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**KAISA GROUP HOLDINGS LTD.**

**佳兆業集團控股有限公司\***

(於開曼群島註冊成立的有限公司)

(股份代號：1638)

## 海外監管公告

本海外監管公告乃根據香港聯合交易所有限公司(「聯交所」)證券上市規則(「上市規則」)第13.10B條刊發。

茲提述佳兆業集團控股有限公司(「本公司」)日期為二零一七年六月七日、二零一七年六月十四日、二零一七年六月二十二日及二零一七年六月二十三日有關票據發行的公告(「該等公告」)。除另有界定外，本公告所用詞彙與該等公告所界定者具有相同涵義。

請參閱隨附之日期為二零一七年六月二十二日有關新票據的發售備忘錄(「發售備忘錄」)，其已於二零一七年七月三日在新交所網站刊發。

在聯交所網站登載發售備忘錄僅為向香港投資者同步發佈資訊及遵守上市規則第13.10B條，並無其他目的。

\* 僅供識別

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承董事會命  
佳兆業集團控股有限公司  
主席兼執行董事  
郭英成

香港，二零一七年七月四日

於本公告日期，執行董事為郭英成先生、孫越南先生、鄭毅先生、喻建清先生及麥帆先生；非執行董事為陳少環女士；獨立非執行董事為張儀昭先生、饒永先生及劉雪生先生。

**STRICTLY CONFIDENTIAL – DO NOT FORWARD**

**THIS OFFERING IS AVAILABLE ONLY TO INVESTORS WHO ARE  
OR ARE ACTING FOR THE ACCOUNT OR BENEFIT OF  
NON-U.S. PERSONS THAT ARE ADDRESSEES OUTSIDE OF THE UNITED STATES.**

**IMPORTANT:** You must read the following disclaimer before continuing. The following disclaimer applies to the attached offering memorandum following this page. You are therefore advised to read this disclaimer carefully before reading, accessing or making any other use of the attached offering memorandum. In accessing the attached offering memorandum, you agree to be bound by the following terms and conditions including any modifications to them from time to time, each time you receive any information from us as a result of such access.

**Confirmation of Your Representation:** You have accessed the attached document on the basis that you have confirmed your representation to Credit Suisse (Hong Kong) Limited, China CITIC Bank International Limited, BOCI Asia Limited, Deutsche Bank AG, Singapore Branch and China Merchants Securities (HK) Co., Ltd. (the “Initial Purchasers”) that (1) you are or are acting for the account or benefit of a non-U.S. person (as defined in Regulation S under the U.S. Securities Act of 1933, as amended (the “U.S. Securities Act”)) outside the United States and to the extent you purchase the securities described in the attached offering memorandum, you will be doing so pursuant to Regulation S under the U.S. Securities Act AND (2) that you consent to delivery of the attached offering memorandum and any amendments or supplements thereto by electronic transmission.

The attached document is not a prospectus for the purposes of the European Union’s Directive 2003/71/EC (and any amendments thereto) as implemented in member states of the European Economic Area (the “EU Prospectus Directive”). The attached document has been prepared on the basis that all offers of the securities made to persons in the European Economic Area will be made pursuant to an exemption under the EU Prospectus Directive from the requirement to produce a prospectus in connection with offers of the securities.

The communication of the attached document and any other document or materials relating to the issue of the securities offered thereby is not being made, and such documents and/or materials have not been approved, by an authorized person for the purposes of section 21 of the United Kingdom’s Financial Services and Markets Act 2000, as amended (the “FSMA”). Accordingly, such documents and/or materials are not being distributed to, and must not be passed on to, the general public in the United Kingdom. The communication of such documents and/or materials as a financial promotion is only being made to those persons in the United Kingdom falling within the definition of investment professionals (as defined in Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the “Financial Promotion Order”)), or within Article 43 of the Financial Promotion Order, or to any other persons to whom it may otherwise lawfully be made under the Financial Promotion Order (all such persons together being referred to as “relevant persons”). In the United Kingdom, the securities offered thereby are only available to, and any investment or investment activity to which the attached document relates will be engaged in only with, relevant persons. Any person in the United Kingdom that is not a relevant person should not act or rely on the attached document or any of its contents.

The attached document has been made available to you in electronic form. You are reminded that documents transmitted via this medium may be altered or changed during the process of transmission and consequently none of the Initial Purchasers or any person who controls them or any of their respective directors, employees representatives or affiliates accepts any liability or responsibility whatsoever in respect of any discrepancies between the document distributed to you in electronic format and the hard copy version. We will provide a hard copy version to you upon request.

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Except with respect to eligible investors in jurisdictions where such offer is permitted by law, nothing in this electronic transmission constitutes an offer or an invitation by or on behalf of either the issuer of the securities or to the Initial Purchasers to subscribe for or purchase any of the securities described therein and access has been limited so that it shall not constitute a general advertisement or solicitation in the United States or elsewhere. If a jurisdiction requires that the offering be made by a licensed broker or dealer and the Initial Purchasers or any affiliate of the Initial Purchasers is a licensed broker or dealer in that jurisdiction, the offering shall be described to be made by the Initial Purchasers or their respective affiliates on behalf of the issuer in such jurisdiction.

You are reminded that you have accessed the attached offering memorandum on the basis that you are a person into whose possession such offering memorandum may be lawfully delivered in accordance with the laws of the jurisdiction in which you are located and you may not nor are you authorized to deliver such offering memorandum, electronically or otherwise, to any other person. If you have gained access to this transmission contrary to the foregoing restrictions, you will be unable to purchase any of the securities described therein.

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## KAISA GROUP HOLDINGS LTD.

*(incorporated in the Cayman Islands with limited liability)*

**US\$56,870,000 7.25% Senior Notes due 2020**  
**US\$9,615,000 7.875% Senior Notes due 2021**  
**US\$23,081,000 8.50% Senior Notes due 2022**  
**US\$702,497,000 9.375% Senior Notes due 2024**

**Issue Price for Notes Due 2020: 100%**

**Issue Price for Notes Due 2021: 100%**

**Issue Price for Notes Due 2022: 100%**

**Issue Price for Notes Due 2024: 100%**

Our 7.25% Senior Notes due 2020 (the “2020 Notes”) will bear interest at the rate of 7.25% per annum and will mature on June 30, 2020. Our 7.875% Senior Notes due 2021 (the “2021 Notes”) will bear interest at the rate of 7.875% per annum and will mature on June 30, 2021. Our 8.50% Senior Notes due 2022 (the “2022 Notes”) will bear interest at the rate of 8.50% per annum and will mature on June 30, 2022. Our 9.375% Senior Notes due 2024 (the “2024 Notes,” together with the 2020 Notes, the 2021 Notes and the 2022 Notes, the “Notes”) will bear interest at the rate of 9.375% per annum and will mature on June 30, 2024. The Notes will bear interest from June 30, 2017, payable semi-annually in arrears on June 30 and December 30 of each year, beginning December 30, 2017.

The Notes are senior obligations of Kaisa Group Holdings Ltd. (the “Company”), guaranteed by certain of our existing subsidiaries (the “Subsidiary Guarantors”), other than (1) those organized under the laws of the PRC and (2) certain other subsidiaries specified in “Description of the 2020 Notes,” “Description of the 2021 Notes,” “Description of the 2022 Notes” and “Description of the 2024 Notes.” We refer to the guarantees by the Subsidiary Guarantors as Subsidiary Guarantees. The Company and the Subsidiary Guarantor Pledgors (as defined herein) have agreed to pledge the capital stock of the Subsidiary Guarantors held by them to secure the Notes and the Subsidiary Guarantees of such Subsidiary Guarantor Pledgors.

We have the option to redeem the Notes in certain circumstances and at certain redemption prices. See “Description of the 2020 Notes — Optional Redemption,” “Description of the 2021 Notes — Optional Redemption,” “Description of the 2022 Notes — Optional Redemption” and “Description of the 2024 Notes — Optional Redemption.” Upon the occurrence of a Change of Control (as defined in the indentures governing the respective series of Notes (the “Indentures”), we must make an offer to repurchase all Notes outstanding at a purchase price equal to 101% of their principal amount, plus accrued and unpaid interest, if any, to the date of repurchase.

The Notes will be (1) at least *pari passu* in right of payment against the Company with all other unsecured, unsubordinated Indebtedness (as defined in the Indentures) of the Company (subject to any priority rights of such unsubordinated Indebtedness pursuant to applicable law), (2) senior in right of payment to any existing and future obligations of the Company expressly subordinated in right of payment to the Notes, (3) effectively subordinated to the secured obligations of the Company, the Subsidiary Guarantors and the JV Subsidiary Guarantors, to the extent of the value of the assets serving as security therefor (other than the collateral securing the Notes), and (4) effectively subordinated to all existing and future obligations of the Non-Guarantor Subsidiaries (as defined below). In addition, applicable law may limit the enforceability of the Subsidiary Guarantees, the JV Subsidiary Guarantees (as defined herein) and the pledge of any collateral. See the section entitled “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral.”

For a more detailed description of the Notes, see the section entitled “Description of the 2020 Notes,” “Description of the 2021 Notes,” “Description of the 2022 Notes” and “Description of the 2024 Notes” beginning on page 170.

We are concurrently conducting an exchange offer for our outstanding Existing Notes (as defined herein) (the “Concurrent Exchange Offer”). Pursuant to the Concurrent Exchange Offer, we expect to issue additional 2020 Notes, additional 2021 Notes, additional 2022 Notes and additional 2024 Notes (collectively the “Exchange Notes”). Any Exchange Notes issued will have the same terms as and form a single class with the Notes of the respective series issued in this offering.

**Investing in the Notes involves risks. See the section entitled “Risk Factors” beginning on page 18.**

Approval in-principle has been received from the Singapore Exchange Securities Trading Limited (the “SGX-ST”) for the listing and quotation of the Notes on the SGX-ST. The SGX-ST assumes no responsibility for the correctness of any of the statements made, opinions expressed or reports contained in this offering memorandum. Approval in-principle from, admission to the Official list of, and listing and quotation of the Notes on, the SGX-ST are not to be taken as an indication of the merits of the Company, the Notes, the Subsidiary Guarantees, the Subsidiary Guarantors or their respective Subsidiaries or associated companies (if any).

The Notes and the Subsidiary Guarantees have not been and will not be registered under the United States Securities Act of 1933, as amended (the “U.S. Securities Act”), and may not be offered or sold within the United States or to U.S. person (as defined in Regulation S under the U.S. Securities Act) except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the U.S. Securities Act. The Notes are being offered and sold by the Initial Purchasers (as defined herein) only to non-U.S. persons outside the United States in compliance with Regulation S under the U.S. Securities Act (“Regulation S”). For a description of certain restrictions on resale and transfer, see the section entitled “Transfer Restrictions.”

It is expected that delivery of the Notes will be made on or about June 30, 2017 through the book-entry facilities of Euroclear Bank SA/NV (“Euroclear”) and Clearstream Banking S.A. (“Clearstream”) against payment therefor in immediately available funds.

*Joint Global Coordinators*

**Credit Suisse**

**China CITIC Bank International**

**BOC International**

**Deutsche Bank**

*Joint Lead Managers and Joint Bookrunners*

**Credit Suisse**

**China CITIC Bank  
International**

**BOC International**

**Deutsche Bank**

**China Merchants  
Securities (HK)**

The date of this offering memorandum is June 22, 2017

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This offering memorandum does not constitute an offer to sell to, or a solicitation of an offer to buy from, any person in any jurisdiction to whom it is unlawful to make the offer or solicitation in such jurisdiction. Neither the delivery of this offering memorandum nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in our affairs since the date of this offering memorandum or that the information contained in this offering memorandum is correct as of any time after that date.

This offering memorandum is not a prospectus for the purposes of the European Union’s Directive 2003/71/EC (and any amendments thereto) as implemented in member states of the European Economic Area (the “EU Prospectus Directive”). This offering memorandum has been prepared on the basis that all offers of the Notes made to persons in the European Economic Area will be made pursuant to an exemption under the EU Prospectus Directive from the requirement to produce a prospectus in connection with offers of the Notes.

**IN CONNECTION WITH THIS OFFERING, EACH OF THE INITIAL PURCHASERS (AS DEFINED HEREIN), AS STABILIZING MANAGER, OR ANY PERSON ACTING ON ITS BEHALF, MAY PURCHASE AND SELL THE NOTES IN THE OPEN MARKET. THESE TRANSACTIONS MAY, TO THE EXTENT PERMITTED BY APPLICABLE LAWS AND REGULATIONS, INCLUDE SHORT SALES, STABILIZING TRANSACTIONS AND PURCHASES TO COVER POSITIONS CREATED BY SHORT SALES. THESE ACTIVITIES MAY STABILIZE, MAINTAIN OR OTHERWISE AFFECT THE MARKET PRICE OF THE NOTES. AS A RESULT, THE PRICE OF THE NOTES MAY BE HIGHER THAN THE PRICE THAT OTHERWISE MIGHT EXIST IN THE OPEN MARKET. IF THESE ACTIVITIES ARE COMMENCED, THEY MAY BE DISCONTINUED AT ANY TIME AND MUST IN ANY EVENT BE BROUGHT TO AN END AFTER A LIMITED TIME. THESE ACTIVITIES WILL BE UNDERTAKEN SOLELY FOR THE ACCOUNT OF THE STABILIZING MANAGER, AND NOT FOR US OR ON OUR BEHALF.**

We, having made all reasonable inquiries, confirm that: (i) this offering memorandum contains all information with respect to us, our subsidiaries and affiliates referred to in this offering memorandum, the Notes and the Subsidiary Guarantees that is material in the context of the issue and offering of the Notes; (ii) the statements contained in this offering memorandum relating to us and our subsidiaries and our affiliates are in every material respect true and accurate and not misleading; (iii) the opinions and intentions expressed in this offering memorandum with regard to us and our subsidiaries and affiliates are honestly held, have been reached after considering all relevant circumstances and are based on reasonable assumptions; (iv) there are no other facts in relation to us, our subsidiaries and affiliates, the Notes and the Subsidiary Guarantees, the omission of which would, in the context of the issue and offering of the Notes, make this offering memorandum, as a whole, misleading in any material respect; and (v) we have made all reasonable enquiries to ascertain such facts and to verify the accuracy of all such information and statements. We accept responsibility accordingly.

This offering memorandum is highly confidential. We are providing it solely for the purpose of enabling you to consider a purchase of the Notes. You should read this offering memorandum before making a decision whether to purchase the Notes. You must not use this offering memorandum for any other purpose, or disclose any information in this offering memorandum to any other person.

We have prepared this offering memorandum, and we are solely responsible for its contents. You are responsible for making your own examination of us and your own assessment of the merits and risks of investing in the Notes. By purchasing the Notes, you will be deemed to have acknowledged that you have made certain acknowledgements, representations and agreements as set forth under the section entitled “Transfer Restrictions” below.

No representation or warranty, express or implied, is made by Credit Suisse (Hong Kong) Limited, China CITIC Bank International Limited, BOCI Asia Limited, Deutsche Bank AG, Singapore Branch or China Merchants Securities (HK) Co., Ltd. (the “Initial Purchasers”) or Citicorp International Limited (the “Trustee”), Citibank, N.A., London Branch (the “Paying and Transfer Agent” and the “Registrar”) or any of their respective affiliates, directors or advisors as to the accuracy or completeness of the information set forth herein, and nothing contained in this offering memorandum is, or should be relied upon as, a promise or representation, whether as to the past or the future. None of the Initial Purchasers, the Trustee, the Paying and Transfer Agent or the Registrar or any of their respective affiliates, directors or advisors has independently verified any of the information contained in this offering memorandum, they can give no assurance that this information is accurate, truthful or complete, and, to the fullest extent permitted by law, none of them accepts any responsibility for the contents of this offering memorandum. This offering memorandum is not intended to provide the basis of any credit or other evaluation nor should it be considered as a recommendation by the Company, the Subsidiary Guarantors, the Initial Purchasers, the Trustee, the Paying and Transfer Agent or the Registrar that any recipient of this offering memorandum should purchase the Notes.

Each person receiving this offering memorandum acknowledges that: (i) such person has been afforded an opportunity to request from us and to review, and has received, all additional information considered by it to be necessary to verify the accuracy of, or to supplement, the information contained herein; (ii) such person has not relied on the Initial Purchasers, the Trustee or any person affiliated with the Initial Purchasers or the Trustee in connection with any investigation of the accuracy of such information or its investment decision; and (iii) no person has been authorized to give any information or to make any representation concerning us, our subsidiaries and affiliates, the Notes or the Subsidiary Guarantees (other than as contained herein and information given by our duly authorized officers and employees in connection with investors’ examination of our company and the terms of the offering of the Notes) and, if given or made, any such other information or representation should not be relied upon as having been authorized by us or the Initial Purchasers or the Trustee.



**The Notes and the Subsidiary Guarantees have not been approved or disapproved of by the United States Securities and Exchange Commission (“SEC”), any state securities commission in the United States or any other United States regulatory authority, nor have any of the foregoing authorities passed upon or endorsed the merits of the offering or the accuracy or adequacy of this offering memorandum. Any representation to the contrary is a criminal offense in the United States.**

We are not, and the Initial Purchasers are not, making an offer to sell the Notes, including the Subsidiary Guarantees, in any jurisdiction except where an offer or sale is permitted. The distribution of this offering memorandum and the offering of the Notes, including the Subsidiary Guarantees, may in certain jurisdictions be restricted by law. Persons into whose possession this offering memorandum comes are required by us and the Initial Purchasers to inform themselves about and to observe any such restrictions. For a description of the restrictions on offers, sales and resales of the Notes, including the Subsidiary Guarantees, and distribution of this offering memorandum, see the sections entitled “Transfer Restrictions” and “Plan of Distribution” below.

This offering memorandum summarizes certain material documents and other information, and we refer you to them for a more complete understanding of what we discuss in this offering memorandum. In making an investment decision, you must rely on your own examination of us and the terms of the offering, including the merits and risks involved. We are not making any representation to you regarding the legality of an investment in the Notes by you under any legal, investment, taxation or similar laws or regulations. You should not consider any information in this offering memorandum to be legal, business or tax advice. You should consult your own professional advisors for legal, business, tax and other advice regarding an investment in the Notes.

We reserve the right to withdraw the offering of Notes at any time, and the Initial Purchasers reserve the right to reject any commitment to subscribe for the Notes in whole or in part and to allot to any prospective purchaser less than the full amount of the Notes sought by such purchaser. The Initial Purchasers and certain related entities may acquire for their own account a portion of the Notes.

## CERTAIN DEFINITIONS, CONVENTIONS AND CURRENCY PRESENTATION

We have prepared this offering memorandum using a number of conventions, which you should consider when reading the information contained herein. When we use the terms “we,” “us,” “our,” the “Company,” the “Group” and words of similar import, we are referring to Kaisa Group Holdings Ltd. itself, or to Kaisa Group Holdings Ltd. and its consolidated subsidiaries, as the context requires.

