSTANDING US\$300,000,000 7.80% GUARANTEED SENIOR NOTES DUE 2020 ISSUED BY JIANGSU NANTONG SANJIAN INTERNATIONAL CO., LTD. 江苏南通三建国际有限公司 AND THE ISSUE OF US\$180,960,000 10.0% GUARANTEED SENIOR NOTES DUE 2022 BY NANTONG SANJIAN OVERSEAS CO., LTD 南通三建海外有限公司**

October 12, 2020

Reference is made to the announcements by Jiangsu Nantong Sanjian International Co., Ltd. 江苏南通三建国际有限公司 (the “**Old Issuer**”) and Nantong Sanjian Overseas Co., Ltd 南通三建海外有限公司 (the “**New Issuer**”) dated August 31, 2020, September 7, 2020, September 16, 2020, September 23, 2020 and September 30, 2020 (the “**Announcements**”) relating to the Exchange Offer in respect of the Old Issuer’s outstanding US\$300,000,000 7.80% guaranteed senior notes due 2020 (ISIN: XS1701582881; Common Code: 170158288) (the “**Old Notes**”).

Unless otherwise defined, capitalized terms used herein shall have the same meaning as those defined in the Announcements.

#### **SETTLEMENT OF THE EXCHANGE OFFER AND THE ISSUE OF THE NEW NOTES**

The Old Issuer and the New Issuer are pleased to announce that the Exchange Offer was completed and settled on October 9, 2020. The total Exchange Consideration, settled on the same date, comprised (i) US\$180,960,000 principal amount of 10.0% guaranteed senior notes due 2022 by Nantong Sanjian Overseas Co., Ltd 南通三建海外有限公司 (ISIN: XS2226676158; Common Code: 222667615) (the “**New Notes**”), (ii) Cash Consideration of US\$45,240,000, (iii) Early Cash Incentive of US\$2,262,000, and (iv) Accrued Interest Payment of US\$7,988,629.99, to Eligible Holders of Old Notes validly tendered and accepted pursuant to the Exchange Offer. Following cancellation of U.S.\$226,200,000 in principal amount of the Old Notes, the outstanding principal amount of the Old Notes as of the date of this announcement is US\$73,800,000.

The New Notes bear interest at the rate of 10.0% per annum and will mature on October 9, 2022, unless otherwise redeemed pursuant to the terms thereof earlier. See “Appendix A – Description of the Notes” for a detailed description of the New Notes (referred to as Notes therein). Capitalized terms referred to and not defined therein shall have the meanings given to them in the Exchange Offer Memorandum.

The New Notes are listed on the SGX-ST on October 12, 2020.

This announcement must be read in conjunction with the Exchange Offer Memorandum.

## GENERAL

The distribution of this announcement, the Announcements and the Exchange Offer Memorandum in certain jurisdictions may be restricted by law. Persons into whose possession this announcement, the Announcements or the Exchange Offer Memorandum comes are required to inform themselves about, and to observe, any such restrictions.

This announcement, the Announcements and the Exchange Offer Memorandum do not constitute an offer to sell or buy or the solicitation of an offer to sell or buy any securities in any circumstances in which such offer or solicitation is unlawful.

The New Notes and the Parent Guarantee have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”), and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons, except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. Accordingly, the New Notes are being offered and sold only to non-U.S. persons outside the United States in compliance with Regulation S under the Securities Act.

**Prohibition of Sales to EEA and UK Retail Investors** – The securities are not intended to be offered, sold or otherwise made available to and should not be offered, sold or otherwise made available to any retail investor in the EEA or in the UK. For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU, as amended (“**MiFID II**”); or (ii) a customer within the meaning of Directive (EU) 2016/97 (“**Insurance Distribution Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II.

**Notification under Section 309B(1)(c) of the Securities and Futures Act, Chapter 289 of Singapore** (the “**SFA**”) – the New Issuer has determined, and hereby notifies all relevant persons (as defined in Section 309A(1) of the SFA), that the New Notes are prescribed capital markets products (as defined in the Securities and Futures (Capital Markets Products) Regulations 2018 of Singapore) and Excluded Investment Products (as defined in MAS Notice SFA 04-N12: Notice on the Sale of Investment Products and MAS Notice FAA-N16: Notice on Recommendations on Investment Products).

**APPENDIX A – DESCRIPTION OF THE NOTES**

## DESCRIPTION OF THE NOTES

For purposes of this “Description of the Notes,” the term “Issuer” refers only to Nantong Sanjian Overseas Co., Ltd (南通三建海外有限公司) and any successor obligor on the Notes, and to any of its Subsidiaries, and the term “Parent Guarantor” refers only to Jiangsu Nantong Sanjian Construction Group Co., Ltd. (江蘇南通三建集團股份有限公司) and not to any of its Subsidiaries (the “**Parent Guarantor**”). The Parent Guarantor’s guarantee of the Notes is referred to as the “Parent Guarantee.” Each Subsidiary of the Parent Guarantor which in the future guarantees the Notes is referred to as a “Subsidiary Guarantor,” and each such guarantee is referred to as a “Subsidiary Guarantee.” Each Subsidiary of the Parent Guarantor that in the future provides a JV Subsidiary Guarantee is referred to as a “JV Subsidiary Guarantor” and each such guarantee is referred to as a “JV Subsidiary Guarantee.”

The Notes are to be issued under an indenture (the “**Indenture**”), to be dated as of the Original Issue Date, among the Issuer, the Parent Guarantor and Citicorp International Limited, as trustee (the “**Trustee**”).

The following is a summary of certain provisions of the Indenture, the Notes, the Parent Guarantee, the Subsidiary Guarantees and the JV Subsidiary Guarantees. This summary does not purport to be complete and is qualified in its entirety by reference to all of the provisions of the Indenture, the Notes, the Parent Guarantee, the Subsidiary Guarantees and the JV Subsidiary Guarantees. It does not restate those documents in their entirety. Whenever particular sections or defined terms of the Indenture not otherwise defined herein are referred to, such sections or defined terms are incorporated herein by reference. Investors should read the Indenture, the Notes, the Parent Guarantee and the forms of Subsidiary Guarantee and the JV Subsidiary Guarantee, because they, and not this description, define your rights as holders of the Notes. Upon prior written request and satisfactory proof of holding, copies of the Indenture will be available for inspection on or after the Original Issue Date at the corporate trust office of the Trustee at 20/F, Citi Tower, One Bay East, 83 Hoi Bun Road, Kwun Tong, Kowloon, Hong Kong.

### Brief Description of the Issuer

The Issuer:

- is a special-purpose financing vehicle established to issue the Notes; and
- has no operating activities other than acting as issuer of Indebtedness, including the Notes.
- The Issuer does not have any operating activities or revenue. See “Risk Factors – Risks Relating to the Notes and the Guarantees – The Issuer is a special-purpose finance vehicle and payments with respect to the Notes are dependent upon cash flow from other members of the Group.”

### Brief Description of the Notes

The Notes will be:

- general obligations of the Issuer;
- senior in right of payment to all future obligations of the Issuer expressly subordinated in right of payment to the Notes;
- at least *pari passu* in right of payment with all other unsecured and unsubordinated Indebtedness of the Issuer (subject to any priority rights of such unsecured and unsubordinated Indebtedness pursuant to applicable law);

- guaranteed by the Parent Guarantor and in the future may be guaranteed by the Subsidiary Guarantors or the JV Subsidiary Guarantors on a senior basis, subject to the limitations described below under the caption “– The Parent Guarantee,” “– The Subsidiary Guarantees and the JV Subsidiary Guarantees,” “Replacement of the Subsidiary Guarantees with the JV Subsidiary Guarantees” and in “Risk Factors – Risks Relating to the Notes and the Guarantees”;
- effectively subordinated to the secured obligations (if any) of the Issuer, the Parent Guarantor, the Subsidiary Guarantors and the JV Subsidiary Guarantors (if any), to the extent of the value of the assets serving as security therefor; and
- effectively subordinated to all existing and future obligations of the Non-Guarantor Subsidiaries.

The Notes will mature on October 9, 2022, unless earlier redeemed pursuant to the terms thereof and the Indenture.

The Notes will bear interest at 10.0% per annum from the Original Issue Date or from the most recent interest payment date to which interest has been paid or duly provided for, payable semi-annually in arrears on April 9 and October 9 of each year (each an “Interest Payment Date”), commencing April 9, 2021. Interest on the Notes will be paid to Holders of record at the close of business on March 25 or September 24 immediately preceding an Interest Payment Date (each, a “Record Date”), notwithstanding any transfer, exchange or cancellation thereof after a Record Date and prior to the immediately following Interest Payment Date. Interest on the Notes will be calculated on the basis of a 360-day year comprised of twelve 30-day months.

Except as described under “Optional Redemption,” “Redemption for Taxation Reasons” and otherwise provided in the Indenture, the Notes may not be redeemed prior to maturity (unless they have been repurchased by the Issuer or the Parent Guarantor).

In any case in which the date of the payment of principal of, premium (if any) on or interest on the Notes is not a Business Day in the relevant place of payment, then payment of such principal, premium or interest need not be made in such place on such date but may be made on the next succeeding Business Day in such place. Any payment made on such Business Day shall have the same force and effect as if made on the date on which such payment is due and no interest on the Notes shall accrue for the period after such date.

The Indenture allows additional Notes to be issued from time to time (the “**Additional Notes**”), subject to certain limitations described under “– Further Issues.” Unless the context requires otherwise, references to the “Notes” for all purposes of the Indenture and this “Description of the Notes” include any Additional Notes that are actually issued.

The Notes will be issued only in fully registered form, without coupons, in denominations of US\$160,000 and integral multiples of US\$1,000 in excess thereof. No service charge will be made for any registration of transfer or exchange of Notes, but the Issuer may require payment of a sum sufficient to cover any transfer tax or other similar governmental charge payable in connection therewith.

All payments on the Notes will be made in U.S. dollars by the Issuer at the office or agency of the Issuer maintained for that purpose (which initially will be the specified office of the Paying Agent, currently located at c/o Citibank, N.A., Dublin Branch, 1 North Wall Quay, Dublin 1, Ireland), and the Notes may be presented for registration of transfer or exchange at such office or agency; *provided that*, at the option of the Issuer, payment of interest may be made by check mailed to the address of the Holders as such address appears in the Note Register maintained by the Note Registrar (as defined below). Interest payable on the Notes held through Euroclear or Clearstream will be available to Euroclear or Clearstream participants (as defined herein) on the Business Day following payment thereof.

## The Parent Guarantee

The Parent Guarantee will be:

- a general obligation of the Parent Guarantor;
- senior in right of payment to all future obligations of the Parent Guarantor expressly subordinated in right of payment to the Parent Guarantee;
- at least *pari passu* in right of payment with the guarantee for the 2020 Notes and all other unsecured and unsubordinated Indebtedness of the Parent Guarantor (subject to any priority rights of such unsecured and unsubordinated Indebtedness pursuant to applicable law);
- effectively subordinated to the secured obligations (if any) of the Parent Guarantor, to the extent of the value of the assets serving as security therefor; and
- effectively subordinated to all existing and future obligations of the Non-Guarantor Subsidiaries and any Unrestricted Subsidiaries.

Under the Indenture and any supplemental indenture to the Indenture, as applicable, the Parent Guarantor will guarantee the due and punctual payment of the principal of, premium, if any, and interest on, and all other amounts payable under, the Notes. The Parent Guarantor will (1) agree that its obligations under the Parent Guarantee will be enforceable irrespective of any invalidity, irregularity or unenforceability of the Notes or the Indenture (other than in respect of the Parent Guarantee) and (2) waive its right to require the Trustee to pursue or exhaust its legal or equitable remedies against the Issuer prior to exercising its rights under the Parent Guarantee.

Moreover, if at any time any amount paid under a Note or the Indenture is rescinded or must otherwise be repaid or restored, the rights of the Holders under the Parent Guarantee will be reinstated with respect to such payment as though such payment had not been made. All payments under the Parent Guarantee are required to be made in U.S. dollars.

## Release of the Parent Guarantee

The Parent Guarantee may be released in certain circumstances, including:

- upon repayment in full of the Notes; and
- upon a defeasance as described under “– Defeasance – Defeasance and Discharge.”

## Registration of the Parent Guarantee

Guarantees of foreign indebtedness arising from offshore bond issuances by a PRC-incorporated entity are subject to registration by the State Administration of Foreign Exchange of the PRC (“SAFE”). The Parent Guarantor understands from its discussion with the SAFE that:

- (i) under PRC law, the Parent Guarantee will be the legal, valid and binding obligations of the Parent Guarantor upon execution;
- (ii) under PRC law, the Parent Guarantor is required to register the Parent Guarantee of the Notes with the Haimen Branch of SAFE (the “**Haimen Branch**”) as soon as possible and in any event before the date that is 15 Registration Business Days after the execution of the Parent Guarantee of the Notes on the Original Issue Date. The Parent Guarantor can perform its obligations under the Parent Guarantee only upon the completion of administrative registration procedures with the Haimen Branch. The enforceability of the Parent Guarantee is subject to certain risks. See “Risk Factors – Risks Relating to the Notes and the

Guarantees – The Guarantees may be challenged under applicable insolvency or fraudulent transfer laws, which can impair the enforceability of the Guarantees” and “Enforcement of Civil Liabilities”; and

- (iii) the Parent Guarantee will cover all sums due under the Notes (including any principal, premium if any, interest and related financial obligations).

Under the Indenture, upon completion of registration of the Parent Guarantee with the Haimen Branch, the Parent Guarantor is required to deliver to the Trustee an Officers’ Certificate attaching a copy of the relevant certificate of registration from the Haimen Branch and certifying that such copy is a true and correct copy (such registration and delivery of an Officers’ Certificate to the Trustee with the certificate from the Haimen Branch referred to collectively as the “SAFE Completion Event”). If the SAFE Completion Event is not completed by 90 Registration Business Days after the closing date of the offering of the Notes, the Issuer will be required under the Indenture to make an offer to repurchase all of the Notes at a price equal to 100% of the principal amount of the Notes then outstanding, plus accrued and unpaid interest to but excluding the date of repurchase. See “– Repurchase upon a SAFE Noncompliance Event.”

The Parent Guarantor intends to register the Parent Guarantee as soon as reasonably practicable after the closing date of the offering of the Notes.

#### **The Subsidiary Guarantees and the JV Subsidiary Guarantees**

There will be no initial Subsidiary Guarantors on the Original Issue Date.

None of the existing or future Restricted Subsidiaries organized under the laws of the PRC (the “**PRC Restricted Subsidiaries**”) will provide a Subsidiary Guarantee or a JV Subsidiary Guarantee on the Original Issue Date or at any time in the future. None of the Exempted Subsidiaries (as long as they continue to be Exempted Subsidiaries) will provide a Subsidiary Guarantee or a JV Subsidiary Guarantee on the Original Issue Date or at any time in the future. None of the Finance Subsidiaries (as long as they continue to be Finance Subsidiaries) will provide a Subsidiary Guarantee or a JV Subsidiary Guarantee on the Original Issue Date or at any time in the future. None of the Listed Subsidiaries (as long as they continue to be Listed Subsidiaries) will provide a Subsidiary Guarantee or a JV Subsidiary Guarantee on the Original Issue Date or at any time in the future.

The Parent Guarantor will cause each of its future Restricted Subsidiaries (other than any PRC Restricted Subsidiary, any Exempted Subsidiary, any Finance Subsidiary or any Listed Subsidiary), as soon as practicable and in any event within 30 days after becoming a Restricted Subsidiary, to execute and deliver to the Trustee a supplemental indenture to the Indenture pursuant to which such Restricted Subsidiary will guarantee the payment of the Notes as either a Subsidiary Guarantor or a JV Subsidiary Guarantor. The Parent Guarantor will cause (x) each of its Restricted Subsidiaries that is an Exempted Subsidiary, as soon as practicable after ceasing to be an Exempted Subsidiary, (y) each of its Restricted Subsidiaries that is a Finance Subsidiary, as soon as practicable after ceasing to be a Finance Subsidiary, and (z) each of its Restricted Subsidiaries that is a Listed Subsidiary, as soon as practicable after ceasing to be a Listed Subsidiary, to execute and deliver to the Trustee a supplemental indenture to the Indenture pursuant to which such Restricted Subsidiary will guarantee the payment of the Notes as either a Subsidiary Guarantor or a JV Subsidiary Guarantor. Notwithstanding the foregoing, the Parent Guarantor may elect to have (w) any existing or future Restricted Subsidiary organized outside the PRC, or (x) as soon as practicable after an Exempted Subsidiary ceases to be an Exempted Subsidiary, such Exempted Subsidiary, or (y) as soon as practicable after a Finance Subsidiary ceases to be a Finance Subsidiary, such Finance Subsidiary, or (z) as soon as practicable after a Listed Subsidiary ceases to be a Listed Subsidiary, such Listed Subsidiary, not provide a Subsidiary Guarantee or a JV Subsidiary Guarantee, *provided that*, after giving effect to the Consolidated Assets of such Restricted Subsidiary, the Consolidated Assets of all Restricted Subsidiaries organized outside the PRC that are not Subsidiary Guarantors or JV Subsidiary Guarantors (excluding the Issuer, Exempted Subsidiaries, Finance

Subsidiaries and the Listed Subsidiaries) do not account for more than 15% of Total Assets. Any Restricted Subsidiary (other than the Issuer) that is not a Subsidiary Guarantor or a JV Subsidiary Guarantor is referred to as a “Non-Guarantor Subsidiary” and all such Restricted Subsidiaries are collectively referred to as the “Non-Guarantor Subsidiaries.”

If, at any time, the Consolidated Assets of all Non-Guarantor Subsidiaries (excluding any PRC Restricted Subsidiary, Exempted Subsidiary, Finance Subsidiary and Listed Subsidiary) exceed 15% of Total Assets, the Parent Guarantor must promptly (i) remove the designation of one or more Non-Guarantor Subsidiaries (other than any PRC Restricted Subsidiary, Exempted Subsidiary, Finance Subsidiary and any Listed Subsidiary) and cause such Non-Guarantor Subsidiaries to execute and deliver to the Trustee a supplemental indenture to the Indenture pursuant to which such Non-Guarantor Subsidiaries will guarantee the payment of the Notes with a Subsidiary Guarantee or a JV Subsidiary Guarantee, (ii) designate one or more Non-Guarantor Subsidiaries as Unrestricted Subsidiaries and/or (iii) cause one or more Non-Guarantor Subsidiaries to pay dividends or make distributions on or with respect to their respective Capital Stock *pro rata* to their respective shareholders or on a basis more favorable to the Parent Guarantor, *provided that* such payment of dividends or distribution is permitted under the Indenture, in the case of each of (i), (ii) and (iii) above, in accordance with the terms of the Indenture and such that the Consolidated Assets of all Non-Guarantor Subsidiaries (excluding any PRC Restricted Subsidiary, Exempted Subsidiary, Finance Subsidiary and Listed Subsidiary) no longer exceed 15% of Total Assets. Such removal of designation as a Non-Guarantor Subsidiary, designation as an Unrestricted Subsidiary and/or payment of dividends or distributions, as the case may be, must be made as soon as practicable and in any event no later than 30 days, after the date any consolidated financial statements of the Parent Guarantor (which the Parent Guarantor shall use its reasonable best efforts to compile in a timely manner) are available (which may include internal consolidated financial statements) which show that the Consolidated Assets of all Non-Guarantor Subsidiaries (excluding any PRC Restricted Subsidiary, Exempted Subsidiary, Finance Subsidiary and any Listed Subsidiary) exceed 15% of Total Assets.

In the case of a Restricted Subsidiary (other than any PRC Restricted Subsidiary, any Exempted Subsidiary, any Finance Subsidiary or any Listed Subsidiary) (i) that is, or is proposed by the Parent Guarantor or any of its Restricted Subsidiaries to be, established or acquired after the Original Issue Date, (ii) that is incorporated in any jurisdiction other than the PRC and (iii) in respect of which the Parent Guarantor or any of its Restricted Subsidiaries (x) is proposing to sell, whether through the sale of existing shares or the issuance of new shares, no less than 20% and no more than 49.9% of the Capital Stock of such Restricted Subsidiary to, or (y) is proposing to purchase no less than 50.1% and no more than 80% of the Capital Stock of, an Independent Third Party and designates such entity as a Restricted Subsidiary, the Parent Guarantor may, concurrently with the consummation of such sale or purchase, cause the provision of a JV Subsidiary Guarantee instead of a Subsidiary Guarantee for (a) such Restricted Subsidiary (the “**JV Subsidiary Guarantor**”) and (b) the Restricted Subsidiaries (other than any PRC Restricted Subsidiary, any Exempted Subsidiary, any Finance Subsidiary or any Listed Subsidiary) of such Restricted Subsidiary, if the following conditions, in the case of both (a) and (b), are satisfied:

- as of the date of execution of the JV Subsidiary Guarantee, no document exists that is binding on the Parent Guarantor or any of the Restricted Subsidiaries that would have the effect of (a) prohibiting the Parent Guarantor or any of the Restricted Subsidiaries from providing such JV Subsidiary Guarantee or (b) requiring the Parent Guarantor or any of the Restricted Subsidiaries to deliver or keep in place a guarantee on terms that are more favorable to the recipients of such guarantee than the JV Subsidiary Guarantee;
- such sale or issuance of Capital Stock is made to, or such purchase of Capital Stock is purchased from, an Independent Third Party at a consideration that is not less than the appraised value of such Capital Stock by an independent appraisal firm of recognized international standing appointed by the Parent Guarantor;



- all capital contributions (by way of transfer of cash or other property or any payment for property or services for the use of others or otherwise) to be made into a JV Subsidiary Guarantor from the date of the sale of existing Capital Stock or issuance of new Capital Stock, or purchase of the Capital Stock, as referred to above, shall be made directly or by contribution of assets or services having an equivalent Fair Market Value by (i) the Parent Guarantor and its Restricted Subsidiaries and (ii) in case of the sale of existing Capital Stock or issuance of new Capital Stock as referred to above, such Independent Third Party that purchased or subscribed for Capital Stock in the JV Subsidiary Guarantor in proportion to their respective direct or indirect ownership percentages of the Capital Stock of such JV Subsidiary Guarantor or on a basis more favorable to the Parent Guarantor or the relevant Restricted Subsidiary;
- concurrently with providing the JV Subsidiary Guarantee, the Parent Guarantor shall or shall cause such JV Subsidiary Guarantor to deliver to the Trustee:
  - (i) (A) a duly executed JV Subsidiary Guarantee of such JV Subsidiary Guarantor and each Restricted Subsidiary of such JV Subsidiary Guarantor, and (B) a duly executed supplemental indenture to the Indenture pursuant to which such JV Subsidiary Guarantor and each of its Restricted Subsidiaries that is not organized under the laws of the PRC (other than any Exempted Subsidiary, any Finance Subsidiary or any Listed Subsidiary) will guarantee the payment of the Notes, each of which provides, among other things, that the aggregate claims of the Trustee under such JV Subsidiary Guarantee and all JV Subsidiary Guarantees provided by the Restricted Subsidiaries and shareholders of such JV Subsidiary Guarantor will be limited to the JV Entitlement Amount;
  - (ii) an Officers' Certificate certifying a copy of the Board Resolution to the effect that such JV Subsidiary Guarantees has been approved by a majority of the disinterested members of the Board of Directors; and

a legal opinion by a law firm of recognized international standing addressed to the Trustee confirming that under New York law such JV Subsidiary Guarantees are valid, binding and enforceable against the JV Subsidiary Guarantor and its Restricted Subsidiaries providing such JV Subsidiary Guarantees (subject to customary qualifications and assumptions).

As of December 31, 2019, the Parent Guarantor and its consolidated Subsidiaries had total borrowings of RMB11,119 million (US\$1,574 million), of which RMB996 million (US\$141 million) was secured.

As of December 31, 2019, the Non-Guarantor Subsidiaries had total borrowings of RMB1,123 million (US\$159 million) and contingent liabilities of RMB2 million (US\$0.3 million).

If any is provided, the Subsidiary Guarantee of each Subsidiary Guarantor:

- is a general obligation of such Subsidiary Guarantor;
- is senior in right of payment to all future obligations of such Subsidiary Guarantor expressly subordinated in right of payment to such Subsidiary Guarantee;
- ranks at least *pari passu* in right of payment with all other unsecured and unsubordinated Indebtedness of such Subsidiary Guarantor (subject to any priority rights of such unsecured and unsubordinated Indebtedness pursuant to applicable law);
- is effectively subordinated to the secured obligations of such Subsidiary Guarantor, to the extent of the assets serving as security therefor; and

- is effectively subordinated to all existing and future obligations of the Non-Guarantor Subsidiaries and any Unrestricted Subsidiaries.

If any is provided, the JV Subsidiary Guarantee of each JV Subsidiary Guarantor will be:

- a general obligation of such JV Subsidiary Guarantor;
- enforceable only up to the JV Entitlement Amount;
- effectively subordinated to the secured obligations (if any) of such JV Subsidiary Guarantor, to the extent of the value of the assets serving as security therefor;
- limited to the JV Entitlement Amount, and will be senior in right of payment to all existing and future obligations of such JV Subsidiary Guarantor expressly subordinated in right of payment to such JV Subsidiary Guarantee; and
- limited to the JV Entitlement Amount, and will rank at least *pari passu* in right of payment with all other unsecured and unsubordinated Indebtedness of such JV Subsidiary Guarantor (subject to any priority rights of such unsecured and unsubordinated Indebtedness pursuant to applicable law).

Each Restricted Subsidiary that guarantees the Notes after the Original Issue Date other than a JV Subsidiary Guarantor is referred to as a “Future Subsidiary Guarantor” and upon execution of the applicable supplemental indenture to the Indenture will be a “Subsidiary Guarantor.”

Although the Indenture contains limitations on the amount of additional Indebtedness that the Non-Guarantor Subsidiaries may incur, the amount of such additional Indebtedness could be substantial. In the event of a bankruptcy, liquidation or reorganization of any Non-Guarantor Subsidiary, such Non-Guarantor Subsidiary will pay the holders of its debt and its trade creditors before they will be able to distribute any of its assets to the Parent Guarantor.

Under the Indenture and any supplemental indenture to the Indenture, as applicable, each of the Subsidiary Guarantors and JV Subsidiary Guarantors, if any in the future, will jointly and severally guarantee the due and punctual payment of the principal of, premium, if any, and interest on, and all other amounts payable under, the Notes, *provided that*, any JV Subsidiary Guarantee will be limited to the JV Entitlement Amount. The Subsidiary Guarantors and JV Subsidiary Guarantors, if any, will (1) agree that their respective obligations under the Subsidiary Guarantees and JV Subsidiary Guarantees, as the case may be, will be enforceable irrespective of any invalidity, irregularity or unenforceability of the Notes or the Indenture and (2) waive their right to require the Trustee to pursue or exhaust its legal or equitable remedies against the Issuer or the Parent Guarantor prior to exercising its rights under the Subsidiary Guarantees and JV Subsidiary Guarantees, as the case may be. Moreover, if at any time any amount paid under a Note or the Indenture is rescinded or must otherwise be repaid or restored, the rights of the Holders under the Subsidiary Guarantees and JV Subsidiary Guarantees, as the case may be, will be reinstated with respect to such payment as though such payment had not been made. All payments under the Subsidiary Guarantees and JV Subsidiary Guarantees, if any, are required to be made in U.S. dollars.