Market data, industry forecast and PRC and property industry statistics in this offering memorandum have been obtained from both public and private sources, including market research, publicly available information and industry publications. Although we believe this information to be reliable, it has not been independently verified by us or the Initial Purchasers or their respective directors and advisors, and neither we, the Initial Purchasers nor our or their respective directors and advisors make any representation as to the accuracy or completeness of that information. In addition, third-party information providers may have obtained information from market participants and such information may not have been independently verified. Due to possibly inconsistent collection methods and other problems, such statistics herein may be inaccurate. You should not unduly rely on such market data, industry forecast and PRC and property industry statistics.

In this offering memorandum, all references to “US\$” and “U.S. dollars” are to United States dollars, the official currency of the United States of America (the “United States” or “U.S.”); all references to “HK\$” and “H.K. dollars” are to Hong Kong dollars, the official currency of the Hong Kong Special Administrative Region of the PRC (“Hong Kong” or “HK”); and all references to “RMB” or “Renminbi” are to Renminbi, the official currency of the People’s Republic of China (“China” or the “PRC”).

We record and publish our financial statements in Renminbi. Unless otherwise stated in this offering memorandum, all translations from Renminbi amounts to U.S. dollars were made at the rate of RMB6.9430 to US\$1.00, the noon buying rate in New York City for cable transfers payable in Renminbi as certified for customs purposes by the Federal Reserve Bank of New York on December 30, 2016, and all translations from H.K. dollars into U.S. dollars were made at the rate of HK\$7.7534 to US\$1.00, the noon buying rate in New York City for cable transfers payable in H.K. dollars as certified for customs purposes by the Federal Reserve Bank of New York on December 30, 2016. All such translations in this offering memorandum are provided solely for your convenience and no representation is made that the Renminbi amounts referred to herein have been, could have been or could be converted into U.S. dollars or H.K. dollars, or vice versa, at any particular rate or at all. For further information relating to the exchange rates, see the section entitled “Exchange Rate Information.”

References to “PRC” and “China,” for the statistical purposes of this offering memorandum, except where the context otherwise requires, do not include Hong Kong, Macau Special Administrative Region of the PRC (“Macau”), or Taiwan. “PRC government” or “State” means the central government of the PRC, including all political subdivisions (including provincial, municipal and other regional or local governments) and instrumentalities thereof, or, where the context requires, any of them.

Our financial statements are prepared in accordance with Hong Kong Financial Reporting Standards (the “HKFRS”) which differ in certain respects from generally accepted accounting principles in certain other countries.

Unless the context otherwise requires, references to “2015” and “2016” in this offering memorandum are to our financial years ended December 31, 2015 and 2016, respectively.

References to the “2012 Notes” are to our 12.875% Senior Notes due 2017.

References to the “2014 Notes” are to our 9.0% Senior Notes due 2019.

References to the “April 2013 Notes” are to our RMB denominated 6.875% Senior Notes due 2016.

References to “contracted sales” are to purchase price for properties that we sold under sales contracts we entered into with purchasers of our properties. We compile contracted sales information (including contracted GFA) for our internal record purposes, and such information has not been audited or reviewed by Grant Thornton Hong Kong Limited, Certified Public Accountants, Hong Kong. Unlike revenue or other statement of profit and loss and other



comprehensive income information, which is recorded based on the applicable accounting standard, contracted sales information reflects purchase price information when the relevant sales contract is signed. As such sales contracts are subject to termination or variation under certain circumstances pursuant to their contractual terms, or subject to default by the relevant purchasers, they are not a guarantee of current or future revenue that we may record. You should in no event treat such contracted sales information as an indication of our revenue or profitability. Revenue recognized from such contracted sales may be materially different from such contracted sales. Accordingly, you should not unduly rely upon contracted sales information contained in this offering memorandum as a measure or indication of our current or future operating performance.

References to the “Convertible Bonds” are to our U.S. dollar settled 8% convertible bonds due 2015.

References to the “Existing Notes” are to our Series A Notes, Series B Notes, Series C Notes, Series D Notes and Series E Notes.

References to the “Existing Notes Trustee” are to Wilmington Trust, National Association.

References to the “IPO” are to our initial public offering listed on The Stock Exchange of Hong Kong Limited (the “Hong Kong Stock Exchange,” “Stock Exchange” or “HKSE”) in December 2009.

References to the “January 2013 Notes” are to our 10.25% Senior Notes due 2020.

References to the “March 2013 Notes” are to our 8.875% Senior Notes due 2018.

References to the “Mandatorily Exchangeable Bonds” are to US\$259,486,248 Variable Rate Mandatorily Exchangeable Bonds due 2019.

References to “Original HSBC Facilities” are to the offshore loan facilities between us and The Hong Kong and Shanghai Banking Corporation Limited in an aggregate amount of HK\$760 million.

References to “Original ICBC Facilities” are to the offshore loan facilities between us and Industrial and Commercial Bank of China (Asia) Limited and/or Industrial and Commercial Bank of China, Paris Branch in an aggregate amount of HK\$155 million and US\$159.5 million.

References to “Original Offshore Facilities” are to the Original HSBC Facilities and the Original ICBC Facilities.

References to the “Series A Notes” are to our US\$277,460,905 Series A Variable Rate Senior Notes due December 31, 2019.

References to the “Series B Notes” are to our US\$499,429,957 Series B Variable Rate Senior Notes due June 30, 2020.

References to the “Series C Notes” are to our US\$610,414,552 Series C Variable Rate Senior Notes due December 31, 2020.

References to the “Series D Notes” are to our US\$665,906,865 Series D Variable Rate Senior Notes due June 30, 2021.

References to the “Series E Notes” are to our US\$721,398,993 Series E Variable Rate Senior Notes due December 31, 2021.

References to “share” are to, unless the context indicates otherwise, an ordinary share, with a nominal value of HK\$0.10, in our share capital.

A property is considered sold after we have executed the purchase contract with a customer and have delivered the property to the customer. All site area and gross floor area (“GFA”) information presented in this offering memorandum represent the site area and GFA of the entire project, including those attributable to the minority shareholders of our non-wholly owned project companies. References to “sq.m.” are to the measurement unit of square meters.

In this offering memorandum, a land grant contract refers to a state-owned land use rights grant contract (國有土地使用權出讓合同) between a developer and the relevant PRC governmental land administrative authorities, typically the local state-owned land bureaus.

In this offering memorandum, a land use rights certificate refers to a state-owned land use rights certificate (國有土地使用證) issued by a local real estate and land resources bureau with respect to the land use rights; a construction land planning permit refers to a construction land planning permit (建設用地規劃許可證) issued by local urban zoning and planning bureaus or equivalent authorities in China; a construction works planning permit refers to a construction works planning permit (建設工程規劃許可證) issued by local urban zoning and planning bureaus or equivalent authorities in China; a construction permit refers to a construction works commencement permit (建築工程施工許可證) issued by local construction committees or equivalent authorities in China; a pre-sale permit refers to a commodity property pre-sale permit (商品房預售許可證) issued by local housing and building administrative bureaus or equivalent authorities with respect to the pre-sale of relevant properties; a certificate of completion refers to an inspection and acceptance form of construction completion (竣工驗收備案表); and a property ownership certificate refers to a property ownership certificate (房屋所有權證) (or in certain areas of the PRC, a property ownership and land use rights certificate (房地產權證)) issued by a local real estate bureau with respect to the ownership rights of the buildings on the relevant land.

Totals presented in this offering memorandum may not total correctly because of rounding of numbers.

## FORWARD-LOOKING STATEMENTS

This offering memorandum contains forward-looking statements that are, by their nature, subject to significant risks and uncertainties. These forward-looking statements include statements relating to:

- our business, financing and operating strategies;
- our capital expenditure and property development plans;
- the amount and nature of, and potential for, future development of our business;
- our operations and business prospects;
- various business opportunities that we may pursue;
- the interpretation and implementation of the existing rules and regulations relating to land appreciation tax and its future changes in enactment, interpretation or enforcement;
- the prospective financial information regarding our businesses;
- availability and costs of bank loans and other forms of financing;
- our dividend policy;
- projects under development or held for future development;
- the regulatory environment of our industry in general;
- the performance and future developments of the property market in China or any region in China in which we may engage in property development;
- changes in political, economic, legal and social conditions in China, including the specific policies of the PRC central and local governments affecting the regions where we operate, which affect land supply, availability and cost of financing, pre-sale, pricing and volume of our property development projects;
- significant delay in obtaining the various permits, proper legal titles or approvals for our properties under development or held for future development;
- timely repayments by our purchasers of mortgage loans guaranteed by us;
- changes in competitive conditions and our ability to compete under these conditions;
- the performance of the obligations and undertakings of the third-party contractors under various construction, building, interior decoration, material and equipment supply and installation contracts;
- changes in currency exchange rates; and
- other factors beyond our control.

In some cases, you can identify forward-looking statements by such terminology as “may,” “will,” “should,” “could,” “would,” “expect,” “intend,” “plan,” “anticipate,” “going forward,” “ought to,” “seek,” “project,” “forecast,” “believe,” “estimate,” “predict,” “potential” or “continue” or the negative of these terms or other comparable terminology. Such statements reflect the current views of our management with respect to future events, operations, results, liquidity and capital resources and are not guarantee of future performance and some of which may not materialize or may change. Although we believe that the expectations reflected in these forward-looking statements are reasonable, we cannot assure you that those expectations will prove to be correct, and you are cautioned not to place undue reliance on such statements. In addition, unanticipated events may adversely affect the actual results we achieve. Important factors that could cause actual results to differ materially from our expectations are disclosed under the section entitled “Risk Factors.” Except as required by law, we undertake no obligation to update or otherwise revise any forward-looking statements contained in this offering memorandum, whether as a result of new information, future events or otherwise after the date of this offering memorandum. All forward-looking statements contained in this offering memorandum are qualified by reference to the cautionary statements set forth in this section.

## SUMMARY

*This summary does not contain all the information that may be important to you in deciding to invest in the Notes. You should read the entire offering memorandum, including the section entitled “Risk Factors” and our consolidated financial statements and related notes thereto, before making an investment decision.*

### Overview

We are a leading PRC property developer with a sizable and diversified land bank of approximately 21.3 million sq.m. GFA in 31 cities across five regions. According to “Top 200 Real Estate Enterprise Property Developers by Sales in 2016” jointly compiled and issued by CRIC and China Real Estate Appraisal Center, we were ranked 46th nationwide in terms of GFA sold in 2016. We focus on mass market housing demand and are primarily engaged in the development of large-scale residential properties as well as integrated commercial properties.

Headquartered in Shenzhen, the Special Economic Zone adjacent to Hong Kong, we have historically focused our property development in the Pearl River Delta region. Our well-established position in the Pearl River Delta region is supported by our geographically diversified development portfolio, including projects in Greater Shenzhen, Foshan, Guangzhou and Zhuhai. Leveraging our success in the Pearl River Delta region, we have also expanded into other areas in China, including Shanghai, Hangzhou, Taizhou, Suzhou, Nanjing, Changzhou, Taicang and Jiangyin in the Yangtze River Delta region, Chengdu, Chongqing and Nanchong in the Western China region, Changsha, Wuhan and Zhuzhou in the Central China region, and Shenyang, Yingkou, Benxi, Panjin, Anshan, Weifang, Liaoyang, Dalian, Dandong, Huludao and Qingdao in the Pan-Bohai Bay Rim. With our in-depth property development experience and the dedication that we have demonstrated throughout our operational history, we intend to expand into other regions in China.

We focus primarily on development of the following:

- Residential properties. Our large-scale residential properties are generally located in suburban areas with access to public transport and other urban facilities in selected cities in China. These properties include apartments, serviced apartments and townhouses, often with complementary commercial facilities, restaurants and community facilities. The principal target customers for our residential properties are middle to upper-middle income households. We often develop our residential properties in a number of phases. We believe our multi-phased approach has enabled us to manage our capital resources efficiently and has increased our returns through the higher average selling prices which we expect to achieve at subsequent development phases.
- Commercial properties. Our integrated commercial properties are generally located in CBDs in selected cities in China. Since 2005, we have increased the commercial property development in our portfolio. Guangzhou Jinmao, our completed commercial project, is located in a prime location within Guangzhou’s CBD and consists of a premium grade office building and retail space. In December 2010, we completed Guangzhou Kaisa Plaza, a commercial project which comprises primarily one high-rise office building with retail space, located in Guangzhou’s Tianhe CBD. In March 2011, the Shenzhen Municipal Government announced its landmark projects in response to the Central Government’s 12th Five-Year Plan, and included in the landmark project list is a trophy project in the heart of Shenzhen CBD — Shenzhen Kaisa Global Center. Our other commercial projects are expected to consist of a mixture of office buildings and retail spaces.

As of December 31, 2016, we had a total of 101 property development projects, including completed properties, properties under development and properties for future development, in 31 cities in China. As of December 31, 2016, we had completed properties with a total GFA of approximately 19,448,712 sq.m., and had a land bank with an estimated total GFA of approximately 21.3 million sq.m., including completed properties held for sale with a total GFA of approximately 2,115,574 sq.m., properties under development with an estimated total GFA of approximately 6,787,761 sq.m. and properties for future development with an estimated total GFA of approximately 12,364,991 sq.m. Our contracted sales were RMB9,254 million and RMB29,843 million (US\$4,298 million) in 2015 and 2016, respectively. Our contracted GFA was approximately 1,255,279 sq.m. and 2,269,379 sq.m. in 2015 and 2016, respectively.

Our revenue was RMB10,926.5 million and RMB17,771.5 million (US\$2,559.6 million) in 2015 and 2016, respectively.

We have historically contracted out construction works of all our development projects to construction contractors, and intend to continue to outsource substantially all of our construction works. We cooperate with Centaline and World Union to jointly promote our developed properties in different regional markets in China. Going forward, we will continue to improve the management of our sales through our dedicated sales team and intend to continue to engage professional property sales agencies to provide marketing and sales services for our properties in China.

We intend to continue to focus on developing residential and commercial properties in the Pearl River Delta region and further diversify geographically through expansion into other promising markets in China. In addition to our focus on residential and commercial development projects, we also aim to increase our investment properties and consequentially our rental income. We intend to retain certain of our commercial properties for long-term investment purposes. In managing our investment property portfolio, we will take into account the estimated long-term growth potential, overall market conditions and our cash flows and financial conditions.

### Recent Developments

Subsequent to December 31, 2016, we acquired the parcels of land as set forth in the table below.

Location	Attributable interest (%)	Number of Land Parcels	Site Area (sq.m.)	Total Planned GFA	Attributable GFA per maximum allowed plot ratio (sq.m.)	Consideration (RMB in million)	Type
Guangzhou . . .	70	1	78,913	409,703	316,443	1,960	Commercial <sup>(1)</sup>
Huizhou . . . . .	100	4	176,724	565,710	441,810	373	Residential <sup>(1)</sup>
Foshan . . . . .	100	1	14,406	84,811	72,031	380	Commercial
Shenyang . . . . .	100	1	12,947	49,532	38,840	239	Residential
Shanghai . . . . .	100	2	23,638	55,429	42,549	84	Residential
Shaoxing . . . . .	70	1	19,852	62,699	47,939	21	Residential
Zhuhai . . . . .	100	1	16,088	35,848	28,958	217	Residential
<b>Total . . . . .</b>		<b>11</b>	<b>342,568</b>	<b>1,263,732</b>	<b>988,570</b>	<b>3,274</b>	

(1) Urban redevelopment projects.

Our total contracted sales for the five months ended May 31, 2017 amounted to approximately RMB14,265 million with the total contracted GFA of approximately 930,616 sq.m., representing increases of approximately 30.2% and 13.0% as compared with the corresponding period in 2016, respectively. The average selling price for the five months ended May 31, 2017 amounted to approximately RMB15,328 per sq.m., representing an increase of approximately 15.2% as compared with the corresponding period in 2016.

### **Concurrent Transactions**

Concurrently with the offering of the Notes, we are conducting the Concurrent Exchange Offer. The Concurrent Exchange Offer is being conducted pursuant to an exchange offer memorandum dated June 7, 2017. Pursuant to the Concurrent Exchange Offer, we expect to issue US\$228,130,000 aggregate principal amount of the 2020 Notes, US\$215,385,000 aggregate principal amount of the 2021 Notes, US\$796,919,000 aggregate principal amount of the 2022 Notes and US\$1,417,503,000 aggregate principal amount of the 2024 Notes, collectively the Exchange Notes. Any Exchange Notes issued will have the same terms as and form a single class with the Notes of the respective series issued in this offering. The Exchange Notes are expected to be delivered on the same date as the Notes.

### **Our Competitive Strengths**

We believe we have the following competitive strengths:

- market leadership in the Pearl River Delta region with a national footprint;
- quality land bank at relatively low cost and supplemented by acquisition by redevelopment;
- responsiveness to market trends and prudent financial management; and
- experienced and long-serving senior management team and continuous recruitment of management talent.

### **Our Business Strategies**

We aim to continue to grow as a leading property developer with a national presence in key economic regions in China. We have developed the following business strategies to pursue our growth objectives:

- continue to enhance profit margin from urban redevelopments in Shenzhen and the rest of the Pearl River Delta region and achieve further geographical diversification in China;
- further enhance asset turnover and cost efficiency through standardized product lines and a scalable business model;
- continue to focus on residential mass market and commercial property development while enhancing property diversification and selectively expanding our land bank and diversify our business; and
- further enhance our brand recognition.

### **General Information**

We were incorporated in the Cayman Islands on August 2, 2007, as an exempted company with limited liability. Our principal place of business in the PRC is at Room 3306, Kerry Center, Ren Min Nan Road, Luohu, Shenzhen, China. Our place of business in Hong Kong is at Suite 2001, 20th Floor, Two International Finance Centre, 8 Finance Street, Central, Hong Kong. Our registered office is located at Cricket Square, Hutchins Drive, P.O. Box 2681, Grand Cayman, KY1-1111, Cayman Islands. Our website is [www.kaisagroup.com](http://www.kaisagroup.com). Information contained on our website does not constitute part of this offering memorandum.



## The Offering

Terms used in this summary and not otherwise defined have the meanings given to them in the sections entitled “Description of the 2020 Notes,” “Description of the 2021 Notes,” “Description of the 2022 Notes” and “Description of the 2024 Notes.”

Issuer . . . . .	Kaisa Group Holdings Ltd.
Notes Offered . . . . .	US\$56,870,000 aggregate principal amount of 7.25% Senior Notes due 2020 (the “2020 Notes”) US\$9,615,000 aggregate principal amount of 7.875% Senior Notes due 2021 (the “2021 Notes”) US\$23,081,000 aggregate principal amount of 8.50% Senior Notes due 2022 (the “2022 Notes”) US\$702,497,000 aggregate principal amount of 9.375% Senior Notes due 2024 (the “2024 Notes”, together with the 2020 Notes, the 2021 Notes, the 2022 Notes, the “Notes”)
Offering Price . . . . .	100% of the principal amount with respect to the 2020 Notes 100% of the principal amount with respect to the 2021 Notes 100% of the principal amount with respect to the 2022 Notes 100% of the principal amount with respect to the 2024 Notes
Maturity Dates . . . . .	June 30, 2020 with respect to the 2020 Notes June 30, 2021 with respect to the 2021 Notes June 30, 2022 with respect to the 2022 Notes June 30, 2024 with respect to the 2024 Notes
Interest . . . . .	The 2020 Notes, the 2021 Notes, the 2022 Notes and the 2024 Notes will bear interest from and including June 30, 2017 at the rate of 7.25%, 7.875%, 8.50% and 9.375% per annum, respectively, payable semi-annually in arrears
Interest Payment Dates . . . . .	June 30 and December 30 of each year, commencing December 30, 2017.
Ranking of the Notes . . . . .	The Notes are: <ul style="list-style-type: none"><li>• general obligations of the Company;</li><li>• senior in right of payment to any existing and future obligations of the Company expressly subordinated in right of payment to the Notes;</li><li>• at least <i>pari passu</i> in right of payment with all other unsecured, unsubordinated Indebtedness of the Company (subject to any priority rights of such unsubordinated Indebtedness pursuant to applicable law);</li></ul>

- guaranteed by the Subsidiary Guarantors and the JV Subsidiary Guarantors (if any) on a senior basis, subject to the limitations described in “Description of the 2020 Notes — The Subsidiary Guarantees and the JV Subsidiary Guarantees,” “Description of the 2021 Notes — The Subsidiary Guarantees and the JV Subsidiary Guarantees,” “Description of the 2022 Notes — The Subsidiary Guarantees and the JV Subsidiary Guarantees” and “Description of the 2024 Notes — The Subsidiary Guarantees and the JV Subsidiary Guarantees” and in “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral”;
- effectively subordinated to the secured obligations of the Company, the Subsidiary Guarantors and the JV Subsidiary Guarantors (if any), to the extent of the value of the assets serving as security therefor (other than the Collateral); and
- effectively subordinated to all existing and future obligations of the Non-Guarantor Subsidiaries.

After the pledge of the Collateral by the Company and the Subsidiary Guarantor Pledgors as described below under the caption “Security to be Granted,” subject to the limitations described in “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral,” the Notes will be secured by a pledge of the Collateral as described below under the caption “Security to be Granted” and will:

- be entitled to a lien on the Collateral (subject to any Permitted Liens and the Intercreditor Agreement); and
- rank effectively senior in right of payment to unsecured obligations of the Company with respect to the value of the Collateral pledged by the Company securing the Notes (subject to any priority rights of such unsecured obligations pursuant to applicable law).

Subsidiary Guarantees and JV

Subsidiary Guarantees. . . . .

Each of the Subsidiary Guarantors and JV Subsidiary Guarantors 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 Guarantees will be limited to the JV Entitlement Amount. The initial Subsidiary Guarantors will not have significant operations or assets. The initial Subsidiary Guarantors will consist of all Restricted Subsidiaries other than the Subsidiaries organized under the laws of the PRC on the Original Issue Date, the initial Subsidiary Guarantors will consist of all of the Restricted Subsidiaries (other than the Restricted Subsidiaries organized under the laws of the PRC (the “PRC Non-Guarantor Subsidiaries”), Ace Start Enterprises Limited (佳始企業有限公司), Bowen Asset Management (Cayman) Limited (寶運資產管理(開曼)有限公司), Bowen Asset Management Limited (寶運資產管理有限公司), Brave Sigh Limited (勇志有限公司), Brave Sigh (Hong Kong) Limited (勇志(香港)有限公司),

Central Sino Investments Limited (正漢投資有限公司), Central Sino Investments (Hong Kong) Limited (正漢投資(香港)有限公司), Crest Sum Limited (總冠有限公司), Crest Sum (Hong Kong) Limited (總冠(香港)有限公司), Glorious Model Limited (榮程有限公司), Glorious Model (Hong Kong) Limited (榮程(香港)有限公司), Goldenform Investments Limited (崇堅投資有限公司), Greater Sail Limited (順帆有限公司), Greater Sail (Hong Kong) Limited (順帆(香港)有限公司), Hao Xi Holdings Limited (豪熙控股有限公司), Hao Xi Holdings (Hong Kong) Limited (豪熙控股(香港)有限公司), Heroic Lead Limited (傑領有限公司), Heroic Lead (Hong Kong) Limited (傑領(香港)有限公司), Huang Da Limited (煌達有限公司), Huang Da (Hong Kong) Limited (煌達(香港)有限公司), Kaisa Logistic Group Limited (佳兆業物流集團有限公司), Kaisa Technology Limited (佳兆業科技有限公司), Kaisa Ventures Limited (佳兆業創投有限公司), Kaisa Ventures (Hong Kong) Limited (佳兆業創投(香港)有限公司), Luxuriant Year Limited (茂年有限公司), Luxuriant Year (Hong Kong) Limited (茂年(香港)有限公司), Onfair Asia Pacific Limited (安信亞太有限公司), Peiyu Limited (沛裕有限公司), Peiyu (Hong Kong) Investments Limited (沛裕(香港)投資有限公司), Pointer Star Limited (尖星有限公司), Portwood Global Limited (港活環球有限公司), Portwood Global (Hong Kong) Limited (港活環球(香港)有限公司), Richedge Limited (博鋒有限公司), Richedge (Hong Kong) Limited (博鋒(香港)有限公司), Right Year Developments Limited (偉年發展有限公司), Right Year Developments (Hong Kong) Limited (偉年發展(香港)有限公司), Soarhigh Developments Limited (展升發展有限公司), Soarhigh Developments (Hong Kong) Limited (展升發展(香港)有限公司), Splendid Maple Limited (燁楓有限公司), Splendid Maple (Hong Kong) Limited (燁楓(香港)有限公司), Superb Mega Limited (超旭有限公司), Super Winful Limited (超全有限公司), Tong Sheng Investments Limited (通升投資有限公司), Tong Sheng Investments (Hong Kong) Limited (通升投資(香港)有限公司), Yuan Yuan Investment Company Limited (遠源投資有限公司), Action Enrich Limited, Action Enrich (Hong Kong) Investment Limited, Sunny Harvest Investments Limited, Sunny Harvest Investments (Hong Kong) Limited, Sunny Sino Investments Limited, Sunny Sino Investments (Hong Kong) Limited, Camilla Catering Group (HK) Company Limited (嘉美軒飲食集團(香港)有限公司), Kaisa Group (International) Holdings Company Limited (佳兆業集團控股(國際)有限公司), Kaisa Medical Group Company Limited (佳兆業醫療集團有限公司), Kaisa Tea Group (Hong Kong) Company Limited (佳兆業茶葉集團(香港)有限公司), Sinoluck Investments Holdings (HK) Limited and Sinoluck Investments Holdings Limited (華運投資控股有限公司) (collectively, the “Other Non-Guarantor Subsidiaries” and, together with the PRC Non-Guarantor Subsidiaries, the “Existing Non-Guarantor Subsidiaries”). The initial Subsidiary Guarantors do not have significant operations or assets.

None of the existing or future Restricted Subsidiaries organized under the laws of the PRC or Exempted Subsidiaries will provide a Subsidiary Guarantee or JV Subsidiary Guarantee at any time in the future.

Each future Subsidiary of the Company (other than Subsidiaries organized under the laws of the PRC and Exempted Subsidiaries) will provide a guarantee of the Notes as soon as practicable after such Subsidiary becomes a Restricted Subsidiary or ceases to be an Exempted Subsidiary. Notwithstanding the foregoing sentence, the Company may elect to have any future Restricted Subsidiary (and its Restricted Subsidiaries) organized outside the PRC not provide a Subsidiary Guarantee or a JV Subsidiary Guarantee at the time such entity becomes a Restricted Subsidiary or ceases to be an Exempted Subsidiary so long as such Restricted Subsidiary does not guarantee any other Indebtedness of the Company or any other Restricted Subsidiary; *provided* that, after giving effect to the Consolidated Assets of such Restricted Subsidiary, the Consolidated Assets of all Restricted Subsidiaries organized outside the PRC (other than Exempted Subsidiaries) that are not Subsidiary Guarantors or JV Subsidiary Guarantors do not account for more than 20% of Total Assets.

A Subsidiary Guarantee may be released or replaced in certain circumstances. See “Description of the 2020 Notes — The Subsidiary Guarantees and the JV Subsidiary Guarantees — Release of the Subsidiary Guarantees and JV Subsidiary Guarantees,” “Description of the 2021 Notes — The Subsidiary Guarantees and the JV Subsidiary Guarantees — Release of the Subsidiary Guarantees and JV Subsidiary Guarantees,” “Description of the 2022 Notes — The Subsidiary Guarantees and the JV Subsidiary Guarantees — Release of the Subsidiary Guarantees and JV Subsidiary Guarantees,” and “Description of the 2024 Notes — The Subsidiary Guarantees and the JV Subsidiary Guarantees — Release of the Subsidiary Guarantees and JV Subsidiary Guarantees.” In the case of a Subsidiary Guarantor with respect to which the Company or any of its Restricted Subsidiaries is proposing to sell, whether through the sale of existing shares or the issuance of new shares, no less than 20% of the Capital Stock of such Subsidiary Guarantor, the Company may (i) release the Subsidiary Guarantees provided by such Subsidiary Guarantor and each of its Restricted Subsidiaries organized outside the PRC, (ii) discharge the pledge of the Capital Stock granted by such Subsidiary Guarantor, and (iii) discharge the pledge of Capital Stock made by the Company or any Subsidiary Guarantor over the shares it owns in such Subsidiary Guarantor, *provided* that after the release of such Subsidiary Guarantees, the Consolidated Assets of all Restricted Subsidiaries organized outside the PRC (other than Exempted Subsidiaries) that are not Subsidiary Guarantors or JV Subsidiary Guarantors (including the Subsidiary Guarantors whose Subsidiary Guarantees were released) do not account for more than 20% of Total Assets.

Ranking of Subsidiary

- Guarantees . . . . . The Subsidiary Guarantee of each Subsidiary Guarantor is:
- a general obligation of such Subsidiary Guarantor;
  - is effectively subordinated to secured obligations of such Subsidiary Guarantor, to the extent of the value of the assets serving as security therefor;
  - 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* with all unsecured, unsubordinated Indebtedness of such Subsidiary Guarantor (subject to any priority rights of such unsubordinated Indebtedness pursuant to applicable law); and
  - effectively subordinated to all existing and future obligations of the Non-Guarantor Subsidiaries.

After the pledge of the Collateral by the Company and the Subsidiary Guarantor Pledgors as described below under the caption “Security to be Granted,” subject to the limitations described in “Risk Factors — Risks Relating to the Subsidiary Guarantees and the Collateral,” the Subsidiary Guarantee of each Subsidiary Guarantor Pledgor will be secured by a pledge of the Collateral as described below under the caption “Security to be Granted” and will:

- be entitled to a lien on the Collateral pledged by such Subsidiary Guarantor Pledgor (subject to any Permitted Liens and the Intercreditor Agreement); and
- rank effectively senior in right of payment to unsecured obligations of such Subsidiary Guarantor Pledgor with respect to the value of the Collateral pledged by such Subsidiary Guarantor Pledgor securing such Subsidiary Guarantee (subject to any priority rights of such unsecured obligations pursuant to applicable law).

Ranking of JV Subsidiary

- Guarantees . . . . . If any is provided, the JV Subsidiary Guarantee of each JV Subsidiary Guarantor:
- will be a general obligation of such JV Subsidiary Guarantor;
  - will be enforceable only up to the JV Entitlement Amount;
  - will be effectively subordinated to secured obligations of such JV Subsidiary Guarantor, to the extent of the value of the assets serving as security therefor;

- subject to the limitation to the JV Entitlement Amount, will be senior in right of payment to all future obligations of such JV Subsidiary Guarantor expressly subordinated in right of payment to such JV Subsidiary Guarantee; and
- subject to the limitation to the JV Entitlement Amount, will rank at least *pari passu* with all other unsecured, unsubordinated Indebtedness of such JV Subsidiary Guarantor (subject to any priority rights of such unsubordinated Indebtedness pursuant to applicable law).

The JV Subsidiary Guarantees of each JV Subsidiary Guarantor will not be secured.

Security to be Granted . . . . .

The Company has agreed for the benefit of the holders of the Notes, to pledge, and cause each initial Subsidiary Guarantor Pledgor to pledge, the Capital Stock of the initial Subsidiary Guarantors (the “Collateral”) owned by it (subject to Permitted Liens and the Intercreditor Agreement) in order to secure the obligations of the Company under the Notes and the Indentures and of each such initial Subsidiary Guarantor Pledgor under its Subsidiary Guarantee.

None of the Capital Stock of the Non-Guarantor Subsidiaries will be pledged on the Original Issue Date or at any time in the future (unless they cease to be Non-Guarantor Subsidiaries). In addition, none of the Capital Stock of any future Restricted Subsidiary that may be organized under the laws of the PRC will be pledged at any time in the future. If any JV Subsidiary Guarantor is established, the Capital Stock of such JV Subsidiary Guarantor owned by the Company or any Subsidiary Guarantor will be pledged to secure the obligations of the Company under the Notes and the Indentures, and of such Subsidiary Guarantor under its Subsidiary Guarantee, as the case may be, in the manner described above. However, none of the JV Subsidiary Guarantors will provide a Security Document pledging the Capital Stock of its direct or indirect Restricted Subsidiaries as security in favor of the Common Security Trustee for the benefit of the Trustee and the Holders.



Intercreditor Agreement . . . . .	<p>The Company, the Subsidiary Guarantor Pledgors, Wilmington Trust, National Association, as the trustee under the Series A Notes, the Series B Notes, the Series C Notes, the Series D Notes and the Series E Notes and U.S. Bank National Association, as trustee under the Mandatorily Exchangeable Bonds and the Common Security Trustee, respectively, entered into an amended and restated intercreditor agreement dated July 21, 2016 (as so amended and supplemented from time to time, the “Intercreditor Agreement”), to which the Trustee will accede on the Original Issue Date. The Intercreditor Agreement provides that the security interests in the Collateral will be shared on a <i>pari passu</i> basis among (i) the trustee under the Mandatorily Exchangeable Bonds, (ii) the trustee for the benefit of the holders of each series of Existing HY Notes, (iii) the Trustee for the benefit of the holders of each series of the Notes and (iv) any other creditors with respect to future Permitted <i>Pari Passu</i> Secured Indebtedness.</p>
Use of Proceeds . . . . .	<p>The Company intends to use the net proceeds of the offering of the Notes to redeem the remaining Existing Notes and the Mandatorily Exchangeable Bonds (or any Exchange Convertible Bonds issued pursuant to the terms of the Mandatorily Exchangeable Bonds) in accordance with the indentures governing the Existing Notes and the trust deed governing the Mandatorily Exchangeable Bonds.</p>
Optional Redemption . . . . .	<p>At any time prior to the maturity date of the 2020 Notes, the Company may at its option redeem the 2020 Notes, in whole but not in part, at a redemption price equal to 100% of the principal amount of the 2020 Notes, plus the Applicable Premium as of, and accrued and unpaid interest, if any, to the redemption date. In addition, at any time prior to the maturity date of the 2020 Notes, the Company may redeem up to 35% of the aggregate principal amount of the 2020 Notes with the Net Cash Proceeds of one or more sales of Common Stock of the Company in an Equity Offering at a redemption price of 107.25% of the principal amount of the 2020 Notes, plus accrued and unpaid interest, if any, to the redemption date.</p> <p>At any time prior to the maturity date of the 2021 Notes, the Company may at its option redeem the 2021 Notes, in whole but not in part, at a redemption price equal to 100% of the principal amount of the 2021 Notes, plus the Applicable Premium as of, and accrued and unpaid interest, if any, to the redemption date. In addition, at any time prior to the maturity date of the 2021 Notes, the Company may redeem up to 35% of the aggregate principal amount of the 2021 Notes with the Net Cash Proceeds of one or more sales of Common Stock of the Company in an Equity Offering at a redemption price of 107.875% of the principal amount of the 2021 Notes, plus accrued and unpaid interest, if any, to the redemption date.</p>

At any time on or after June 30, 2020, the Company may redeem the 2022 Notes, in whole or in part, at redemption prices specified under “Description of the 2022 Notes — Optional Redemption.” At any time prior to June 30, 2020, the Company may at its option redeem the 2022 Notes, in whole but not in part, at a redemption price equal to 100% of the principal amount of the 2022 Notes, plus the Applicable Premium as of, and accrued and unpaid interest, if any, to the redemption date. In addition, at any time prior to June 30, 2020, the Company may redeem up to 35% of the aggregate principal amount of the 2022 Notes with the Net Cash Proceeds of one or more sales of Common Stock of the Company in an Equity Offering at a redemption price of 108.50% of the principal amount of the 2022 Notes, plus accrued and unpaid interest, if any, to the redemption date.

At any time on or after June 30, 2021, the Company may redeem the 2024 Notes, in whole or in part, at redemption prices specified under “Description of the 2024 Notes — Optional Redemption.” At any time prior to June 30, 2021, the Company may at its option redeem the 2024 Notes, in whole but not in part, at a redemption price equal to 100% of the principal amount of the 2024 Notes, plus the Applicable Premium as of, and accrued and unpaid interest, if any, to the redemption date. In addition, at any time prior to June 30, 2021, the Company may redeem up to 35% of the aggregate principal amount of the 2024 Notes with the Net Cash Proceeds of one or more sales of Common Stock of the Company in an Equity Offering at a redemption price of 109.375% of the principal amount of the 2024 Notes, plus accrued and unpaid interest, if any, to the redemption date.

Repurchase of Notes Upon a  
Change of Control . . . . .

Not later than 30 days following a Change of Control, the Company will make an offer to purchase all outstanding Notes at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest, if any, to the date of repurchase.

Additional Amounts . . . . . All payments on the Notes or under the Subsidiary Guarantees or the JV Subsidiary Guarantees 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 Company, a successor of the Company or an applicable Subsidiary Guarantor or JV Subsidiary Guarantor is organized or resident for tax purposes or any jurisdiction from or through which payment is made (or any political subdivision or taxing authority thereof or therein), unless such withholding or deduction is required by law or by regulation or governmental policy having the force of law. Subject to certain exceptions and as more fully described herein, in the event that any such withholding or deduction is so required, the Company, a successor of the Company or the applicable Subsidiary Guarantor or JV Subsidiary Guarantor, as the case may be, will pay such Additional Amounts as will result in receipt of such amounts as would have been received by the holder of each Note had no such withholding or deduction been required. See “Description of the 2020 Notes — Additional Amounts,” “Description of the 2021 Notes — Additional Amounts,” “Description of the 2022 Notes — Additional Amounts” and “Description of the 2024 Notes — Additional Amounts.”

Redemption for Taxation  
Reasons . . . . . Subject to certain exceptions and as more fully described herein, the Company may redeem the Notes, in whole but not in part, at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest, if any, to the date of redemption, if the Company, a Surviving Person, a Subsidiary Guarantor or a JV Subsidiary Guarantor would be obligated to pay certain Additional Amounts as a result of certain changes in specified tax laws or other circumstances. See “Description of the 2020 Notes — Redemption for Tax Reasons,” “Description of the 2021 Notes — Redemption for Tax Reasons,” “Description of the 2022 Notes — Redemption for Tax Reasons” and “Description of the 2024 Notes — Redemption for Tax Reasons.”