Under the Indenture and any supplemental indenture to the Indenture, as applicable, each Subsidiary Guarantee, if any, will be limited to an amount not to exceed the maximum amount that can be guaranteed by the applicable Subsidiary Guarantor without rendering the Subsidiary Guarantee, as it relates to such Subsidiary Guarantor, voidable under applicable law relating to insolvency, fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. Each JV Subsidiary Guarantee provided by any JV Subsidiary Guarantor, if any, will, together with all the JV Subsidiary Guarantees provided by the Restricted Subsidiaries and shareholders of such JV Subsidiary Guarantor, in the aggregate, be limited to an amount which is the lower of (i) the applicable JV

Entitlement Amount and (ii) an amount not to exceed the maximum amount that can be guaranteed by the applicable JV Subsidiary Guarantor without rendering the JV Subsidiary Guarantee, as it relates to such JV Subsidiary Guarantor, voidable under applicable law relating to insolvency, fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

If a Subsidiary Guarantee or a JV Subsidiary Guarantee were to be rendered void or voidable, it could be subordinated by a court to all other Indebtedness (including guarantees and other contingent liabilities) of the applicable Subsidiary Guarantor or JV Subsidiary Guarantor, as the case may be, and, depending on the amount of such Indebtedness, a Subsidiary Guarantor's or, a JV Subsidiary Guarantor's liability on its Subsidiary Guarantee or JV Subsidiary Guarantee, as applicable, could in each case be reduced to zero.

The obligations of each Subsidiary Guarantor under its respective Subsidiary Guarantee may be limited, or possibly invalid, under applicable laws. Similarly, the obligations of each JV Subsidiary Guarantor under its JV Subsidiary Guarantee may be limited, or possibly invalid, under applicable laws. The guarantee of a Subsidiary Guarantor or, if any, a JV Subsidiary Guarantee may be voided or subject to review under applicable insolvency or fraudulent transfer laws, or subject to a lawsuit by or on behalf of creditors of such Subsidiary Guarantor or JV Subsidiary Guarantee. See "Risk Factors – Risks Relating to the Notes and the Guarantees – The Guarantees may be challenged under applicable insolvency or fraudulent transfer laws, which could impair the enforceability of the Guarantees."

#### **Release of the Subsidiary Guarantees and or the JV Subsidiary Guarantees**

There will be no Subsidiary Guarantee or JV Subsidiary Guarantee on the Original Issue Date. A Subsidiary Guarantee given by a Subsidiary Guarantor or a JV Subsidiary Guarantee given by a JV Subsidiary Guarantor, if any, may be released in certain circumstances, including:

- upon repayment in full of the Notes;
- upon a defeasance as described under "– Defeasance – Defeasance and Discharge;"
- upon the designation by the Parent Guarantor of a Subsidiary Guarantor or a JV Subsidiary Guarantor as an Unrestricted Subsidiary in compliance with the terms of the Indenture;
- upon the sale, merger or disposition of a Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be, in compliance with the terms of the Indenture (including the covenants under the captions "– Certain Covenants – Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries," "– Certain Covenants – Limitation on Asset Sales" and "– Consolidation, Merger and Sale of Assets") resulting in such Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be, no longer being a Restricted Subsidiary, so long as (1) such Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be, is simultaneously released from its obligations in respect of the Parent Guarantor's other Indebtedness or any Indebtedness of any other Restricted Subsidiary and (2) the proceeds from such sale, merger or disposition are used for the purposes permitted or required by the Indenture;
- in the case of a Subsidiary Guarantee, upon the replacement of a Subsidiary Guarantee with a JV Subsidiary Guarantee or another Subsidiary Guarantee;
- in the case of a JV Subsidiary Guarantee, upon the replacement of a JV Subsidiary Guarantee with a Subsidiary Guarantee or another JV Subsidiary Guarantee;
- in the case of a Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be, that becomes an Exempted Subsidiary or a Listed Subsidiary;

- in the case of a Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be, that becomes a Non-Guarantor Subsidiary, in compliance with the terms of the Indenture; or
- as described under “– Amendments and Waiver.”

Notwithstanding the foregoing paragraph, any such sale or issuance of the Capital Stock of the relevant Subsidiary Guarantor or JV Subsidiary Guarantor, as the case may be (including where such sale results in the relevant Subsidiary Guarantor or JV Subsidiary Guarantor ceasing to be a Restricted Subsidiary) will need to comply with the other covenants set forth in the Indenture, including, without limitation, the “Limitation on Asset Sales” and “Limitation on Restricted Payments” covenants to the extent required thereunder. Any Net Cash Proceeds from the sale or issuance of such Capital Stock shall be applied by the Parent Guarantor (or any Restricted Subsidiary) in accordance with the “Limitation on Asset Sales” covenant to the extent required thereunder.

No release of a Subsidiary Guarantor from its Subsidiary Guarantee or a JV Subsidiary Guarantor from its JV Subsidiary Guarantee shall be effective against the Trustee or the Holders until the Parent Guarantor has delivered to the Trustee an Officers’ Certificate stating that all requirements relating to such release have been complied with and such release is authorized and permitted by the terms of the Indenture. The Trustee shall be entitled to rely without liability upon such Officers’ Certificate as sufficient evidence thereof in which event it shall be conclusive and binding on the Holders.

#### **Replacement of the Subsidiary Guarantees with the JV Subsidiary Guarantees**

The Subsidiary Guarantee given by any Subsidiary Guarantor may be released and replaced by a JV Subsidiary Guarantee (i) by the Parent Guarantor if the Parent Guarantor so elects, or (ii) following the sale or issuance by the Parent Guarantor or any of its Restricted Subsidiaries of Capital Stock in (a) such Subsidiary Guarantor or (b) any other Subsidiary Guarantor that, directly or indirectly, owns a majority of the Capital Stock of such Subsidiary Guarantor, in each case, and, in the case of (ii) above, as a result of such sale or issuance, immediately after the release and replacement of the Subsidiary Guarantee, no less than 50.1% and no more than 80% of the issued Capital Stock of such Subsidiary Guarantor is owned by the Parent Guarantor and/or other Subsidiary Guarantors, *provided that* the following conditions are satisfied or complied with:

- as of the date of such proposed release, no document exists that is binding on the Parent Guarantor or any of the Restricted Subsidiaries that would have the effect of (a) prohibiting the Parent Guarantor or any of the Restricted Subsidiaries from releasing such Subsidiary Guarantee, (b) prohibiting the Parent Guarantor or any of the Restricted Subsidiaries from providing a JV Subsidiary Guarantee, or (c) requiring the Parent Guarantor or any of the Restricted Subsidiaries to deliver or keep in force a replacement guarantee on terms that are more favorable to the recipients of such guarantee than the JV Subsidiary Guarantee;
- in the case of (ii) above, such sale or issuance of Capital Stock is made to an Independent Third Party at a consideration that is not less than the appraised value of such Capital Stock determined by an independent appraisal firm of recognized international standing appointed by the Parent Guarantor;
- in the case of (ii) above, all capital contributions (by way of transfer of cash or other property or any payment for property or services for the use of others or otherwise) to be made into a JV Subsidiary Guarantor from the date of the sale of existing Capital Stock or issuance of new Capital Stock as referred to above, shall be made directly or by contribution of assets or services having an equivalent Fair Market Value by (i) the Parent Guarantor and its Restricted Subsidiaries and (ii) such Independent Third Party that purchased or subscribed for Capital Stock in the JV Subsidiary Guarantor in proportion to their respective direct or indirect ownership percentages of the Capital Stock of such JV Subsidiary Guarantor or on a basis more favorable to the Parent Guarantor;

- concurrently with the release of such Subsidiary Guarantee, the Parent Guarantor shall or shall cause such JV Subsidiary Guarantor to deliver to the Trustee:
  - (i) (A) a duly executed JV Subsidiary Guarantee of such JV Subsidiary Guarantor and each Restricted Subsidiary of such JV Subsidiary Guarantor, and (B) a duly executed supplemental indenture to the Indenture pursuant to which such JV Subsidiary Guarantor and each of its Restricted Subsidiaries that is not organized under the laws of the PRC (other than any Exempted Subsidiary, Finance Subsidiary and Listed Subsidiary) will guarantee the payment of the Notes, each of which provides, among other things, that the aggregate claims of the Trustee under such JV Subsidiary Guarantee and all JV Subsidiary Guarantees provided by the Restricted Subsidiaries and shareholders of such JV Subsidiary Guarantor will be limited to the JV Entitlement Amount;
  - (ii) an Officers' Certificate certifying a copy of the Board Resolution to the effect that such JV Subsidiary Guarantees has been approved by a majority of the disinterested members of the Board of Directors; and
  - (iii) a legal opinion by a law firm of recognized international standing addressed to the Trustee confirming that under New York law such JV Subsidiary Guarantees are valid, binding and enforceable against the JV Subsidiary Guarantor and its Restricted Subsidiaries providing such JV Subsidiary Guarantees (subject to customary qualifications and assumptions).

Notwithstanding the foregoing paragraph, any such sale or issuance of the Capital Stock of the relevant Subsidiary Guarantor (including where such sale results in the relevant Subsidiary Guarantor ceasing to be a Restricted Subsidiary) will need to comply with the other covenants set forth in the Indenture, including, without limitation, the "Limitation on Asset Sales" and "Limitation on Restricted Payments" covenants.

Any Net Cash Proceeds from the sale or issuance of such Capital Stock shall be applied by the Parent Guarantor (or any Restricted Subsidiary) in accordance with the "Limitation on Asset Sales" covenant.

As of the date of the Indenture, all of the Parent Guarantor's Subsidiaries will be "Restricted Subsidiaries." However, under the circumstances described below under the caption "– Certain Covenants – Designation of Restricted and Unrestricted Subsidiaries," the Parent Guarantor will be permitted to designate certain of its Subsidiaries as "Unrestricted Subsidiaries." The Parent Guarantor's Unrestricted Subsidiaries will generally not be subject to the restrictive covenants in the Indenture. The Parent Guarantor's Unrestricted Subsidiaries will not guarantee the Notes.

#### **Further Issues**

Subject to the covenants described below and in accordance with the terms of the Indenture, the Issuer may, from time to time, without notice to or the consent of the Holders, create and issue additional notes (the "**Additional Notes**") having the same terms and conditions as the Notes (including the benefit of the Parent Guarantee, Subsidiary Guarantees and JV Subsidiary Guarantees, if any) in all respects (or in all respects except for the issue date, issue price and the first payment of interest on them and, to the extent necessary, certain temporary securities law transfer restrictions and any limitations associated with the registration of the Parent Guarantee with the Haimen Branch and any related rights of the Holders of Additional Notes set forth under "– Repurchase upon a SAFE Noncompliance Event") (a "Further Issue") so that such Additional Notes may be consolidated and form a single series with the previously outstanding Notes and vote together as one class on all matters with respect to the Notes; *provided that* (a) the issuance of any such Additional Notes shall then be permitted under the "Limitation on Indebtedness and Preferred Stock" covenant described below; (b) that the "original Issue

Date” as used under “– Repurchase Upon Occurrence of the SAFE Noncompliance Event” shall be deemed to mean the issue date of the applicable Further Issue; (c) that such tranche of Additional Notes shall be assigned a temporary ISIN, Common Code or other identifying number until the SAFE Completion Event (as defined below) has occurred with respect to such Additional Notes; and (d) until the SAFE Completion Event has occurred with respect to such Additional Notes, such Additional Notes will not be consolidated or form a single series with the previously outstanding Notes or vote together as one class on matters with respect to the Notes; *provided further that* if such Additional Notes are issued within 15 Registration Business Days after the Original Issue Date and the Parent Guarantor registers the Parent Guarantee with respect to both the Notes and the Additional Notes with Haimen Branch, the preceding clauses (c) and (d) shall not apply. In connection with any such issuance of Additional Notes, the Issuer shall deliver an Officers’ Certificate to the Trustee directing the Trustee to authenticate and deliver Additional Notes in an aggregate principal amount specified therein and the Trustee, in accordance with such Officers’ Certificate, shall authenticate and deliver such Additional Notes.

Prior to the time such tranche of Additional Notes may be consolidated to form a single series with the previously outstanding Notes, such tranche of Additional Notes shall have a temporary ISIN and Common Code and be represented by the temporary Global Note substantially in the form set out in the Indenture (the “**Temporary Global Note**”), which shall bear a legend as set forth below:

“THIS IS A TEMPORARY GLOBAL NOTE. THIS TEMPORARY GLOBAL NOTE MAY BE EXCHANGED BY THE TRUSTEE, UPON RECEIPT OF THE SAFE COMPLETION CERTIFICATE WITH RESPECT TO SUCH ADDITIONAL NOTES ON OR PRIOR TO THE SAFE NONCOMPLIANCE EVENT OCCURRENCE DATE AND WITHOUT THE CONSENT OF THE HOLDERS, FOR A PERMANENT GLOBAL NOTE PURSUANT TO THE INDENTURE.”

The Trustee shall, upon receipt of the SAFE Completion Certificate with respect to such tranche of Additional Notes in the form set out in the Indenture, and without the consent of the Holders, exchange the Temporary Global Note for a permanent Global Note (the “**Permanent Global Note**”) substantially in the form set out in the Indenture, except for the first Interest Payment Date and issue date, which shall have the same ISIN and Common Code as the previously outstanding Notes. The Parent Guarantee and the Subsidiary Guarantee endorsed on the Temporary Global Note shall, upon such exchange, be endorsed on the Permanent Global Note.

### **Optional Redemption**

At any time prior to October 9, 2022, the Issuer may at its option redeem the Notes, in whole or in part, at a redemption price equal to 101% of the principal amount of the Notes plus accrued and unpaid interest, if any, to (but not including) the redemption date. Neither the Trustee nor any of the Agents shall be responsible for verifying or calculating the redemption price.

At any time and from time to time prior to October 9, 2022, the Issuer may redeem up to 35% of the aggregate principal amount of the Notes with the Net Cash Proceeds of one or more sales of the Common Stock of the Parent Guarantor in an Equity Offering at a redemption price of 110% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to (but not including) the redemption date; *provided that* at least 65% of the aggregate principal amount of the Notes originally issued on the Original Issue Date remains outstanding after each such redemption and any such redemption takes place within 60 days after the closing of the related Equity Offering.

Any redemption of Notes and notice of redemption may, at the Issuer’s discretion, be subject to the satisfaction (or waiver by the Issuer in its sole discretion) of one or more conditions precedent (including, in the case of a redemption related to an Equity Offering, the consummation of such Equity Offering and in the case of a repurchase upon a Change of Control, the occurrence of a Change of Control).

If the optional redemption date is on or after a Record Date and on or before the related Interest Payment Date, the accrued and unpaid interest will be paid to the Person in whose name the Note is registered at the close of business on such Record Date, and no additional interest will be payable to Holders whose Notes will be subject to redemption by the Issuer.

Any redemption described under this “– Optional Redemption” caption may, at the Issuer’s discretion, be subject to one or more conditions precedent, in which case the related notice will describe each such condition, and if applicable, shall state that, in the Issuer’s discretion, the date of redemption may be delayed until such time as any or all such conditions shall be satisfied or waived, or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied or waived by the date of redemption, or by the date of redemption as so delayed.

### **Selection and Notice**

The Issuer will give not less than 30 days’ nor more than 60 days’ notice of any redemption to the Holders and the Trustee. If less than all of the Notes are to be redeemed at any time, the Notes for redemption will be selected as follows:

- (1) if the Notes are listed on any recognized securities exchange or held through a clearing system, in compliance with the requirements of the principal recognized securities exchange on which the Notes are listed or the requirement of the clearing system; or
- (2) if the Notes are not listed on any recognized securities exchange or held through a clearing system, on a *pro rata* basis, unless otherwise required by applicable law.

No Note of US\$160,000 in principal amount or less shall be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption relating to such Note will state the portion of the principal amount to be redeemed. A new Note in principal amount equal to the unredeemed portion will be issued upon cancellation of the original Note. On and after the redemption date, interest will cease to accrue on the Notes or portions of them called for redemption.

### **Repurchase of Notes Upon a Change of Control**

Not later than 30 days following a Change of Control, the Issuer or the Parent Guarantor will make an Offer to Purchase all outstanding Notes (a “**Change of Control Offer**”) at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest, if any, to (but not including) the Offer to Purchase Payment Date.

Each of the Issuer and the Parent Guarantor has agreed in the Indenture that it will timely repay all Indebtedness or obtain consents as necessary under, or terminate, agreements or instruments that would otherwise prohibit a Change of Control Offer required to be made pursuant to the Indenture. Notwithstanding this agreement of the Issuer and the Parent Guarantor, it is important to note that if the Issuer or the Parent Guarantor, as the case may be, is unable to repay (or cause to be repaid) all of the Indebtedness, if any, that would prohibit the repurchase of the Notes or is unable to obtain the requisite consents of the holders of such Indebtedness, or terminate any agreements or instruments that would otherwise prohibit a Change of Control Offer, it would continue to be prohibited from purchasing the Notes. In that case, the Issuer’s or the Parent Guarantor’s failure to purchase tendered Notes would constitute an Event of Default under the Indenture.

Certain of the events constituting a Change of Control under the Notes may also constitute an event of default under certain debt instruments of the Parent Guarantor and its Subsidiaries. Future debt of the Parent Guarantor and its Subsidiaries may also (1) prohibit the Issuer or the Parent Guarantor from purchasing Notes in the event of a Change of Control; (2) provide that a Change of Control is a default; or (3) require repurchase of such debt upon a Change of Control. Moreover, the exercise by the Holders of their right to require the Issuer or the Parent Guarantor to purchase the Notes could cause a

default under other Indebtedness, even if the Change of Control itself does not, due to the financial effect of the purchase on the Issuer or the Parent Guarantor. The Issuer's or the Parent Guarantor's ability to pay cash to the Holders following the occurrence of a Change of Control may be limited by the Issuer's and the Parent Guarantor's, the Subsidiary Guarantors' and the JV Subsidiary Guarantors' then-existing financial resources. There can be no assurance that sufficient funds will be available when necessary to make the required purchase of the Notes. See "Risk Factors – Risks Relating to the Notes and the Guarantees – The Group may not be able to repurchase the Notes upon a Change of Control."

The definition of Change of Control includes a phrase relating to the sale of "all or substantially all" the assets of the Parent Guarantor. Although there is a limited body of case law interpreting the phrase "substantially all," there is no precise established definition of the phrase under applicable law. Accordingly, the ability of a Holder of Notes to require the Parent Guarantor to repurchase such Holder's Notes as a result of a sale of less than all the assets of the Parent Guarantor to another person or group may be uncertain and will depend upon particular facts and circumstances. As a result, there may be a degree of uncertainty in ascertaining whether a sale or transfer of "all or substantially all" the assets of the Parent Guarantor has occurred.

Notwithstanding the above, the Issuer or the Parent Guarantor will not be required to make a Change of Control Offer following a Change of Control if a third party makes the Change of Control Offer in the same manner within the same time frame and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Issuer or the Parent Guarantor and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

The Trustee shall not be required to take any steps to ascertain whether a Change of Control has occurred or may occur, and shall be entitled to assume that no such event has occurred until it has received written notice to the contrary from the Parent Guarantor. The Trustee shall not be required to take any steps to ascertain whether the condition for the exercise of the rights herein has occurred. The Trustee shall not be responsible for determining or verifying whether a Note is to be accepted for redemption and will not be responsible to the Holders for any loss arising from any failure by it to do so. The Trustee shall not be under any duty to determine, calculate or verify the redemption amount payable hereunder and will not be responsible to the Holders for any loss arising from any failure by it to do so.

Except as described above with respect to a Change of Control, the Indenture does not contain provisions that permit the Holders to require the Issuer or the Parent Guarantor to purchase or redeem the Notes in the event of a takeover, recapitalization or similar transaction.

#### **No Mandatory Redemption or Sinking Fund**

There will be no mandatory redemption or sinking fund payments for the Notes.

#### **Additional Amounts**

All payments of principal of, and premium (if any) and interest on the Notes or under the Parent Guarantee or the Subsidiary Guarantees or the JV Subsidiary Guarantees (if any) will be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or within any jurisdiction in which the Issuer, the Parent Guarantor, or an applicable Subsidiary Guarantor or JV Subsidiary Guarantor, as the case may be, or a Surviving Person (as defined under the caption "– Consolidation, Merger and Sale of Assets") is organized or resident for tax purposes (or any political subdivision or taxing authority thereof or therein), including, without limitation, if applicable, the PRC, or the jurisdiction through which payments are made or any political subdivision or taxing authority thereof or therein (each, a "Relevant Jurisdiction"), unless such withholding or deduction is required by law or by regulation or governmental policy having the force of law.



Where such withholding or deduction is made by the Issuer, the Parent Guarantor or, as the case may be, any applicable Subsidiary Guarantor or JV Subsidiary Guarantor, or a Surviving Person by or within the PRC up to and including the aggregate rate applicable on September 30, 2020 (the “**Applicable Rate**”), the Issuer or, as the case may be, such Subsidiary Guarantor or JV Subsidiary Guarantor, or Surviving Person will increase the amounts paid by it to the extent required, so that the net amount received by Holders equals the amounts which would otherwise have been receivable by them had no such withholding or deduction been required.

If the Issuer, the Parent Guarantor or, as the case may be, any applicable Subsidiary Guarantor or JV Subsidiary Guarantor, or a Surviving Person is required to make a deduction or withholding (i) by or within the PRC in excess of the Applicable Rate or (ii) by or within any Relevant Jurisdiction other than PRC, the Issuer or, as the case may be, such Subsidiary Guarantor or JV Subsidiary Guarantor, or Surviving Person will pay such additional amounts (“**Additional Amounts**”) as will result in receipt by the Holder of each Note of such amounts as would have been received by such Holder had no such withholding or deduction been required, except that no Additional Amounts shall be payable:

(1) for or on account of:

- (a) any tax, duty, assessment or other governmental charge that would not have been imposed but for:
  - (i) the existence of any present or former connection between the Holder or beneficial owner of such Note, Parent Guarantee, Subsidiary Guarantee or JV Subsidiary Guarantee (as the case may be), and the Relevant Jurisdiction (other than merely acquiring or holding such Note or the receipt of payments or enforcement of rights thereunder or under the Parent Guarantee, a Subsidiary Guarantee or a JV Subsidiary Guarantee), including, without limitation, such Holder or beneficial owner being or having been a national, domiciliary or resident of such Relevant Jurisdiction or treated as a resident thereof or being or having been physically present or engaged in a trade or business therein or having or having had a permanent establishment therein;
  - (ii) the presentation of such Note (in cases in which presentation is required) more than 30 days after the later of the date on which the payment of the principal of, premium, if any, and interest on, such Note became due and payable pursuant to the terms thereof or was made or duly provided for, except to the extent that the Holder thereof would have been entitled to such Additional Amounts if it had presented such Note for payment on any date within such 30-day period;
  - (iii) the failure of the Holder or beneficial owner to comply with a timely request of the Issuer, the Parent Guarantor, a Surviving Person, or any Subsidiary Guarantor or JV Subsidiary Guarantor addressed to the Holder or beneficial owner, as the case may be, to provide information concerning such Holder’s or beneficial owner’s nationality, residence, identity or connection with any Relevant Jurisdiction, if and to the extent that due and timely compliance with such request is required under the tax laws of such jurisdiction in order to reduce or eliminate any withholding or deduction as to which Additional Amounts would have otherwise been payable to such Holder; or
  - (iv) the presentation of such Note (in cases in which presentation is required) for payment in the Relevant Jurisdiction, unless such Note could not have been presented for payment elsewhere;
- (b) any estate, inheritance, gift, sale, transfer, personal property or similar tax, assessment or other governmental charge; or

- (c) any combination of taxes, duties, assessments or other governmental charges referred to in the preceding clauses (a) and (b); or
- (2) to a Holder that is a fiduciary, partnership or person other than the sole beneficial owner of any payment to the extent that such payment would be required to be included in the income under the laws of a Relevant Jurisdiction, for tax purposes, of a beneficiary or settlor with respect to the fiduciary, or a member of that partnership or a beneficial owner who would not have been entitled to such Additional Amounts had that beneficiary, settlor, partner or beneficial owner been the Holder thereof.

Whenever there is mentioned in any context the payment of principal of, and any premium or interest on, any Note or under the Parent Guarantee, any Subsidiary Guarantee or any JV Subsidiary Guarantee, such mention shall be deemed to include payment of Additional Amounts provided for in the Indenture to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

The Paying Agent and the Trustee will make payments free of withholdings or deductions on account of taxes unless required by applicable law. If such a deduction or withholding is required, the Paying Agent or the Trustee will not be obligated to pay any Additional Amount to the recipient unless such an Additional Amount is received by the Paying Agent or the Trustee.

Each Holder, by accepting the Notes agrees, for the benefit of the Trustee, that it is solely responsible for its own independent appraisal of, and investigation into, all risks arising under or in connection with the offering of the Notes and has not relied on and will not at any time rely on the Trustee in respect of such risks.

Notwithstanding any other provision of the Indenture, any amounts to be paid on the Notes by or on behalf of the Issuer, and any amounts to be paid by or on behalf of the Parent Guarantor pursuant to the Parent Guarantee, or by or on behalf of any Subsidiary Guarantor pursuant to its Subsidiary Guarantee, as the case may be, will be paid net of any deduction or withholding imposed or required pursuant to an agreement described in Section 147 1(b) of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”), or otherwise imposed pursuant to Sections 1471 through 1474 of the Code (or any regulations thereunder or official interpretations thereof) or an intergovernmental agreement between the United States and another jurisdiction facilitating the implementation thereof (or any fiscal or regulatory legislation, rules or practices implementing such an intergovernmental agreement) (any such withholding or deduction, a “**FATCA Withholding**”). Neither the Issuer nor any other person will be required to pay any Additional Amounts in respect of FATCA Withholding.

#### **Repurchase upon a SAFE Noncompliance Event**

Upon completion by the Parent Guarantor of registration of the Parent Guarantee for the Notes with the Haimen Branch, the Parent Guarantor will be required to deliver an Officers’ Certificate in a form set forth in the Indenture attaching a copy of the relevant certificate of registration from the Haimen Branch and certifying that such copy is true and correct (such registration and delivery of an Officers’ Certificate to the Trustee attaching the Haimen Branch certificate referred to collectively as the “**SAFE Completion Event**”). If, on the date that is 90 Registration Business Days after the Original Issue Date, the SAFE Completion Event shall not have occurred (such nonoccurrence, a “**SAFE Noncompliance Event**”), the Issuer will be required to make an offer to repurchase all of the Notes at a price in cash equal to 100% of the principal amount of the Notes offered for repurchase, plus accrued and unpaid interest, if any, on the principal amount of the Notes being repurchased to but excluding the date of repurchase (a “**SAFE Noncompliance Offer**”).

Within 10 calendar days following a SAFE Noncompliance Event, the Issuer will be required to give written notice of a SAFE Noncompliance Offer to the Trustee and the Holders of the Notes offering to repurchase all of the Notes on the date specified in the notice, which date will be no earlier than 30

calendar days and no later than 60 calendar days from the date such notice is given. See “Risk Factors – Risks Relating to the Notes and the Guarantees – The Issuer or the Parent Guarantor may not be able to redeem the Notes upon the occurrence of a SAFE Noncompliance Event.”