Covenants . . . . . The Notes, the Indenture and the Subsidiary Guarantees will limit the Company’s ability and the ability of its Restricted Subsidiaries to, among other things:

- incur additional Indebtedness and issue preferred stock;
- make investments or other Restricted Payments;
- guarantee Indebtedness;
- enter into certain transactions with affiliates;
- create Liens;
- enter into Sale and Leaseback Transactions;
- sell assets;

	<ul style="list-style-type: none"> <li>• enter into agreements that restrict the Company’s Restricted Subsidiaries’ ability to pay dividends;</li> <li>• issue and sell Capital Stock of Restricted Subsidiaries;</li> <li>• effect a consolidation or merger; and</li> <li>• engage in different business activities.</li> </ul> <p>All of these limitations are subject to a number of important qualifications and exceptions. See “Description of the 2020 Notes — Certain Covenants,” “Description of the 2021 Notes — Certain Covenants,” “Description of the 2022 Notes — Certain Covenants” and “Description of the 2024 Notes — Certain Covenants.”</p>
Transfer Restrictions . . . . .	The Notes, the Subsidiary Guarantees and the JV Subsidiary Guarantees (if any) will not be registered under the Securities Act or under any state securities laws of the United States and will be subject to customary restrictions on transfer and resale. See “Transfer Restrictions.”
Form, Denomination and Registration . . . . .	The Notes will be issued only in fully registered form, without coupons, in denominations of US\$200,000 and integral multiples of US\$1,000 in excess thereof and will be initially represented by one or more global notes deposited with a common depository and registered in the name of the common depository or its nominee for the accounts of Euroclear or Clearstream.
Book-Entry . . . . .	The Notes will be issued in book-entry form through the facilities of Euroclear or Clearstream for the accounts of its participants. For a description of certain factors relating to clearance and settlement, see “Description of the 2020 Notes — Book-Entry; Delivery and Form,” “Description of the 2021 Notes — Book-Entry; Delivery and Form,” “Description of the 2022 Notes — Book-Entry; Delivery and Form” and “Description of the 2024 Notes — Book-Entry; Delivery and Form.”
Delivery of the Notes . . . . .	The Company expects to make delivery of the Notes, against payment in same-day funds on or about June 30, 2017, which is expected to be the sixth business day following the date of this offering memorandum. See “Plan of Distribution.”
Trustee . . . . .	Citicorp International Limited
Paying and Transfer Agent and Registrar . . . . .	Citibank, N.A., London Branch
Listing and Trading . . . . .	Approval in-principle has been received from the SGX-ST for the listing and quotation of the Notes on the SGX-ST. For so long as the Notes are listed on the SGX-ST and the rules of the SGX-ST so require, the Notes will be traded on the SGX-ST in a minimum board lot size of S\$200,000 (or its equivalent in foreign currencies).

Governing Law . . . . . The Notes, the Subsidiary Guarantees and the Indenture will be governed by and will be construed in accordance with the laws of the State of New York.

Risk Factors. . . . . For a discussion of certain factors that should be considered in evaluating an investment in the Notes, see “Risk Factors.”

Identification Numbers  
for the Notes. . . . .

	<u>ISIN</u>	<u>Common Code</u>
The 2020 Notes . . . . .	XS1627597013	162759701
The 2021 Notes. . . . .	XS1627597286	162759728
The 2022 Notes. . . . .	XS1627597955	162759795
The 2024 Notes. . . . .	XS1627598094	162759809

### Summary Consolidated Financial and Other Data

The following table presents our summary financial and other data. The summary consolidated statement of profit and loss and other comprehensive income data for 2015 and 2016 and the summary consolidated statement of financial position data as of December 31, 2015 and 2016 set forth below (except for EBITDA data) have been derived from our consolidated financial statements as of and for the year ended December 31, 2016, as audited by Grant Thornton Hong Kong Limited, included elsewhere in this offering memorandum. Our financial results for any past period are not, and should not be taken as, an indication of our performance, financial position or results of operations in future periods. Our financial statements have been prepared and presented in accordance with HKFRS, which differ in certain respects from generally accepted accounting principles in other jurisdictions. The summary financial data below should be read in conjunction with the section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and the notes to those statements included elsewhere in this offering memorandum.

#### Summary Consolidated Statement of Profit and Loss and Other Comprehensive Income and Other Financial Data

	For the year ended December 31,		
	2015	2016	2016
	(RMB in thousands)	(RMB in thousands)	(US\$ in thousands)
			(unaudited)
Revenue . . . . .	10,926,535	17,771,517	2,559,631
Cost of sales . . . . .	(10,583,158)	(15,459,546)	(2,226,638)
<b>Gross profit</b> . . . . .	<b>343,377</b>	<b>2,311,971</b>	<b>332,993</b>
Other losses, net . . . . .	(216,339)	(560,512)	(80,731)
Selling and marketing costs . . . . .	(559,419)	(842,695)	(121,373)
Administrative expenses . . . . .	(1,066,169)	(1,745,262)	(251,370)
Changes in fair value of investment properties	3,824,520	4,161,371	599,362
Changes in fair value of financial derivatives .	(42,219)	(21,500)	(3,097)
<b>Operating profit</b> . . . . .	<b>2,283,751</b>	<b>3,303,373</b>	<b>475,784</b>
Share of results of associates . . . . .	(3,586)	(40,578)	(5,844)
Share of results of joint ventures . . . . .	—	8,223	1,184
Finance costs, net . . . . .	(2,106,444)	(2,120,366)	(305,396)
Gain on extinguishment of financial liabilities . . . . .	—	716,143	103,146
<b>Profit before income tax</b> . . . . .	<b>173,721</b>	<b>1,866,795</b>	<b>268,874</b>
Income tax expenses . . . . .	(1,428,205)	(2,214,306)	(318,926)
<b>Loss for the year</b> . . . . .	<b>(1,254,484)</b>	<b>(347,511)</b>	<b>(50,052)</b>



	For the year ended December 31,		
	2015	2016	2016
	(RMB in thousands)	(RMB in thousands)	(US\$ in thousands) (unaudited)
<b>Other comprehensive loss, including reclassification adjustments</b>			
Items that will be reclassified subsequently to profit or loss			
Changes in fair value of available-for-sale financial assets, net of tax . . . . .	—	(210)	(30)
<b>Other comprehensive loss for the year, including reclassification adjustments . . .</b>	<u>—</u>	<u>(210)</u>	<u>(30)</u>
<b>Total comprehensive loss for the year . . . . .</b>	<u>(1,254,484)</u>	<u>(347,721)</u>	<u>(50,082)</u>
<b>(Loss)/profit for the year attributable to:</b>			
Equity holders of the Company . . . . .	(1,121,577)	(612,380)	(88,201)
Non-controlling interests . . . . .	(132,907)	264,869	38,149
	<u>(1,254,484)</u>	<u>(347,511)</u>	<u>(50,052)</u>
<b>Total comprehensive (loss)/income attributable to:</b>			
Equity holders of the Company . . . . .	(1,121,577)	(612,590)	(88,231)
Non-controlling interests . . . . .	(132,907)	264,869	38,149
	<u>(1,254,484)</u>	<u>(347,721)</u>	<u>(50,082)</u>
<b>Other Financial Data</b>			
EBITDA <sup>(1)</sup> . . . . .	(1,145,317)	1,666,885	240,081
EBITDA margin <sup>(2)</sup> . . . . .	(10.5)%	9.4%	9.4%

- (1) *EBITDA for any period consists of profit or loss for the period, changes in fair value of investment properties, changes in fair value of financial derivatives, net finance cost (excluding net exchange gains/losses), capitalized interest charged to cost of sales, income tax expense, depreciation, amortization of intangible assets, amortization of land use rights, share-based payments and write down of completed properties held for sale and provisions for properties under development. EBITDA is not a standard measure under HKFRS. EBITDA is a widely used financial indicator of a company's ability to service and incur debt. EBITDA should not be considered in isolation or construed as an alternative to cash flows, net income or any other measure of financial performance or as an indicator of our operating performance, liquidity, profitability or cash flows generated by operating, investing or financing activities. In evaluating EBITDA, we believe that investors should consider, among other things, the components of EBITDA such as sales and operating expenses and the amount by which EBITDA exceeds capital expenditures and other charges. We have included EBITDA because we believe it is a useful supplement to cash flow data as a measure of our performance and our ability to generate cash flow from operations to cover debt service and taxes. EBITDA presented herein may not be comparable to similarly titled measures presented by other companies. Investors should not compare our EBITDA to EBITDA presented by other companies because not all companies use the same definition. See the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations — Non-GAAP Financial Measures" for a reconciliation of our profit or loss for the year under HKFRS to our definition of EBITDA. Investors should also note that EBITDA as presented herein may be calculated differently from Consolidated EBITDA as defined and used in the Indenture governing the Notes. Interest expense excludes amounts capitalized. See the sections entitled "Description of the 2020 Notes — Definitions," "Description of the 2021 Notes — Definitions," "Description of the 2022 Notes — Definitions" and "Description of the 2024 Notes — Definitions" for a description of the manner in which Consolidated EBITDA is defined for purposes of the Indentures governing the Notes.*
- (2) *EBITDA margin is calculated by dividing EBITDA by revenue.*

#### Summary Consolidated Statement of Financial Position Data

	As of December 31,		
	2015	2016	2016
	(RMB in thousands)	(RMB in thousands)	(US\$ in thousands) (unaudited)
<b>Assets</b>			
Non-current assets . . . . .	22,478,677	34,602,673	4,983,822
Current assets . . . . .	105,067,998	131,219,294	18,899,509
Total assets . . . . .	<u>127,546,675</u>	<u>165,821,967</u>	<u>23,883,331</u>
<b>Equity and Liabilities</b>			
Non-current liabilities . . . . .	41,568,239	83,977,948	12,095,340
Current liabilities . . . . .	72,778,791	58,797,620	8,468,619
Total liabilities . . . . .	114,347,030	142,775,568	20,563,959
Total equity . . . . .	13,199,645	23,046,399	3,319,372
Total equity and liabilities . . . . .	<u>127,546,675</u>	<u>165,821,967</u>	<u>23,883,331</u>

## RISK FACTORS

*You should carefully consider the risks and uncertainties described below and other information contained in this offering memorandum before making an investment decision. The risks and uncertainties described below may not be the only ones that we face. Additional risks and uncertainties that we are not aware of or that we currently believe are immaterial may also adversely affect our business, financial condition or results of operations. If any of the possible events described below occur, our business, financial condition or results of operations could be materially and adversely affected. In such case, we may not be able to satisfy our obligations under the Notes, and you could lose all or part of your investment.*

### **Risks Relating to the Business**

***We are heavily dependent on the performance of the PRC real estate market, particularly in the Pearl River Delta region***

Our business and prospects depend on the performance of the real estate market in China and, in particular, in the Pearl River Delta region. Any real estate market downturn in China generally or, in particular, in the Pearl River Delta region and other cities and regions where we operate, could adversely affect our business, results of operations and financial condition. As of December 31, 2016, among our 101 property development projects, 47 were located in the Pearl River Delta region, 10 were located in the Western China region, seven were located in the Central China region, 22 were located in the Yangtze River Delta region, and 15 were located in the Pan-Bohai Bay Rim. We also intend to enter into other regions and cities in China. We cannot assure you that the demand for new properties in the Pearl River Delta region and other regions and cities in China where we operate or intend to expand will continue to grow or that prices will not deteriorate. In addition, fluctuations of supply and demand in the real estate market in China are caused by economic, social, political, regulatory and other factors that are outside of our control and we cannot assure you that there will not be over-supply of properties or an economic downturn in the property sector in the Pearl River Delta region and other cities and regions of China where we operate or intend to expand. Any such over-supply or economic downturn may result in a slow down in property sales or downward pressure on property prices regionally or nationwide. Any adverse development in the real estate market in the Pearl River Delta region or other regions and cities in China where we operate or may operate in the future could have a material and adverse effect on our business, results of operations and financial condition.

***Our business is subject to extensive governmental regulation and, in particular, we are susceptible to policy changes in the PRC property sector***

Our business is subject to extensive governmental regulation and the macroeconomic control measures implemented by the PRC government from time to time. As with other PRC property developers, we must comply with various requirements mandated by the PRC laws and regulations, including the policies and procedures established by local authorities designated to implement such laws and regulations. In particular, the PRC government exerts considerable direct and indirect influence on the development of the PRC property sector by imposing industry policies and other economic measures, such as control over the supply of land for property development, control of foreign exchange, property financing, taxation and foreign investment. Through these policies and measures, the PRC government may restrict or reduce land available for property development, raise benchmark interest rates of commercial banks, place additional limitations on the ability of commercial banks to make loans to property developers and property purchasers, impose additional taxes and levies on property sales and restrict foreign investment in the PRC property sector. In recent years, the PRC Government has introduced a series of regulations and policies designed to generally control the growth of the property market, including, among others:

- strictly enforcing the idle land related laws and regulations;
- restricting the grant or extension of revolving credit facilities to property developers that hold a large amount of idle land and vacant commodity properties;
- prohibiting commercial banks from lending funds to real estate developers with an internal capital ratio of less than a certain prescribed percentage; and
- restricting PRC commercial banks from granting loans to property developers for the purpose of paying land grant premiums.

In particular, the PRC Government also introduced the following policies, among others, to specifically control the growth of the residential property market:

- limiting the maximum amount of monthly mortgage and the maximum amount of total monthly debt service payments of an individual borrower;
- imposing a business tax levy on the sales proceeds for second-hand transfers subject to the length of holding period and type of properties;
- increasing the minimum amount of down payment of the purchase price of the residential property of a family;
- tightening the availability of individual housing loans in the property market to individuals and their family members with more than one residential property;
- imposing a 20.0% individual income tax on the gain from the sale of second-hand properties; and
- limiting the availability of individual housing provident fund loans for the purchase of second (or more) residential properties by employees and their family members.

The PRC government has also in recent years announced a series of other measures designed to stabilize the growth of the PRC economy and to stabilize the growth of specific sectors, including the property market, to a more sustainable level. In particular, since the second half of 2016, the local governments in certain cities including without limitation Shenzhen, Guangzhou, Foshan, Dongguan, Huizhou, Zhuhai, Chengdu, Qingdao, Changsha, Wuhan, Changzhou, Shanghai, Suzhou, Hangzhou and Nanjing, where we have property projects, have issued new property market control policies, including restoring or strengthening the restriction on purchases of residential properties and tightening credit policy. From time to time, local governments may adopt more stringent policies to regulate the property market. For instance, Shanghai has recently launched a new campaign to clamp down on so-called commercial-title apartments by which the approval of all new commercial-title apartment projects is to be suspended, while the construction and sale of commercial and office projects will be strictly regulated. Property developers will be required to rectify any unsanctioned modifications to their original designs before the release of the commercial and office projects. We cannot assure you that our projects in Shanghai will not be affected by such new policy. Other political, economic and social factors may also lead to further adjustments and changes of such policies. We cannot assure you that the PRC government will not adopt additional and more stringent industry policies, regulations and measures in the future, nor can we assure you when or whether the existing policies will be eased or reversed. If we fail to adapt our operations to new policies, regulations and measures that may come into effect from time to time with respect to the property industry, or such policy changes disrupt our business, reduce our sales or average selling prices, or cause us to incur additional costs, our business prospects, results of operations and financial condition may be materially and adversely affected. For more information on the governmental regulation, policies and measures, see “Regulations.”

See “— Risks Relating to the Real Estate Industry in China — The PRC government may adopt further measures to slow down growth in the property sector” for more risks and uncertainties relating to the extensive PRC regulations.

***We may not always be able to obtain land reserves at a commercially acceptable cost, or at all, that are suitable for development***

We derive our revenue principally from the sale of properties that we have developed. Therefore, we must maintain or increase our land reserves in strategic locations at an appropriate pace in order to ensure sustainable business growth. Our ability to identify and acquire suitable development sites is subject to a number of factors, some of which are beyond our control.

The supply of substantially all of the land in China is controlled by the PRC government. The land supply policies adopted by the PRC government directly impact our ability to acquire land use rights for development and our costs of such acquisitions. In recent years, the PRC central and local governments have implemented various measures to regulate the means by which property developers may obtain land. The PRC government also controls land supply through zoning, land usage regulations and other means. All these measures further intensify the competition for land in China among property developers. The implementation of these regulations may increase land transfer prices and require property developers to maintain a

higher level of working capital. See “Regulations — Land for Property Development” for information on the regulatory procedures and restrictions relating to land acquisition in PRC.

In addition, we cannot assure you that the parcels of land we have acquired to date will appreciate in value, or that we will continue to be able to acquire land of sufficient size and with an appropriate scope of usage in desirable locations at a commercially acceptable cost, or at all. If we fail to acquire sufficient land reserves in a timely manner and on acceptable terms, or at all, our business, results of operations, financial condition and prospects may be materially and adversely affected.

***We may not always be able to obtain land use rights certificates with respect to certain parcels of land in connection with which we have entered into various contractual arrangements***

We may not always be able to obtain land use rights certificates with respect to certain parcels of land. We have entered into various land grant contracts with the PRC government. As of December 31, 2016, the deposits paid in respect of the abovementioned parcels of land totalled approximately RMB17,694 million (US\$2,548 million). We have not obtained the land use rights certificates with respect to these parcels of land. We cannot assure you that the relevant PRC government authorities will grant us the appropriate land use rights or issue the relevant land use rights certificates in respect of these parcels of land or in respect of other land we may contract to acquire in the future, in a timely manner, or at all. Nor can we assure you that our contractual arrangements will eventually result in our acquisition of any land use rights. As these contractual arrangements are subject to various government approvals that involve relatively complex procedures, it is not uncommon to take years to complete the acquisition of the underlying land, if at all. If we fail to obtain, or experience material delay in obtaining, the land use rights certificates with respect to any parcels of land we have contracted or may contract to acquire in the future, in a timely manner, or at all, our business, results of operations and financial condition may be materially and adversely affected. Furthermore, as of December 31, 2016, our total contracted commitment for property development expenditures was approximately RMB27,186.3 million (US\$3,915.6 million). We cannot assure you that the transactions as contemplated in the relevant agreement can be completed, any refund of our prepayments will be provided in a timely manner or at all. If we fail to complete acquisition and obtain land use rights certificates or to obtain refunds, our financial condition, cash flow and results of operations and business may be materially and adversely affected.

***Our acquisition of companies holding land use rights may be unsuccessful and our acquisition agreements may not provide us with sufficient protection against potential liability***

We intend to continue to acquire the controlling equity interests in companies holding land use rights as a means of expanding our business and land bank. However, we may face strong competition during the acquisition process and we may not be successful in selecting or valuing target companies or their land appropriately. As a result, we may be unable to complete such acquisitions at reasonable cost, or at all. In addition, we may have to allocate additional capital and human resources to integrate the acquired business into our operations. We also cannot assure you that the integration of any acquired company will be successfully completed within a reasonable period of time, or at all, or that it will generate the economic benefit that we expected.

***We may not have adequate financing to fund our land acquisitions and property projects***

Property development is capital intensive. We finance our property projects primarily through a combination of internal funds, construction loans, proceeds from pre-sales, capital markets activities and other methods of financing. As of December 31, 2016, our total borrowings amounted to RMB87,536.8 million (US\$12,607.9 million). Our ability to procure adequate and suitable financing for acquisitions of land and/or companies holding land use rights for property developments depends on a number of factors some of which are beyond our control, including general economic conditions, our financial strength and performance, credit availability from financial institutions, cost of borrowing and monetary policies in China.