A holder of Notes will have no right to require the Issuer to repurchase portions of Notes if it would result in the issuance of Notes, representing the portion not repurchased, in an amount of less than US\$160,000. The Issuer will comply, to the extent applicable, with the requirements of applicable securities laws or regulations in connection with the repurchase of the Notes pursuant to this covenant.

### **Redemption for Taxation Reasons**

The Notes may be redeemed, at the option of the Issuer or a Surviving Person, as a whole but not in part, at any time upon giving not less than 30 days’ nor more than 60 days’ notice to the Holders and the Trustee (which notice shall be irrevocable), at a redemption price equal to 100% of the principal amount thereof, together with any accrued and unpaid interest (including any Additional Amounts), if any, to the date fixed by the Issuer or the Surviving Person, as the case may be, for redemption (the “**Tax Redemption Date**”) if, as a result of:

- (1) any change in, or amendment to, the laws (or any regulations or rulings promulgated thereunder) of a Relevant Jurisdiction affecting taxation; or
- (2) any change in the existing official position or the stating of an official position regarding the application or interpretation of such laws, regulations or rulings (including a holding, judgment or order by a court of competent jurisdiction),

which change or amendment becomes effective (or in the case of an official position, is announced) (i) with respect to the Issuer or the Parent Guarantor, on or after September 30, 2020, or (ii) with respect to any Future Subsidiary Guarantor, JV Subsidiary Guarantor or Surviving Person, on or after the date such Future Subsidiary Guarantor, JV Subsidiary Guarantor or Surviving Person becomes a Subsidiary Guarantor, JV Subsidiary Guarantor or Surviving Person, with respect to any payment due or to become due under the Notes or the Indenture, the Issuer, the Parent Guarantor or such relevant Surviving Person, Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be, is, or on the next Interest Payment Date would be, required to pay Additional Amounts, and such requirement cannot be avoided by the taking of reasonable measures by the Issuer, the Parent Guarantor or such relevant Surviving Person, Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be; *provided that* no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Issuer, the Parent Guarantor or such relevant Surviving Person or Subsidiary Guarantor or JV Subsidiary Guarantor, as the case may be, would be obligated to pay such Additional Amounts if a payment in respect of the Notes were then due.

Prior to the mailing of any notice of redemption of the Notes pursuant to the foregoing, the Issuer, the Parent Guarantor or such relevant Surviving Person, Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be, will deliver to the Trustee at least 30 days but not more than 60 days before a redemption date:

- (1) an Officers’ Certificate stating that such change, amendment, or stating of an official position referred to in the prior paragraph has occurred, describing the facts related thereto and stating that such requirement cannot be avoided by the Issuer, the Parent Guarantor or a Surviving Person, or a Subsidiary or a JV Subsidiary Guarantor, as the case may be, after taking reasonable measures available to it; and
- (2) an Opinion of Counsel or an opinion of a tax consultant, in either case of recognized standing with respect to tax matters of the Relevant Jurisdiction, stating that the requirement to pay such Additional Amounts results from such change, amendment, or stating of an official position referred to in the prior paragraph.

The Trustee shall be and is entitled to accept such certificate and opinion as sufficient evidence of the satisfaction of the conditions precedent described above without further verification, in which event it shall be conclusive and binding on the Holders and will not be responsible for any loss occasioned by acting in reliance on such certificate and opinion, and is not obligated to verify any information in any certificate or opinion.

Any Notes that are redeemed for tax reasons will be cancelled.

### **Open Market Purchases**

Subject to compliance with applicable law, the Issuer or the Parent Guarantor may purchase the Notes in the open market or by tender or by any other means at any price, so long as such acquisition does not otherwise violate the terms of the Indenture; provided that all Notes redeemed or repurchased by the Issuer or the Parent Guarantor may not be reissued or resold.

### **Certain Covenants**

Set forth below are summaries of certain covenants contained in the Indenture.

### **Limitation on Indebtedness and Preferred Stock**

- (1) The Parent Guarantor will not, and will not permit any Restricted Subsidiary to, Incur any Indebtedness (including Acquired Indebtedness), and the Parent Guarantor will not permit any Restricted Subsidiary to issue Preferred Stock, *provided that* the Parent Guarantor, each Subsidiary Guarantor and JV Subsidiary Guarantor may Incur Indebtedness (including Acquired Indebtedness), any Finance Subsidiary may Incur Finance Subsidiary Indebtedness, the Issuer may issue Additional Notes, and any Non-Guarantor Subsidiary (other than any Finance Subsidiary) may Incur Permitted Subsidiary Indebtedness if, after giving effect to the Incurrence of such Indebtedness and the receipt and application of the proceeds therefrom, (x) no Default has occurred and is continuing and (y) the Fixed Charge Coverage Ratio would be not less than (x) 2.0 to 1.0.

Notwithstanding the foregoing, the Parent Guarantor will not permit any Restricted Subsidiary to Incur any Disqualified Stock (other than Disqualified Stock held by the Issuer or the Parent Guarantor or a Subsidiary Guarantor, so long as it is so held).

- (2) Notwithstanding the foregoing, the Parent Guarantor and, to the extent provided below, any Restricted Subsidiary may Incur each and all of the following (“**Permitted Indebtedness**”):
  - (a) Indebtedness under the Notes (excluding any Additional Notes), the Parent Guarantee and any Subsidiary Guarantee and JV Subsidiary Guarantee;
  - (b) any *Pari Passu* Guarantee;
  - (c) Indebtedness of the Parent Guarantor or any Restricted Subsidiary outstanding on the Original Issue Date excluding Indebtedness permitted under clause (2)(d) of this covenant; *provided that* such Indebtedness of Restricted Subsidiaries (other than Subsidiary Guarantors, JV Subsidiary Guarantors and Finance Subsidiaries) shall be included in the calculation of Permitted Subsidiary Indebtedness (other than any such Indebtedness described in clauses (a), (d), (f) and (g) of this paragraph (2));
  - (d) Indebtedness of the Parent Guarantor or any Restricted Subsidiary owed to the Parent Guarantor or any Restricted Subsidiary; provided that (i) any event which results in any such Restricted Subsidiary to whom such Indebtedness is owed ceasing to be a Restricted Subsidiary or any subsequent transfer of such Indebtedness (other than to the Parent Guarantor or any Restricted Subsidiary) shall be deemed, in each case, to

constitute an Incurrence of such Indebtedness not permitted by this clause (d) and (ii) if the Issuer is the obligor on such Indebtedness, such Indebtedness (other than any intercompany loan from a Finance Subsidiary to the Parent Guarantor to transfer the proceeds of a Finance Subsidiary Indebtedness) must be unsecured and expressly be subordinated in right of payment to the Notes, and if the Parent Guarantor, a Subsidiary Guarantor or a JV Subsidiary Guarantor is the obligor on such Indebtedness and none of the Issuer, Finance Subsidiaries, the Parent Guarantor, the Subsidiary Guarantors or the JV Subsidiary Guarantors is the obligee, such Indebtedness must be unsecured and expressly subordinated in right of payment to the Parent Guarantee or the Subsidiary Guarantee of such Subsidiary Guarantor or the JV Subsidiary Guarantee of such JV Subsidiary Guarantor, as the case may be;

- (e) Indebtedness (“**Permitted Refinancing Indebtedness**”) issued in exchange for, or the net proceeds of which are used to refinance or refund, replace, exchange, renew, repay, redeem, defease, discharge or extend (collectively, “refinance” and “refinances” and “refinanced” shall have a correlative meaning), then outstanding Indebtedness (or Indebtedness that is no longer outstanding but that is refinanced substantially concurrently with the Incurrence of such Permitted Refinancing Indebtedness) Incurred under the immediately preceding paragraph (1) or clauses (a), (c), (e), (l), (m), (n), (q), (s) and (t) of this paragraph (2) and any refinancings thereof in an amount not to exceed the amount so refinanced (plus premiums, accrued interest, fees and expenses); *provided that* (i) Indebtedness the proceeds of which are used to refinance the Notes or Indebtedness that is *pari passu* with, or subordinated in right of payment to, the Notes or the Parent Guarantee, or if any, a Subsidiary Guarantee or a JV Subsidiary Guarantee shall only be permitted under this clause (e) if (A) in case the Notes are refinanced in part or the Indebtedness to be refinanced is *pari passu* with the Notes or the Parent Guarantee, a Subsidiary Guarantee or a JV Subsidiary Guarantee, as the case may be, such new Indebtedness, by its terms or by the terms of any agreement or instrument pursuant to which such new Indebtedness is issued or remains outstanding, is expressly made *pari passu* with, or subordinated in right of payment to, the remaining Notes or the Parent Guarantee, such Subsidiary Guarantee or JV Subsidiary Guarantee, as the case may be, or (B) in case the Indebtedness to be refinanced is subordinated in right of payment to the Notes or the Parent Guarantee, or a Subsidiary Guarantee or JV Subsidiary Guarantee, as the case may be, such new Indebtedness, by its terms or by the terms of any agreement or instrument pursuant to which such new Indebtedness is issued or remains outstanding, is expressly made subordinated in right of payment to the Notes or the Parent Guarantee, such Subsidiary Guarantee or JV Subsidiary Guarantee, as the case may be, at least to the extent that the Indebtedness to be refinanced is subordinated to the Notes or the Parent Guarantee, such Subsidiary Guarantee or JV Subsidiary Guarantee, as the case may be, (ii) such new Indebtedness, determined as of the date of Incurrence of such new Indebtedness, does not mature prior to the Stated Maturity of the Indebtedness to be refinanced, and the Average Life of such new Indebtedness is at least equal to the remaining Average Life of the Indebtedness to be refinanced (iii) in no event may Indebtedness of the Issuer, the Parent Guarantor, any Subsidiary Guarantor or any JV Subsidiary Guarantor, be refinanced pursuant to this clause (e) by means of any Indebtedness of any Restricted Subsidiary that is not the Parent Guarantor, a Subsidiary Guarantor (other than a Finance Subsidiary Indebtedness); and (iv) in no event may Indebtedness of the Issuer, the Parent Guarantor or any Subsidiary Guarantor be refinanced pursuant to this clause (e) by means of any Indebtedness of any JV Subsidiary Guarantor, *provided that* this sub-clause (iv) shall not prohibit the replacement of a Subsidiary Guarantee by a JV Subsidiary Guarantee if otherwise permitted by the Indenture;

- (f) Indebtedness Incurred by the Parent Guarantor or any Restricted Subsidiary pursuant to Hedging Obligations entered into in the ordinary course of business and designed solely to protect the Parent Guarantor or any of its Restricted Subsidiaries from fluctuations in interest rates, currencies or the price of commodities and not for speculation;
- (g) Indebtedness Incurred by the Parent Guarantor or any Restricted Subsidiary constituting reimbursement obligations with respect to workers' compensation claims or self-insurance obligations or bid, performance or surety bonds (in each case in the ordinary course of business and other than for an obligation for borrowed money);
- (h) Indebtedness Incurred by the Parent Guarantor or any Restricted Subsidiary constituting reimbursement obligations with respect to letters of credit, trade guarantees or similar instruments issued in the ordinary course of business to the extent that such letters of credit, trade guarantees or similar instruments are not drawn upon or, if drawn upon, to the extent such drawing is reimbursed no later than 30 days following receipt by the Parent Guarantor or such Restricted Subsidiary of a demand for reimbursement;
- (i) Indebtedness arising from agreements providing for indemnification, adjustment of purchase price or similar obligations, or from guarantees or letters of credit, surety bonds or performance bonds securing any obligation of the Parent Guarantor or any Restricted Subsidiary pursuant to such agreements, in any case, Incurred in connection with the disposition of any business, assets or Restricted Subsidiary, other than guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiary for the purpose of financing such acquisition; *provided that* the maximum aggregate liability in respect of all such Indebtedness in the nature of such guarantee shall at no time exceed the gross proceeds actually received from the sale of such business, assets or Restricted Subsidiary;
- (j) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; *provided that* such Indebtedness is extinguished within five Business Days of Incurrence;
- (k) Guarantees by the Parent Guarantor or any Restricted Subsidiary of Indebtedness of any Restricted Subsidiary or the Parent Guarantor that was permitted to be Incurred under another provision of this covenant, to the extent permitted under the "Limitation on Issuances of Guarantees by Restricted Subsidiaries" below;
- (l) Indebtedness of the Parent Guarantor or any Restricted Subsidiary:
  - (i) representing Capitalized Lease Obligations incurred in the ordinary course of business; or
  - (ii) constituting purchase money Indebtedness incurred to finance (x) all or any part of the purchase price of equipment, property or assets to be used in the ordinary course of a Permitted Business of the Parent Guarantor or any Restricted Subsidiary (including the purchase of Capital Stock of any Person holding such equipment, property or assets that is, or will upon such purchase become, a Restricted Subsidiary) or (y) the cost of development, construction or improvement of equipment, property or assets to be used in the ordinary course of a Permitted Business by the Parent Guarantor or a Restricted Subsidiary;

*provided that*, (A) such purchase money Indebtedness shall not exceed the purchase price of such equipment, property or assets so acquired, (B) such purchase money Indebtedness shall be Incurred no later than 180 days after the acquisition of such

equipment, property or assets and (C) on the date of the Incurrence of any Indebtedness permitted by this clause, and after giving effect thereto, the sum of (a) the aggregate principal amount outstanding of all such Indebtedness Incurred pursuant to this clause (l) (together with any refinancings thereof, but excluding any guarantee Incurred under this clause to the extent the amount of such guarantee is otherwise reflected in such aggregated principal amount) plus (b) the aggregate principal amount outstanding of all Indebtedness Incurred under clauses (2)(n), (2)(q), (2)(r), (2)(s) and (2)(t) hereof (together with any refinancings thereof, but excluding any guarantee Incurred under such clauses to the extent the amount of such guarantee is otherwise reflected in such aggregated principal amount) does not exceed an amount equal to 25% of Total Assets;

- (m) Indebtedness of the Parent Guarantor or any Restricted Subsidiary consisting of local lines of credit, bilateral facilities, working capital facilities and/or other operating facilities, in each case, with a maturity of one year or less used for working capital purposes; *provided that*, on the date of the Incurrence of any Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness Incurred pursuant to this clause (m) (together with any refinancings thereof) does not exceed US\$20 million (or the Dollar Equivalent thereof);
- (n) Acquired Indebtedness of any Restricted Subsidiary Incurred and outstanding on the date on which such Restricted Subsidiary became a Restricted Subsidiary (other than Indebtedness Incurred (i) to provide all or any portion of the funds utilized to consummate the transaction or series of transactions pursuant to which a Person becomes a Restricted Subsidiary or (ii) otherwise in contemplation of a Person becoming a Restricted Subsidiary or any such acquisition); *provided that*, on the date of the Incurrence of any Indebtedness and after giving effect thereto, the sum of (i) the aggregate principal amount outstanding of all such Indebtedness Incurred pursuant to this clause (n) (together with any refinancings thereof, but excluding any guarantee Incurred under this clause to the extent the amount of such guarantee is otherwise reflected in such aggregate principal amount) plus (ii) the aggregate principal amount outstanding of all Indebtedness Incurred under clauses (2)(l), (2)(q), (2)(r), (2)(s) and (2)(t) hereof (together with any refinancings thereof, but excluding any guarantee Incurred under such clauses to the extent the amount of such guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 25% of Total Assets;
- (o) Indebtedness of the Parent Guarantor or any Restricted Subsidiary in an aggregate principal amount outstanding at any time (together with refinancings thereof) not to exceed US\$20 million (or the Dollar Equivalent thereof);
- (p) Indebtedness of the Parent Guarantor or any Restricted Subsidiary constituting an obligation to pay the deferred purchase price of Capital Stock of a Person pursuant to a Staged Acquisition Agreement, to the extent that such deferred purchase price is paid within 12 months after the date the Parent Guarantor or such Restricted Subsidiary enters into such Staged Acquisition Agreement;
- (q) Indebtedness incurred by the Parent Guarantor or any Restricted Subsidiary under Credit Facilities; *provided that* on the date of the Incurrence of such Indebtedness and after giving effect thereto, the sum of (i) the aggregate principal amount outstanding of all such Indebtedness Incurred pursuant to this clause (q) (together with any refinancings thereof, but excluding guarantee Incurred under this clause to the extent the amount of such guarantee is otherwise reflected in such aggregate principal amount) plus (ii) the aggregate principal amount outstanding of all Indebtedness Incurred under clause (2)(l), (2)(n), (2)(r), (2)(s) and (2)(t) hereof (together with any refinancings

thereof, but excluding any guarantee Incurred under such clauses to the extent the amount of such guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 25% of Total Assets;

- (r) Indebtedness Incurred or Preferred Stock issued by the Parent Guarantor or any Restricted Subsidiary arising from any Investment made by a Trust Company Investor in any PRC Restricted Subsidiary, and Indebtedness of the Parent Guarantor or a Restricted Subsidiary constituting a guarantee by, or grant of a Lien on the assets of the Parent Guarantor or any PRC Restricted Subsidiary in favor of a Trust Company Investor with respect to the obligation to pay a guaranteed or preferred return to such Trust Company Investor on Capital Stock of such Restricted Subsidiary; *provided that* on the date of the Incurrence or issuance of such Indebtedness or Preferred Stock and after giving effect thereto, the sum of (i) the aggregate principal amount outstanding of all such Indebtedness Incurred pursuant to this clause (r) (together with any refinancings thereof, but excluding any guarantee Incurred under this clause to the extent the amount of such guarantee is otherwise reflected in such aggregate principal amount) plus (ii) the aggregate principal amount outstanding of all Indebtedness Incurred under clause (2)(l), (2)(n), (2)(q), (2)(s) and (2)(t) hereof (together with any refinancings thereof, but excluding any guarantee Incurred under such clauses to the extent the amount of such guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 25% of Total Assets;
  - (s) Bank Deposit Secured Indebtedness Incurred by the Parent Guarantor or any Restricted Subsidiary, *provided that* on the date of Incurrence of such Indebtedness and after giving effect thereto, the sum of, (1) the aggregate principal amount outstanding of all such Indebtedness Incurred under this clause (s) (together with any refinancings thereof, but excluding any guarantee Incurred under such clause to the extent the amount of such guarantee is otherwise reflected in such aggregate principal amount), plus (2) the aggregate principal amount outstanding of all Indebtedness Incurred under clauses (2)(l), (2)(n), (2)(q), (2)(r) and (2)(t) hereof (together with any refinancings thereof, but excluding any guarantee Incurred under such clause to the extent the amount of such guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 25% of Total Assets;
  - (t) Indebtedness Incurred by the Parent Guarantor or any Restricted Subsidiary constituting a guarantee of Indebtedness of any Person (other than the Parent Guarantor, any Restricted Subsidiary, or any Person described in clauses (x) or (y) of the first paragraph of the covenant under the caption “– Limitation on Transactions with Shareholders and Affiliates;”) *provided that* on the date of Incurrence of such Indebtedness and after giving effect thereto, the sum of, (1) the aggregate principal amount outstanding of all such Indebtedness Incurred under this clause (t) (together with any refinancings thereof), plus (2) the aggregate principal amount outstanding of all Indebtedness Incurred under clauses (2)(l), (2)(n), (2)(q), (2)(r) and (2)(s) hereof (together with any refinancings thereof, but excluding any guarantee Incurred under such clause to the extent the amount of such guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 25% of Total Assets; and
  - (u) Indebtedness Incurred by the Parent Guarantor constituting a Subordinated Shareholder Loan.
- (3) For purposes of determining compliance with this “Limitation on Indebtedness and Preferred Stock” covenant, in the event that an item of Indebtedness meets the criteria of more than one of the types of Indebtedness described above, including under the proviso in the first



paragraph of part (1), the Parent Guarantor, in its sole discretion, shall classify, and from time to time may reclassify, such item of Indebtedness in one or more types of Indebtedness described above.

- (4) Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that may be Incurred pursuant to this covenant will not be deemed to be exceeded with respect to any outstanding Indebtedness due solely to the result of fluctuations in the exchange rates of currencies *provided that* such Indebtedness was permitted to be Incurred at the time of such Incurrence. For purposes of determining compliance with any U.S. dollar denominated restriction on the Incurrence of Indebtedness, the Dollar Equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness; *provided that* if such Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currency in which such refinancing Indebtedness is denominated that is in effect on the date of such refinancing. Notwithstanding any other provision of the Indenture, the maximum amount of Indebtedness that may be Incurred pursuant to this covenant will not be deemed to be exceeded with respect to any outstanding Indebtedness due solely to the result of fluctuations in the exchange rates of currencies, provided that such Indebtedness was permitted to be Incurred at the time of such Incurrence.

#### **Limitation on Restricted Payments**

The Parent Guarantor will not, and will not permit any Restricted Subsidiary to, directly or indirectly (the payments or any other actions described in clauses (1) through (4) below being collectively referred to as “**Restricted Payments**”):

- (1) declare or pay any dividend or make any distribution on or with respect to the Parent Guarantor’s or any of its Restricted Subsidiaries’ Capital Stock (other than dividends or distributions payable or paid in shares of the Parent Guarantor’s Capital Stock (other than Disqualified Stock or Preferred Stock) or in options, warrants or other rights to acquire shares of such Capital Stock) held by Persons other than the Parent Guarantor or any Wholly Owned Restricted Subsidiary;
- (2) purchase, call for redemption or redeem, retire or otherwise acquire for value any shares of Capital Stock (including options, warrants or other rights to acquire such shares of Capital Stock) of the Parent Guarantor or any Restricted Subsidiary or any direct or indirect parent of the Parent Guarantor held by any Persons (other than the Parent Guarantor or any Wholly Owned Restricted Subsidiary) other than (i) the purchase of Capital Stock of a Restricted Subsidiary pursuant to a Staged Acquisition Agreement permitted to be entered into under the Indenture or (ii) the purchase of Capital Stock of a Restricted Subsidiary held by any Trust Company Investor in connection with Indebtedness Incurred under clause (2)(r) of the covenant described under the caption “– Limitation on Indebtedness and Preferred Stock;”

- (3) make any voluntary or optional principal payment, or voluntary or optional redemption, repurchase, defeasance, or other acquisition or retirement for value, of Indebtedness that is subordinated in right of payment to the Notes, the Parent Guarantee, any Subsidiary Guarantee or any JV Subsidiary Guarantee (excluding any intercompany Indebtedness between or among the Parent Guarantor and any of its Restricted Subsidiaries); or
- (4) make any Investment, other than a Permitted Investment;

if, at the time of, and after giving effect to, the proposed Restricted Payment:

- (a) a Default has occurred and is continuing or would occur as a result of such Restricted Payment;
- (b) the Parent Guarantor could not Incur at least US\$1.00 of Indebtedness under the proviso in the first paragraph of part (1) of the covenant under the caption “– Limitation on Indebtedness and Preferred Stock;” or
- (c) such Restricted Payment, together with the aggregate amount of all Restricted Payments made by the Parent Guarantor and its Restricted Subsidiaries after the Measurement Date, shall exceed the sum of (without duplication):
  - (i) 50% of the aggregate amount of the Consolidated Net Income of the Parent Guarantor (or, if the Consolidated Net Income is a loss, minus 100% of the amount of such loss) accrued on a cumulative basis during the period (taken as one accounting period) beginning on the first day of the fiscal quarter during which the Measurement Date occurred and ending on the last day of the Parent Guarantor’s most recently ended fiscal quarter for which consolidated financial statements of the Parent Guarantor (which the Parent Guarantor shall use its reasonable best efforts to compile in a timely manner) are available (which may include internal consolidated financial statements); plus
  - (ii) 100% of the aggregate Net Cash Proceeds received by the Parent Guarantor after the Measurement Date as a capital contribution to its common equity or from the issuance and sale of its Capital Stock (other than Disqualified Stock) to a Person who is not a Subsidiary of the Parent Guarantor, including any such Net Cash Proceeds received upon (A) the conversion by a Person who is not a Subsidiary of the Parent Guarantor of any Indebtedness (other than Subordinated Indebtedness) of the Parent Guarantor into Capital Stock (other than Disqualified Stock) of the Parent Guarantor, or (B) the exercise by a Person who is not a Subsidiary of the Parent Guarantor of any options, warrants or other rights to acquire Capital Stock of the Parent Guarantor (other than Disqualified Stock) in each case excluding the amount of any such Net Cash Proceeds used to redeem, repurchase, defease or otherwise acquire or retire for value any Subordinated Indebtedness or Capital Stock of the Parent Guarantor or any Restricted Subsidiary; plus
  - (iii) the amount by which Indebtedness of the Parent Guarantor or any of its Restricted Subsidiaries is reduced on the Parent Guarantor’s consolidated balance sheet upon the conversion or exchange (other than by a Subsidiary of the Parent Guarantor) subsequent to the Measurement Date of any Indebtedness of the Parent Guarantor or any of its Restricted Subsidiaries convertible or exchangeable into Capital Stock (other than Disqualified Stock) of the Parent Guarantor (less the amount of any cash, or the Fair Market Value of any other property, distributed by the Parent Guarantor upon such conversion or exchange), *provided, however, that the*

foregoing amount shall not exceed the Net Cash Proceeds received by the Parent Guarantor or any of its Restricted Subsidiaries from the Incurrence of such Indebtedness; plus

- (iv) an amount equal to the net reduction in Investments (other than reductions in Permitted Investments) that were made after the Measurement Date in any Person resulting from (A) payments of interest on Indebtedness, dividends or repayments of loans or advances by such Person, in each case to the Parent Guarantor or any Restricted Subsidiary (except, in each case, to the extent any such payment or proceeds are included in the calculation of Consolidated Net Income) after the Measurement Date, (B) the unconditional release of a guarantee provided by the Parent Guarantor or a Restricted Subsidiary after the Measurement Date of an obligation of another Person, (C) to the extent that an Investment made after the Measurement Date was, after such date, or is sold or otherwise liquidated or repaid for cash, the lesser of (x) cash return of capital with respect to such Investment (less the cost of disposition, if any) and (y) the initial amount of such Investment, or (D) from redesignations of Unrestricted Subsidiaries as Restricted Subsidiaries, not to exceed, in each case, the amount of Investments (other than Permitted Investments) made by the Parent Guarantor or a Restricted Subsidiary after the Measurement Date in any such Person or Unrestricted Subsidiary; plus
- (v) US\$20 million (or the Dollar Equivalent thereof).

The foregoing provision shall not be violated by reason of:

- (1) the payment of any dividend or redemption of any Capital Stock within 60 days after the related date of declaration or call for redemption if, at said date of declaration or call for redemption, such payment or redemption would comply with the preceding paragraph;
- (2) the redemption, repurchase, defeasance or other acquisition or retirement for value of Subordinated Indebtedness of the Parent Guarantor, any Finance Subsidiary, or any Subsidiary Guarantor or JV Subsidiary Guarantor with the Net Cash Proceeds of, or in exchange for, a substantially concurrent Incurrence of Permitted Refinancing Indebtedness;
- (3) the redemption, repurchase or other acquisition of Capital Stock of the Parent Guarantor, any Subsidiary Guarantor or JV Subsidiary Guarantor (or options, warrants or other rights to acquire such Capital Stock) in exchange for, or out of the Net Cash Proceeds of a substantially concurrent capital contribution or a substantially concurrent sale (other than to a Subsidiary of the Parent Guarantor) of, shares of the Capital Stock (other than Disqualified Stock) of the Parent Guarantor, any Subsidiary Guarantor or any JV Subsidiary Guarantor (or options, warrants or other rights to acquire such Capital Stock); *provided that* the amount of any such Net Cash Proceeds that are utilized for any such Restricted Payment will be excluded from clause (c)(ii) of the preceding paragraph;
- (4) the redemption, repurchase, defeasance or other acquisition or retirement for value of Subordinated Indebtedness of the Parent Guarantor, any Subsidiary Guarantor or JV Subsidiary Guarantor in exchange for, or out of the Net Cash Proceeds of, a substantially concurrent capital contribution or sale (other than to a Subsidiary of the Parent Guarantor) of, shares of the Capital Stock (other than Disqualified Stock) of the Parent Guarantor, any Subsidiary Guarantor or JV Subsidiary Guarantor (or options, warrants or other rights to acquire such Capital Stock); *provided that* the amount of any such Net Cash Proceeds that are utilized for any such Restricted Payment will be excluded from clause (c)(ii) of the preceding paragraph, *provided however that* any item that has been excluded pursuant to clause (c)(ii) of the preceding paragraph will not be excluded again as a result of the proviso in this clause (4);

- (5) the declaration and payment of any dividends or distributions declared, paid or made by a Restricted Subsidiary payable, on a *pro rata* basis or on a basis more favorable to the Parent Guarantor, to all holders of any class of Capital Stock of such Restricted Subsidiary, a majority of which is held, directly or indirectly through Restricted Subsidiaries, by the Parent Guarantor;
- (6) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Parent Guarantor; *provided that*, any such cash payment shall not be for the purpose of evading the limitation of this “Limitation on Restricted Payments” covenant (as determined in good faith by the Board of Directors of the Parent Guarantor);
- (7) the repurchase, redemption or other acquisition or retirement for value of any Capital Stock of the Parent Guarantor or any Restricted Subsidiary held by an employee benefit plan of the Parent Guarantor or any Restricted Subsidiary, any current or former officer, director, consultant, or employee of the Parent Guarantor or any Restricted Subsidiary (or permitted transferees, estates or heirs of any of the foregoing); *provided that* the aggregate price paid for all such repurchased, redeemed, acquired or retired Capital Stock may not exceed US\$1 million (or the Dollar Equivalent thereof) in the aggregate;
- (8) the purchase of Capital Stock of a Person pursuant to a Staged Acquisition Agreement to acquire the Capital Stock of such Person; *provided that* such Person becomes a Restricted Subsidiary on or before the last date in the period stipulated in such Staged Acquisition Agreement for which the purchase price can be made;
- (9) the declaration and payment of dividends by the Parent Guarantor, with respect to any fiscal year, in an aggregate amount not to exceed (x) 20% of the distributable profits of the Parent Guarantor in such fiscal year, or (y) 30% of the distributable profits of the Parent Guarantor in such fiscal year so long as the Capital Stock of the Parent Guarantor is listed on the Shanghai Stock Exchange or as otherwise required by the Shanghai Stock Exchange;
- (10) dividends paid to, or the purchase of Capital Stock of any PRC Restricted Subsidiary held by, any Trust Company Investor in respect of any Indebtedness or Preferred Stock outstanding on the Original Issue Date or permitted to be Incurred under clause (2)(r) under the caption “Limitation on Indebtedness and Preferred Stock;” or
- (11) the purchase by the Parent Guarantor or any Restricted Subsidiary of the Capital Stock of any Restricted Subsidiary that is not Wholly Owned, directly or indirectly, by the Parent Guarantor from an Independent Third Party, *provided that* the Parent Guarantor delivers to the Trustee a Board Resolution set forth in an Officers’ Certificate confirming that, in the opinion of the Board of Directors, the purchase price of such Capital Stock is less than or equal to the Fair Market Value of such Capital Stock.

*provided that*, in the case of clause (2), (3), (4) or (5) of the preceding paragraph, no Default shall have occurred and be continuing or would occur as a consequence of the actions or payments set forth therein.

Each Restricted Payment permitted pursuant to clause (1), (5) and (9) of the preceding paragraph after the Measurement Date shall be included in calculating whether the conditions of clause (c) of the first paragraph of this “– Limitation on Restricted Payments” covenant have been met with respect to any subsequent Restricted Payments.

The amount of any Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Parent Guarantor or the Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

The value of any assets or securities that are required to be valued by this covenant will be the Fair Market Value. The Board of Directors' determination of the Fair Market Value of a Restricted Payment or any such assets or securities must be based upon an opinion or appraisal issued by an appraisal or investment banking firm of recognized international standing if the Fair Market Value exceeds US\$10 million (or the Dollar Equivalent thereof).

Not later than the date of making any Restricted Payment in an amount in excess of US\$10 million (or the Dollar Equivalent thereof) (other than any Restricted Payments set forth in clauses (5) through (11) other than (9) in the second paragraph of this “– Limitation on Restricted Payments”), the Parent Guarantor will deliver to the Trustee an Officers' Certificate stating that such Restricted Payment is permitted and setting forth the basis upon which the calculations required by this “– Limitation on Restricted Payments” covenant were computed, together with a copy of any fairness opinion or appraisal required by the Indenture.

If a payment or other action meets the criteria of more than one of the clauses in the second paragraph of this covenant, or is permitted under the first paragraph of this covenant (including by virtue of qualifying as a Permitted Investment), the Parent Guarantor and the Restricted Subsidiaries will be permitted to classify such payment or other action on the date of its occurrence in any manner that complies with this covenant. Payments or other actions permitted by this covenant need not be permitted solely by reference to one provision permitting such payment or other action but may be permitted in part by one such provision and in part by one or more other provisions of this covenant permitting such payment or other action (including pursuant to any section of the definition of “Permitted Investment”).

#### **Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries**

- (1) Except as provided below, the Parent Guarantor will not, and will not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any encumbrance or restriction on the ability of any Restricted Subsidiary to:
  - (a) pay dividends or make any other distributions on any Capital Stock of such Restricted Subsidiary owned by the Parent Guarantor or any other Restricted Subsidiary;
  - (b) pay any Indebtedness or other obligation owed to the Parent Guarantor or any other Restricted Subsidiary;
  - (c) make loans or advances to the Parent Guarantor or any other Restricted Subsidiary; or
  - (d) sell, lease or transfer any of its property or assets to the Parent Guarantor or any other Restricted Subsidiary,

*provided that* for the avoidance of doubt the following shall not be deemed to constitute such an encumbrance or restriction: (i) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on Common Stock; (ii) the subordination of loans or advances made to the Parent Guarantor or any Restricted Subsidiary to other Indebtedness Incurred by the Parent Guarantor or any Restricted Subsidiary; and (iii) the provisions contained in documentation governing Indebtedness requiring transactions between or among the Parent Guarantor and any Restricted Subsidiary or between or among any Restricted Subsidiary to be on fair and reasonable terms or on an arm's length basis.

- (2) The provisions of paragraph (1) under this covenant do not apply to any encumbrances or restrictions:
- (a) existing in agreements as in effect on the Original Issue Date, or in the Notes, the Parent Guarantee, any Subsidiary Guarantee or JV Subsidiary Guarantees, the Indenture or Pari Passu Guarantee, and any extensions, amendments, refinancings, renewals or replacements of any of the foregoing agreements; *provided that* the encumbrances and restrictions in any such extension, amendments, refinancing, renewal or replacement, taken as a whole, are no more restrictive in any material respect to the Holders than those encumbrances or restrictions that are then in effect and that are being extended, amended, refinanced, renewed or replaced;
  - (b) arising or existing under or by reason of applicable law, rule, regulation or order;
  - (c) existing with respect to any Person or the property or assets of such Person acquired by the Parent Guarantor or any Restricted Subsidiary, at the time of such acquisition and not incurred in contemplation thereof, which encumbrances or restrictions are not applicable to any Person or the property or assets of any Person other than such Person or the property or assets of such Person so acquired, and any extensions, amendments, refinancings, renewals or replacements thereof; *provided that* the encumbrances and restrictions in any such extension, amendments, refinancing, renewal or replacement, taken as a whole, are no more restrictive in any material respect to the Holders than those encumbrances or restrictions that are then in effect and that are being extended, amended, refinanced, renewed or replaced;
  - (d) that otherwise would be prohibited by the provision described in clause (1)(d) of this covenant if they arise, or are agreed to, in the ordinary course of business and, that (i) restrict in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease or license, or (ii) exist by virtue of any Lien on, or agreement to transfer, option or similar right with respect to any property or assets of the Parent Guarantor or any Restricted Subsidiary not otherwise prohibited by the Indenture or (iii) do not relate to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of the property or assets of the Parent Guarantor or any Restricted Subsidiary in any manner material to the Parent Guarantor or any Restricted Subsidiary;
  - (e) with respect to a Restricted Subsidiary and imposed pursuant to an agreement that has been entered into for the sale, transfer or disposition of all or substantially all of the Capital Stock of, or property and assets of, such Restricted Subsidiary that is permitted by the “– Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries,” “– Limitation on Indebtedness and Preferred Stock,” “Consolidation, Merger and Sale of Assets” and “– Limitation on Asset Sales” covenants;
  - (f) with respect to any Restricted Subsidiary and imposed pursuant to an agreement that has been entered into for the Incurrence of Indebtedness or issue of Preferred Stock of the type described under clause (2)(l) or permitted under clauses (2)(m), (2)(n), (2)(o), (2)(p), (2)(q), (2)(r), (2)(s) and (2)(t) of the “– Limitation on Indebtedness and Preferred Stock” covenant if, as determined by the Board of Directors, the encumbrances or restrictions are (i) customary for such types of agreements and (ii) would not, at the time agreed to, be expected to materially and adversely affect the ability of the Issuer to make required payment on the Notes, the Parent Guarantor to make required payment on its Parent Guarantee, any Subsidiary Guarantor to make required payment on its Subsidiary Guarantee or any JV Subsidiary Guarantor to make required payment on its JV Subsidiary Guarantee, as the case may be, and, with respect

to Indebtedness of the type described in clause (2)(l) or permitted under clauses (2)(m), (2)(n), (2)(o), (2)(p), (2)(q), (2)(r), (2)(s) and (2)(t), any extensions, amendments, refinancings, renewals or replacements of any of the foregoing agreements; *provided that* the encumbrances and restrictions in any such extension, amendments, refinancing, renewal or replacement, taken as a whole, are no more restrictive in any material respect to the Holders than those encumbrances or restrictions that are then in effect and that are being extended, amended, refinanced, renewed or replaced;

- (g) any encumbrance or restriction existing by reason of any Lien permitted under the “– Limitation on Liens” covenant;
- (h) existing with respect to Hedging Obligation permitted to be Incurred under clause (2)(f) of the covenant described under the caption “– Limitation on Indebtedness and Preferred Stock” solely to the extent that such restriction or encumbrance is only encumbering customary initial deposits or margin deposits or is otherwise within the general parameters customary in the industry with respect to such Hedging Obligations;
- (i) existing in customary provisions in leases, licenses, joint venture agreements and other similar agreements permitted under the Indenture, to the extent such encumbrance or restriction relates to the activities or assets of a Restricted Subsidiary (as determined in good faith by the Board of Directors) (i) the encumbrances or restrictions are customary for a lease, license, joint venture or similar agreement of that type and (ii) the encumbrances or restrictions would not, at the time agreed to, be expected to materially and adversely affect (x) the ability of the Parent Guarantor to make the required payments under the Parent Guarantee or (y) any Subsidiary Guarantor to make required payments under its Subsidiary Guarantee; and
- (j) existing with respect to any Unrestricted Subsidiary or the property or assets of such Unrestricted Subsidiary that is designated as a Restricted Subsidiary in accordance with the terms of the Indenture at the time of such designation and not incurred in contemplation of such designation, which encumbrances or restrictions are not applicable to any Person or the property or assets of any Person other than such Unrestricted Subsidiary or its subsidiaries or the property or assets of such Unrestricted Subsidiary or its subsidiaries, and any extensions, amendments, refinancings, renewals or replacements thereof; *provided that*, the encumbrances and restrictions in any such extension, amendment, refinancing, renewal or replacement, taken as a whole, are no more restrictive in any material respect to the Holders than those encumbrances or restrictions that are then in effect and that are being extended, amended, refinanced, renewed or replaced.

#### **Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries**

The Parent Guarantor will not sell, and will not permit any Restricted Subsidiary, directly or indirectly, to issue or sell any shares of Capital Stock of a Restricted Subsidiary (including options, warrants or other rights to purchase shares of such Capital Stock) except:

- (1) to the Parent Guarantor or a Wholly Owned Restricted Subsidiary, or in the case of a Restricted Subsidiary that is not Wholly Owned, *pro rata* to its shareholders or incorporators or on a basis more favorable to the Parent Guarantor and its Restricted Subsidiaries;
- (2) to the extent such Capital Stock represents director’s qualifying shares or is required by applicable law to be held by a Person other than the Parent Guarantor or a Wholly Owned Restricted Subsidiary;

- (3) the issuance or sale of Capital Stock of a Restricted Subsidiary if, immediately after giving effect to such issuance or sale, such Restricted Subsidiary would no longer constitute a Restricted Subsidiary and any remaining Investment in such Person would have been permitted to be made under the “Limitation on Restricted Payments” covenant if made on the date of such issuance or sale and *provided that* the Parent Guarantor complies with the “– Limitation on Asset Sales” covenant; or
- (4) the issuance or sale of Capital Stock of a Restricted Subsidiary (which remains a Restricted Subsidiary after any such issuance or sale); *provided that* the Parent Guarantor or such Restricted Subsidiary applies the Net Cash Proceeds of such issuance or sale in accordance with the “– Limitation on Asset Sales” covenant.

#### **Limitation on Issuances of Guarantees by Restricted Subsidiaries**

The Parent Guarantor will not permit any Restricted Subsidiary which is not the Issuer or a Subsidiary Guarantor or a JV Subsidiary Guarantor, if any, directly or indirectly, to guarantee any Indebtedness (“**Guaranteed Indebtedness**”) of the Parent Guarantor or any Restricted Subsidiary, unless (1)(a) such Restricted Subsidiary simultaneously executes and delivers a supplemental indenture to the Indenture providing for an unsubordinated and unconditional Subsidiary Guarantee of payment of the Notes by such Restricted Subsidiary and (b) such Restricted Subsidiary waives and will not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Parent Guarantor or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Subsidiary Guarantee until the Notes have been paid in full or (2) such guarantee and such Guaranteed Indebtedness are permitted by clauses (2)(b), (2)(c) or (2)(d) or 2(k)(in the case of clauses (2)(k), other than a guarantee by a PRC Restricted Subsidiary of the Indebtedness of a non-PRC Restricted Subsidiary or a guarantee by a Restricted Subsidiary of the Indebtedness of a Finance Subsidiary), under the caption “– Limitation on Indebtedness and Preferred Stock.”

If the Guaranteed Indebtedness (1) ranks *pari passu* in right of payment with the Notes or any Subsidiary Guarantee, then the guarantee of such Guaranteed Indebtedness shall rank *pari passu* in right of payment with, or subordinated to, Subsidiary Guarantee, or (2) is subordinated in right of payment to the Notes or any Subsidiary Guarantee, then the guarantee of such Guaranteed Indebtedness shall be subordinated in right of payment to the Subsidiary Guarantee, at least to the extent that the Guaranteed Indebtedness is subordinated to the Notes or the Subsidiary Guarantee.

#### **Limitation on Transactions with Shareholders and Affiliates**

The Parent Guarantor will not, and will not permit any Restricted Subsidiary to, directly or indirectly, enter into, renew or extend any transaction or arrangement (including, without limitation, the purchase, sale, lease or exchange of property or assets, or the rendering of any service) with (x) any holder (or any Affiliate of such holder) of 10% or more of any class of Capital Stock of the Parent Guarantor or (y) any Affiliate of the Parent Guarantor (each an “Affiliate Transaction”), unless:

- (1) the Affiliate Transaction is on fair and reasonable terms that are no less favorable to the Parent Guarantor or the relevant Restricted Subsidiary than those that would have been obtained in a comparable arm’s length transaction by the Parent Guarantor or the relevant Restricted Subsidiary with a Person that is not an Affiliate of the Parent Guarantor or such Restricted Subsidiary; and



- (2) the Parent Guarantor delivers to the Trustee:
  - (a) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of US\$10 million (or the Dollar Equivalent thereof), a Board Resolution set forth in an Officers' Certificate certifying that such Affiliate Transaction complies with this covenant and such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors; and
  - (b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of US\$15 million (or the Dollar Equivalent thereof), in addition to the Board Resolution required in clause (2)(a) above, an opinion as to the fairness to the Parent Guarantor or the relevant Restricted Subsidiary of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of recognized international standing.

The foregoing limitation does not limit, and shall not apply to:

- (1) the payment of reasonable and customary regular compensation to directors of the Parent Guarantor or any Restricted Subsidiary who are not employees of the Parent Guarantor or any Restricted Subsidiary;
- (2) transactions between or among the Parent Guarantor and any of its Wholly Owned Restricted Subsidiaries or between or among Wholly Owned Restricted Subsidiaries;
- (3) any Restricted Payment of the type described in clauses (1) or (2) of the first paragraph of the covenant described above under the caption “– Limitation on Restricted Payments” if permitted by that covenant;
- (4) any sale of Capital Stock (other than Disqualified Stock) of the Parent Guarantor;
- (5) the payment of compensation to officers and directors of the Parent Guarantor or any Restricted Subsidiary pursuant to an employee stock or share option scheme; and
- (6) any repurchase, redemption or other acquisition or retirement for value of any Capital Stock of the Parent Guarantor or any Restricted Subsidiary pursuant to clause (7) of the second paragraph of the covenant described under “– Limitation on Restricted Payments.”

In addition, the requirements of clause (2) of the first paragraph of this covenant shall not apply to (i) Investments (other than Permitted Investments) not prohibited by the “– Limitation on Restricted Payments” covenant, (ii) transactions pursuant to agreements in effect on the Original Issue Date and described in the Offering Memorandum, or any amendment or modification or replacement thereof, so long as such amendment, modification or replacement is not more disadvantageous to the Parent Guarantor and its Restricted Subsidiaries than the original agreement in effect on the Original Issue Date and (iii) any transaction (A) between or among the Parent Guarantor, any Wholly Owned Restricted Subsidiary and any Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary or (B) between or among the Parent Guarantor or a Restricted Subsidiary on the one hand and any Unrestricted Subsidiary, Jointly Controlled Entity or Associate on the other hand; *provided that* in the case of clause (iii) (a) such transaction is entered into in the ordinary course of business and (b) none of the minority shareholders or minority partners of or in such Restricted Subsidiary that is not Wholly Owned by the Parent Guarantor is a Person described in clauses (x) or (y) of the first paragraph of this covenant (other than by reason of such minority shareholder or minority partner being an officer or director of such Restricted Subsidiary or by reason of being a Subsidiary of the Parent Guarantor) and (c) in the case of a Unrestricted Subsidiary, Jointly Controlled Entity or Associate, none of the shareholders or partners which beneficially owns more than 10% of the Capital Stock of or in such Unrestricted Subsidiary,

Jointly Controlled Entity or Associate is a Person described in clauses (x) or (y) of the first paragraph of this covenant (other than by reason of such shareholder or partner being an officer or director of such entity or by reason of being a Subsidiary of the Parent Guarantor).

### **Limitation on Liens**

The Parent Guarantor will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, incur, assume or permit to exist any Lien of any nature whatsoever on any of its assets or properties of any kind, whether owned at the Original Issue Date or thereafter acquired, except Permitted Liens, unless the Notes are equally and ratably secured by such Lien.

### **Limitation on Sale and Leaseback Transactions**

The Parent Guarantor will not, and will not permit any of its Restricted Subsidiaries to, enter into any Sale and Leaseback Transaction; *provided that* the Parent Guarantor or any Restricted Subsidiary may enter into a Sale and Leaseback Transaction if:

- (1) the Parent Guarantor or such Restricted Subsidiary could have (a) Incurred Indebtedness in an amount equal to the Attributable Indebtedness relating to such Sale and Leaseback Transaction under the covenant described above under “– Limitation on Indebtedness and Preferred Stock” and (b) incurred a Lien to secure such Indebtedness pursuant to the covenant described above under the caption “– Limitation on Liens,” in which case, the corresponding Indebtedness and Lien will be deemed incurred pursuant to those provisions;
- (2) the gross cash proceeds of that Sale and Leaseback Transaction are at least equal to the Fair Market Value of the property that is the subject of such Sale and Leaseback Transaction; and
- (3) the transfer of assets in that Sale and Leaseback Transaction is permitted by, and the Parent Guarantor or such Restricted Subsidiary applies the proceeds of such transaction in compliance with, the covenant described below under the caption “– Limitation on Asset Sales.”

### **Limitation on Asset Sales**

The Parent Guarantor will not, and will not permit any Restricted Subsidiary to, consummate any Asset Sale, unless:

- (1) no Default shall have occurred and be continuing or would occur as a result of such Asset Sale;
- (2) the consideration received by the Parent Guarantor or such Restricted Subsidiary, as the case may be, is at least equal to the Fair Market Value of the assets sold or disposed of;
- (3) in the case of an Asset Sale that constitutes an Asset Disposition, the Issuer could Incur at least US\$1.00 of Indebtedness under the proviso in the first paragraph of part (1) of the covenant under the caption “– Limitation on Indebtedness and Preferred Stock” after giving *pro forma* effect to such Asset Disposition; and

- (4) at least 75% of the consideration received consists of cash, Temporary Cash Investments or Replacement Assets; *provided that* in the case of an Asset Sale in which the Parent Guarantor or such Restricted Subsidiary receives Replacement Assets involving aggregate consideration with Fair Market Value in excess of US\$10 million (or the Dollar Equivalent thereof), the Parent Guarantor shall deliver to the Trustee an opinion as to the fairness to the Parent Guarantor or such Restricted Subsidiary of such Asset Sale from a financial point of view issued by an accounting, appraisal or investment banking firm of recognized international standing. For purposes of this provision, each of the following will be deemed to be cash:
- (a) any liabilities, as shown on the Parent Guarantor's most recent consolidated balance sheet, of the Parent Guarantor or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Notes, the Parent Guarantor, any Subsidiary Guarantee or any JV Subsidiary Guarantee) that are assumed by the transferee of any such assets pursuant to a customary assumption, assignment, set-off, novation or similar agreement that releases the Parent Guarantor or such Restricted Subsidiary from further liability; and
  - (b) any securities, notes or other obligations received by the Parent Guarantor or any Restricted Subsidiary from such transferee that are promptly, but in any event within 30 days of closing, converted by the Parent Guarantor or such Restricted Subsidiary into cash, to the extent of the cash received in that conversion;

Within 360 days after the receipt of any Net Cash Proceeds from an Asset Sale, the Parent Guarantor (or any Restricted Subsidiary) may apply such Net Cash Proceeds to:

- (1) permanently repay Senior Indebtedness of the Issuer, the Parent Guarantor or any Subsidiary Guarantor or any Indebtedness of a Restricted Subsidiary that is not the Issuer (and, if such Senior Indebtedness repaid is revolving credit Indebtedness, to correspondingly reduce commitments with respect thereto) in each case owing to a Person other than the Parent Guarantor or a Restricted Subsidiary; or
- (2) acquire Replacement Assets;

*provided that* pending application of such Net Cash Proceeds in accordance with clause (1) or (2) above, the Parent Guarantor or any Restricted Subsidiary may make an Investment in cash or Temporary Cash Investments.

Any Net Cash Proceeds from Asset Sales that are not applied or invested as provided in clauses (1) and (2) in the immediately preceding paragraph will constitute "Excess Proceeds." Excess Proceeds of less than US\$10 million (or the Dollar Equivalent thereof) will be carried forward and accumulated. When accumulated Excess Proceeds exceeds US\$10 million (or the Dollar Equivalent thereof), within 10 days thereof, the Issuer or the Parent Guarantor must make an Offer to Purchase Notes having a principal amount equal to:

- (1) accumulated Excess Proceeds, multiplied by
- (2) a fraction (x) the numerator of which is equal to the outstanding principal amount of the Notes and (y) the denominator of which is equal to the outstanding principal amount of the Notes and all *pari passu* Indebtedness similarly required to be repaid, redeemed or tendered for in connection with the Asset Sale, rounded down to the nearest US\$1,000.

The offer price in any Offer to Purchase will be equal to 100% of the principal amount of the Notes and such other *pari passu* Indebtedness plus any accrued and unpaid interest to (but excluding) the date of purchase, and will be payable in cash.

If any Excess Proceeds remain after consummation of an Offer to Purchase, the Parent Guarantor or any Restricted Subsidiary may use those Excess Proceeds for any purpose not otherwise prohibited by the Indenture. If the aggregate principal amount of Notes (and any other *pari passu* Indebtedness) tendered in such Offer to Purchase exceeds the amount of Excess Proceeds, the Trustee will select the Notes (and such other *pari passu* Indebtedness) to be purchased on a *pro rata* basis. Upon completion of each Offer to Purchase, the amount of Excess Proceeds will be reset at zero.

#### **Limitation on the Parent Guarantor's Business Activities**

The Parent Guarantor will not, and will not permit any Restricted Subsidiary to, directly or indirectly, engage in any business other than Permitted Businesses; *provided, however, that* the Parent Guarantor or any Restricted Subsidiary may own Capital Stock of an Unrestricted Subsidiary or joint venture or other entity that is engaged in a business other than Permitted Businesses as long as any Investment therein was not prohibited when made by the covenant under the caption “– Limitation on Restricted Payments”; *provided further*, that the Parent Guarantor shall at all times own all the Capital Stock of the Issuer.

#### **Limitation on the Issuer's Activities**

Notwithstanding anything contained in the Indenture to the contrary, the Issuer will not engage in any business activity or undertake any other activity, except any activity (a) relating to the offering, sale or issuance of the Notes, the incurrence of Indebtedness represented by the Notes or any Additional Notes issued under the Indenture (if such offering, sale or issuance is permitted under the Indenture), (b) relating to the offering, sale or issuance of debt obligations in the future and the incurrence of Indebtedness represented by such debt obligations (or guarantees thereof) (if such offering, sale or issuance is permitted under the Indenture), (c) contributing to, lending to or otherwise using the proceeds of the issuance of Indebtedness incurred by the Issuer to fund the activities of, the Parent Guarantor or any Restricted Subsidiary, (d) undertaken with the purpose of fulfilling any obligations under the Indebtedness referred to in clauses (a) and (b) under this “Limitation on the Issuer's Activities” covenant or the Indenture or any future indenture related to such Indebtedness or for purposes of any consent solicitation or tender for such Indebtedness or refinancing of such Indebtedness or (e) directly related to the establishment and/or maintenance of the Issuer's corporate existence.

The Issuer will not (a) issue any Capital Stock other than the issuance of its ordinary shares to the Parent Guarantor or a Wholly Owned Restricted Subsidiary or (b) acquire or receive any property or assets (including, without limitation, any Capital Stock or Indebtedness of any Person), other than (x) any future intercompany Indebtedness owed by the Parent Guarantor or any Restricted Subsidiary to the Issuer in respect of the borrowing of the gross proceeds of the issuance of Indebtedness by the Issuer or payments in respect thereof or (y) cash for ongoing corporate activities of the Issuer described in the preceding paragraph.

The Issuer will not create, incur, assume or suffer to exist any Lien of any kind against or upon any of its property or assets, or any proceeds therefrom unless otherwise permitted under the Indenture.

For so long as any Notes are outstanding, the Issuer will not, and the Parent Guarantor will procure that none of the Restricted Subsidiaries will, commence or take any action to cause a winding-up or liquidation of the Issuer.