Various PRC regulations restrict our ability to raise capital through external financing and other methods, including without limitation, the following:

- We cannot pre-sell uncompleted units in a project prior to achieving certain development milestones;
- PRC banks are prohibited from extending loans to real estate companies for the purposes of funding the purchase of land use rights;

- We cannot borrow from a PRC bank for a particular project unless we obtain the land use rights certificate, construction land planning permit, construction works planning permit and construction works commencement permit for that project;
- PRC banks are restricted from granting loans for the development of luxury residential properties;
- Property developers are strictly prohibited from using the proceeds from a loan obtained from a local bank to fund property developments outside the region where that bank is located;
- PRC banks are prohibited from accepting properties that have been vacant for more than three years as collateral for loans;
- restricting the granting or extension of revolving credit facilities to property developers that hold a large amount of idle land and vacant commodity properties; and
- restricting the granting or extension of revolving credit facilities to property developers that have a history of being included in land-related abuses, including misconduct related to changing the use of land, postponing construction or completion of projects or hoarding property.

In November 2009, the PRC government raised the minimum down payment to 50% of the total land premium and required the land premium to be fully paid within one year after the signing of a land contract, subject to limited exceptions. In March 2010, the PRC government further tightened this requirement by setting a minimum price for land transfers of at least 70% of the benchmark price for land in the surrounding locality and requiring a bidding deposit of at least 20% of the applicable minimum land transfer price. Additionally, a land grant contract must be entered into within 10 working days of closing and the 50% down payment (taking into account any deposits previously paid) paid within one month of signing the land grant contract, with the balance to be paid in full within one year of the contract date in accordance with provisions of such contract, subject to limited exceptions. In April 2017, the PRC government required that the examination system of land acquisition capital should be adopted by local authorities to ensure that property developers are acquiring land with internal funds.

These government actions and policy initiatives limit our ability to use bank loans to finance our acquisitions and property development projects. The PRC government, moreover, could introduce other initiatives which may further limit our access to capital, and consequently limit our ability to obtain bank loans, the net proceeds from this offering or other forms of financing. If we fail to secure adequate financing or renew our existing credit facilities prior to their expiration, or if the PRC government adopts further restrictive credit policies in the future, our business, results of operations and financial condition may be materially and adversely affected.

In addition, our ability to obtain adequate financing may be affected by our lack of credit ratings from internationally recognized rating agencies. In January 2015, Standard & Poor's Ratings Services lowered its corporate rating on us to SD from BB- with a negative outlook, and Moody's Investors Service lowered its corporate credit rating on us to Ca from B3 with a negative outlook. In March 2015, Standard & Poor's Ratings Services further downgraded its corporate rating on us to D from SD. In June 2015, Standard & Poor's Ratings Services discontinued its corporate rating on us and Moody's Investors Service withdrew its corporate rating in August 2015. Without credit ratings from internationally recognized rating agencies, we may not be able to obtain adequate financings at commercially acceptable costs, or at all.

***Our LAT provisions and prepayments may not be sufficient to meet our LAT obligations***

In accordance with the provisions of the Provisional Regulations of the People's Republic of China on Land Appreciation Tax ("LAT") (《中華人民共和國土地增值稅暫行條例》) and the related implementation rules, all entities and individuals that receive income from the sale or transfer of land use rights, buildings and ancillary facilities are subject to LAT at progressive rates ranging from 30% to 60% of the appreciated value of such properties. There is an exemption for the sale of ordinary residential properties if the appreciated value does not exceed 20% of the total deductible expense items allowed under the relevant LAT regulations. This exemption is not available for sales of luxury residential properties, villas and commercial properties. It is not clear whether the residential portion of our mixed residential and



commercial developments will be eligible for the exemption available to ordinary residential properties. The State Administration of (“SAT”) Taxation clarified LAT settlement to some extent in its Notice on the Administration of the Settlement of Land Appreciation Tax of Property Development Enterprises (《關於房地產開發企業土地增值稅清算管理有關問題的通知》) effective February 1, 2007. The Notice clarifies that provincial and local tax bureaus may formulate their own implementing rules and determine how LAT will be settled in their jurisdictions. On May 19, 2010, the SAT issued the Circular on Issues Concerning Settlement of Land Appreciation Tax (《關於土地增值稅清算有關問題的通知》) to clarify and strengthen the settlement of LAT. Furthermore, on May 25, 2010, the SAT issued the Notice on Strengthening the Collection of Land Appreciation Tax (《關於加強土地增值稅徵管工作的通知》), which requires that the minimum LAT prepayment rate shall be 2% for provinces in the eastern region, 1.5% for provinces in the central and northeastern regions, and 1% for provinces in the western region.

We have been prepaying LAT in respect of our pre-sale proceeds since a prepayment obligation was imposed in 2004. In addition, we also make provision for the estimated amount of LAT that may be payable in respect of our other sales. We made LAT provisions of RMB186.9 million and RMB493.8 million (US\$71.1 million) for each of the years ended December 31, 2015 and 2016, respectively. LAT provisions are recorded as a part of “income taxes payable” on our consolidated statement of financial position. We cannot assure you that the relevant tax authorities will agree with our calculation of LAT liabilities nor can we assure you that the LAT provisions will be sufficient to cover our LAT obligations in respect of our past LAT liabilities. If the relevant tax authorities determine that our LAT liabilities exceed our LAT prepayments and provisions, and seek to collect that excess amount, our cash flow, results of operations and financial condition may be materially and adversely affected. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Key Factors Affecting our Results of Operations — LAT.”

***The transition from business tax to value-added tax may adversely affect our business, results of operations and financial condition***

The PRC Government has been progressively implementing the pilot reform for the transition from business tax to value-added tax in certain regions and industries from 2012. Pursuant to the Notice on the Full Implementation of Pilot Program for Transition from Business Tax to Value-Added Tax (《關於全面推開營業稅改徵增值稅試點的通知》) and the Implementing Measures for the Pilot Program for Transition from Business Tax to Value-added Tax (《營業稅改徵增值稅試點實施辦法》) issued by the Ministry of Finance (“MOF”) and SAT on March 23, 2016. On May 1, 2016, the “transitioning from business tax to value-added tax” scheme became effective.

Changes in the scope of taxation affect, to a certain extent, our tax burden. We have only recently become subject to the value-added tax regime. We expect the scheme will not materially affect our net profit or cash flow but may negatively affect our revenue and costs. At the same time, we are required to re-formulate our business and financial management procedures and adjust our accounting and audit treatment as well as tax system in order to comply with such scheme. The scheme also imposes stricter requirements on contractors and suppliers. In addition, the PRC Government may further supplement and amend relevant policies and rules, and different interpretations may be applied in implementing these policies and rules. As a result, uncertainties remain as to the tax treatment of our income and expenses under the new value-added tax regime. As of the date of this offering memorandum, we have been conducting ongoing assessment on the impact on our tax burden and profitability caused by the transition from business tax to value-added tax. We cannot assure you that the transition from business tax to value-added tax will not have an adverse impact on our business, results of operations and financial condition.

***We experienced net cash outflows from operating activities in the past and maintain a significant amount of indebtedness, which may materially and adversely affect our liquidity and our ability to service our indebtedness***

We had a net cash outflows from operating activities of RMB5,282.6 million in 2015. We maintain a significant amount of indebtedness to finance our operations. As of December 31, 2015 and 2016, our total borrowings were RMB72,118.2 million and RMB87,536.8 million

(US\$12,607.9 million), respectively. Our gearing ratio (total borrowings less cash and cash equivalents, bank deposits and restricted cash divided by total equity) was approximately 521.3% and 307.9%, respectively, as of December 31, 2015 and 2016. Of our total outstanding borrowings of RMB87,536.8 million (US\$12,607.9 million) as of December 31, 2016, RMB7,762.3 million (US\$1,118.0 million) was repayable within 12 months and RMB79,774.5 million (US\$11,489.9 million) was repayable in more than one year.

Our cash flow and results of operations of our operating subsidiaries will affect our liquidity and our ability to service our indebtedness. We cannot assure you that we will not experience negative operating cash flow in the future, or will be able to continue to generate and maintain sufficient cash flow to service our indebtedness. If we are unable to make scheduled payments in connection with our debts and other fixed payment obligations as they become due, we may need to refinance such obligations, obtain additional financing or default on our obligations. Furthermore, the Existing Notes, the Notes and some of our bank loans contain cross default provisions under which default in one of them could trigger a default on other Existing Notes, Notes or bank loans as well. We cannot assure you that our refinancing efforts would be successful or timely or that we could secure additional financing on acceptable terms, or at all. If we fail to maintain sufficient cash flow to service our indebtedness or our refinancing efforts are unsuccessful, our liquidity, business, and financial condition will be materially and adversely affected.

In addition to borrowings, we rely on proceeds from the pre-sale of residential properties as a major source of funding for our property development activities. If our pre-sales are limited or reduced for any reason, including policy or regulatory changes, a reduction in demand for or in the prices of our properties, or an increase in the time required to complete sales, we could experience cash flow shortfalls and difficulties in funding our property development activities and servicing our indebtedness. For example, during the period from December 2014 to July 2016, Shenzhen Urban Planning and Land and Resources Commission blocked our certain unsold units of property projects under pre-sale from processing and filing sale and purchase agreements, which augured the series of events that significantly disrupted our operations. We were given to understand that the principal reason for the blockages was to protect the interest of the buyers of such units, who had only entered into provisional sale and purchase agreements with us. The blockages disrupted our cash flows and resulted in our failure to pay the interests under the 2012 Notes, the January 2013 Notes and the March 2013 Notes. Standard & Poor's Ratings Services and Moody's Investors Service downgraded and subsequently withdrew our credit ratings after our cash flows were disrupted by the blockages. See "— We may not have adequate financing to fund our land acquisitions and property projects" for details. In addition, in connection with the blockages, some of our onshore creditors filed applications with PRC courts for preservation of our assets. We started our Debt Restructuring in light of the liquidity situation caused by the blockages. The Debt Restructuring was effected on July 21, 2016. Although the blockages have been removed and the preservation of our assets in connection with the blockages has been lifted as of the date of this offering memorandum, we cannot assure you that we will not experience similar incidents in the future.

***We may be adversely affected by fluctuations in the global economy and financial markets***

Our business is sensitive to national and local economic conditions in the markets where we operate or may operate in the future, including GDP growth, inflation, interest rates, availability of and access to capital markets, consumer spending rates, and the effects of governmental initiatives to manage economic conditions. Such economic conditions are closely related to global economic conditions and any disadvantageous changes in global economy could adversely affect China's economic conditions and in turn our business.

The global economic slowdown and turmoil in the global financial markets that started in the second half of 2008 have had a negative impact on the world economy. In 2010, a financial crisis emerged in Europe, triggered by high budget deficits and rising direct and contingent sovereign debt in Greece, Ireland, Italy, Portugal and Spain, which created concerns about the ability of these European nations to continue to service their sovereign debt obligations. On August 6, 2011, Standard and Poor's Ratings Services ("S&P") downgraded the rating for long-term United States debt to "AA+" from "AAA" for the first time in 70 years. The downgrade of United States debt by S&P, coupled with the economic turmoil in Europe and other parts of the world could lead to another global economic downturn and financial market

crisis. In addition, in the wake of a referendum in the United Kingdom in June 2016, in which the majority of voters voted in favor of an exit from the European Union (“Brexit”), there was an increase in volatility in the global financial markets.

Any global economic slowdown and financial market turmoil may have adversely affect, and may continue adversely affecting, homeowners and potential property purchasers, which may lead to a decline in the general demand for our products and erosion of their sale prices. In addition, any further tightening of liquidity in the global financial markets may negatively affect our liquidity. Therefore, if the global economic slowdown or the financial markets crisis continue, our business, financial condition and results of operations may be negatively affected.

***We may be adversely affected by the performance of third-party contractors***

We engage third-party contractors to provide various services, including design, pile setting, foundation digging, construction, equipment installation, interior decoration, electromechanical engineering, pipeline engineering and elevator installation. During the two years ended December 31, 2016, payments to third-party contractors accounted for all of our total construction costs. Our principal independent third-party contractors carry out property construction and subcontract various works to independent third-party subcontractors. We endeavor to employ construction contractors with good reputations, strong track records, and adequate financial resources. We also adopt and follow our own quality control procedures and routinely monitor works performed by third-party contractors. However, we cannot assure you that any third-party contractor will provide services that satisfy our required standard of quality. If the performance of any third-party contractor is not satisfactory, we may need to replace that contractor or take other remedial actions, which could increase the cost and lengthen the time required to complete the work and the whole project. In addition, we are expanding our business into other regional markets in China, and there may be a shortage of contractors that meet our quality requirements in such markets. Moreover, contractors may undertake projects for other developers, engage in risky or unsound practices or encounter financial or other difficulties, which may affect their ability to complete their work for us on time or within budget. Any of the above factors could have a material and adverse effect on our reputation, business, results of operations and financial condition.

***We may not be able to effectively manage our expansion and growth***

We have historically focused on developing properties in the Pearl River Delta region. We have expanded into other regions and plan to further explore other promising markets in China. Our expansion is based on our forward-looking assessment of market prospects. We cannot assure you that our assessments will turn out to be accurate. In addition, to succeed with our business expansion, we will need to recruit and train new managers and other employees and build our operations and reputation in our target regional markets within a relatively short period of time. We have limited knowledge of the conditions of these local property markets and little or no experience in property development in these regions. As we enter into new markets, we may not have the same level of familiarity with contractors, business practices and customs and customer tastes, behavior and preferences as compared to the cities where we are an established property developer. In addition, when we enter into new geographical areas, we may face intense competition from developers with an established presence and market share in those areas. Therefore, we cannot assure you that we can execute successfully our contemplated expansion plan or that we will succeed in effectively integrating our expanded operations, or that our expanded operations will generate adequate returns on our investments or positive operating cash flows. Furthermore, our business expansion may place a substantial strain on our managerial and financial resources and any failure in effectively managing our expanded operations may materially and adversely affect our business, results of operations, financial condition and prospects.

***We may not be able to effectively diversify our business***

We have been seeking to diversify our business. We currently operate three hotels in Shenzhen and Huizhou, and intend to launch a few new hotels under our own brands “Keyu Hotel (可域酒店)” and “Orientino Hotels (銷域酒店)” in the near future. We also engage in cinema, department store and cultural center operations. In November 2016, we acquired 21.7% equity interest in Mega Medical Technology Limited, a Hong Kong Stock Exchange listed company engaging in supply of dental equipment and consumables, and became its largest shareholder. See “Business — Our Business Strategies.” We cannot assure you that we will be

able to leverage our past experience in the property development industry in expanding into these industries. We may be exposed to considerable reputational and financial risks if these operations are mismanaged or do not meet the expectations of our customers. If we fail in our efforts to diversify our business, there may have a material adverse effect on our reputation generally, and our business, results of operations, financial condition and prospects may be materially and adversely affected.

***The fair value of our investment properties is likely to fluctuate from time to time and may decrease significantly in the future, which may materially and adversely impact our profitability***

We are required to reassess the fair value of our investment properties as of the end of each reporting date. In accordance with HKFRS, gains or losses (as applicable) arising from changes in the fair value of our investment properties should be recognised in profit or loss in the period in which they arise. Our investment properties were revalued by an independent property valuer as of December 31, 2015 and 2016, respectively. In making the judgement, consideration is given to assumptions that are mainly based on market conditions existing at the reporting date. We recognize and measure our investment properties on our consolidated statement of financial position at fair value with changes in fair value being recognized in our consolidated profit or loss. For the years ended December 31, 2015 and 2016, the fair value gains on our investment properties were RMB3,824.5 million and RMB4,161.4 million (US\$599.4 million), respectively.

Fair value gains or losses do not, however, change our cash position as long as the relevant investment properties are held by us, and accordingly do not increase our liquidity in spite of the increased profit represented by any fair value gains. The amount of revaluation adjustments has been, and will continue to be, subject to market fluctuations. Macroeconomic factors, including economic growth rate, interest rate, inflation rate, urbanization rate and disposable income level, in addition to any government regulations, can substantially affect the fair value of our investment properties and affect the supply and demand in the PRC property market. All these factors are beyond our control and we cannot assure you that changes in market conditions will continue to create fair value gains on our investment properties at the historical levels, or at all, or that the fair value of our investment properties will not decrease in the future. If the fair value of our investment properties declines, our profitability would be materially and adversely affected.

***We guarantee mortgage loans of our customers and may be liable to the mortgagee banks if our customers default on their mortgage payments***

We generally pre-sell properties before construction is completed. The purchasers of our properties may need mortgage loans to purchase our properties, and we typically arrange for various banks to provide these mortgage loans. In accordance with market practice, the mortgagee banks require us to guarantee our customers' mortgage loans. Typically, our guarantee obligations for such customers' mortgage loans are released upon the earlier of (i) the satisfaction of the mortgage loan by the purchaser of the property; and (ii) the issuance of the property ownership certificate for the mortgaged property and the completion of the registration of the mortgage. It generally takes six months to one year after we deliver possession of the relevant property to the purchaser for our guarantee to be released. In line with industry practice, we rely on the credit analysis performed by the mortgagee banks in respect of individual customers and we do not conduct any independent credit checks on them.

As of December 31, 2015 and 2016, our outstanding financial guarantees for the mortgage loans of our customers amounted to RMB15,105.9 million and RMB21,843.2 million (US\$3,146.1 million), respectively. If a purchaser defaults under the mortgage loan and the mortgagee bank calls on our relevant guarantee after it deals with the relevant property through a default auction, we are required to repay the outstanding amount owed by the purchaser to the mortgagee bank under the mortgage loan. During the two years ended December 31, 2016, we did not experience any instances where we had to honor our guarantee obligations as a result of a failure by our customers to repay their mortgage loans. If we are required to honor our guarantees, our results of operations and financial position may be materially and adversely affected.

***We may suffer certain losses not covered by insurance***

We do not carry comprehensive insurance against all potential losses or damages with respect to our properties before their delivery to customers nor do we maintain insurance coverage against liability from tortious acts, property damage or personal injury relating to the construction and maintenance of our properties. Although we expect our third-party construction companies to maintain appropriate insurance coverage, we cannot assure you that their insurance would cover or be sufficient to satisfy all claims, or that we would not be sued or held liable for damages notwithstanding their insurance coverage. Moreover, there are certain losses for which insurance is not available on commercially practicable terms in China, such as losses suffered due to earthquake, typhoon, flooding, war and civil disorder. If we suffer from any losses, damages or liabilities in the course of our business, we may not have sufficient financial resources to cover such losses, damages or liabilities or to satisfy our related obligations. Any payment we make to cover any losses, damages or liabilities may have a material and adverse effect on our business, results of operations and financial condition.

***We may not be able to complete our projects according to schedule or on budget***

A property development project requires substantial capital expenditures prior to and during the construction period, and it may take over a year before a development generates positive cash flow through pre-sales or sales. The progress of, and costs for, a development project can be adversely affected by many factors, including, without limitation:

- changes in market conditions, an economic downturn or a decline in consumer confidence;
- delays in obtaining necessary licenses, permits or approvals from government agencies or authorities;
- relocation of existing residents and demolition of existing structures;
- increases in the market prices of raw materials if we cannot pass on the increased costs to customers;
- shortages of materials, equipment, contractors and skilled labor;
- latent soil or subsurface conditions and latent environmental damage requiring remediation;
- unforeseen engineering, design, environmental or geographic problems;
- labor disputes;
- construction accidents;
- natural disasters;
- adverse weather conditions;
- changes in government practices and policies, including reclamation of land for public works or facilities; and
- other unforeseen problems or circumstances.