The Issuer will not consolidate with, merge with or into, another Person, permit any Person to merge with or into it, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its properties and assets to any Person.

## **Use of Proceeds**

The Issuer and the Parent Guarantor will not, and the Parent Guarantor will not permit any Restricted Subsidiary to, use the net proceeds from the sale of the Notes, in any amount, for any purpose other than as specified under the caption “Use of Proceeds” in the Offering Memorandum (or, in the case of any Additional Notes, the offering document relating to the sale of such Additional Notes).

## **Designation of Restricted and Unrestricted Subsidiaries**

The Board of Directors may designate any Restricted Subsidiary (other than the Issuer) to be an Unrestricted Subsidiary; *provided that* (1) no Default shall have occurred and be continuing at the time of or after giving effect to such designation; (2) neither the Parent Guarantor nor any Restricted Subsidiary provides credit support for the Indebtedness of such Restricted Subsidiary (other than any guarantee in compliance with clause (6) below); (3) such Restricted Subsidiary has no outstanding Indebtedness that could trigger a cross-default to the Indebtedness of the Parent Guarantor, the Issuer or any other Restricted Subsidiary; (4) such Restricted Subsidiary does not own any Disqualified Stock of the Parent Guarantor or Disqualified or Preferred Stock of another Restricted Subsidiary or hold any Indebtedness of, or any Lien on any property of, the Parent Guarantor or any Restricted Subsidiary, if such Disqualified or Preferred Stock or Indebtedness could not be Incurred under the covenant described under the caption “– Certain Covenants – Limitation on Indebtedness and Preferred Stock” or such Lien would violate the covenant described under the caption “– Limitation on Liens;”(5) such Restricted Subsidiary does not own any Voting Stock of another Restricted Subsidiary, and all of its Subsidiaries are Unrestricted Subsidiaries or are being concurrently designated to be Unrestricted Subsidiaries in accordance with this paragraph; and (6) the Investment deemed to have been made thereby in such newly-designated Unrestricted Subsidiary and each other newly-designated Unrestricted Subsidiary being concurrently redesignated would be permitted to be made by the covenant described under “– Certain Covenants – Limitation on Restricted Payments”; *provided further that*, the Issuer shall be a Restricted Subsidiary for so long as any Notes are outstanding.

The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided that* (1) no Default shall have occurred and be continuing at the time of or after giving effect to such designation; (2) any Indebtedness of such Unrestricted Subsidiary outstanding at the time of such designation which will be deemed to have been Incurred by such newly-designated Restricted Subsidiary as a result of such designation would be permitted to be Incurred by the covenant described under the caption “– Certain Covenants – Limitation on Indebtedness and Preferred Stock;”(3) any Lien on the property of such Unrestricted Subsidiary at the time of such designation which will be deemed to have been incurred by such newly-designated Restricted Subsidiary as a result of such designation would be permitted to be incurred by the covenant described under the caption “– Certain Covenants – Limitation on Liens;”(4) such Unrestricted Subsidiary is not a Subsidiary of another Unrestricted Subsidiary (that is not concurrently being designated as a Restricted Subsidiary); (5) if such Restricted Subsidiary (other than a Exempted Subsidiary or Listed Subsidiary) is not organized under the laws of the PRC, such Restricted Subsidiary shall upon such designation execute and deliver to the Trustee a supplemental indenture to the Indenture by which such Restricted Subsidiary shall become a Subsidiary Guarantor or a JV Subsidiary Guarantor.

## **Government Approvals and Licenses; Compliance with Law**

The Parent Guarantor will, and will cause each Restricted Subsidiary to, (1) obtain and maintain in full force and effect all governmental approvals, authorizations, consents, permits, concessions and licenses as are necessary to engage in the Permitted Businesses; (2) preserve and maintain good and valid title to its properties and assets (including land-use rights) free and clear of any Liens other than Permitted Liens; and (3) comply with all laws, regulations, orders, judgments and decrees of any governmental body, except to the extent that failure so to obtain, maintain, preserve and comply with would not reasonably be expected to have a material adverse effect on (a) the business, results of operations or prospects of the Parent Guarantor and its Restricted Subsidiaries, taken as a whole, or (b)

the ability of the Issuer, or any Subsidiary Guarantor or JV Subsidiary Guarantor to perform its obligations under the Notes, the relevant Subsidiary Guarantee or JV Subsidiary Guarantee or the Indenture.

### **Anti-Layering**

The Parent Guarantor will not Incur, and will not permit the Issuer or any Subsidiary Guarantor or JV Subsidiary Guarantor to Incur, any Indebtedness if such Indebtedness is contractually subordinated in right of payment to any other Indebtedness of the Parent Guarantor, the Issuer or such Subsidiary Guarantor or JV Subsidiary Guarantor, as the case may be, unless such Indebtedness is also contractually subordinated in right of payment to the Notes or the applicable Subsidiary Guarantee or JV Subsidiary Guarantee, on substantially identical terms. This does not apply to distinctions between categories of Indebtedness that exist by reason of any Liens or guarantees securing or in favor of some but not all of such Indebtedness.

### **Provision of Financial Statements and Reports**

- (1) The Parent Guarantor will file with the Trustee and furnish to the Holders:
  - (a) as soon as they are available, but in any event within 150 calendar days after the end of the fiscal year of the Parent Guarantor, copies of its financial statements (on a consolidated basis) in respect of such financial year (including a statement of income, balance sheet and cash flow statement) audited by a member firm of a nationally or internationally-recognized firm of independent accountants, in each case together with an English translation thereof;
  - (b) as soon as they are available, but in any event within 120 calendar days after the end of the second financial quarter of the Parent Guarantor, copies of its unaudited and unreviewed financial statements (on a consolidated basis) in respect of such half-year period (including a statement of income, balance sheet and cash flow statement), in each case together with an English translation thereof; and
  - (c) as soon as they are available, but in any event within 60 calendar days after the end of each of the first and third financial quarters of the Parent Guarantor, copies of its unaudited financial statements (on a consolidated basis), including a statement of income, balance sheet and cash flow statement, prepared on a basis consistent with the audited financial statements of the Parent Guarantor together with a certificate signed by the person then authorized to sign financial statements on behalf of the Parent Guarantor to the effect that such financial statements are true in all material respects and present fairly the financial position of the Parent Guarantor as at the end of, and the results of its operations for, the relevant quarterly period, in each case together with an English translation thereof.
- (2) In addition, so long as any of the Notes remain outstanding, the Parent Guarantor will provide to the Trustee (a) within 150 calendar days after the close of each fiscal year, an Officers' Certificate stating the Fixed Charge Coverage Ratio with respect to the most recent fiscal year and showing in reasonable detail the calculation of the Fixed Charge Coverage Ratio, including the arithmetic computations of each component of the Fixed Charge Coverage Ratio, with a certificate from the Parent Guarantor's external auditors verifying the accuracy and correctness of the calculation and arithmetic computation; *provided that* the Parent Guarantor shall not be required to provide such certification if its external auditors refuse to provide such certification as a result of a policy of such external auditors not to provide such certification; and (b) as soon as possible and in any event within 30 days after the Parent Guarantor becomes aware or should reasonably become aware of the occurrence of a Default, an Officers' Certificate setting forth the details of the Default, and the action which the Parent Guarantor proposes to take with respect thereto.

## Events of Default

The following events will be defined as “Events of Default” in the Indenture:

- (1) default in the payment of principal of (or premium, if any, on) the Notes when the same becomes due and payable at maturity, upon acceleration, redemption or otherwise;
- (2) default in the payment of interest or Additional Amounts on any Note when the same becomes due and payable, and such default continues for a period of 30 consecutive days;
- (3) (a) default in the performance or breach of the provisions of the covenants described under “– Consolidation, Merger and Sale of Assets,” and “– Certain Covenants – Limitation on Liens,” or (b) the failure by the Issuer or the Parent Guarantor to make or consummate an Offer to Purchase in the manner described under the captions “– Repurchase of Notes upon a Change of Control,” “– Repurchase of Notes upon a SAFE Noncompliance Event,” or “– Certain Covenants – Limitation on Asset Sales.”
- (4) the Parent Guarantor or any Restricted Subsidiary defaults in the performance of or breaches any other covenant or agreement in the Indenture or under the Notes (other than a default specified in clause (1), (2) or (3) above) and such default or breach continues for a period of 30 consecutive days after written notice by the Trustee or the Holders of 25% or more in aggregate principal amount of the Notes then outstanding;
- (5) there occurs with respect to any Indebtedness of the Parent Guarantor or any Restricted Subsidiary having an outstanding principal amount of US\$20 million (or the Dollar Equivalent thereof) or more in the aggregate for all such Indebtedness of all such Persons, whether such Indebtedness now exists or shall hereafter be created, (a) an event of default that has caused the holder thereof to declare such Indebtedness to be due and payable prior to its Stated Maturity and/or (b) the failure to make a principal payment when due; *provided, however,* that such Indebtedness shall not include (x) the Indebtedness represented by the 2020 Notes and any guarantee thereof and (y) any Indebtedness (other than that represented by the 2020 Notes and any guarantee thereof) with respect to which any default or event of default occurs solely as a result of any default or event of default under the 2020 Notes Indenture;
- (6) one or more final judgments or orders for the payment of money are rendered against the Parent Guarantor or any of its Restricted Subsidiaries and are not paid or discharged within the time frame specified in such final judgment or order, and there is a period of 60 consecutive days following entry of the final judgment or order that causes the aggregate amount for all such final judgments or orders outstanding and not paid or discharged against all such Persons to exceed US\$10 million (or the Dollar Equivalent thereof) (in excess of amounts which the Parent Guarantor’s insurance carriers have agreed to pay under applicable policies) during which a stay of enforcement, by reason of a pending appeal or otherwise, is not in effect;
- (7) an involuntary case or other proceeding is commenced against the Parent Guarantor or any Significant Restricted Subsidiary with respect to it or its debts under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect seeking the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Parent Guarantor or any Significant Restricted Subsidiary or for any substantial part of the property and assets of the Parent Guarantor or any Significant Restricted Subsidiary and such involuntary case or other proceeding remains undismissed and unstayed for a period of 60 consecutive days; or an order for relief is entered against the Parent Guarantor or any Significant Restricted Subsidiary under any applicable bankruptcy, insolvency or other similar law as now or hereafter in effect;

- (8) the Parent Guarantor or any Significant Restricted Subsidiary (a) commences a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case under any such law, (b) other than in connection with a solvent liquidation or reorganization (except for any solvent liquidation or reorganization of the Issuer or the Parent Guarantor), consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Parent Guarantor or any Significant Restricted Subsidiary or for all or substantially all of the property and assets of the Parent Guarantor or any Significant Restricted Subsidiary or (c) effects any general assignment for the benefit of creditors; and
- (9) any Subsidiary Guarantor or JV Subsidiary Guarantor denies or disaffirms its obligations under its Subsidiary Guarantee or JV Subsidiary Guarantee, except as permitted by the Indenture, any Subsidiary Guarantee or JV Subsidiary Guarantee is determined to be unenforceable or invalid or shall for any reason cease to be in full force and effect.

If an Event of Default (other than an Event of Default specified in clause (7) or (8) above) occurs and is continuing under the Indenture, the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding, by written notice to the Issuer and the Parent Guarantor (and to the Trustee if such notice is given by the Holders), may, and the Trustee at the request of such Holders shall (subject to being indemnified and/or secured and/or prefunded to its satisfaction), declare the principal of, premium, if any, and any accrued and unpaid interest on the Notes to be immediately due and payable. Upon a declaration of acceleration, such principal of, premium, if any, and any accrued and unpaid interest shall be immediately due and payable. If an Event of Default specified in clause (7) or (8) above occurs with respect to the Parent Guarantor or any Restricted Subsidiary, the principal of, premium, if any, and any accrued and unpaid interest on the Notes then outstanding shall automatically become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

The Issuer will be required to furnish to the Trustee annually, and within 14 days of any written request by the Trustee, a statement concerning the performance and observance of its obligations under the Notes or the Indenture and the occurrence of any Event of Default, if any. In addition, the Issuer is required to as soon as reasonably practicable notify the Trustee in writing of the occurrence of any Event of Default.

The Holders of at least a majority in principal amount of the outstanding Notes by written notice to the Issuer and the Parent Guarantor and to the Trustee may on behalf of the Holders of Notes waive all past Defaults and rescind and annul a declaration of acceleration and its consequences if:

- (1) all existing Events of Default, other than the nonpayment of the principal of, premium, if any, and interest on the Notes that have become due solely by such declaration of acceleration, have been cured or waived, and
- (2) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction.

Upon such waiver, the Default will cease to exist, and any Event of Default arising therefrom will be deemed to have been cured, but no such waiver will extend to any subsequent or other Default or impair any right consequent thereon.

If an Event of Default occurs and is continuing, the Trustee may, and shall upon request of Holders of at least 25% in aggregate principal amount of outstanding Notes, pursue in its own name or as trustee of an express trust, any available remedy by proceeding at law or in equity to collect the



payment of principal of and interest on the Notes or to enforce the performance of any provision of the Notes or the Indenture. The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding.

The Holders of at least a majority in aggregate principal amount of the outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee, subject to the Trustee being indemnified and/or secured and/or prefunded to its satisfaction in advance of the proceedings. However, the Trustee may refuse to follow any direction that is unclear, conflicting or equivocal, conflicts with law or the Indenture, that may involve the Trustee in personal liability and may take any other action it deems proper that is not inconsistent with any such direction received from Holders. In addition, the Trustee will not be required to expend its own funds in following such direction if it does not believe that reimbursement or satisfactory indemnification and/or security is assured to it.

A Holder of Notes may not institute any proceeding, judicial or otherwise, with respect to the Indenture or the Notes, or for the appointment of a receiver or trustee, or for any other remedy under the Indenture or the Notes, unless:

- (1) the Holder has previously given the Trustee written notice of a continuing Event of Default;
- (2) the Holders of at least 25% in aggregate principal amount of outstanding Notes make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer the Trustee indemnity and/or security and/or prefunding reasonably satisfactory to the Trustee against any costs, liability or expense to be incurred in compliance with such request;
- (4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity and/or security and/or prefunding; and
- (5) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding Notes do not give the Trustee a written direction that is inconsistent with the request.

However, such limitations do not apply to the right of any Holder to receive payment of the principal of, premium, if any, or interest on, such Note, or to bring suit for the enforcement of any such payment, on or after the due date expressed in the Notes, which right shall not be impaired or affected without the consent of the Holder.

Officers of the Parent Guarantor must certify to the Trustee in writing, on or before a date not more than 150 calendar days after the end of each fiscal year ending after the Original Issue Date and within 14 days after written request from the Trustee, that a review has been conducted of the activities of the Parent Guarantor and its Restricted Subsidiaries and the Parent Guarantor's and the Issuer's performance under the Indenture and that the Parent Guarantor and the Issuer have fulfilled all obligations thereunder, or, if there has been a Default in the fulfillment of any such obligation, specifying each such Default and the nature and status thereof. The Parent Guarantor will also be obligated to notify the Trustee in writing of any Default or Defaults in the performance of any covenants or agreements under the Indenture. See “– Provision of Financial Statements and Reports.”

None of the Trustee or any Agent is obligated to do anything to ascertain whether any Event of Default or Default has occurred or is continuing and will not be responsible to Holders or any other person for any loss arising from any failure by it to do so, and each of the Trustee and the Agents may assume that no such event has occurred and that the Issuer, Parent Guarantor, the Subsidiary Guarantors and the JV Subsidiary Guarantors, if any, are performing all of their respective obligations under the Indenture, the Notes, the Parent Guarantee, the Subsidiary Guarantee and the JV Subsidiary Guarantee,

as the case may be, unless the Trustee or the Agents, as the case may be, has received written notice of the occurrence of such event or facts establishing that a Default or an Event of Default has occurred or that the Issuer, Parent Guarantor and the Subsidiary Guarantors and the JV Subsidiary Guarantors, as the case may be, are not performing all of their respective obligations under the Indenture, the Notes, the Parent Guarantee, or if given, the Subsidiary Guarantee or the JV Subsidiary Guarantee, as the case may be. The Trustee or the Agents are entitled to rely on any Opinion of Counsel or Officers' Certificate regarding whether a Default or an Event of Default has occurred.

### **Consolidation, Merger and Sale of Assets**

The Parent Guarantor will not consolidate with, merge with or into another Person, permit any Person to merge with or into it, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its and its Restricted Subsidiaries' properties and assets (computed on a consolidated basis) (as an entirety or substantially an entirety in one transaction or a series of related transactions) to another Person, unless each of the following conditions is satisfied:

- (1) the Parent Guarantor shall be the continuing Person, or the Person (if other than it) formed by such consolidation or merger or that acquired or leased such property and assets (the "**Surviving Person**") shall be a corporation organized and validly existing under the laws of the PRC and shall expressly assume, by a supplemental indenture to the Indenture, executed and delivered to the Trustee, all the obligations of the Parent Guarantor under the Indenture and the Notes, including the obligation to pay Additional Amounts with respect to any jurisdiction in which it is organized or resident for tax purposes or through which it makes payments, and the Indenture and the Notes shall remain in full force and effect;
- (2) immediately after giving effect to such transaction, no Default shall have occurred and be continuing;
- (3) immediately after giving effect to such transaction on a *pro forma* basis, the Parent Guarantor or the Surviving Person, as the case may be, shall have a Consolidated Net Worth equal to or greater than the Consolidated Net Worth of the Parent Guarantor immediately prior to such transaction;
- (4) immediately after giving effect to such transaction on a *pro forma* basis, the Parent Guarantor or the Surviving Person, as the case may be, could Incur at least US\$1.00 of Indebtedness under the first paragraph of part (1) of the covenant under the caption "**– Certain Covenants – Limitation on Indebtedness and Preferred Stock;**"
- (5) the Parent Guarantor delivers to the Trustee (x) an Officers' Certificate (attaching the arithmetic computations to demonstrate compliance with clauses (3) and (4)) and (y) an Opinion of Counsel, in each case stating that (A) such consolidation, merger or transfer and the relevant supplemental indenture complies with this provision and that all conditions precedent provided for in the Indenture relating to such transaction have been complied with and (B) if the Parent Guarantor is the continuing Person, the Parent Guarantee provided by the Parent Guarantor and all the obligations of the Parent Guarantor under the Indenture and the Notes, including the obligation to pay Additional Amounts with respect to any jurisdiction in which it is organized or resident for tax purposes or through which it makes payments, and the Indenture and the Notes shall remain valid and in full force and effect, and that no registration with, or approval from, any government authority shall be required with respect to such documents' validity or enforceability other than any such registration or approval that has been made or obtained prior to such transaction; and
- (6) each Subsidiary Guarantor and each JV Subsidiary Guarantor, if any, unless such Subsidiary Guarantor or JV Subsidiary Guarantor, as the case may be, is the Person with which the Parent Guarantor has entered into a transaction described under the caption "**– Consolidation,**

Merger and Sale of Assets,” shall execute and deliver a supplemental indenture to the Indenture confirming that its Subsidiary Guarantee or its JV Subsidiary Guarantee, as the case may be, shall apply to the obligations of the Issuer in accordance with the Notes and the Indenture.

No Subsidiary Guarantor or JV Subsidiary Guarantor, if any, will consolidate with, merge with or into another Person, permit any Person to merge with or into it, or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its and its Restricted Subsidiaries’ properties and assets (computed on a consolidated basis) (as an entirety or substantially an entirety in one transaction or a series of related transactions) to another Person (other than the Parent Guarantor or another Subsidiary Guarantor or JV Subsidiary Guarantor, if any), unless each of the following conditions is satisfied:

- (1) such Subsidiary Guarantor or JV Subsidiary Guarantor shall be the continuing Person, or the Person (if other than it) formed by such consolidation or merger or that acquired or leased such property and assets shall be the Parent Guarantor, another Subsidiary Guarantor or JV Subsidiary Guarantor or shall become a Subsidiary Guarantor or a JV Subsidiary Guarantor concurrently with the transaction; and shall expressly assume, by a supplemental indenture to the Indenture, executed and delivered to the Trustee, all the obligations of such Subsidiary Guarantor or JV Subsidiary Guarantor under the Indenture, and the Notes, as the case may be, including the obligation to pay Additional Amounts with respect to any jurisdiction in which it is organized or resident for tax purposes or through which it makes payments, and the Indenture, and the Notes, as the case may be, shall remain in full force and effect;
- (2) immediately after giving effect to such transaction, no Default shall have occurred and be continuing;
- (3) immediately after giving effect to such transaction on a *pro forma* basis, the Parent Guarantor shall have a Consolidated Net Worth equal to or greater than the Consolidated Net Worth of the Parent Guarantor immediately prior to such transaction;
- (4) immediately after giving effect to such transaction on a *pro forma* basis, the Parent Guarantor could Incur at least US\$1.00 of Indebtedness under the first paragraph of part (1) of the covenant under the caption “– Certain Covenants – Limitation on Indebtedness and Preferred Stock;” and
- (5) the Parent Guarantor or the Issuer delivers to the Trustee (x) an Officers’ Certificate (attaching the arithmetic computations to demonstrate compliance with clauses (3) and (4) of this paragraph) and (y) an Opinion of Counsel, in each case stating that such consolidation, merger or transfer and the relevant supplemental indenture complies with this provision and that all conditions precedent provided for in the Indenture relating to such transaction have been complied with.

*provided that* this paragraph shall not apply to any sale or other disposition that complies with the “– Certain Covenants – Limitation on Asset Sales” covenant or any Subsidiary Guarantor or JV Subsidiary Guarantor whose Subsidiary Guarantee or JV Subsidiary Guarantee, as the case may be, is unconditionally released in accordance with the provisions described under “– The Subsidiary Guarantees and JV Subsidiary Guarantees – Release of the Subsidiary Guarantees and or the JV Subsidiary Guarantees.”

Although there is a limited body of case law interpreting the phrase “substantially all,” there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve “all or substantially all” of the property or assets of a Person.

The foregoing requirements shall not apply to (i) a consolidation or merger of any Subsidiary Guarantor or JV Subsidiary Guarantor with and into the Parent Guarantor or another Subsidiary Guarantor or JV Subsidiary Guarantor, so long as such Parent Guarantor or such Subsidiary Guarantor or JV Subsidiary Guarantor survives such consolidation or merger.

The foregoing provisions would not necessarily afford Holders protection in the event of highly-leveraged or other transactions involving the Parent Guarantor and the Subsidiary Guarantors and the JV Subsidiary Guarantors, if any, that may adversely affect Holders.

### **No Payments for Consents**

The Parent Guarantor will not, and shall not permit any of its Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes unless such consideration is offered to be paid or is paid to all Holders that consent, waive or agree to amend such term or provision within the time period set forth in the solicitation documents relating to such consent, waiver or amendment.

### **Defeasance**

#### ***Defeasance and Discharge***

The Indenture will provide that the Issuer will be deemed to have paid and will be discharged from any and all obligations in respect of the Notes on the 183rd day after the deposit referred to below, and the provisions of the Indenture will no longer be in effect with respect to the Notes (except for, among other matters, certain obligations to register the transfer or exchange of the Notes, to replace stolen, lost or mutilated Notes, to maintain paying agencies, to pay Additional Amounts and to hold monies for payment in trust) if, among other things:

- (1) the Issuer (a) has deposited into an account opened with the Trustee (or its agent), money and/or U.S. Government Obligations or any combination thereof that through the payment of interest and principal in respect thereof in accordance with their terms will provide money in an amount sufficient to pay the principal of, premium, if any, and accrued interest on the Notes on the Stated Maturity for such payments in accordance with the terms of the Indenture and the Notes and (b) delivers to the Trustee an Opinion of Counsel or a certificate of an internationally-recognized firm of independent accountants to the effect that the amount deposited by the Issuer is sufficient to provide payment for the principal of, premium, if any, and accrued interest on, the Notes on the Stated Maturity for such payment in accordance with the terms of the Indenture;
- (2) the Issuer has delivered to the Trustee an Opinion of Counsel from a firm of recognized international standing to the effect that the creation of and the deposit of assets into the defeasance account does not violate the U.S. Investment Company Act of 1940, as amended, and after the passage of 123 days following the deposit, the fund or assets will not be subject to the effect of Section 547 of the United States Bankruptcy Code or Section 15 of the New York Debtor and Creditor Law; and
- (3) immediately after giving effect to such deposit on a *pro forma* basis, no Event of Default, or event that after the giving of notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing on the date of such deposit or during the period ending on the 183rd day after the date of such deposit, and such defeasance shall not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which the Parent Guarantor or any of its Restricted Subsidiaries is a party or by which the Parent Guarantor or any of its Restricted Subsidiaries is bound.

In the case of either discharge or defeasance of the Notes, the Parent Guarantee, Subsidiary Guarantees and JV Subsidiary Guarantees terminate.

### ***Defeasance of Certain Covenants***

The Indenture will provide that (i) the provisions of the Indenture will no longer be in effect with respect to clauses (3), (4), (5)(x) and (7) under the first paragraph and clauses (3), (4), (5)(x) and (6) under the second paragraph under “– Consolidation, Merger and Sale of Assets” and all the covenants described herein under “– Certain Covenants,” other than as described under “– Certain Covenants-Government Approvals and Licenses; Compliance with Law” and “– Certain Covenants -Anti-Layering,” and (ii) clause (3) under “– Events of Default” with respect to clauses (3), (4), (5)(x) and (7) under the first paragraph and clauses (3), (4), (5)(x) and (6) under the second paragraph under “Consolidation, Merger and Sale of Assets” and with respect to the other events set forth in the above clause (i), clause (4) under “Events of Default” with respect to such other covenants and clauses (5) and (6) under “Events of Default” shall be deemed not to be Events of Default upon, among other things, the deposit into an account opened with the Trustee, of money, U.S. Government Obligations or a combination thereof that through the payment of interest and principal in respect thereof in accordance with their terms will provide money in an amount sufficient to pay the principal of, premium, if any, and accrued interest on the Notes on the Stated Maturity of such payments in accordance with the terms of the Indenture and the Notes, the satisfaction of the provisions described in clause (2) of the preceding paragraph.

### ***Defeasance and Certain Other Events of Default***

In the event that the Issuer exercises its option to omit compliance with certain covenants and provisions of the Indenture as described in the immediately preceding paragraph and the Notes are declared due and payable because of the occurrence of an Event of Default that remains applicable, the amount of money and/or U.S. Government Obligations on deposit with the Trustee will be sufficient to pay amounts due on the Notes at the time of their Stated Maturity but may not be sufficient to pay amounts due on the Notes at the time of the acceleration resulting from such Event of Default. However, the Issuer will remain liable for such payments.

### **Amendments and Waiver**

#### ***Amendments Without Consent of Holders***

The Indenture, the Notes, the Parent Guarantee, the Subsidiary Guarantees and the JV Subsidiary Guarantees, if any, may be amended, without the consent of any Holder, to:

- (1) cure any ambiguity, defect, omission or inconsistency in the Indenture, the Notes, the Parent Guarantee, the Subsidiary Guarantees or the JV Subsidiary Guarantees, if any;
- (2) comply with the provisions described under “– Consolidation, Merger and Sale of Assets;”
- (3) evidence and provide for the acceptance of appointment by a successor Trustee;
- (4) add any Subsidiary Guarantor or JV Subsidiary Guarantor, or any Subsidiary Guarantee or JV Subsidiary Guarantee, or release any Subsidiary Guarantor or JV Subsidiary Guarantor from any Subsidiary Guarantee or JV Subsidiary Guarantee, as the case may be, as provided or permitted by the terms of the Indenture;
- (5) provide for the issuance of Additional Notes in accordance with the limitations set forth in the Indenture;
- (6) provide collateral to secure the Notes or any Subsidiary Guarantee, as the case may be;

- (7) in any other case where a supplemental indenture to the Indenture is required or permitted to be entered into pursuant to the provisions of the Indenture without the consent of any Holder;
- (8) effect any changes to the Indenture in a manner necessary to comply with the procedures of Euroclear or Clearstream;
- (9) make any other change that does not materially and adversely affect the rights of any Holder;  
or
- (10) conform the text of the Indenture, the Notes, the Parent Guarantee, Subsidiary Guarantees, or the JV Subsidiary Guarantee, if any, to any provision of this “Description of the Notes” to the extent that such provision in this “Description of the Notes” was intended to be a verbatim recitation of a provision in the Indenture, the Notes, the Parent Guarantee, Subsidiary Guarantees, or the JV Subsidiary Guarantee.

#### ***Amendments With Consent of Holders***

The Indenture, the Notes, the Parent Guarantee, Subsidiary Guarantees and the JV Subsidiary Guarantee, if any, may be amended with the consent of the Holders of not less than a majority in aggregate principal amount of the outstanding Notes, and the Holders of a majority in principal amount of the outstanding Notes may amend or waive future compliance by the Parent Guarantor or any of its Restricted Subsidiaries with any provision thereof; *provided, however, that* no such modification, amendment or waiver may, without the consent of Holders of not less than 75% in aggregate principal amount of the outstanding Notes:

- (1) change the Stated Maturity of the principal of, or any installment of interest on, any Note;
- (2) reduce the principal amount of, or premium, if any, or interest on, any Note;
- (3) change the place, currency or time of payment of principal of, or premium, if any, or interest on, any Note;
- (4) impair the right to institute suit for the enforcement of any payment on or after the Stated Maturity (or, in the case of a redemption, on or after the redemption date) of any Note, the Parent Guarantee, and Subsidiary Guarantees and the JV Subsidiary Guarantee, if any;
- (5) reduce the above-stated percentage of outstanding Notes the consent of whose Holders is necessary to modify or amend the Indenture;
- (6) waive a default in the payment of principal of, premium, if any, or interest on the Notes;
- (7) release any Subsidiary Guarantor or JV Subsidiary Guarantor from its Subsidiary Guarantee or JV Subsidiary Guarantee, as the case may be, except as provided in the Indenture;
- (8) reduce the percentage or aggregate principal amount of outstanding Notes the consent of whose Holders is necessary for waiver of compliance with certain provisions of the Indenture or for waiver of certain defaults;
- (9) amend, change or modify the Parent Guarantee, any Subsidiary Guarantee or JV Subsidiary Guarantee in a manner that adversely affects the Holders;
- (10) reduce the amount payable upon a Change of Control Offer or an Offer to Purchase with the Excess Proceeds from any Asset Sale or, change the time or manner by which a Change of Control Offer or an Offer to Purchase with the Excess Proceeds or other proceeds from any

Asset Sale may be made or by which the Notes must be repurchased pursuant to a Change of Control Offer or an Offer to Purchase with the Excess Proceeds or other proceeds from any Asset Sale;

- (11) change the redemption date or the redemption price of the Notes from that stated under the caption “– Optional Redemption” or “– Redemption for Taxation Reasons;”
- (12) amend, change or modify the obligation of the Issuer, the Parent Guarantor, the Subsidiary Guarantors or the JV Subsidiary Guarantors to pay Additional Amounts; or
- (13) amend, change or modify any provision of the Indenture or the related definition affecting the ranking of the Notes, the Parent Guarantee, the Subsidiary Guarantees or the JV Subsidiary Guarantees in a manner which adversely affects the Holders.

### **Unclaimed Money**

Claims against the Issuer, the Parent Guarantor, the Subsidiary Guarantors or the JV Subsidiary Guarantors for the payment of principal of, premium, if any, or interest, on the Notes, the Parent Guarantee, the Subsidiary Guarantees or the JV Subsidiary Guarantees will become void unless presentation for payment is made as required in the Indenture within a period of six years.

### **No Personal Liability of Incorporators, Stockholders, Officers, Directors or Employees**

No recourse for the payment of the principal of, premium, if any, or interest on any of the Notes or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Issuer or any of the Parent Guarantor, the Subsidiary Guarantors or the JV Subsidiary Guarantors in the Indenture, or in any of the Notes or the Parent Guarantee, or if given, the Subsidiary Guarantees or the JV Subsidiary Guarantees, or because of the creation of any Indebtedness represented thereby, shall be had against any incorporator, stockholder, officer, director, employee or controlling person of the Issuer, the Parent Guarantor or any of the Subsidiary Guarantors or the JV Subsidiary Guarantors, or of any successor Person thereof. Each Holder, by accepting the Notes, waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes, the Parent Guarantee, the Subsidiary Guarantees and the JV Subsidiary Guarantees. Such waiver may not be effective to waive liabilities under the U.S. federal securities laws.

### **Concerning the Trustee and the Agents**

Citicorp International Limited has been appointed as Trustee under the Indenture. Citibank, N.A., London Branch has been appointed as note registrar (the “**Note Registrar**”) and as paying and transfer agent (the “**Paying Agent**” and, together with the Note Registrar, the “**Agents**”) with regard to the Notes. Except during the continuance of a Default, the Trustee will not be liable, except for the performance of such duties as are specifically set forth in the Indenture or the Notes, as the case may be, and no implied covenants or obligations will be read into the Indenture, the Notes and the agent appointment letter against the Trustee or the Agents. If an Event of Default has occurred and is continuing, the Trustee will use the same degree of care and skill in its exercise of the rights and powers vested in it under the Indenture or the Notes as a prudent person would exercise under the circumstances in the conduct of such person’s own affairs. Pursuant to the terms of the Indenture or the Notes (as the case may be), the Issuer will reimburse the Trustee and the Agents for all expenses incurred. The Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request of any Holder, unless such Holder shall have offered to the Trustee indemnity and/or security and/or prefunding satisfactory to it against any loss, liability or expense.

The Trustee and the Agents shall not be deemed or implied to have any duties or obligations under any documents to which it is a party. Furthermore, the Trustee and the Agents shall not be deemed to have knowledge of any event unless it has been actually notified in writing of such event. In the

exercise of its duties, neither the Trustee nor any Agent shall be responsible for the verification of the accuracy or completeness of any certification or legal opinion submitted to it by the Issuer and is entitled to rely exclusively on, and take action based on the information contained in, the certification or legal opinion. Notwithstanding anything described herein, neither the Trustee nor any Agent has duty to monitor the performance or compliance of the Issuer in the fulfillment of the Issuer's obligations under the Indenture.

The Trustee shall not be responsible for the performance by any other person appointed by the Issuer in relation to the Notes and, unless notified in writing to the contrary, shall assume that the same are being duly performed. The Trustee shall not be liable to any Holders or any other person for any action taken by the Holders or the Trustee in accordance with the instructions of the Holders.

The Trustee and the Agents are entitled to rely on all instructions, notices, declarations and certifications received pursuant to the Indenture without investigating or being responsible for the accuracy, authenticity and validity of these instructions, notices, declarations and certifications.

Neither the Trustee nor the Agents will be responsible for making calculations or for verifying calculations performed by the Issuer or any other persons unless otherwise specified in the Indenture. The Indenture contains limitations on the rights of the Trustee, should it become a creditor of the Parent Guarantor, any of the Subsidiary Guarantors and the JV Subsidiary Guarantors, if any, or the Issuer to obtain payment of claims in certain cases or to realize on certain property received by it in respect of any such claims, as security or otherwise. The Trustee and the Agents are permitted to engage in other transactions, including normal banking and trustee relationships, with the Issuer, the Parent Guarantor, any of the Subsidiary Guarantors and the JV Subsidiary Guarantors, if any, and their respective Affiliates; provided, however, that if it acquires any conflicting interest that may have a materially prejudicial effect upon the Holders of the Notes, it must eliminate such conflict or resign. The Trustee and the Agents may have an interest in, may be providing, or may in the future provide financial or other services to other parties.

### **Book-Entry; Delivery and Form**

The Notes will be represented by a global note in registered form without interest coupons attached (the "**Global Note**"). On the Original Issue Date, the Global Note will be deposited with a common depository and registered in the name of the common depository or its nominee for the accounts of Euroclear and Clearstream. Any additional Notes will be represented by additional global notes in registered form without interest coupons attached (the "**Additional Global Notes**" and, together with the Global Note, the "**Global Notes**").

### **Global Notes**

Ownership of beneficial interests in the Global Notes (the "**book-entry interests**") will be limited to persons that have accounts with Euroclear and/or Clearstream or persons that may hold interests through such participants. Book-entry interests will be shown on, and transfers thereof will be effected only through, records maintained in book-entry form by Euroclear and Clearstream and their participants.

Except as set forth below under "**Individual Definitive Notes**," the book-entry interests will not be held in definitive form. Instead, Euroclear and/or Clearstream will credit on their respective book-entry registration and transfer systems a participant's account with the interest beneficially owned by such participant. The laws of some jurisdictions may require that certain purchasers of securities take physical delivery of such securities in definitive form. The foregoing limitations may impair the ability to own, transfer or pledge book-entry interests.

So long as the Notes are held in global form, the common depository for Euroclear and/or Clearstream (or its nominee) will be considered the sole holder of the Global Notes for all purposes under the Indenture and "holders" of book-entry interests will not be considered the owners or



“Holders” of Notes for any purpose. As such, participants must rely on the procedures of Euroclear and Clearstream and indirect participants must rely on the procedures of the participants through which they own book-entry interests in order to transfer their interests in the Notes or to exercise any rights of Holders under the Indenture.

None of the Issuer, the Parent Guarantor, the Subsidiary Guarantors and the JV Subsidiary Guarantors, if any, the Trustee or any of their respective agents will have any responsibility or be liable for any aspect of the records relating to the book-entry interests. The Notes are not issuable in bearer form.

### **Payments on the Global Note**

Payments of any amounts owing in respect of the Global Notes (including principal, premium, interest and Additional Amounts) will be made to the Paying Agent in U.S. dollars. The Paying Agent will, in turn, make such payments to the common depositary for Euroclear and Clearstream, which will distribute such payments to participants in accordance with their procedures. Each of the Issuer, the Parent Guarantor and the Subsidiary Guarantors and the JV Subsidiary Guarantors, if any, will make payments of all such amounts without deduction or withholding for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature, except as may be required by law and as described under “– Additional Amounts.”

Under the terms of the Indenture, the Issuer, the Parent Guarantor, the Subsidiary Guarantors and the JV Subsidiary Guarantors, if any, and the Trustee will treat the registered holder of the Global Notes (i.e., the common depositary or its nominee) as the owner thereof for the purpose of receiving payments and for all other purposes. Consequently, none of the Issuer, the Parent Guarantor, the Subsidiary Guarantors and the JV Subsidiary Guarantors, if any, the Trustee or any of their respective agents has or will have any responsibility or liability for:

- any aspect of the records of Euroclear, Clearstream or any participant or indirect participant relating to or payments made on account of a book-entry interest, for any such payments made by Euroclear, Clearstream or any participant or indirect participants, or for maintaining, supervising or reviewing any of the records of Euroclear, Clearstream or any participant or indirect participant relating to or payments made on account of a book-entry interest; or
- any action or failure to take action by Euroclear, Clearstream or any participant or indirect participant.

Payments by participants to owners of book-entry interests held through participants are the responsibility of such participants.

### **Redemption of Global Notes**

In the event any Global Note, or any portion thereof, is redeemed, the common depositary will distribute the amount received by it in respect of the Global Note so redeemed to Euroclear and/or Clearstream, as applicable, who will distribute such amount to the holders of the book-entry interests in such Global Note. The redemption price payable in connection with the redemption of such book-entry interests will be equal to the amount received by the common depositary, Euroclear or Clearstream, as applicable, in connection with the redemption of such Global Note (or any portion thereof). The Issuer understands that under existing practices of Euroclear and Clearstream, if fewer than all of the Notes are to be redeemed at any time, Euroclear and Clearstream will credit their respective participants’ accounts on a proportionate basis (with adjustments to prevent fractions) or by lot or on such other basis as they deem fair and appropriate; *provided, however, that* no book-entry interest of US\$160,000 principal amount, or less, as the case may be, will be redeemed in part.

### **Action by Owners of Book-Entry Interests**

Euroclear and Clearstream have advised that they will take any action permitted to be taken by a Holder of Notes only at the direction of one or more participants to whose account the book-entry interests in the Global Note are credited and only in respect of such portion of the aggregate principal amount of Notes as to which such participant or participants has or have given such direction. Euroclear and Clearstream will not exercise any discretion in the granting of consents, waivers or the taking of any other action in respect of the Global Note. If there is an Event of Default under the Notes, however, each of Euroclear and Clearstream reserves the right to exchange the Global Notes for individual definitive notes in certificated form, and to distribute such individual definitive notes to their participants.

### **Transfers**

Transfers between participants in Euroclear and Clearstream will be effected in accordance with Euroclear and Clearstream's rules and will be settled in immediately available funds. If a Holder requires physical delivery of individual definitive notes for any reason, including to sell the Notes to persons in jurisdictions which require physical delivery of such securities or to pledge such securities, such Holder must transfer its interest in the Global Notes in accordance with the normal procedures of Euroclear and Clearstream and in accordance with the provisions of the Indenture.

Book-entry interests in the Global Notes will be subject to the restrictions on transfer discussed under "Transfer Restrictions."

Any book-entry interest in a Global Note that is transferred to a person who takes delivery in the form of a book-entry interest in another Global Note will, upon transfer, cease to be a book – entry interest in the first-mentioned Global Note and become a book-entry interest in the other Global Note and, accordingly, will thereafter be subject to all transfer restrictions, if any, and other procedures applicable to book-entry interests in such other Global Note for as long as it retains such a book-entry interest.

### **Global Clearance and Settlement Under the Book-Entry System**

Book-entry interests owned through Euroclear or Clearstream accounts will follow the applicable settlement procedures. Book-entry interests will be credited to the securities custody accounts of Euroclear and Clearstream participants on the Business Day following the settlement date against payment for value on the settlement date.

The book-entry interests will trade through participants of Euroclear or Clearstream, and will settle in same-day funds. Since the purchaser determines the place of delivery, it is important to establish at the time of trading of any book-entry interests where both the purchaser's and seller's accounts are located to ensure that settlement can be made on the desired value date.

### **Information Concerning Euroclear and Clearstream**

The Issuer understands as follows with respect to Euroclear and Clearstream:

Euroclear and Clearstream hold securities for participating organizations and facilitate the clearance and settlement of securities transactions between their respective participants through electronic book-entry changes in accounts of such participants. Euroclear and Clearstream provide to their participants, among other things, services for safekeeping, administration, clearance and settlement of internationally traded securities and securities lending and borrowing. Euroclear and Clearstream interface with domestic securities markets. Euroclear and Clearstream participants are financial institutions, such as underwriters, securities brokers and dealers, banks and trust companies, and certain other organizations. Indirect access to Euroclear or Clearstream is also

available to others such as banks, brokers, dealers and trust companies that clear through or maintain a custodian relationship with a Euroclear or Clearstream participant, either directly or indirectly.

Although the foregoing sets out the procedures of Euroclear and Clearstream in order to facilitate the original issue and subsequent transfers of interests in the Notes among participants of Euroclear and Clearstream, neither Euroclear nor Clearstream is under any obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time.

None of the Issuer, the Parent Guarantor, the Subsidiary Guarantors and JV Subsidiary Guarantors, if any, the Trustee or any of their respective agents will have responsibility for the performance of Euroclear or Clearstream or their respective participants of their respective obligations under the rules and procedures governing their operations, including, without limitation, rules and procedures relating to book-entry interests.

### **Individual Definitive Notes**

If (1) the common depository or any successor to the common depository is at any time unwilling or unable to continue as a depository for the reasons described in the Indenture and a successor depository is not appointed by the Issuer within 90 days, (2) either Euroclear or Clearstream, or a successor clearing system is closed for business for a continuous period of 14 days (other than by reason of holidays, statutory or otherwise) or announces an intention to permanently cease business or does in fact do so, or (3) any of the Notes has become immediately due and payable in accordance with “– Events of Default” and the Issuer has received a written request from a Holder, the Issuer will issue individual definitive notes in registered form in exchange for the Global Note. Upon receipt of such notice from the common depository or the Trustee, as the case may be, the Issuer will use its best efforts to make arrangements with the common depository for the exchange of interests in the Global Note for individual definitive notes and cause the requested individual definitive notes to be executed and delivered to the Note Registrar in sufficient quantities and authenticated by the Note Registrar for delivery to Holders. Persons exchanging interests in a Global Note for individual definitive notes will be required to provide the Note Registrar, through the relevant clearing system, with written instruction and other information required by the Issuer and the Note Registrar to complete, execute and deliver such individual definitive notes. In all cases, individual definitive notes delivered in exchange for any Global Note or beneficial interests therein will be registered in the names, and issued in any approved denominations, requested by the relevant clearing system.

Individual definitive notes will not be eligible for clearing and settlement through Euroclear or Clearstream.

### **Notices**

All notices or demands required or permitted by the terms of the Notes or the Indenture to be given to or by the Holders are required to be in writing and may be given or served by being sent by prepaid courier or first-class mail (if intended for the Issuer, the Parent Guarantor, the Subsidiary Guarantors and the JV Subsidiary Guarantors, if any) addressed at 131 Shishan Road, Haimen City, Jiangsu Province, PRC (Attention: Mr. Gu Chong; Facsimile number: +86 21 55980077), (if intended for the Trustee), at the corporate trust office of the Trustee; and (if intended for any Holder) addressed to such Holder at such Holder’s last address as it appears in the Note Register.

Any such notice or demand will be deemed to have been sufficiently given or served when so sent or deposited and, if to the Holders, when delivered in accordance with the applicable rules and procedures of Euroclear or Clearstream, as the case may be. Any such notice shall be deemed to have been delivered on the day such notice is delivered to Euroclear or Clearstream, as the case may be, or if by mail, when so sent or deposited.

## **Consent to Jurisdiction; Service of Process**

The Issuer, the Parent Guarantor, each of the Subsidiary Guarantors and the JV Subsidiary Guarantors, if any, will irrevocably (1) submit to the non-exclusive jurisdiction of any U.S. federal or New York state court located in the Borough of Manhattan, The City of New York in connection with any suit, action or proceeding arising out of, or relating to, the Notes, the Parent Guarantee, the Subsidiary Guarantees and the JV Subsidiary Guarantees, if any, the Indenture or any transaction contemplated thereby; and (2) designate and appoint Law Debenture Corporate Services Inc. for receipt of service of process in any such suit, action or proceeding.

## **Governing Law**

Each of the Notes, the Parent Guarantee, the Subsidiary Guarantees and the JV Subsidiary Guarantees, if any, and the Indenture provides that such instrument will be governed by, and construed in accordance with, the laws of the State of New York.

## **Definitions**

Set forth below are defined terms used in the covenants and other provisions of the Indenture. Reference is made to the Indenture for other capitalized terms used in this “Description of the Notes” for which no definition is provided.

“2020 Notes” means the 7.80% guaranteed senior notes due 2020 issued by Jiangsu Nantong Sanjian International Co., Ltd. pursuant to the 2020 Notes Indenture.

“2020 Notes Indenture” means the indenture dated October 26, 2017, as amended or supplemented from time to time, governing the 2020 Notes.

“Acquired Indebtedness” means Indebtedness of a Person existing at the time such Person becomes a Restricted Subsidiary or Indebtedness of a Restricted Subsidiary assumed in connection with an Asset Acquisition by such Restricted Subsidiary whether or not Incurred in connection with, or in contemplation of, the Person merging with or into or becoming a Restricted Subsidiary.

“Affiliate” means, with respect to any Person, any other Person (1) directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person; (2) who is a director or officer of such Person or any Subsidiary of such Person or of any Person referred to in clause (1) of this definition; or (3) who is a spouse or any person cohabiting as a spouse, child or step-child, parent or step-parent, brother, sister, step-brother or step-sister, parent-in-law, grandchild, grandparent, uncle, aunt, nephew and niece of a Person described in clause (1) or (2). For purposes of this definition, “control”(including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Asset Acquisition” means (1) an Investment by the Parent Guarantor or any of its Restricted Subsidiaries in any other Person pursuant to which such Person shall become a Restricted Subsidiary or shall be merged into or consolidated with the Parent Guarantor or any of its Restricted Subsidiaries; or (2) an acquisition by the Parent Guarantor or any of its Restricted Subsidiaries of the property and assets of any Person other than the Parent Guarantor or any of its Restricted Subsidiaries that constitute substantially all of a division or line of business of such Person.

“Asset Disposition” means the sale or other disposition by the Parent Guarantor or any of its Restricted Subsidiaries (other than to the Parent Guarantor or another Restricted Subsidiary) of (1) all or substantially all of the Capital Stock of any Restricted Subsidiary; or (2) all or substantially all of the assets that constitute a division or line of business of the Parent Guarantor or any of its Restricted Subsidiaries.

“Asset Sale” means any sale, transfer or other disposition (including by way of merger, consolidation or Sale and Leaseback Transaction) of any of its property or assets (including any sale of Capital Stock of a Subsidiary or issuance of Capital Stock by a Restricted Subsidiary) in one transaction or a series of related transactions by the Parent Guarantor or any of its Restricted Subsidiaries to any Person; *provided that* “Asset Sale” shall not include:

- (1) sales or other dispositions of inventory, receivables and other current assets (including properties under development for sale and completed properties for sale) in the ordinary course of business;
- (2) sales, transfers or other dispositions of assets constituting a Permitted Investment or Restricted Payment permitted to be made under the “– Certain Covenants – Limitation on Restricted Payments” covenant;
- (3) sales, transfers or other dispositions of assets with a Fair Market Value not in excess of US\$1 million (or the Dollar Equivalent thereof) in any transaction or series of related transactions;
- (4) any sale, transfer, assignment or other disposition of any property, or equipment that has become damaged, worn out, obsolete or otherwise unsuitable for use in connection with the business of the Parent Guarantor or its Restricted Subsidiaries
- (5) any transfer, assignment or other disposition deemed to occur in connection with creating or granting any Permitted Lien;
- (6) a transaction covered by the covenant under the caption “– Consolidation, Merger and Sale of Assets;” and
- (7) any sale, transfer or other disposition by the Parent Guarantor or any of its Restricted Subsidiaries, including the sale or issuance by the Parent Guarantor or any Restricted Subsidiary of any Capital Stock of any Restricted Subsidiary, to the Parent Guarantor or any Restricted Subsidiary.

“Associate” means any corporation, association or other business entity primarily engaged in a Permitted Business, of which at least 20% of the Capital Stock and the Voting Stock is owned, directly or indirectly, by the Parent Guarantor or any Restricted Subsidiary.

“Attributable Indebtedness” means, in respect of a Sale and Leaseback Transaction, at the time of determination, the present value, discounted at the interest rate implicit in the Sale and Leaseback Transaction, of the total obligations of the lessee for rental payments during the remaining term of the lease in the Sale and Leaseback Transaction, including any period for which such lease has been extended or may, at the option of the lessor, be extended.

“Average Life” means, at any date of determination with respect to any Indebtedness, the quotient obtained by dividing (1) the sum of the products of (a) the number of years from such date of determination to the dates of each successive scheduled principal payment of such Indebtedness and (b) the amount of such principal payment by (2) the sum of all such principal payments.

“Bank Deposit Secured Indebtedness” means Indebtedness of the Parent Guarantor or any Restricted Subsidiary that is secured by a pledge of one or more bank accounts or deposits of the Parent Guarantor or a Restricted Subsidiary and/or (ii) is guaranteed by a guarantee, letter of credit or similar instruments from or arranged by the Parent Guarantor or a Restricted Subsidiary and is used by the Parent Guarantor and its Restricted Subsidiaries to effect exchange of foreign currencies.

“Board of Directors” means the board of directors elected or appointed by the stockholders of the Parent Guarantor to manage the business of the Parent Guarantor or any committee of such board duly authorized to take the action purported to be taken by such committee.

“Board Resolution” means any resolution of the Board of Directors taking an action which it is authorized to take and adopted at a meeting duly called and held at which a quorum of disinterested members (if so required) was present and acting throughout or adopted by written resolution executed by every member of the Board of Directors.

“Business Day” means any day which is not a Saturday, Sunday, legal holiday or other day on which banking institutions in The City of New York, London or Hong Kong (or in any other place in which payments on the Notes are to be made) are authorized by law or governmental regulation to close.

“Capitalized Lease” means, with respect to any Person, any lease of any property (whether real, personal or mixed) which, in conformity with GAAP, is required to be capitalized on the balance sheet of such Person.

“Capitalized Lease Obligations” means the discounted present value of the rental obligations under a Capitalized Lease.

“Capital Stock” means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) in equity of such Person, whether outstanding on the Original Issue Date or issued thereafter, including, without limitation, all Common Stock and Preferred Stock, but excluding debt securities convertible or exchangeable into such equity.

“Change of Control” means the occurrence of one or more of the following events:

- (1) the merger, amalgamation or consolidation of the Parent Guarantor with or into another Person (other than one or more Permitted Holders) or the merger or amalgamation of another Person (other than one or more Permitted Holders) with or into the Parent Guarantor, or the sale of all or substantially all the assets of the Parent Guarantor to another Person (other than one or more Permitted Holders);
- (2) the Permitted Holders are collectively the “beneficial owners” (as such term is used in Rule 13d-3 of the Exchange Act) of less than 40% of the total voting power of the Voting Stock of the Parent Guarantor;
- (3) any “person” or “group”(as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the “beneficial owner”( as such term is used in Rule 13d-3 of the Exchange Act), directly or indirectly, of total voting power of the Voting Stock of the Parent Guarantor greater than such total voting power held beneficially by the Permitted Holders;
- (4) individuals who on the Original Issue Date constituted the Board of Directors of the Parent Guarantor, together with any new directors whose election to the Board of Directors was approved by a vote of at least two-thirds of the directors then still in office who were either directors on the Original Issue Date or whose election was previously so approved, cease for any reason to constitute a majority of the Board of Directors of the Parent Guarantor then in office; or
- (5) the adoption of a plan relating to the liquidation or dissolution of the Parent Guarantor.

“Clearstream” means Clearstream Banking S.A.

“Commodity Hedging Agreement” means any spot, forward or option commodity price protection agreements or other similar agreement or arrangement designed to protect against fluctuations in commodity prices.

“Common Stock” means, with respect to any Person, any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or non-voting) of such Person’s common stock or ordinary shares, whether or not outstanding at the date of the Indenture, and include, without limitation, all series and classes of such common stock or ordinary shares.

“Consolidated Assets” means, with respect to any Restricted Subsidiary at any date of determination, the Parent Guarantor and its Restricted Subsidiaries’ proportionate interest in the total consolidated assets of that Restricted Subsidiary and its Restricted Subsidiaries measured in accordance with GAAP as of the last day of the most recent fiscal quarter period for which consolidated financial statements of the Parent Guarantor and its Restricted Subsidiaries (which the Parent Guarantor shall use its reasonable best efforts to compile in a timely manner) are available (which may be internal consolidated financial statements).