Our property projects are at risk from earthquakes, floods and other natural disasters in the regions where we operate. Damage to any of our properties or impact on the markets, whether by natural disasters or otherwise, may either delay or preclude our ability to develop and sell our properties or adversely affect our budget for the projects. See “— We may be adversely affected by fluctuations in the global economy and financial markets” and “— The national and regional economies in China and our business may be adversely affected by natural disasters or other catastrophic events.” During the years ended December 31, 2015 and 2016, we experienced delays in completion or delivery of our certain projects, namely phase I of Shanghai Kaisa Mansion No. 8 and Qingdao Kaisa Lake View Place, which are substantially delivered as of the date of this offering memorandum. We may experience additional or significant delays in completion or delivery of our projects in the future and we may be subject to liability for any such delays. Construction delays or failure to complete construction of a project according to its planned specifications, schedule or budget may materially and adversely affect our reputation, business, results of operations and financial condition.



***We have in the past had significant lapses in our internal controls. If we fail to implement and maintain an effective system of internal controls, we may be unable to accurately or timely report our results of operations or prevent fraud, which may adversely affect our business and results of operations***

As stated in the Company's announcement on the Hong Kong Stock Exchange ("HKEx") dated July 15, 2016, our former auditor, PricewaterhouseCoopers ("PwC"), who tendered its resignation as the auditor of the Company with effect on June 24, 2016, communicated in February 2015 to our Board of Directors certain issues ("Significant Reporting Matters") identified during the course of its audit of our 2014 consolidated financial statements and recommended our Board of Directors to form an independent investigation on such issues. The Significant Reporting Matters identified by PwC included: (a) identification of certain newly uncovered agreements and the authenticity of the Company's accounting records, (b) identification of unexplained cash payments and receipts, (c) re-purchases, sales, cancellation of sales, and purchases of properties under development, completed properties held for sale in bulk and proposed development project with alleged third parties, (d) disposal of subsidiaries located in Dongguan and Huizhou to alleged third parties, (e) re-designation of advance proceeds received to other payables and (f) the blockage of certain property projects. Further details are set out in the Company's announcement on the HKEx dated July 15, 2016. To address the Significant Reporting Matters, an independent committee was subsequently established by our independent non-executive directors for the purpose of reviewing our financial statements.

FTI Accounting and Advisory Services Ltd ("FTI") was then engaged to conduct a forensic examination of our financial information. In October 2016, FTI issued its findings in a report and the Company disclosed the key findings and the key limitations on the work performed by FTI in its announcement on the HKEx dated December 19, 2016. According to the findings of the FTI's investigation, (1) certain former employees of the Company (the "Former Employees") attempted to obscure the existence of certain borrowing agreements (the "Uncovered Borrowings") through an elaborate scheme which involved (i) the creation of fictitious agreements and documents; (ii) substantial improper and unauthorized payments; (iii) the use of fund remittance agents to disguise the true purpose of the improper and unauthorized payments; (iv) incorrect accounting treatment of the payments and the outstanding liability in the Company's accounting records and (v) collusion between multiple parties, including the Former Employees, suppliers, fund remittance agents and certain other third parties; (2) certain payment transactions, which have been approved by a number of the Former Employees, were found to have no clear business purpose and certain receipt transactions by the Company were either not properly authorized or had no identifiable business purpose, and (3) the Company acquired the equity interests in 19 project companies during the financial year of 2014, while none of these transactions was properly authorized and approved. FTI was unable to find any payments (or other types of consideration) made by the Company for the acquisition of any of these 19 project companies. FTI also identified the creation of certain fictitious agreements, which facilitated the re-designation of certain accounting entries of advance proceeds received to other payables, as opposed to debt. FTI did not identify any evidence of fraud that was involved in the blockage of property projects.

In its report, FTI highlighted that its findings were subject to key limitations, including: (1) PwC refused to meet with FTI to assist with its understanding of the Significant Reporting Matters; (2) a significant number of senior management and employees of the Company whom FTI considered to be integral to obtain a full understanding of the Significant Reporting Matters had resigned since the identification of the Significant Reporting Matters and were not available to assist with the investigation; (3) some of the documents and/or electronic records that FTI requested were no longer retained, or cannot be located or they may have been inadvertently lost or misplaced; (4) many of the third party entities which were the subject of FTI's enquiries have either been dissolved since the end of 2014, and/or they were offshore entities registered in the British Virgin Islands, whose exact ownership records are not publicly available, and, furthermore, these third parties engaged financial intermediaries or agent to transact with the Company on their behalf which obfuscated FTI's analysis of the transaction chronology and funds flows; (5) the interviewees that FTI interviewed generally had either limited or no knowledge of the relevant transactions or they were reluctant to divulge any information to substantiate their statements owing to confidentiality reasons; and (6) a large number of transactions were not supported by sufficient documentary evidence and transaction descriptions in the Company's general accounting ledgers were incomplete, inaccurate or inadequate. As a

result of the limitations on the work performed by FTI, there can be no assurance that FTI's investigations uncovered all of the wrongdoings or irregularities, or that the steps we took to address the Significant Reporting Matters would have addressed other matters that could have been uncovered if such limitations did not exist, all of which could have a material and adverse effect on the Company's business, results of operations and financial condition.

Taking into account the findings of FTI's investigation, we have made prior year adjustments when we prepared our consolidated financial statements for the year ended December 31, 2014, including recording a loss of RMB482,736,000 in the Company's consolidated profit or loss for the year ended December 31, 2014. Grant Thornton Hong Kong Limited, our auditor for the financial year ended December 31, 2014, did not express an opinion on whether the consolidated financial statements for the year ended 31 December 2014 gave a true and fair view of our loss and cash flows for the year ended December 31, 2014. Grant Thornton Hong Kong Limited gave a true and fair view of the state of the affairs of the Company and the Group as at December 31, 2014 with regard to the Company's and the Group's statements of financial position in accordance with HKFRSs.

Subsequent to the FTI's investigation, GT Advisory was engaged by the Company to conduct a review of our internal controls. GT Advisory identified the following major areas of enhancements, including (1) internal audit function not being independent, (2) the whistle-blowing mechanism lacking independence and having inadequate follow-up procedures, (3) inadequate document retention procedures, (4) Company chops being applied to fictitious or unauthorized contracts, (5) certain accounting entries being made in the absence of sufficient and appropriate supporting documents, (6) certain on-line bank payments being made in the absence of sufficient and appropriate supporting documents, (7) inadequate borrowing procedure controls and lack of segregation between financing function and fund transfer function, (8) lack of guidelines governing fund remittance agents, (9) lack of clear guidelines governing transactions with significant monetary amounts or transactions not in the normal course of business, (10) inadequate functions in the office automation system in preventing errors or fraud and (11) decision making power was concentrated in the chairman of the board. We have enhanced our internal control procedures accordingly. See "Business — Internal Control" for details of enhancements we have made to our internal controls. We have also announced in detail the actions taken by us to enhance our internal controls in our announcement on the HKEx dated March 26, 2017.

There is no assurance that securities class actions or other lawsuits in relation to such Significant Reporting Matters or other accounting irregularities could be filed against the Company, its directors or its officers. Any such investigations or lawsuits may adversely affect the Company's business financial condition, results of operations and cash flows or materially harm the Company's business and reputation. Also, although we had implemented various measures to enhance our internal controls, such measures may not fully address these deficiencies in our internal control, and ineffective internal controls would significantly hinder our ability to prevent fraud. We cannot assure you that we will not experience similar incidents in the future, and any similar incidents in the future could result in inaccuracies in our financial statements, which could also impair our ability to comply with applicable financial reporting requirements and related regulatory filings on a timely basis. As a result, our business, financial condition, results of operations and prospects, as well as the trading price of our securities, may be materially and adversely affected.

***We have faced negative publicity in the past and may face negative publicity in future that could lead to material adverse impacts on our operation and financial conditions.***

From time to time, our Company may face negative publicity relating to our business, financial performance, financial reporting or operations or our directors and officers. For example, certain of our directors and officers were reported in news articles in the past to have connections with PRC officials, who were investigated and found to have committed misconduct. We may be required to defend ourselves against such allegations and publicity through public announcements or legal and administrative proceedings as appropriate. However, we cannot assure you that such actions would be effective to protect our reputation, that such proceedings would result in a ruling or decision to our favor, or that the negative publicity effect would be eliminated or reduced upon a positive ruling. Such publicity could also have a materially adverse effect on our business and our reputation, and as a result, could adversely affect the market for our securities. Even if the allegations are without merit, they may lead to one or more investors



to file securities class action or other lawsuits against us, which could harm our reputation and business, and could distract our management from day-to-day operations of our business. We cannot assure you that we will be able to obtain the dismissal of any such lawsuits, even if they are without merit. We will also incur costs in managing and defending any such litigation and may incur related indemnity obligations. We may need to pay damages or settle any such litigation with a substantial amount of cash. These costs could have a material adverse impact on our business, our reputation, our results of operation and cash flow.

***Our profitability and results of operations are affected by changes in interest rates***

We rely on and expect to continue to rely on bank and third-party loans to finance our project developments. Changes in interest rates have affected and will continue to affect our finance costs and, ultimately, our results of operations. As our bank loans are principally denominated in Renminbi, the interest rates on our loans are primarily affected by the benchmark interest rates set by the People's Bank of China ("PBOC"), which have fluctuated significantly in recent years. The PBOC benchmark one-year lending rates in the PRC as of December 31, 2015 and 2016 were 4.35% and 4.35%, respectively. Any further increase in such benchmark lending rates will increase the interest costs for our property developments.

A substantial portion of the interest expense has been capitalized as properties under development, which will then be recognized in the consolidated profit or loss as cost of sales upon the sale of properties. Capitalized interest represented 9.6% and 14.1% of our cost of sales in 2015 and 2016, respectively. As a result, such capitalized interest expense may adversely affect our gross profit margin upon the sales of properties in future.

In addition, increases in interest rates may affect our customers' ability to secure mortgages on acceptable terms, which in turn may affect their ability to purchase our properties.

***We may have to compensate our customers if we fail to meet all requirements for the delivery of completed properties and the issuance of property ownership certificates***

According to the relevant PRC law, property developers must meet various requirements as stated below within 90 days after the delivery of property or such other time period that may be provided in the relevant sales and purchase agreement to assist a purchaser in obtaining the individual property ownership certificate. We generally elect to specify the deadline to apply for an individual property ownership certificate in the sales and purchase agreement to allow sufficient time for the application and approval process. Within eight months of the date of the completion certificate for a development, we must apply for a general property ownership certificate for the entire development. This involves, among other things, the submission of a number of documents, including land use rights documents, planning approvals and construction permits. Following the effective date of a sales and purchase agreement for one or more units in a development, we then assist the purchaser to apply for an individual property ownership certificate for each unit. This involves submission of other documents, including the sales and purchase agreement, identification documentation for the purchaser, evidence of payment of deed tax and a copy of the general property ownership certificate issued to us. Delay by a purchaser in providing the documents relating to the purchaser, or delay by the various administrative authorities in reviewing the relevant application document, as well as other factors beyond our control, may affect timely delivery of the relevant individual property ownership certificate. Under current PRC laws and regulations and under our sales and purchase agreements, we are required to compensate our customers for delays in delivery caused by us of individual property ownership certificates. During the years ended December 31, 2015 and 2016, we paid RMB2.9 million and RMB24.7 million (US\$3.6 million) as compensation for delays in delivery of individual property ownership certificates, respectively. However, we cannot assure you that delays in delivery caused by us of the required property ownership certificates will not occur. Significant delays with respect to one or more of our developments may materially and adversely affect our reputation, business, results of operations and financial condition.

***The PRC government may impose fines on us or take back our land if we fail to develop a property according to the terms of the land grant contract***

Under PRC laws and regulations, if we fail to develop a property according to the terms of the land grant contract, including those relating to the payment of land premium, demolition and resettlement costs and other fees, the specified use of the land and the time for commencement and completion of the development, the PRC government may issue a warning, impose a penalty, and/or take back our land. Under current PRC laws and regulations, if we fail to pay any

outstanding land grant premium on time, we may be subject to a late payment penalty of 0.1% of the outstanding balance for every day of delay in payment. In addition, the PRC government may impose an idle land fee equal to 20% of the land premium or allocation fees if (i) we do not commence construction for more than one year after the date specified in the relevant land grant contract, or (ii) total constructed GFA is less than one-third of the total proposed GFA for the development or the capital invested in the development is less than one-fourth of the total investment approved for the development, and the development is suspended for more than one year without governmental approval. Furthermore, the PRC government has the authority to take back the land without compensation to us, if we do not commence construction for more than two years after the date specified in the land grant contract.

In 2016, ten parcels of land for two of our property projects in Shenzhen were deemed as idle land by local land authorities, for which we have paid the required idle land fees and entered into contracts with local land authorities to extend the respective construction commencement date as stipulated in the relevant land grant contracts. In 2017, we received notices from a local government which imposed penalties on us of a total amount of RMB16.6 million in respect of our two pieces of idle land, and as of the date of this offering memorandum, we have not paid such penalties as we are applying with the local government for alleviating the penalties and we cannot assure that the local government will accept our application. Furthermore, if we fail to complete the construction of our property projects within the time period as stipulated in the land grant contracts, the land authorities may require us to pay liquidated damages or even take back the land without compensation. For example, for one of our projects in Shenzhen, the local land authority has required us to pay the liquidated damages of RMB6 million due to having not completed the construction of the project within the time period as stipulated in the land grant contracts, and even though we have paid the full amount of such liquidated damages, we may be required to pay additional liquidated damages by the land authority as this project is still under construction and the extended completion date in the land grant contracts has expired. We also have not completed development of certain other projects within the time period stipulated in the relevant land grant contracts, for which we have not yet been required to pay any liquidated damages or imposed on other penalties, but we cannot assure you that the government will not impose any penalty on us in the future. None of our land has been taken back by the government as a result of being idle as of the date of this offering memorandum. Furthermore, we have not commenced development of certain other projects within the time period stipulated in the relevant land grant contracts or required by relevant PRC laws, for which we have not received any idle land notice or been required to pay liquidated damages or other penalties. We cannot assure you that there will be no significant delays in the commencement of construction or the development of our properties in the future, or that our developments will not be subject to idle land penalties or liquidated damages, or be taken back by the government as a result of such delays. The imposition of substantial idle land penalties or liquidated damages, could have a material and adverse affect on our business, results of operations and financial condition. If any of our land is taken back by the government, we would not only lose the opportunity to develop the property, but we would also lose our prior investments in the development, including land premiums paid and costs incurred in connection with such land.

***We may be required to relocate existing residents and pay demolition and resettlement costs associated with our future property developments and such costs may increase***

We may be required to undertake and pay for demolition of existing buildings and resettlement of existing residents with respect to some of our property developments in accordance with the relevant PRC laws and regulations. We have also entered into certain contractual arrangements involving demolition and resettlement works. In particular, we have entered into certain contractual arrangements relating to redevelopment and primary land development with a view to facilitating potential acquisitions of land use rights or enhancing our future expansion into the relevant markets. See the section entitled “Business — Description of our Property Development Projects — Contractual Arrangements.” In 2015 and 2016, our demolition and resettlement costs were approximately RMB275.1 million and RMB1,785.9 million (US\$257.2 million), respectively. The compensation we pay for resettlement is calculated in accordance with certain formulas published by the relevant local authorities. These formulas take into account the location, GFA and the type of building to be demolished, local income levels and many other factors. There can be no assurance that local authorities will not change or adjust their formulas without prior notice. Existing owners or residents may disagree

with the compensation arrangements or refuse to relocate. The administrative process to settle the amount of compensation, together with any appeals, or a refusal to relocate may significantly delay the timetable for the affected development. Although we take into consideration the difficulties in resettlement compensation negotiations before we enter into such contractual arrangements, the protracted resettlement process may cause delays in the redevelopment projects, and adversely affect our plans to obtain the relevant land use rights or enter into the new markets. In addition, there is no assurance that we will be able to reach agreements for compensation and resettlement for such redevelopment projects on terms satisfactory to us or at all. Moreover, an unfavorable final determination or settlement regarding the amount of compensation payable by us may increase the cost of the development and materially and adversely affect our cash flow, business, results of operations and financial condition.

***A deterioration in our brand image could adversely affect our business***

We rely to a significant extent on our brand name and brand image, “Kaisa” (“佳兆業”). Any negative incident or negative publicity concerning us or our property developments could adversely affect our reputation and business. In addition, although we are a well-known brand in the Pearl River Delta Region, we are less well known in other regions in China. Brand value is based largely on subjective consumer perceptions and can be damaged by isolated incidents that reduce consumer trust. Consumer demand for our products and our brand value could diminish significantly if we fail to preserve the quality of our products, or fail to deliver a consistently positive consumer experience in each of our complexes, or if we are perceived to act in an unethical or socially irresponsible manner.

In addition, our efforts to protect our brand name may not be adequate, and we may be unable to identify any unauthorized use of our brand name or to take appropriate steps to enforce our rights on a timely basis. As of December 31, 2016, we registered 841 trademarks in the PRC and five trademarks in Hong Kong. Our brand could be misappropriated or misused in the future. Any unauthorized use or infringement of our brand name and trademarks may impair the value we have built in our brand name, damage our reputation and materially and adversely affect our business and results of operations.

***Our success depends on the continued services of our senior management team***

Our success and growth depend on Mr. Kwok Ying Shing, one of our founders and Chairman and the continued services of our executive Directors and other members of our senior management team. They have extensive experience in the PRC real estate industry, and in-depth knowledge of various aspects of property development, strategic planning and business management. We cannot assure you that Mr. Kwok, any executive director or member of senior management is willing or able to continue in his or her present position or that we will be able to find and hire a suitable replacement, or if he or she is recruited by a competitor or departs to start a competing business. In addition, if we enter into financing agreements in the future which require any of our senior management members to main his/her position as a senior management member, resignation of such senior management member may trigger mandatory prepayment provisions under such financing agreements. Moreover, along with our steady growth and expansion into other regional markets in China, we will need to employ, train and retain additional suitable skilled and qualified management and employees from a wider geographical area. If we cannot attract and retain suitable personnel, our business and future growth may be materially and adversely affected.

***Property owners may terminate our engagement as the provider of property management services***

We provide property management services to the owners of our developed residential and commercial projects through our wholly owned property management subsidiaries. We believe that property management is an important part of our business strategy and is critical to the successful marketing and promotion of our property developments. Under PRC laws and regulations, a majority of property owners of a residential community of certain size have the right to change the property management service provider. We had not experienced any termination of our property management services by the owners of our developed properties during the years ended December 31, 2015 and 2016. In 2015 and 2016, the revenue derived from our property management services was RMB224.1 million and RMB271.6 million (US\$39.1 million), respectively. If the owners of our developed properties, however, choose to terminate our property management services, or our customers are unsatisfied with our property management services, our reputation and results of operations may be materially and adversely affected.

***We may be involved from time to time in disputes, administrative, legal and other proceedings arising out of our operations or subject to fines and sanctions in relation to our non-compliance with certain PRC laws and regulations, and may face significant liabilities as a result***

We may be involved in disputes with various parties involved in the construction, development and the sale of our properties, including contractors, suppliers, construction workers, original owners and residents, partners and purchasers. These disputes may lead to protests, legal or other proceedings and may result in damage to our reputation, incurrence of substantial costs and the diversion of resources and management's attention. As most of our projects are comprised of multiple phases, purchasers of our properties in earlier phases may file legal actions against us if our subsequent planning and development of the relevant project is perceived to be inconsistent with our representations and warranties made to such earlier purchasers. These disputes and legal and other proceedings may materially and adversely affect our reputation, business, results of operations and financial condition. For example, three of our PRC subsidiaries have been involved in the disputes with their contractors, suppliers or purchasers, with the bank accounts and certain buildings subject to preliminary injunction in aid of later execution. The judicial process of releasing the seizure of properties may decrease the time we devote to normal and customary operating functions. In addition, we may have compliance issues with regulatory bodies in the course of our operations, which may subject us to administrative proceedings and unfavorable decrees that result in liabilities and cause delays to our property developments. For instance, we have been imposed penalties by relevant local governmental authorities as we commenced the construction before obtaining construction permits for certain of our property projects. There have also been instances where we did not pay the relevant taxes fully or timely. For example, in 2016, one of our PRC subsidiaries in Guangzhou was required by the local tax authority to pay the overdue stamp duty for an amount of approximately RMB2.4 million along with penalties of approximate RMB2.1 million. Additionally, as of May 1, 2017, another PRC subsidiary in Shenzhen failed to pay the overdue tax of approximately RMB131 million accrued. If we fail to comply with any applicable PRC laws or regulations, our reputation and our business, results of operations and financial condition may be materially and adversely affected.

In addition, several of our PRC subsidiaries are not fully in compliance with PRC laws and regulations, including those in relation to registered share capital, business licenses, operation permits, tax payment obligation and articles of association of these PRC subsidiaries, and their operations may be adversely affected if they are subject to fines or sanctions imposed by PRC authorities as a result.

***We are subject to legal and business risks and our business may be adversely affected if we fail to obtain or maintain the required qualification certificates and other requisite government approvals***

A PRC property developer must hold a valid qualification certificate to develop property. In addition, at various stages of project development, the PRC property developer must also obtain various licenses, certificates, permits, and approvals from the relevant PRC administrative authorities, including land use rights certificates, planning permits, construction permits, pre-sale permits and certificates or confirmation of completion.

According to the Provisions on Administration of Qualifications of Real Estate Developers (房地產開發企業資質管理規定) issued by the Ministry of Construction (now MOHURD), a newly established property developer must first apply for a provisional qualification certificate with a one-year validity, which can be renewed annually for not more than two consecutive years. If, however, the newly established property developer fails to commence a property development project within the one-year period following the provisional qualification certificate, it will not be allowed to renew the term of its provisional qualification certificate. Developers with longer operating histories must submit their qualification certificates to relevant construction administration authorities for review annually. Government regulations require developers to fulfill all statutory requirements before they may obtain or renew their qualification certificates.

We conduct our property developments through project companies. These project companies must hold valid qualification certificates to be able to conduct their businesses. Some of our project companies are in the process of obtaining or renewing their qualification certificates. We cannot assure you that our project companies will be able to obtain or renew the



necessary qualification certificates in a timely manner, or at all. If any of our project companies does not obtain or renew the necessary qualification certificate in a timely manner, or at all, our prospects, and our business, results of operations and financial condition may be materially and adversely affected.

Pursuant to the Measures for the Administration of Qualifications of Property Service Enterprises (《物業服務企業資質管理辦法》), entities engaged in property management are required to obtain qualification certificates before they commence their business operations. Our wholly owned property management subsidiaries are primarily engaged to manage the residential and commercial properties we developed. If any property management companies are unable to meet the relevant requirements and therefore unable to obtain or maintain the qualification certificates, our business and financial condition could be materially and adversely affected.

In addition to the above, we cannot assure you that we will not encounter significant problems in satisfying the conditions to, or delays in, the issuance or renewal of other necessary licenses, certificates, permits or approvals. There may also be delays on the part of the administrative bodies in reviewing and processing our applications and granting licenses, certificates, permits or approvals. If we fail to obtain the necessary governmental licenses, certificates, permits or approvals for any of our major property projects, or a delay occurs in the government's examination and review process, our development schedule and our sales could be substantially delayed, resulting in a material and adverse effect on our business, results of operations and financial condition.

***We have in the past experienced restrictions on the processing and filing of sale and purchase agreements relating to our projects, which caused an adverse impact on our cash flows, financial position and operations***

During the period from December 2014 to July 2016, Shenzhen Urban Planning and Land and Resources Commission blocked 11 of our property projects, including those with unsold units of our property projects under pre-sale, unsold units of our completed property projects and properties held for rental and self-use, from processing and filing sale and purchase agreements. As a result of the blockages, we experienced a substantial decline in our cash collection from property sales, causing an adverse impact on our cash flows, financial position and operations. See “— We experienced net cash outflows from operating activities in the past and maintain a significant amount of indebtedness, which may materially and adversely affect our liquidity and our ability to service our indebtedness.” Furthermore, commercial banks across China suspended issuing personal mortgage loans to purchasers for substantially all of our properties, significantly impacting our ability to sell units. In particular, the blockages disrupted our cash flows and subsequently resulted in our failure to pay interest under our onshore debt and the 2012 Notes, the January 2013 Notes and the March 2013 Notes. As a result, a significant number of our projects were blocked for sale or frozen, and certain of our bank accounts were frozen, by PRC courts due to asset preservation and we were subject to substantial litigation and arbitration suits filed by onshore creditors. As of the date of the offering memorandum, none of our projects are subject to asset preservation as a result of the blockages. In light of the liquidity situation caused by the blockages, we started our Debt Restructuring, which was effected on July 21, 2016. See “Description of Material Indebtedness and Other Obligations — Debt Restructuring.” Although the blockages have been removed as of the date of this offering memorandum, we cannot assure you that we will not experience similar restrictions and blockages in the future, which would have a material and adverse impact on our cash flows, financial position and operations and, in turn, our ability to make payments under the Notes.

***We may need to alter our sales model if the cooperation between us and our primary sales partner is discontinued***

We have been cooperating with Centaline and World Union for a number of years to promote our properties across different regional markets in China. We generally enter into one-year non-exclusive sales agency agreements with respect to the sales agency services provided by Centaline and World Union on a project-by-project basis. Under these agreements, Centaline and World Union are generally entitled to a sales commission for sales they conclude upon completion of the sales pursuant to the relevant property purchase contracts. Our arrangements with Centaline and World Union have always been and will continue to be dependent upon the demand for the properties we develop in the relevant local markets. If we

discontinue or significantly limit our cooperation with Centaline or World Union, terminate our sales agency agreements or decide not to enter into new agreements upon expiration of our existing sales agency agreements, our sales may be interrupted. As a result, our business, financial condition and results of operations may be adversely affected.

***Any disputes with joint venture or co-development partners may materially and adversely affect our business.***

We may carry out our business through joint ventures or in collaboration with third parties which we do not control. Such joint venture arrangements or collaborations involve a number of risks, including:

- disputes with our partners in connection with the performance of their obligations under the relevant project, joint venture or cooperative property development agreements;
- disputes as to the scope of each party's responsibilities under these arrangements;
- financial difficulties encountered by our partners affecting their ability to perform their obligations under the relevant project, joint venture or cooperative property development agreements with us;
- conflicts between the policies or objectives adopted by our partners and those adopted by us; and
- losses of our investments in such joint venture arrangements or collaborations as there is no guarantee that they will materialize into profitable arrangements or projects.

Any of these and other factors may materially and adversely affect our business.

***Our substantial shareholders may take actions that are not in, or may conflict with, our or our creditors', including the holders of the Notes, best interests***

As of the date of this offering memorandum, Mr. Kwok Ying Shing, Mr. Kwok Ying Chi, Mr. Kwok Hiu Kwan, Da Chang Investment Company Limited, Da Feng Investment Company Limited and Da Zheng Investment Company Limited hold in the aggregate 45.02% of our outstanding shares. These shareholders have and will continue to have the ability to exercise influence over our business, and may cause us to take actions that are not in, or may conflict with, our or our creditors', including the holders of the Notes, best interests, including matters relating to our management and policies and the election of our directors and senior management. They will be able to influence our major policy decisions, including our overall strategic and investment decisions, through the election of our directors and, in turn, indirectly affecting the selection of our senior management, determining the timing and amount of any dividend payments, approving our annual budgets, deciding on increases or decreases in our share capital, determining our issuance of new securities, approving mergers, acquisitions and disposals of our assets or businesses, and amending our articles of association. For more information, see "Management," "Substantial Shareholders," and "Related Party Transactions."

### **Risks Relating to the Real Estate Industry in China**

***The PRC government may adopt further measures to slow down growth in the property sector***

Along with the economic growth in China, investments in the property sectors have increased significantly in the past few years. In response to concerns over the increase in property investments, from 2004 to March 2013, the PRC government introduced various policies and measures to curtail property developments, including:

- requiring real estate developers to finance, with their internal resources, at least 35% of the total investment (excluding affordable housing projects);
- limiting the monthly mortgage payment to 50% of an individual borrower's monthly income and limiting all monthly debt service payments of an individual borrower to 55% of his or her monthly income;
- suspending land supply for villa construction and restricting land supply for high-end residential property construction;
- requiring that at least 70% of the land supply approved by any local government for residential property development during any given year must be used for developing low- to medium-cost and small- to medium-size units for sale or as low-cost rental properties;

- requiring that at least 70% of the total development and construction area of residential projects approved or constructed on or after June 1, 2006 in any administrative jurisdiction must consist of units with a unit floor area of less than 90 square meters and that projects which have received project approvals prior to this date but have not obtained construction permits must adjust their planning in order to comply with this new requirement, with the exception that municipalities under direct administration of the PRC central government and provincial capitals and certain cities may deviate from such ratio under special circumstances upon approval from MOHURD;
- requiring any first-time home owner to pay the minimum amount of down-payment of 30% of the purchase price of the underlying property;
- requiring any second-time home buyer to pay an increased minimum amount of down-payment of 60% of the purchase price of the underlying property and an increased minimum mortgage loan interest rate of no less than 110% of the relevant PBOC benchmark one-year bank lending interest rate;
- for a commercial property buyer, (i) requiring banks not to finance any purchase of pre-sold properties, (ii) increasing the minimum amount of down-payment to 50% of the purchase price of the underlying property, (iii) increasing the minimum mortgage loan interest rate to 110% of the relevant PBOC benchmark one-year bank lending interest rate, and (iv) limiting the terms of such bank borrowings to no more than 10 years, with commercial banks allowed flexibility based on their risk assessment;
- for a buyer of commercial/residential dual-purpose properties, increasing the minimum amount of down-payment to 45% of the purchase price of the underlying property, with the other terms similar to those for commercial properties;
- limiting the grant or extension of revolving credit facilities to property developers that hold a large amount of idle land and vacant commodity properties;
- imposing more restrictions on the types of property developments that foreign investments may engage in;
- imposing or increasing taxes on short-term gains from second-hand property sales;
- restricting foreign investment in the property sector by, among other things, increasing registered capital and other requirements for establishing FIREEs, tightening foreign exchange control and imposing restrictions on purchases of properties in China by foreign persons;
- requiring commercial banks to suspend mortgage loans to customers for purchase of a third or further residential property, or to non-residents who cannot provide proof of local tax or social security insurance payments for more than a one-year period;
- Raising the benchmark one-year lending rate published by PBOC for the year ended December 31, 2010 to 5.81% and to 6.56% in July 7, 2011;
- adjusting the PBOC Renminbi deposit reserve requirement ratio for all PRC deposit taking financial institutions nine times in 2011 and 2012;
- non-registered residents who own one or more residential properties and fail to provide one-year or longer tax payment certificates or social insurance payment certificates are prohibited from purchasing any residential properties located in the administrative area; and
- strictly enforcing a 20% tax on home sale profits.

Since the second half of 2014, the central and local governments have implemented measures to support the demand of buyers of residential properties and to promote the sustainable development of the real estate market. In September 2014, PBOC and the China Banking Regulatory Commission (“CBRC”) jointly issued a circular which provide that (1) the minimum mortgage loan interest rate for first-time purchasers of residential property was set at 70% of the benchmark lending interest rate; (2) where a family that owns a residential property and has paid off its existing mortgage loan applies for a new mortgage loan to purchase another residential property to improve living conditions, the bank may apply the aforesaid mortgage



loan policy for first-time purchasers of residential property; and (3) in cities that have lifted restrictions on the purchase of residential property by residents or those that have not imposed such restrictions, when a family that owns two residential properties or more and has paid off its existing mortgage loans applies for a new mortgage loan to purchase another residential property, the bank is required to assess the credit profile of the borrower, taking into consideration the solvency and credit standing of the borrower and other factors, to decide the down payment ratio and loan interest rate. In view of the local urbanization plan, banks may provide mortgage loans to non-local residents that meet the conditions required by the related policies. In March 2015, PBOC, CBRC and MOHURD jointly issued a notice to lower the minimum down payment to 40% for the family that owns a residential property and has not paid off its existing mortgage loan applying for a new mortgage loan to purchase another ordinary residential property to improve living conditions and allow the bank at its own discretion to decide the down payment ratio and loan interest rate taking into consideration the solvency and credit standing of the borrower. Furthermore, according to a notice jointly issued by SAT and MOF, effective from March 31, 2015, a business tax will be levied on the entire sales proceeds from resale of properties if the holding period is shorter than two years, and if the holding period is more than two years, business tax for transfer of ordinary residences will not be imposed, whereas for the transfer of non-ordinary residences business tax shall be paid on the basis of price difference between the transfer income and the purchase cost. In February 2016, the PBOC and CBRC jointly issued a notice which provides that in cities where property purchase control measures are not being implemented, the minimum down payment ratio for a personal housing commercial loan obtained by a household for purchasing its first ordinary residential property is, in principle, 25% of the property price, which can be adjusted downward by 5% by local authorities. For existing residential property household owners which have not fully repaid the previous loan and are obtaining further personal housing commercial loan to purchase an additional ordinary residential property for the purpose of improving living conditions, the minimum down payment ratio shall be not less than 30%, which is lower than the previous requirement of not less than 40%. In February 2016, SAT and MOF jointly issued a circular to further adjust downward the deed tax and business tax payable for real estate transactions. Since the second half of 2016, certain local governments including without limitation Shenzhen, Guangzhou, Foshan, Dongguan, Huizhou, Zhuhai, Chengdu, Qingdao, Changsha, Wuhan, Changzhou, Shanghai, Suzhou, Hangzhou and Nanjing, where we have property projects, have issued new property market control policies, including restoring or strengthening the restriction on purchases of residential properties and tightening credit policy.

We cannot assure you that the PRC government will not change or modify these temporary measures in the future. For more information on the various restrictive measures taken by the PRC government, you should refer to the section entitled “Regulations.” These measures may limit our access to capital resources, reduce market demand for our products and increase our operating costs in complying with these measures. We cannot assure you that the PRC government will not adopt additional and more stringent measures, which could further slow down property development in China and adversely affect our business and prospects. For example, the PRC government has announced that it may impose a broader real estate tax in the future. We are not sure whether and when such tax will be imposed and neither can we assess the adverse impact of the new tax on our business operations and financial results. If we fail to adapt our operations to new policies, regulations and measures that may come into effect from time to time with respect to the real property industry, or such policy changes disrupt our business or cause us to incur additional costs, our business, prospects, financial condition and results of operations may be materially and adversely affected.

***The property industry in China is still at a relatively early stage of development, and there is a significant degree of uncertainty in the market as a whole***

Private ownership of property in China is still at a relatively early stage of development. Demand for private residential property has been increasing rapidly in recent years. However, increased demand has often been coupled with volatile market conditions and fluctuations in prices. Numerous factors may affect the development of the market and accordingly, it is very difficult to predict when and how much demand will develop. Limited availability of accurate financial and market information and the general low level of transparency in China contribute to overall uncertainty. Investors may be discouraged from acquiring new properties due to the lack of a liquid secondary market for residential properties. In addition, the limited amounts and types of mortgage financing available to individuals, together with the lack of long-term security

of legal title and enforceability of property rights, may also inhibit demand for residential property. Finally, the risk of over-supply is increasing in parts of China where property investment, trading and speculation have become more active. If as a result of any one or more of these or similar factors, demand for residential property or market prices decline significantly, our business, results of operations and financial condition may be materially and adversely affected.

***Increasing competition in the PRC, particularly in the Pearl River Delta region, may adversely affect our business and financial condition***

In recent years, a large number of property developers have undertaken property development and investment projects, particularly in the Pearl River Delta region. The intensity of the competition among property developers in the Pearl River Delta region and other parts in the PRC for land, financing, raw materials and skilled management and labor resources may result in increased cost for land acquisition and construction, a decrease in property prices and delays in the government approval process. An oversupply of properties available for sale could also depress the prices of the properties we sell and may adversely affect our business, financial condition and results of operations.

In addition, the property markets in the Pearl River Delta region and elsewhere in the PRC are rapidly changing. Macro-economic measures have recently been adopted by the PRC government in an attempt to slow the rapid growth of the PRC's economy and deter investment in fixed assets, including real estate assets. If we cannot respond to changes in market conditions in the Pearl River Delta region or elsewhere or react to changes in customer preferences more swiftly or more effectively than our competitors, our business, results of operations and financial condition could be adversely affected.

***We are exposed to contractual, legal and regulatory risks related to pre-sales***

We depend on cash flows from pre-sales of properties as an important source of funding for our property developments. We face risks relating to the pre-sale of properties. For example, we may find ourselves liable to the purchasers for their losses if we pre-sell units in a property development and fail to complete that development. If we fail to complete a pre-sold property on time, our purchasers may claim compensation for late delivery pursuant to either their contracts with us or relevant PRC laws and regulations. If our delay extends beyond a specified period, our purchasers may terminate their pre-sale contracts and claim for compensation. A purchaser may also terminate his or her contract with us if the GFA of the relevant unit, as set out in the individual property ownership certificate, deviates by more than 3% from the GFA of that unit set out in his or her contract. We cannot assure you that we will not experience delays in the completion and delivery of our projects, nor that the GFA for a delivered unit will not deviate by more than 3% from the GFA set out in the relevant contract in every instance. Any termination of the purchase contract as a result of our late delivery of properties or deviation from the GFA set out in such contract will have a material adverse effect on our business, financial condition and results of operations.

Under current PRC laws and regulations, property developers must fulfill certain conditions before they can commence pre-sales of the relevant properties and pre-sales proceeds may only be used to finance the related development. Various PRC authorities and regulators have publicly called for the discontinuance or abolishment of pre-sales, or to impose tighter regulations on such practice. We cannot assure you that the PRC governmental authority will not ban the practice of pre-selling uncompleted properties or implement further restrictions on the pre-sale of properties, such as imposing additional conditions for a pre-sale permit or further restrictions on the use of pre-sale proceeds. Proceeds from the pre-sale of our properties are an important source of financing for our property developments. Consequently, any restriction on our ability to pre-sell our properties, including any increase in the amount of up-front expenditure we must incur prior to obtaining the pre-sale permit, would extend the time period required for recovery of our capital outlay and would result in our needing to seek alternative means to finance the various stages of our property developments. This, in turn, could have an adverse effect on our business, cash flow results of operations and financial condition.