“Consolidated EBITDA” means, for any period, Consolidated Net Income for such period plus, to the extent such amount was deducted in calculating such Consolidated Net Income:

- (1) Consolidated Interest Expense,
- (2) income taxes (other than income taxes attributable to extraordinary and non-recurring gains (or losses) or sales of assets), and
- (3) depreciation expense, amortization expense and all other non-cash items reducing Consolidated Net Income (other than non-cash items in a period which reflect cash expenses paid or to be paid in another period), less all non-cash items increasing Consolidated Net Income,

all as determined on a consolidated basis for the Parent Guarantor and its Restricted Subsidiaries in conformity with GAAP; *provided that* (1) if any Restricted Subsidiary is not a Wholly Owned Restricted Subsidiary, Consolidated EBITDA shall be reduced (to the extent not otherwise reduced in accordance with GAAP) by an amount equal to (A) the amount of the Consolidated Net Income attributable to such Restricted Subsidiary multiplied by (B) the percentage ownership interest in the income of such Restricted Subsidiary not owned on the last day of such period by the Parent Guarantor or any of its Restricted Subsidiaries and (2) in the case of any PRC CJV (consolidated in accordance with GAAP), Consolidated EBITDA shall be reduced (to the extent not already reduced in accordance with GAAP) by any payments, distributions or amounts (including the Fair Market Value of any non-cash payments, distributions or amounts) required to be made or paid by such PRC CJV to the PRC CJV Partner, or to which the PRC CJV Partner otherwise has a right or is entitled, pursuant to the joint venture agreement governing such PRC CJV.

“Consolidated Fixed Charges” means, for any period, the sum (without duplication) of (1) Consolidated Interest Expense for such period and (2) all cash and non-cash dividends paid, declared, accrued or accumulated during such period on any Disqualified Stock or Preferred Stock of the Parent Guarantor or any Restricted Subsidiary held by Persons other than the Parent Guarantor or any Wholly Owned Restricted Subsidiary, except for dividends payable in the Parent Guarantor’s Capital Stock (other than Disqualified Stock).

“Consolidated Interest Expense” means, for any period, the amount that would be included in gross interest expense on a consolidated income statement prepared in accordance with GAAP for such period of the Parent Guarantor and its Restricted Subsidiaries, plus, to the extent not included in such gross interest expense, and to the extent incurred, accrued or payable during such period by the Parent Guarantor and its Restricted Subsidiaries, without duplication, (1) interest expense attributable to

Capitalized Lease Obligations, (2) amortization of debt issuance costs and original issue discount expense and non-cash interest payments in respect of any Indebtedness, (3) the interest portion of any deferred payment obligation, (4) all commissions, discounts and other fees and charges with respect to letters of credit or similar instruments issued for financing purposes or in respect of any Indebtedness, (5) the net costs associated with Hedging Obligations (including the amortization of fees), (6) interest accruing on Indebtedness of any other Person that is guaranteed by, or secured by a Lien on any asset of, the Parent Guarantor or any Restricted Subsidiary, and (7) any capitalized interest, *provided that* interest expense attributable to interest on any Indebtedness bearing a floating interest rate will be computed on a *pro forma* basis as if the rate in effect on the date of determination had been the applicable rate for the entire relevant period.

“Consolidated Net Income” means, with respect to any specified Person for any period, the aggregate of the net income (or loss) of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in conformity with GAAP; *provided that* the following items shall be excluded in computing Consolidated Net Income (without duplication):

- (1) the net income (or loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting except that:
  - (a) subject to the exclusion contained in clause (5) below, the Parent Guarantor’s equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Parent Guarantor or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to a Restricted Subsidiary, to the limitations contained in clause (3) below); and
  - (b) the Parent Guarantor’s equity in a net loss of any such Person for such period shall be included in determining such Consolidated Net Income to the extent funded with cash or other assets of the Parent Guarantor or Restricted Subsidiaries;
- (2) the net income (or loss) of any Person accrued prior to the date it becomes a Restricted Subsidiary or is merged into or consolidated with the Parent Guarantor or any of its Restricted Subsidiaries or all or substantially all of the property and assets of such Person are acquired by the Parent Guarantor or any of its Restricted Subsidiaries;
- (3) the net income (but not loss) of any Restricted Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of such net income is not at the time permitted by the operation of the terms of its charter, articles of association or other similar constitutive documents, or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Restricted Subsidiary;
- (4) the cumulative effect of a change in accounting principles;
- (5) any net after tax gains realized on the sale or other disposition of (a) any property or assets of the Parent Guarantor or any Restricted Subsidiary which is not sold in the ordinary course of its business or (b) any Capital Stock of any Person (including any gains by the Parent Guarantor realized on sales of Capital Stock of the Parent Guarantor or other Restricted Subsidiaries);
- (6) any translation gains and losses due solely to fluctuations in currency values and related tax effects; and
- (7) any net after-tax extraordinary or non-recurring gains.



“Consolidated Net Worth” means, at any date of determination, stockholders’ equity as set forth on the most recently available quarterly, semi-annual or annual consolidated balance sheet of the Parent Guarantor and its Restricted Subsidiaries prepared in accordance with GAAP, plus, to the extent not included, any Preferred Stock of the Parent Guarantor, less any amounts attributable to Disqualified Stock or any equity security convertible into or exchangeable for Indebtedness, the cost of treasury stock and the principal amount of any promissory notes receivable from the sale of the Capital Stock of the Parent Guarantor or any of its Restricted Subsidiaries, each item to be determined in conformity with GAAP.

“Credit Facilities” means one or more of the facilities or arrangements with one or more banks or other lenders or institutions providing for revolving credit loans, term loans, receivables or financings (including without limitation through the sale of receivables or assets to such institutions or to special purpose entities formed to borrow from such institutions against such receivables or assets or the creation of any Liens in respect of such receivables or assets in favor of such institutions), letters of credit or other Indebtedness, in each case, including all agreements, instruments and documents executed and delivered pursuant to or in connection with any of the foregoing, including but not limited to any notes and letters of credit issued pursuant thereto and any guarantee and collateral agreement, patent and trademark security agreement, mortgages or letter of credit applications and other guarantees, pledge agreements, security agreements and collateral documents, in each case as the same may be amended, supplemented, waived or otherwise modified from time to time, or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time (whether in whole or in part, whether with the original banks, lenders or institutions or other banks, lenders or institutions or otherwise, and whether provided under any original Credit Facility or one or more other credit agreements, indentures, financing agreements or other Credit Facilities or otherwise). Without limiting the generality of the foregoing, the term “Credit Facility” shall include any agreement (1) changing the maturity of any Indebtedness Incurred thereunder or contemplated thereby, (2) adding Subsidiaries as additional borrowers or guarantors thereunder, (3) increasing the amount of Indebtedness Incurred thereunder or available to be borrowed thereunder or (4) otherwise altering the terms and conditions thereof.

“Currency Agreement” means any foreign exchange forward contract, currency swap agreement or other similar agreement or arrangement designed to protect against fluctuations in foreign exchange rates.

“Default” means any event that is, or after notice or passage of time or both would be, an Event of Default.

“Disqualified Stock” means any class or series of Capital Stock of any Person that by its terms or otherwise is (1) required to be redeemed prior to the date that is 183 days after the Stated Maturity of the Notes, (2) redeemable at the option of the holder of such class or series of Capital Stock at any time prior to the date that is 183 days after the Stated Maturity of the Notes or (3) convertible into or exchangeable for Capital Stock referred to in clause (1) or (2) above or Indebtedness having a scheduled maturity prior to the date that is 183 days after the Stated Maturity of the Notes; *provided that* any Capital Stock that would not constitute Disqualified Stock but for provisions thereof giving holders thereof the right to require such Person to repurchase or redeem such Capital Stock upon the occurrence of an “asset sale” or “change of control” occurring prior to the date that is 183 days after the Stated Maturity of the Notes shall not constitute Disqualified Stock if the “asset sale” or “change of control” provisions applicable to such Capital Stock are no more favorable to the holders of such Capital Stock than the provisions contained in the “– Certain Covenants – Limitation on Asset Sales” and “– Repurchase of Notes upon a Change of Control” covenants and such Capital Stock specifically provides that such Person will not repurchase or redeem any such stock pursuant to such provision prior to the Issuer’s or the Parent Guarantor’s repurchase of such Notes as are required to be repurchased pursuant to the “– Certain Covenants – Limitation on Asset Sales” and “– Repurchase of Notes upon a Change of Control” covenants.

“Dollar Equivalent” means, with respect to any monetary amount in a currency other than U.S. dollars, at any time for the determination thereof, the amount of U.S. dollars obtained by converting such foreign currency involved in such computation into U.S. dollars at the base rate for the purchase of U.S. dollars with the applicable foreign currency as quoted by the Federal Reserve Bank of New York on the date of determination.

“Entrusted Loans” means borrowings by a PRC Restricted Subsidiary from a bank that are secured by a pledge of deposits made by another PRC Restricted Subsidiary to the lending bank as security for such borrowings, *provided that* such borrowings are not reflected on the consolidated balance sheet of the Parent Guarantor.

“Equity Offering” means (i) any underwritten primary public offering or private placement of Common Stock of the Parent Guarantor after the Original Issue Date or (ii) any underwritten secondary public offering or secondary private placement of Common Stock of the Parent Guarantor beneficially owned by a Permitted Holder, after the Original Issue Date, to the extent that a Permitted Holder or a Person controlled by a Permitted Holder concurrently with such public offering or private placement purchases in cash an equal amount of Common Stock from the Parent Guarantor at the same price as the public offering or private placing price; *provided that* any offering or placing referred to in (A) clause (i), (B) clause (ii), or (C) a combination of clauses (i) and (ii) result in the aggregate gross cash proceeds received by the Parent Guarantor being no less than US\$20 million (or the Dollar Equivalent thereof).

“Euroclear” means Euroclear Bank S.A./N.V., as operator of the Euroclear System.

“Exempted Subsidiary” means any Restricted Subsidiary (including, for the avoidance of doubt, any Restricted Subsidiary that is not Wholly Owned by the Parent Guarantor) organized in any jurisdiction other than the PRC that is prohibited by applicable law or regulation from providing a Subsidiary Guarantee or a JV Subsidiary Guarantee; *provided that* (x) the Parent Guarantor shall have failed, upon using commercially reasonable efforts, to obtain any required governmental or regulatory approval or registration with respect to such Subsidiary Guarantee or JV Subsidiary Guarantee, to the extent that such approval or registration is available under any applicable law or regulation and (y) such Restricted Subsidiary shall cease to be an Exempted Subsidiary immediately upon such prohibition ceasing to be in force or apply to such Restricted Subsidiary or upon the Parent Guarantor having obtained such applicable approval or registration.

“Exchange Act” means the U.S. Securities Exchange Act of 1934, as amended.

“Fair Market Value” means the price that would be paid in an arm’s-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy, as determined in good faith by the Board of Directors, whose determination shall be conclusive if evidenced by a Board Resolution, except in the case of a determination of Fair Market Value of total assets for the purposes of determining a JV Entitlement Amount, in which case such price shall be determined by an accounting, appraisal or investment banking firm of recognized international standing appointed by the Parent Guarantor.

“Finance Subsidiary” means a Subsidiary of the Parent Guarantor or another Finance Subsidiary (including the Issuer) (i) that is a Restricted Subsidiary and whose operations are comprised of Incurring Indebtedness to Persons other than the Parent Guarantor or any Restricted Subsidiary from time to time to finance the operations of the Parent Guarantor and/or its Restricted Subsidiaries, (ii) that has not lent the proceeds of any Finance Subsidiary Indebtedness to any Person other than the Parent Guarantor, any Subsidiary Guarantor or the Issuer and (iii) which conducts no business and owns no material assets other than any equity interests in a Finance Subsidiary or intercompany Indebtedness Incurred in connection with the Indebtedness described in clauses (i) and (ii).

“Finance Subsidiary Indebtedness” means Indebtedness of a Finance Subsidiary that is guaranteed by one or more of (i) the Parent Guarantor or (ii) any Subsidiary Guarantor and JV Subsidiary Guarantor, as the case may be; *provided that* no Non-Guarantor Subsidiary shall provide any guarantee to or be an obligor under such Indebtedness.

“Fitch” means Fitch Ratings Ltd., a subsidiary of the Fitch Group, a jointly owned subsidiary of Fimalae, S.A. and Hearst Corporation, and its successors.

“Fixed Charge Coverage Ratio” means, on any Transaction Date, the ratio of (1) the aggregate amount of Consolidated EBITDA for the then most recent four fiscal quarter periods prior to such Transaction Date for which consolidated financial statements of the Parent Guarantor (which the Parent Guarantor shall use its reasonable best efforts to compile in a timely manner) are available (which may be internal consolidated financial statements) (the “**Four Quarter Period**”) to (2) the aggregate Consolidated Fixed Charges during such Four Quarter Period. In making the foregoing calculation:

- (a) *pro forma* effect shall be given to any Indebtedness, Disqualified Stock or Preferred Stock Incurred, repaid or redeemed during the period (the “**Reference Period**”) commencing on and including the first day of the Four Quarter Period and ending on and including the Transaction Date (other than Indebtedness Incurred or repaid under a revolving credit or similar arrangement (or under any predecessor revolving credit or similar arrangement) in effect on the last day of such Four Quarter Period), in each case as if such Indebtedness, Disqualified Stock or Preferred Stock had been Incurred, repaid or redeemed on the first day of such Reference Period; *provided that*, in the event of any such repayment or redemption, Consolidated EBITDA for such period shall be calculated as if the Parent Guarantor or such Restricted Subsidiary had not earned any interest income actually earned during such period in respect of the funds used to repay or redeem such Indebtedness, Disqualified Stock or Preferred Stock;
- (b) Consolidated Interest Expense attributable to interest on any Indebtedness (whether existing or being Incurred) computed on a *pro forma* basis and bearing a floating interest rate shall be computed as if the rate in effect on the Transaction Date (taking into account any Interest Rate Agreement applicable to such Indebtedness if such Interest Rate Agreement has a remaining term in excess of 12 months or, if shorter, at least equal to the remaining term of such Indebtedness) had been the applicable rate for the entire period;
- (c) *pro forma* effect shall be given to the creation, designation or redesignation of Restricted and Unrestricted Subsidiaries as if such creation, designation or redesignation had occurred on the first day of such Reference Period;
- (d) *pro forma* effect shall be given to Asset Dispositions and Asset Acquisitions (including giving *pro forma* effect to the application of proceeds of any Asset Disposition) that occur during such Reference Period as if they had occurred and such proceeds had been applied on the first day of such Reference Period; and
- (e) *pro forma* effect shall be given to asset dispositions and asset acquisitions (including giving *pro forma* effect to the application of proceeds of any asset disposition) that have been made by any Person that has become a Restricted Subsidiary or has been merged with or consolidated into the Parent Guarantor or any Restricted Subsidiary during such Reference Period and that would have constituted Asset Dispositions or Asset Acquisitions had such transactions occurred when such Person was a Restricted Subsidiary as if such asset dispositions or asset acquisitions were Asset Dispositions or Asset Acquisitions that occurred on the first day of such Reference Period;

*provided that* to the extent that clause (d) or (e) of this sentence requires that *pro forma* effect be given to an Asset Acquisition or Asset Disposition (or asset acquisition or asset disposition), such *pro forma* calculation shall be based upon the four full fiscal quarter periods immediately preceding the Transaction Date of the Person, or division or line of business of the Person, that is acquired or disposed for which financial information is available.

“GAAP” means generally accepted accounting principles in PRC as in effect from time to time. All ratios and computations contained or referred to in the Indenture shall be computed in conformity with GAAP applied on a consistent basis.

“guarantee” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise) or (2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided that* the term “guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “guarantee” used as a verb has a corresponding meaning.

“Hedging Obligation” of any Person means the obligations of such Person pursuant to any Commodity Hedging Agreement, Currency Agreement or Interest Rate Agreement.

“Holder” means the Person in whose name a Note is registered in the Note register.

“Incur” means, with respect to any Indebtedness or Capital Stock, to incur, create, issue, assume, guarantee or otherwise become liable for or with respect to, or become responsible for, the payment of, contingently or otherwise, such Indebtedness or Capital Stock; *provided that* (1) any Indebtedness and Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary (or fails to meet the qualifications necessary to remain an Unrestricted Subsidiary) will be deemed to be Incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary and (2) the accretion of original issue discount, the accrual of interest, the accrual of dividends, the payment of interest in the form of additional Indebtedness and the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock shall not be considered an Incurrence of Indebtedness. The terms “Incurrence,” “Incurred” and “Incurring” have meanings correlative with the foregoing.

“Indebtedness” means, with respect to any Person at any date of determination (without duplication):

- (1) all indebtedness of such Person for borrowed money;
- (2) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (3) all obligations of such Person in respect of letters of credit, bankers’ acceptances or other similar instruments;
- (4) all obligations of such Person to pay the deferred and unpaid purchase price of property or services, except Trade Payables;
- (5) all Capitalized Lease Obligations and Attributable Indebtedness;

- (6) all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided that* the amount of such Indebtedness shall be the lesser of (a) the Fair Market Value of such asset at such date of determination and (b) the amount of such Indebtedness;
- (7) all Indebtedness of other Persons guaranteed by such Person to the extent such Indebtedness is guaranteed by such Person;
- (8) to the extent not otherwise included in this definition, Hedging Obligations;
- (9) any Preferred Stock issued by any Person that is a Restricted Subsidiary and Disqualified Stock issued by any Person valued at the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price plus accrued dividends.

Notwithstanding the foregoing, Indebtedness shall not include any capital commitments, deferred payment obligation, pre-sale receipts in advance from customers, performance obligations or similar obligations (or any guarantee thereof) Incurred in the ordinary course of business in connection with the acquisition, development, construction or improvement of real or personal property (including land use rights) to be used in a Permitted Business or Entrusted Loans; *provided that* such Indebtedness is not reflected as borrowings or indebtedness on the consolidated balance sheet of the Parent Guarantor or any Restricted Subsidiary (contingent obligations and commitments referred to in a footnote to financial statements and not otherwise reflected as borrowings on the balance sheet will not be deemed to be reflected on such balance sheet).

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations, the maximum liability upon the occurrence of the contingency giving rise to the obligation; *provided that*

- (1) the amount outstanding at any time of any Indebtedness issued with original issue discount is the face amount of such Indebtedness less the remaining unamortized portion of the original issue discount of such Indebtedness at such time as determined in conformity with GAAP,
- (2) money borrowed and set aside at the time of the Incurrence of any Indebtedness in order to prefund the payment of the interest on such Indebtedness shall not be deemed to be “Indebtedness” so long as such money is held to secure the payment of such interest, and
- (3) the amount of Indebtedness with respect to any Hedging Obligation shall be: (i) zero if Incurred pursuant to clause (2)(f) under the “Limitation on Indebtedness and Preferred Stock” covenant, or (ii) equal to the net amount payable by such Person if such Hedging Obligation terminated at that time if not Incurred pursuant to such paragraph.

“Independent Third Party” means any Person that is not an Affiliate of the Parent Guarantor.

“Interest Rate Agreement” means any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement, option or future contract or other similar agreement or arrangement designed to protect against fluctuations in interest rates.

“Investment” means:

- (1) any direct or indirect advance, loan or other extension of credit to another Person;
- (2) any capital contribution to another Person (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others);

- (3) any purchase or acquisition of Capital Stock, Indebtedness, bonds, notes, debentures or other similar instruments or securities issued by another Person; or
- (4) any guarantee of any obligation of another Person.

For the purposes of the provisions of the “Designation of Restricted and Unrestricted Subsidiaries” and “Limitation on Restricted Payments” covenants: (1) the Parent Guarantor will be deemed to have made an Investment in an Unrestricted Subsidiary in an amount equal to the Parent Guarantor’s proportional interest in the Fair Market Value of the assets (net of the Parent Guarantor’s proportionate interest in the liabilities owed to any Person other than the Parent Guarantor or a Restricted Subsidiary and that are not guaranteed by the Parent Guarantor or a Restricted Subsidiary) of a Restricted Subsidiary that is designated an Unrestricted Subsidiary at the time of such designation, (2) if the Parent Guarantor or any Restricted Subsidiary sells or otherwise disposes of any Capital Stock of any direct or indirect Restricted Subsidiary of the Parent Guarantor such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary, the Parent Guarantor will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Capital Stock of such Person not sold or disposed of and (3) any property transferred to or from any Person shall be valued at its Fair Market Value at the time of such transfer, as determined in good faith by the Board of Directors.

“Jointly Controlled Entity” means any corporation, association or other business entity of which 20% or more of the voting power of the outstanding Capital Stock is owned, directly or indirectly, by the Parent Guarantor or a Restricted Subsidiary and such corporation, association or other business entity is treated as a “jointly controlled entity” in accordance with GAAP and is primarily engaged in a Permitted Business, and such Jointly Controlled Entity’s Subsidiaries.

“JV Entitlement Amount” means, with respect to any JV Subsidiary Guarantor and its Subsidiaries, an amount that is equal to the product of (i) the Fair Market Value of the total assets of such JV Subsidiary Guarantor and its Subsidiaries, on a consolidated basis (without deducting any Indebtedness or other liabilities of such JV Subsidiary Guarantor and its subsidiaries) as of the date of the last fiscal year end of the Parent Guarantor; and (ii) a percentage equal to the direct equity ownership percentage of the Parent Guarantor and/or its Restricted Subsidiaries in the Capital Stock of such JV Subsidiary Guarantor and its Subsidiaries.

“JV Subsidiary Guarantee” means any guarantee of the obligations of the Issuer under the Indenture and the Notes by any JV Subsidiary Guarantor under the caption “– The Subsidiary Guarantees and the JV Subsidiary Guarantees.”

“JV Subsidiary Guarantor” means a Restricted Subsidiary that executes a JV Subsidiary Guarantee.

“Lien” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including, without limitation, any conditional sale or other title retention agreement or lease in the nature thereof or any agreement to create any mortgage, pledge, security interest, lien, charge, easement or encumbrance of any kind).

“Listed Subsidiary” means any Restricted Subsidiary any class of the Capital Stock of which is listed on a Qualified Exchange and any Subsidiary of a Listed Subsidiary;

“Measurement Date” means October 26, 2017.

“Moody’s” means Moody’s Investors Service, Inc. and its successors.

“Net Cash Proceeds” means:

- (1) with respect to any Asset Sale, the proceeds of such Asset Sale in the form of cash or cash equivalents, including payments in respect of deferred payment obligations (to the extent corresponding to the principal, but not interest, component thereof) when received in the form of cash or cash equivalents and proceeds from the conversion of other property received when converted to cash or cash equivalents, net of:
  - (a) brokerage commissions and other fees and expenses (including fees and expenses of counsel and investment bankers) related to such Asset Sale;
  - (b) provisions for all taxes (whether or not such taxes will actually be paid or are payable) as a result of such Asset Sale without regard to the consolidated results of operations of the Parent Guarantor and its Restricted Subsidiaries, taken as a whole;
  - (c) payments made to repay Indebtedness or any other obligation outstanding at the time of such Asset Sale that either (x) is secured by a Lien on the property or assets sold or (y) is required to be paid as a result of such sale;
  - (d) appropriate amounts to be provided by the Parent Guarantor or any Restricted Subsidiary as a reserve against any liabilities associated with such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, all as determined in conformity with GAAP; and
- (2) with respect to any issuance or sale of Capital Stock or securities convertible or exchangeable into Capital Stock, the proceeds of such issuance or sale in the form of cash or cash equivalents, including payments in respect of deferred payment obligations (to the extent corresponding to the principal, but not interest, component thereof) when received in the form of cash or cash equivalents and proceeds from the conversion of other property received when converted to cash or cash equivalents, net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions and brokerage, consultant and other fees incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof.

“Non-Guarantor Subsidiaries” has the meaning assigned to such term under the caption “– The Subsidiary Guarantees and JV Subsidiary Guarantees.”

“Note Register” means the register of Noteholders which the Parent Guarantor will procure to be kept by the Note Registrar.

“Offer to Purchase” means an offer to purchase Notes by the Parent Guarantor or the Issuer, as the case may be, from the Holders commenced by the Parent Guarantor or the Issuer, as the case may be, mailing a notice by first class mail, postage prepaid, to the Trustee, the Paying Agent and each Holder at its last address appearing in the Note Register stating:

- (1) the provision in the Indenture pursuant to which the offer is being made and that all Notes validly tendered will be accepted for payment on a *pro rata* basis;
- (2) the purchase price and the date of purchase (which shall be a Business Day no earlier than 30 days nor later than 60 days from the date such notice is mailed) (the “**Offer to Purchase Payment Date**”);
- (3) that any Note not tendered will continue to accrue interest pursuant to its terms;

- (4) that, unless the Parent Guarantor or the Issuer, as the case may be, defaults in the payment of the purchase price, any Note accepted for payment pursuant to the Offer to Purchase shall cease to accrue interest on and after the Offer to Purchase Payment Date;
- (5) that Holders electing to have a Note purchased pursuant to the Offer to Purchase will be required to surrender the Note, together with the form entitled “Option of the Holder to Elect Purchase” on the reverse side of the Note completed, to the Paying Agent at the address specified in the notice prior to the close of business on the Business Day immediately preceding the Offer to Purchase Payment Date;
- (6) that Holders will be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the third Business Day immediately preceding the Offer to Purchase Payment Date, a facsimile transmission or letter setting forth the name of such Holder, the principal amount of Notes delivered for purchase and a statement that such Holder is withdrawing his election to have such Notes purchased; and
- (7) that Holders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered; *provided that* each Note purchased and each new Note issued shall be in a principal amount of US\$160,000 or integral multiples of US\$1,000 in excess thereof.

One Business Day prior to the Offer to Purchase Payment Date, the Parent Guarantor or the Issuer, as the case may be, shall deposit with the Paying Agent money sufficient to pay the purchase price of all Notes or portions thereof so accepted. On the Offer to Purchase Payment Date, the Parent Guarantor or the Issuer, as the case may be, shall (a) accept for payment on a *pro rata* basis Notes or portions thereof tendered pursuant to an Offer to Purchase and (b) deliver, or cause to be delivered, to the Trustee all Notes or portions thereof so accepted together with an Officers’ Certificate specifying the Notes or portions thereof accepted for payment by the Parent Guarantor or the Issuer, as the case may be. The Paying Agent shall promptly mail to the Holders of Notes so accepted payment in an amount equal to the purchase price, and the Trustee shall as soon as reasonably practicable authenticate and mail to such Holders a new Note equal in principal amount to any unpurchased portion of the Note surrendered; *provided that* each Note purchased and each new Note issued shall be in a principal amount of US\$160,000 or integral multiples of US\$1,000 in excess thereof. The Parent Guarantor or the Issuer, as the case may be, will publicly announce the results of an Offer to Purchase as soon as practicable after the Offer to Purchase Payment Date. The Parent Guarantor or the Issuer, as the case may be, will comply with Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable, in the event that the Issuer is required to repurchase Notes pursuant to an Offer to Purchase.

To the extent that the provisions of any securities laws or regulations of any jurisdiction conflict with the provisions of the Indenture governing any Offer to Purchase, the Issuer and the Parent Guarantors will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Indenture by virtue of such compliance. The Issuer will not be required to make an Offer to Purchase if a third party makes the Offer to Purchase in compliance with the requirements set forth in the Indenture applicable to an Offer to Purchase made by the Issuer and purchases all Notes properly tendered and not withdrawn under the Offer to Purchase.

The offer is required to contain or incorporate by reference information concerning the business of the Parent Guarantor and its Subsidiaries which the Parent Guarantor in good faith believes will assist such Holders to make an informed decision with respect to the Offer to Purchase, including a brief description of the events requiring the Parent Guarantor or the Issuer, as the case may be, to make the Offer to Purchase, and any other information required by applicable law to be included therein. The offer is required to contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Offer to Purchase.



“Offering Memorandum” means the Issuer’s exchange offering memorandum dated August 31, 2020.

“Officer” means one of the executive officers of the Parent Guarantor, or, in the case of the Issuer, a Subsidiary Guarantor or a JV Subsidiary Guarantor, one of the directors or officers of the Issuer or such Subsidiary Guarantor or JV Subsidiary Guarantor, as the case may be.

“Officers’ Certificate” means a certificate signed by two Officers; *provided, however*, with respect to the Officers’ Certificate required to be delivered by the Issuer or any Subsidiary Guarantor under the Indenture, Officers’ Certificate means a certificate signed by one Officer if there is only one Officer in the Issuer or such Subsidiary Guarantor at the time such certificate is required to be delivered.

“Opinion of Counsel” means a written opinion from legal counsel who is reasonably acceptable to the Trustee.

“Original Issue Date” means the date on which the Notes are originally issued under the Indenture.

“Parent Guarantee” means any guarantee of the obligations of the Issuer under the Indenture and the Notes by the Parent Guarantor.

“Pari Passu Guarantee” means a guarantee by the Parent Guarantor, any Subsidiary Guarantor or JV Subsidiary Guarantor of Indebtedness of the Parent Guarantor, a Subsidiary Guarantor or a JV Subsidiary Guarantor, or the Issuer (including the Additional Notes), as the case may be; *provided that* (1) the Parent Guarantor, such Subsidiary Guarantor or JV Subsidiary Guarantor, or the Issuer was permitted to Incur such Indebtedness under the covenant under the caption “– Certain Covenants – Limitation on Indebtedness and Preferred Stock” and (2) such guarantee ranks *pari passu* with any outstanding Parent Guarantee or Subsidiary Guarantee of such Subsidiary Guarantor, or JV Subsidiary Guarantee of such Subsidiary Guarantor, as the case may be.

“Permitted Businesses” means any business which is the same as or related, ancillary or complementary to any of the businesses of the Parent Guarantor and its Restricted Subsidiaries as described in the Offering Memorandum on the Original Issue Date.

“Permitted Holders” means any or all of the following:

- (1) Huang Yuhui;
- (2) any Affiliate (other than an Affiliate as defined in clause (2) or (3) of the definition of Affiliate) of the Person specified in clause (1); and
- (3) any Person both the Capital Stock and the Voting Stock of which (or in the case of a trust, the beneficial interests in which) are at least majority-owned by one or more of the Persons specified in clauses (1) and (2).

“Permitted Investment” means:

- (1) any Investment in the Parent Guarantor or a Restricted Subsidiary that is primarily engaged in a Permitted Business or a Person which will, upon the making of such Investment, become a Restricted Subsidiary that is primarily engaged in a Permitted Business or will be merged or consolidated with or into or transfer or convey all or substantially all its assets to, the Parent Guarantor or a Restricted Subsidiary that is primarily engaged in a Permitted Business;
- (2) Temporary Cash Investments;

- (3) payroll, travel and similar advances made in the ordinary course of business to cover matters that are expected at the time of such advances ultimately to be treated as expenses in accordance with GAAP;
- (4) stock, obligations or securities received in satisfaction of judgments;
- (5) an Investment in an Unrestricted Subsidiary consisting solely of an Investment in another Unrestricted Subsidiary;
- (6) any Investment pursuant to a Hedging Obligation entered into in the ordinary course of business (and not for speculation) and designed solely to protect the Parent Guarantor or any Restricted Subsidiary against fluctuations in commodity prices, interest rates or foreign currency exchange rates;
- (7) receivables owing to the Parent Guarantor or any Restricted Subsidiary, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;
- (8) Investments made by the Parent Guarantor or any Restricted Subsidiary consisting of consideration received in connection with an Asset Sale made in compliance with the covenant under the caption “– Certain Covenants – Limitation on Asset Sales”;
- (9) pledges or deposits (x) with respect to leases or utilities provided to third parties in the ordinary course of business or (y) otherwise described in the definition of “Permitted Liens” or made in connection with Liens permitted under the covenant described under “– Certain Covenants – Limitation on Liens”;
- (10) Investments in securities of trade creditors, trade debtors or customers received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditor, trade debtor or customer;
- (11) advances to contractors and suppliers for the acquisition of assets or consumables or services in the ordinary course of business that are recorded as deposits or prepaid expenses on the Parent Guarantor’s consolidated balance sheet;
- (12) deposits made in order to comply with statutory or regulatory obligations to maintain deposits for workers compensation claims, unemployment insurance or other types of social security and other purposes specified by statute or regulation from time to time in the ordinary course of business;
- (13) repurchases or redemption of the Notes;
- (14) Investments in existence on the Original Issue Date;
- (15) guarantees permitted under clause (2) of the covenant under “– Limitation on Indebtedness and Preferred Stock”;

- (16) any Investment (including without limitation any deemed Investment upon the sale of Capital Stock of a Restricted Subsidiary or the designation of a Restricted Subsidiary as an Unrestricted Subsidiary) by the Parent Guarantor or any Restricted Subsidiary in any Person (excluding the Investments permitted to be made or incurred under other clauses of this definition of “Permitted Investment”); *provided that* the following conditions are satisfied:
- (i) the aggregate of all Investments made under this clause (16) since the Original Issue Date shall not exceed in aggregate an amount equal to 10% of Total Assets, *provided* that such aggregate amount of Investments shall be calculated after deducting an amount equal to the net reduction in all Investments made under this clause (16) since the Original Issue Date resulting from:
    - (A) payments of interest on Indebtedness, dividends or repayments of loans or advances made under this clause (16), in each case to the Parent Guarantor or any Restricted Subsidiary (except, in each case, to the extent any such payment or proceeds are included in the calculation of Consolidated Net Income),
    - (B) the unconditional release of the Parent Guarantee provided by the Parent Guarantor after the Original Issue Date under this clause of an obligation of any such Person,
    - (C) to the extent that an Investment made after the Original Issue Date under this clause (16) is sold or otherwise liquidated or repaid for cash, the lesser of (x) cash return of capital with respect to such Investment (less the cost of disposition, if any) and (y) the initial amount of such Investment, not to exceed, in each case, the amount of Investments made by the Parent Guarantor or a Restricted Subsidiary after the Original Issue Date in any such Person pursuant to this clause (16), or
    - (D) redesignations of Unrestricted Subsidiaries as Restricted Subsidiaries;
  - (ii) none of the other shareholders or partners in such Person in which such Investment was made pursuant to this clause (16) is a Person described in clauses (x) or (y) of the first paragraph of the covenant under the caption “– Certain Covenants – Limitation on Transactions with Shareholders and Affiliates”(other than by reason of such shareholder or partner being an officer or director of the Parent Guarantor or a Restricted Subsidiary or by reason of being a Restricted Subsidiary), except to the extent that such Investment (x) would have satisfied the requirements of the covenant under the caption “– Certain Covenants – Limitation on Transactions with Shareholders and Affiliates” as if such Investment were an Affiliate Transaction and (y) would otherwise be permitted under applicable laws, regulations or the requirements of the Shanghai Stock Exchange; and
  - (iii) no Default has occurred and is continuing or would occur as a result of such Investment.

For the avoidance of doubt, the value of each Investment made pursuant to this clause shall be valued at the time such Investment is made.

“Permitted Liens” means:

- (1) Liens for taxes, assessments, governmental charges or claims that are being contested in good faith by appropriate legal or administrative proceedings promptly instituted and diligently conducted and for which a reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made;

- (2) statutory and common law Liens of landlords and carriers, warehousemen, mechanics, suppliers, repairmen or other similar Liens arising in the ordinary course of business and with respect to amounts not yet delinquent or being contested in good faith by appropriate legal or administrative proceedings promptly instituted and diligently conducted and for which a reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made;
- (3) Liens incurred or deposits made to secure the performance of tenders, bids, leases, statutory or regulatory obligations, bankers' acceptances, surety and appeal bonds, government contracts, performance and return-of-money bonds, utility services, developer's or other obligations to make site or off-site improvement and other obligations of a similar nature incurred in the ordinary course of business (exclusive of obligations for the payment of borrowed money);
- (4) leases or subleases granted to others that do not materially interfere with the ordinary course of business of the Parent Guarantor and its Restricted Subsidiaries, taken as a whole;
- (5) Liens encumbering property or assets under construction arising from progress or partial payments by a customer of the Parent Guarantor or its Restricted Subsidiaries relating to such property or assets;
- (6) Liens on property of, or on shares of Capital Stock or Indebtedness of, any Person existing at the time such Person becomes, or becomes a part of, any Restricted Subsidiary; *provided that* such Liens do not extend to or cover any property or assets of the Parent Guarantor or any Restricted Subsidiary other than the property or assets acquired; *provided further that* such Liens were not created in contemplation of or in connection with the transactions or series of transactions pursuant to which such Person became a Restricted Subsidiary;
- (7) Liens in favor of the Parent Guarantor or any Restricted Subsidiary;
- (8) Liens arising from the attachment or rendering of a final judgment or order against the Parent Guarantor or any Restricted Subsidiary that does not give rise to an Event of Default;
- (9) Liens securing reimbursement obligations with respect to letters of credit that encumber documents and other property relating to such letters of credit and the products and proceeds thereof;
- (10) Liens encumbering customary initial deposits and margin deposits, and other Liens that are within the general parameters customary in the industry and incurred in the ordinary course of business, in each case, securing Indebtedness under Hedging Obligations permitted by clause (f) of the second paragraph of the covenant under the caption "-- Certain Covenants -- Limitation on Indebtedness and Preferred Stock";
- (11) Liens existing on the Original Issue Date;
- (12) Liens securing Indebtedness which is Incurred to refinance secured Indebtedness which is permitted to be Incurred under clause (e) of the second paragraph of the covenant described under the caption entitled "-- Certain Covenants -- Limitation on Indebtedness and Preferred Stock"; *provided that* such Liens do not extend to or cover any property or assets of the Parent Guarantor or any Restricted Subsidiary other than the property or assets securing the Indebtedness being refinanced;
- (13) any interest or title of a lessor in the property subject to any operating lease;

- (14) easements, rights-of-way, municipal and zoning ordinances or other restrictions as to the use of properties in favor of governmental agencies or utility companies that do not materially adversely affect the value of such properties or materially impair the use for the purposes of which such properties are held by the Parent Guarantor or any Restricted Subsidiary;
- (15) Liens on assets or property of the Parent Guarantor or any Restricted Subsidiary for the purpose of securing any Capitalized Lease Obligation or purchase money Indebtedness permitted to be Incurred under clause (2)(l) of the covenant described under “-Certain Covenants-Limitation on Indebtedness and Preferred Stock”; *provided, however, that* (i) the Liens do not extend to any property or assets which is not subject to such Capitalized Lease Obligation or purchase money Indebtedness and cover only the equipment, property or assets acquired, developed, constructed or improved with such Indebtedness and (ii) is created prior to, at the time of or within 180 days of such acquisition, development, construction or improvement; *provided further that*, in the case of clause (i) such Lien may cover other property or assets (instead of or in addition to such item of equipment, property or asset) if the aggregate book value of property or assets (as reflected in the most recent available consolidated financial statements of the Parent Guarantor (which may be internal consolidated financial statements) or, if any such property or assets have been acquired since the date of such financial statements, the cost of such property or assets) subject to Liens incurred pursuant to this clause (15) does not exceed 130% of the aggregate principal amount or aggregate committed amount of Indebtedness secured by such Liens;
- (16) Liens on deposits made in order to comply with statutory obligations to maintain deposits for workers compensation claims, unemployment insurance or other types of social security and other purposes specified by statute or regulations made in the ordinary course of business and not securing Indebtedness of the Parent Guarantor or any Restricted Subsidiary;
- (17) Liens on current assets securing Indebtedness which is permitted to be Incurred under clause (2)(m) of the covenant described under “- Certain Covenants – Limitation on Indebtedness and Preferred Stock;”
- (18) Liens on deposits securing letters of credit, trade guarantees or similar instruments (and reimbursement obligations relating thereto) incurred in the ordinary course;
- (19) Liens arising by virtue of any statutory or common law provisions relating to banker’s Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depository or financial institution;
- (20) Liens arising out of conditional sale, title retention, hire purchase, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;
- (21) Liens Incurred on deposits made to secure Entrusted Loans;
- (22) Liens *provided that* the maximum amount of Indebtedness secured in the aggregate at any one time pursuant to this clause (22) does not exceed US\$10 million;
- (23) Liens on the Capital Stock of the Person that is to be acquired under the relevant Staged Acquisition Agreement securing Indebtedness permitted to be Incurred under clause (2)(p) of the covenant described under “- Certain Covenants – Limitation on Indebtedness and Preferred Stock;”
- (24) Liens on current assets securing Indebtedness under Credit Facilities which is permitted to be Incurred under clause (2)(q) of the covenant described under “- Certain Covenants – Limitation on Indebtedness and Preferred Stock;”

- (25) Liens granted by the Parent Guarantor or a PRC Restricted Subsidiary in favor of a Trust Company Investor in respect of, and to secure the Indebtedness or Preferred Stock permitted to be Incurred or issued under clause (2)(r) of the covenant described under “– Certain Covenants – Limitation on Indebtedness and Preferred Stock;”
- (26) Liens Incurred on bank accounts made to secure Bank Deposit Secured Indebtedness permitted to be Incurred under clause (2)(s) of the covenant described under “– Certain Covenants – Limitation on Indebtedness and Preferred Stock;”
- (27) Liens placed on the Capital Stock of any non-Wholly Owned Subsidiary or joint venture in the form of a transfer restriction, purchase option, call or similar right of a third party joint venture partner.

“Permitted Subsidiary Indebtedness” means Indebtedness (other than Finance Subsidiary Indebtedness) of, and all Preferred Stock issued by, the Non-Guarantor Subsidiaries (other than any Finance Subsidiary) taken as a whole; *provided that*, on the date of the Incurrence of such Indebtedness and after giving effect thereto and the application of the proceeds thereof, the aggregate principal amount outstanding of all such Indebtedness or issuance of such Preferred Stock, as the case may be (excluding any Indebtedness of any Non-Guarantor Subsidiary permitted under clauses (2)(a), (2)(b), (2)(d), (2)(f) and (2)(m) of the covenant described under “– Certain Covenants – Limitation on Indebtedness and Preferred Stock”) does not exceed an amount equal to 15% of Total Assets.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

“PRC” means the People’s Republic of China, excluding, solely for the purposes of this definition, Hong Kong Special Administrative Region, Macau Special Administrative Region and Taiwan.

“PRC CJV” means any Subsidiary that is a Sino-foreign cooperative joint venture enterprise with limited liability, established in the PRC pursuant to the Law of the People’s Republic of China on Sino-foreign Cooperative Joint Ventures adopted on April 13, 1988 (as most recently amended on November 4, 2017) and the Detailed Rules for the Implementation of the Law of the People’s Republic of China on Sino-foreign Cooperative Joint Ventures promulgated on September 4, 1995 (as most recently amended on March 1, 2017), as such laws may be amended.

“PRC CJV Partner” means with respect to a PRC CJV, the other party to the joint venture agreement relating to such PRC CJV with the Parent Guarantor or any Restricted Subsidiary.

“PRC Restricted Subsidiary” means a Restricted Subsidiary organized under the laws of the PRC.

“Preferred Stock ”as applied to the Capital Stock of any Person means Capital Stock of any class or classes that by its term is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

“Qualified Exchange” means (1) a national securities exchange (as such term is defined in Section 6 of the Exchange Act) or a designated offshore securities market (as such term is defined in Rule 902(b) under the Securities Act), or (2) the Shenzhen Stock Exchange, the Shanghai Stock Exchange, the New York Stock Exchange, the London Stock Exchange, The Stock Exchange of Hong Kong Limited, the Singapore Exchange Securities Trading Limited or the Nasdaq Stock Market.

“Registration Business Day” means a day other than a Saturday, Sunday or a day on which the Haimen Branch is authorized or obligated by law or executive order to remain closed.

“Replacement Assets” means, on any date, (1) properties or assets that replace the properties and assets that were the subject of such Asset Sale that are used in a Permitted Business or (2) property or assets (other than current assets) that are used in a Permitted Business, including the Capital Stock of any Person holding such property or assets that is primarily engaged in a Permitted Business and is or will become, upon the acquisition by the Parent Guarantor or any of its Restricted Subsidiaries of such Capital Stock, a Restricted Subsidiary.

“Restricted Subsidiary” means any Subsidiary of the Parent Guarantor (including the Issuer) other than an Unrestricted Subsidiary.

“S&P” means Standard & Poor’s Ratings Services and its affiliates.

“SAFE” means the State Administration of Foreign Exchange of the PRC.

“Sale and Leaseback Transaction” means any direct or indirect arrangement relating to property (whether real, personal or mixed), now owned or hereafter acquired whereby the Parent Guarantor or any Restricted Subsidiary transfers such property to another Person and the Parent Guarantor or any Restricted Subsidiary leases it from such Person.

“Securities Act” means the U.S. Securities Act of 1933, as amended.

“Senior Indebtedness” of the Parent Guarantor or a Restricted Subsidiary, as the case may be, means all Indebtedness of the Parent Guarantor or the Restricted Subsidiary, as relevant, whether outstanding on the Original Issue Date or thereafter created, except for Indebtedness which, in the instrument creating or evidencing the same, is expressly stated to be subordinated in right of payment to (a) in respect of the Issuer, the Notes or (b) in respect of the Parent Guarantor, a Subsidiary Guarantor or a JV Subsidiary Guarantor, the Parent Guarantee, its Subsidiary Guarantee or JV Subsidiary Guarantee, as the case may be; *provided that* Senior Indebtedness does not include (1) any obligation to the Parent Guarantor or any Restricted Subsidiary, (2) Trade Payables or (3) Indebtedness Incurred in violation of the Indenture.

“Significant Restricted Subsidiary” means a Restricted Subsidiary, or group of Restricted Subsidiaries, that would, when taken together, be a “significant subsidiary” within the meaning of the definition of “significant subsidiary” in Article 1, Rule 1-02(w) of Regulation S-X, promulgated pursuant to the Securities Act, as such Regulation is in effect on the Original Issue Date; *provided that* in each instance in such definition in which the term “10 percent” is used, the term “5 percent” shall be substituted therefor.

“Staged Acquisition Agreement” means an agreement between the Parent Guarantor or a Restricted Subsidiary and an Independent Third Party (x) pursuant to which the Parent Guarantor or such Restricted Subsidiary agrees to acquire not less than a majority of the Capital Stock of a Person for consideration that is not more than the Fair Market Value of such Capital Stock of such Person at the time the Parent Guarantor or such Restricted Subsidiary enters into such agreement and (y) which provides that the payment of the purchase price for such Capital Stock is made in more than one instalment over a period of time.

“Stated Maturity” means, (1) with respect to any Indebtedness, the date specified in such debt security as the fixed date on which the final installment of principal of such Indebtedness is due and payable as set forth in the documentation governing such Indebtedness and (2) with respect to any scheduled installment of principal of or interest on any Indebtedness, the date specified as the fixed date on which such installment is due and payable as set forth in the documentation governing such Indebtedness.

“Subordinated Indebtedness” means any Indebtedness of the Issuer, the Parent Guarantor, any Subsidiary Guarantor or any JV Subsidiary Guarantee, which is contractually subordinated or junior in right of payment to the Notes, the Parent Guarantee, or the Subsidiary Guarantee and the JV Subsidiary Guarantee, as applicable, pursuant to a written agreement to such effect.

“Subordinated Shareholder Loan” means any loan to the Parent Guarantor from Permitted Holders which (i) is expressly subordinated in right of payment to the Notes, the Parent Guarantee, the Subsidiary Guarantee or the JV Subsidiary Guarantee pursuant to a written agreement to such effect, and (ii) does not provide any cash payment of interest.

“Subsidiary” means, with respect to any Person, any corporation, association or other business entity (1) of which more than 50% of the voting power of the outstanding Voting Stock is owned, directly or indirectly, by such Person and one or more other Subsidiaries of such Person or (2) of which 50% or less of the voting power of the outstanding Voting Stock is owned, directly or indirectly, by such Person and one or more other Subsidiaries of such Person and in each case which is “controlled” and consolidated by such Person in accordance with GAAP; *provided, however, that* with respect to clause (2) the occurrence of any event as a result of which such corporation, association or other business entity ceases to be “controlled” by such Person under GAAP and to constitute a Subsidiary of such Person shall be deemed to be an Investment by such Person in such entity, which shall be made in compliance with the covenant under the caption “– Certain Covenants – Limitation on Restricted Payments.”

“Subsidiary Guarantee” means any guarantee of the obligations of the Issuer under the Indenture and the Notes by any Subsidiary Guarantor.

“Subsidiary Guarantor” means any Restricted Subsidiary which guarantees the payment of the Notes pursuant to the Indenture and the Notes; provided that Subsidiary Guarantor will not include any Person whose Subsidiary Guarantee has been released in accordance with the Indenture and the Notes or any JV Subsidiary Guarantor.

“Temporary Cash Investment” means any of the following:

- (1) direct obligations of the United States of America, any state of the European Economic Area, the People’s Republic of China and Hong Kong or any agency of any of the foregoing or obligations fully and unconditionally guaranteed by the United States of America, any state of the European Economic Area, the People’s Republic of China and Hong Kong or any agency of any of the foregoing, in each case maturing within one year;
- (2) demand or time deposit accounts, certificates of deposit and money market deposits maturing within 180 days of the date of acquisition thereof issued by a bank or trust company which is organized under the laws of the United States of America, any state thereof, any state of the European Economic Area or Hong Kong, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of US\$100 million (or the Dollar Equivalent thereof) and has outstanding debt which is rated “A”(or such similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the U.S. Securities Act) or any money market fund sponsored by a registered broker dealer or mutual fund distributor;
- (3) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (1) above entered into with a bank or trust company meeting the qualifications described in clause (2) above;
- (4) commercial paper, maturing not more than 180 days after the date of acquisition thereof, issued by a corporation (other than an Affiliate of the Parent Guarantor) organized and in existence under the laws of the United States of America, any state thereof or any foreign



country recognized by the United States of America with a rating at the time as of which any investment therein is made of “P-1”(or higher) according to Moody’s or “A-1”(or higher) according to S&P;

- (5) securities, maturing within one year of the date of acquisition thereof, issued or fully and unconditionally guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least “A” by S&P or Moody’s;
- (6) any money market fund that has at least 95% of its assets continuously invested in investments of the types described in clauses (1) through (5) above;
- (7) (i) demand or time deposit accounts, certificates of deposit, overnight or call deposits and money market deposits with any banks or financial institutions organized under the laws of the PRC, Hong Kong, United Kingdom, Singapore, Luxembourg or United States of America, or (ii) any financial products for which any such bank or financial institutions guarantees or undertake for the return of at least 100% of the principal amount thereof, *provided that* in the case of (ii) such deposits do not exceed US\$10.0 million (or the Dollar Equivalent thereof) with any single bank or US\$30.0 million (or the Dollar Equivalent thereof) in the aggregate, at any date of determination thereafter; and
- (8) investment products that are principal protected with any bank or financial institution organized under the laws of the PRC or Hong Kong if held to maturity (which shall not be more than one year) and can be withdrawn at any time with no more than six months’ notice.

“Total Assets” means, as of any date, the total consolidated assets of the Parent Guarantor and its Restricted Subsidiaries measured in accordance with GAAP as of the last day of the most recent fiscal quarter for which consolidated financial statements of the Parent Guarantor (which the Parent Guarantor shall use its reasonable best efforts to compile in a timely manner) are available (which may be internal consolidated financial statements); *provided that*, (1) only with respect to clause (2)(l) of “– Certain Covenants – Limitation on Indebtedness and Preferred Stock” covenant and the definition of “Permitted Subsidiary Indebtedness,” Total Assets shall be calculated after giving *pro forma* effect to include the cumulative value of all of the real or personal property or equipment the acquisition, development, construction or improvement of which requires or required the Incurrence of Indebtedness and calculation of Total Assets thereunder, in each case as of such date, as measured by the purchase price or cost therefor or budgeted cost provided in good faith by the Parent Guarantor or any of its Restricted Subsidiaries to the bank or other similar financial institutional lender providing such Indebtedness; (2) only with respect to clause (2)(n) of “– Certain Covenants – Limitation on Indebtedness and Preferred Stock” covenant, with respect to the Incurrence of any Acquired Indebtedness as a result of any Person becoming a Restricted Subsidiary, Total Assets shall be calculated after giving *pro forma* effect to include the consolidated assets of such Restricted Subsidiary and any other change to the consolidated assets of the Parent Guarantor as a result of such Person becoming a Restricted Subsidiary; and (3) only with respect to clauses (2)(l), (2)(q), (2)(r), (2)(s) and (2)(t) of “– Certain Covenants – Limitation on Indebtedness and Preferred Stock” covenant, Total Assets as of such last day shall be calculated to give effect to the appraised value of assets classified under the line item “investment properties” appearing under the consolidated balance sheet of such financial statements, to the extent that (a) such appraised value shall be determined by a recognized property valuer that shall be an Independent Third Party, (b) such appraisal shall be made no earlier than six months prior to the date of such last day and (c) such appraisal shall be based on assumptions and estimates that are reasonable and customary, consistent with market practice for real estate developers operating in a similar geographical location, based upon an opinion from an accounting or investment banking firm of recognized standing.

“Trade Payables” means, with respect to any Person, any accounts payable or any other indebtedness or monetary obligation to trade creditors created, assumed or guaranteed by such Person or any of its Subsidiaries arising in the ordinary course of business in connection with the acquisition of goods or services.

“Transaction Date” means, with respect to the Incurrence of any Indebtedness, the date such Indebtedness is to be Incurred and, with respect to any Restricted Payment, the date such Restricted Payment is to be made.

“Trust Company Investor” means an Independent Third Party that is a financial institution, an insurance or a trust company organized under the laws of the PRC, or an Affiliate thereof, that Invests in any Capital Stock of a PRC Restricted Subsidiary.

“Unrestricted Subsidiary” means (1) any Subsidiary of the Parent Guarantor that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors in the manner provided in the Indenture; and (2) any Subsidiary of an Unrestricted Subsidiary.

“U.S. Government Obligations” means securities that are (1) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof at any time prior to the Stated Maturity of the Notes, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account of the holder of a depository receipt; *provided that* (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of interest on or principal of the U.S. Government Obligation evidenced by such depository receipt.

“Voting Stock” means, with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

“Wholly Owned” means, with respect to any Subsidiary of any Person, the ownership of all of the outstanding Capital Stock of such Subsidiary (other than any director’s qualifying shares or Investments by foreign nationals mandated by applicable law) by such Person or one or more Wholly Owned Subsidiaries of such Person; *provided that* Subsidiaries that are PRC CJVs shall not be considered Wholly Owned Subsidiaries unless such Person or one or more Wholly Owned Subsidiaries of such Person is entitled to 95% or more of the economic benefits distributable by such Subsidiary.