***The total GFA of some of our developments may exceed the original permitted GFA and the excess GFA is subject to governmental approval and payment of additional land premium***

The permitted total GFA for a particular development is set out in various governmental documents issued at various stages. In many cases, the underlying land grant contract will specify permitted total GFA. Total GFA is also set out in the relevant urban planning approvals and various construction permits. If constructed total GFA exceeds the permitted total, or if the completed development contains built-up areas that the authorities believe do not conform to the approved plans as set out in relevant construction works planning permit, we may not be able to obtain the acceptance and compliance form of construction completion (竣工驗收備案表) for the development, and as a consequence, we would not be in a position to deliver individual units to purchasers or to recognize the related pre-sale proceeds as revenue. Moreover, excess GFA requires governmental approval, and the payment of additional land premium. We may also be subject to liability to purchasers under our sales and purchase agreements. For example, in the development of our Guangzhou Jinmao, the constructed total GFA exceeded the permitted total GFA as provided in the construction works planning permit, and we were required to seek approval and pay additional land premiums for the excess GFA in 2009. During the years ended December 31, 2015 and 2016, we did not have any other cases where our constructed total GFA exceeded the permitted total GFA.

We cannot assure you that constructed total GFA for each of our existing projects under development or any future property developments will not exceed permitted total GFA for that development, or that the authorities will not determine that all built-up areas conform to the plans approved as set out in the construction permit. Moreover, we cannot assure you that we would have sufficient funding to pay any required additional land premium or to pay for any corrective action that may be required in a timely manner, or at all. Any of these circumstances may materially and adversely affect our reputation, business, results of operations and financial condition.

***The terms on which mortgage loans are available, if at all, may affect our sales***

Substantially all of the purchasers of our properties rely on mortgages to finance their purchases. An increase in interest rates may significantly increase the cost of mortgage financing and affect the affordability of residential properties. In addition, the PRC government and commercial banks may also increase the down payment requirement, impose other conditions or otherwise change the regulatory framework in a manner that would make mortgage financing unavailable or unattractive to potential property purchasers. In addition, banks may not lend to any individual borrower if the monthly repayment of the anticipated mortgage loan would exceed 50% of the individual borrower's monthly income or if the total debt service of the individual borrower would exceed 55% of such individual's monthly income. If the availability or attractiveness of mortgage financing is reduced or limited, many of our prospective customers may not be able to purchase our properties and, as a result, our business, liquidity and results of operations could be materially and adversely affected.

In line with industry practice, we provide guarantees to banks for mortgages they offer to our purchasers up until we complete the relevant property and the individual property ownership certificates with respect to the relevant properties are issued to our purchasers and the mortgage registrations for the relevant properties have been completed. If there are changes in laws, regulations, policies and practices that would prohibit property developers from providing guarantees to banks in respect of mortgages offered to property purchasers and the banks would not accept any alternative guarantees by third parties, or if no third party is available or willing in the market to provide such guarantees, it may become more difficult for property purchasers to obtain mortgages from banks and other financial institutions during sales and pre-sales of our properties. Such difficulties in financing could result in a substantially lower rate of sale and pre-sale of our properties, which would materially and adversely affect our cash flow, financial condition and results of operations.

***Our results of operations may vary significantly from period to period***

Our results of operations may vary significantly due to a number of factors, including the timetables of our property development projects, the timing of the sale of properties that we have developed, our revenue recognition policies and any volatility in expenses such as raw material costs. The overall schedules of our property development and the number of properties that we can develop or complete during any particular period are limited as a result of the

substantial capital required for the acquisition of land, demolition and resettlement and construction. The sale of properties we develop is subject to general market or economic conditions in the areas where we conduct our business and the level of acceptance of our properties by prospective customers. According to our accounting policy, we recognize revenue upon the completion and delivery of the properties to purchasers, which may typically take six to 18 months after the commencement of the pre-sale. Therefore, in periods in which we pre-sell a large aggregate GFA, we may not generate a correspondingly high level of revenue if the properties pre-sold are not delivered within the same period. In addition, our business depends on obtaining adequate supplies of raw materials and is subject to fluctuation in the market prices of raw materials. The prices that we pay for raw materials may increase due to increased industry demand, inflation, higher fuel and transportation costs and other factors. We will continue to experience significant fluctuations in revenue and profit on an interim basis subsequent to the offering. We therefore believe that period-to-period comparisons of our operating results may not be as meaningful as they would be for a company with recurring revenue.

***Potential liability for environmental damages could result in substantial cost increases***

We are subject to a variety of laws and regulations concerning the protection of health and the environment. The particular environmental laws and regulations that apply to any given project development site vary according to the site's location, the site's environmental condition, the present and former uses of the site and the nature and former uses of adjoining properties. Compliance with environmental laws and regulations may result in delays in development, substantial costs and may prohibit or severely restrict project development activity in environmentally sensitive regions or areas. Under PRC laws and regulations, we are required to submit an environmental impact assessment report to the relevant governmental authorities for approval before commencing construction of any project. Although the environmental inspections conducted by the relevant PRC environmental protection agencies to date have not revealed any environmental violations that we believe would have a material adverse effect on our business, results of operations or financial condition, there may be potential material environmental liabilities of which we are unaware. In addition, our operations could result in environmental liabilities or our contractors could violate environmental laws and regulations in their operations that may be attributed to us. For more information, see the section entitled "Business — Environmental and Safety Matters."

***The construction business and the property development business are subject to claims under statutory quality warranties***

Under Regulations on the Administration of Quality of Construction Works (《建設工程質量管理條例》), all property development companies in the PRC must provide certain quality warranties for the properties they construct or sell. We are required to provide these warranties to our customers. Generally, we receive quality warranties from our third-party contractors with respect to our development projects. If a significant number of claims are brought against us under our warranties and if we are unable to obtain reimbursement for such claims from third-party contractors in a timely manner or at all, or if the money retained by us to cover our payment obligations under the quality warranties is not sufficient, we could incur significant expenses to resolve such claims or face delays in correcting the related defects, which could in turn harm our reputation and have a material and adverse effect on our business, financial condition and results of operations.

***Our investments in the PRC are subject to the PRC government's control over foreign investment in the property sector.***

The PRC government imposes restrictions on foreign investment in the property sector to curtail the overheating of the property sector by, among other things, increasing the capital and other requirements for establishing foreign-invested real estate enterprises, tightening foreign exchange control and imposing restrictions on purchases of properties in China by foreign persons. For example, in May 2007, MOFCOM and the State Administration of Foreign Exchange ("SAFE") jointly issued the Notice on Further Strengthening and Regulating the Approval and Supervision on Foreign Investment in Real Estate Sector in the PRC (《關於進一步加強、規範外商直接投資房地產業審批和監管的通知》), which, among other things, provides that:

- foreign investment in the property sector in the PRC relating to luxury properties should be strictly controlled;

- prior to obtaining approval for the establishment of foreign-invested real estate enterprises, either (i) both the land use rights certificates and housing title certificates should be obtained, or (ii) contracts for obtaining land use rights or housing titles should be entered into;
- foreign-invested real estate enterprises approved by local authorities shall immediately register with MOFCOM through a filing made by the local authorities; and
- foreign exchange administration authorities and banks authorized to conduct foreign exchange business should not effect foreign exchange settlements of capital account items for those foreign-invested real estate enterprises which have not completed their filings with MOFCOM or fail to pass the annual inspection.

These restrictions imposed by the PRC government on foreign investment in the property sector may affect our ability to make further investments in our PRC subsidiaries and as a result may limit our business growth and have a material adverse effect on our business, prospects, financial condition and results of operations.

***The PRC government has imposed restrictions on the ability of PRC property developers to receive offshore funds***

In May 2007, MOFCOM and SAFE jointly issued the Notice on Further Strengthening and Regulating the Approval and Supervision on Foreign Investment in Real Estate Sector in the PRC (《關於進一步加強、規範外商直接投資房地產業審批和監管的通知》). In April 2013, SAFE issued the Notice Regarding Promulgation of Administrative Measures on Foreign Debt Registration (《國家外匯管理局關於發佈《外債登記管理辦法》的通知》) effective from May 13, 2013 which contains an appendix named the Operating Guidelines for Foreign Debt Registration Administration (外債登記管理操作指引). These notices indicate that SAFE will no longer process foreign debt registrations or foreign debt applications for the settlement of foreign exchange submitted by real estate enterprises with foreign investment that obtained authorization certificates from and registered with MOFCOM on or after June 1, 2007. These regulations effectively prohibit us from injecting funds into our PRC project companies by way of shareholder loans. Without the flexibility to transfer funds to PRC subsidiaries as loans, we cannot assure you that the dividend payments from our PRC subsidiaries will be available on each interest payment date to pay the interest due and payable under the Notes, or on the maturity date to pay the principal of the outstanding Notes.

**Risks Relating to China**

***PRC economic, political and social conditions, as well as governmental policies, could affect our business and prospects***

The PRC economy differs from the economies of most of the developed countries in many aspects, including:

- the amount and degree of the PRC government involvement;
- growth rate and degree of development;
- uniformity in the implementation and enforcement of laws;
- content of and control over capital investment;
- control of foreign exchange; and
- allocation of resources.

The PRC economy has been transitioning from a centrally planned economy to a more market-oriented economy. For approximately three decades, the PRC government has implemented economic reform measures to utilize market forces in the development of the PRC economy. In addition, the PRC government continues to play a significant role in regulating industries and the economy through policy measures. We cannot predict whether changes in PRC economic, political or social conditions and in PRC laws, regulations and policies will have any adverse effect on our current or future business, financial condition or results of operations.



In addition, many of the economic reforms carried out by the PRC government are unprecedented or experimental and are expected to be refined and improved over time. Other political, economic and social factors may also lead to further adjustments of the reform measures. This refining and adjustment process may not necessarily have a positive effect on our operations and business development. For example, the PRC government has in the past implemented a number of measures intended to slow down certain segments of the economy that the government believed to be overheating, including the real estate industry. These measures have included restricting foreign investment in certain sectors of the real estate industry, raising benchmark interest rates of commercial banks, reducing currency supply and placing additional limitations on the ability of commercial banks to make loans by raising bank reserves against deposits and raising the thresholds and minimum loan interest rates for residential mortgages. These actions, as well as future actions and policies of the PRC government, could cause a decrease in the overall level of economic activity, and in turn have a material and adverse impact on our business and financial condition.

***Changes in government control of currency conversion and in PRC foreign exchange regulations may adversely affect our business operations***

The PRC government imposes controls on the convertibility between Renminbi and foreign currencies and the remittance of foreign exchange out of China. We receive substantially all our revenue in Renminbi. Under our current corporate structure, our income is primarily derived from dividend payments from our PRC subsidiaries. Our PRC subsidiaries must convert their Renminbi earnings into foreign currency before they may pay cash dividends to us or service their foreign currency denominated obligations. Under existing PRC foreign exchange regulations, payments of current-account items may be made in foreign currencies without prior approval from SAFE by complying with certain procedural requirements.

However, approval from appropriate governmental authorities is required when Renminbi is converted into foreign currencies and remitted out of China for capital-account transactions, such as the repatriation of equity investment in China and the repayment of the principal of loans denominated in foreign currencies. Such restrictions on foreign exchange transactions under capital accounts also affect our ability to finance our PRC subsidiaries. Subsequent to this offering, we have the choice, as permitted by the PRC foreign investment regulations, to invest our net proceeds from this offering in the form of registered capital or a shareholder loan into our PRC subsidiaries to finance our operations in China. Our choice of investment is affected by the relevant PRC regulations with respect to capital-account and current-account foreign exchange transactions in China. Our investment decisions are additionally affected by various other measures taken by the PRC government relating to the PRC property market as we have disclosed in the section entitled “Industry Overview — The PRC Real Estate Industry — Measures affecting the PRC property market.” In addition, our transfer of funds to our subsidiaries in China is subject to approval by or filing with PRC governmental authorities in the case of an increase in registered capital, and subject to approval by and registration with PRC governmental authorities in case of shareholder loans to the extent that the existing foreign investment approvals received by our PRC subsidiaries permit any such shareholder loans at all. These limitations on the flow of funds between us and our PRC subsidiaries could restrict our ability to act in response to changing market conditions.

***We may be treated as a PRC resident enterprise for PRC tax purposes, which may subject us to PRC income taxes on our worldwide income.***

In March 2007, the National People’s Congress of the PRC and its Standing Committee (the “NPC” or the “National People’s Congress”) enacted the Enterprise Income Tax Law of the PRC (《中華人民共和國企業所得稅法》) (the “Enterprise Income Tax Law”), which took effect on January 1, 2008. The Enterprise Income Tax Law imposes a unified income tax rate of 25% on all domestic and foreign-invested enterprises unless they qualify under certain limited exceptions.

Under the Enterprise Income Tax Laws, enterprises established under the laws of jurisdictions outside China with their “de facto management bodies” located within China may be considered PRC resident enterprises and therefore subject to PRC enterprise income tax at the rate of 25% on their worldwide income. The Enterprise Income Tax Laws provide that the “de facto management body” of an enterprise is the organization that exercises substantial and overall management and control over the production, employees, books of accounts and properties of the enterprise. In April 2009, the SAT specified certain criteria for the

determination of the “de facto management bodies” for foreign enterprises that are controlled by PRC enterprises. However, there have been no official implementation rules regarding the determination of the “de facto management bodies” for foreign enterprises that are not controlled by PRC enterprises (including companies such as ourselves). If a majority of the members of our management team continue to be located in China, we may be considered a PRC resident enterprise and therefore subject to PRC enterprise income tax at the rate of 25% on our worldwide income. If we or any of our non-PRC subsidiaries otherwise become a PRC resident enterprise under the Enterprise Income Tax Laws, our profitability and cash flow would be materially and adversely affected.

***Interest payable by us to our foreign investors and gain on the sale of our Notes may become subject to withholding taxes under PRC tax laws***

Under the Enterprise Income Tax Laws, if our Company is deemed a PRC resident enterprise, the interest payable on the Notes will be considered to be sourced within China. PRC income tax at the rate of 10% will be applicable to such interest payable by us to investors that are “non-resident enterprises” so long as such “non-resident enterprise” investors do not have an establishment or place of business in China or, if despite the existence of such establishment or place of business in China, the relevant income is not effectively connected with such establishment or place of business in China. Similarly, any gain realized on the transfer of the Notes by such investors will be subject to a 10% PRC income tax if such gain is regarded as income derived from sources within China. It is uncertain whether we will be considered a PRC “resident enterprise,” so we are not sure whether the interest payable to our foreign investors, or the gain our foreign investors may realize from the transfer of our Notes, would be treated as income sourced within China and be subject to PRC tax. If we are required under the Enterprise Income Tax Laws to withhold PRC income tax on our interest payable to our foreign shareholders who are “non-resident enterprises,” we will be required to pay such additional amounts as will result in receipt by a holder of a Note of such amounts as would have been received by the holder had no such withholding been required. The requirement to pay additional amounts will increase the cost of servicing interest payments on the Notes, and could have a material adverse effect on our ability to pay interest on, and repay the principal amount of, the Notes, as well as our profitability and cash flow. In addition, if you are required to pay PRC income tax on the transfer of our Notes, the value of your investment in our Notes may be materially and adversely affected. It is unclear whether, if we are considered a PRC “resident enterprise,” holders of our Notes might be able to claim the benefit of income tax treaties or agreements entered into between China and other countries or areas.

***PRC regulations relating to the establishment of offshore special purpose companies by PRC residents may adversely affect our business operations***

In October 2005, the SAFE issued the Notice Regarding Certain Administrative Measures on Financing and Round-trip Investment by PRC Residents through Offshore Special Purpose Vehicles (《關於境內居民通過境外特殊目的公司融資及返程投資外匯管理有關問題的通知》), or Circular No. 75 which became effective on November 1, 2005. The notice requires PRC residents, including both legal and natural persons, to register with the local SAFE branch before establishing or controlling any company outside of China (an “offshore special purpose company”) for the purpose of acquiring any assets of or equity interest in a PRC company and raising funds offshore. In July 2014, Circular No. 75 was abolished by SAFE and was superseded by the Notice Regarding Certain Issues on the Foreign Exchange Administration on the Offshore Investment and Financing and Round-trip Investment by PRC Residents through Special Purpose Vehicles (《關於境內居民通過特殊目的公司境外投融資及返程投資外匯管理有關問題的通知》), or Circular No. 37.

Circular No. 37 and other relevant SAFE rules require PRC residents, including both legal and natural persons, to register with the banks before making capital contribution to any company outside of China (an “offshore SPV”) with onshore or offshore assets and equity interests legally owned by PRC residents. In addition, any PRC individual resident who is the shareholder of an offshore SPV is required to update its registration with banks with respect to that offshore SPV in connection with change of basic information of the offshore SPV such as its company name, business term, the shareholding by individual PRC resident, merger, division and with respect to the individual PRC resident in case of any increase or decrease of capital in the offshore SPV, transfer of shares or swap of shares by the individual PRC resident. Failure to comply with the required registration and updating requirements described above may result in



restrictions being imposed on the foreign exchange activities of the PRC subsidiaries of such offshore SPV, including increasing the registered capital of, payment of dividends and other distributions to, and receiving capital injections from the offshore SPV. Failure to comply with Circular No. 37 may also subject the relevant PRC residents or the PRC subsidiaries of such offshore SPV to penalties under PRC foreign exchange administration regulations for evasion of applicable foreign exchange restrictions.

If the SAFE promulgates clarifications or regulations in the future requiring our beneficial owners who are Hong Kong permanent residents to comply with the registration procedures and update requirements described above and if our beneficial owners are unable or fail to comply with such procedures, our beneficial owners may be subject to fines and legal sanctions and our business operations may also be materially and adversely affected, particularly with respect to the ability of our Chinese subsidiaries to remit foreign currency payments out of China.

***Our operations and financial performance could be adversely affected by labor shortages, increase in labor costs, changes to the PRC labor-related laws and regulations or labor disputes***

The PRC Labor Contract Law, which became effective on January 1, 2008, imposes greater liabilities on employers and significantly affects the cost of an employer's decision to reduce its workforce. Further, it requires certain terminations to be based upon seniority and not merit. In the event we decide to significantly change or decrease our workforce, the Labor Contract Law could adversely affect our ability to effect such changes in the most cost effective or timely manner to our business, hence may adversely affect our financial condition and results of operations. In addition, the PRC government has continued to introduce various new labor-related regulations after the promulgation of the Labor Contract Law. Among other things, the paid annual leave provisions require that paid annual leaves ranging from five to fifteen days be available to nearly all employees and further require that employers compensate an employee for any annual leave days the employee is unable to take in the amount of three times of such employee's daily salary, subject to certain exceptions.

On October 28, 2010, the Standing Committee of the National People's Congress promulgated the Social Insurance Law, which became effective on July 1, 2011, to clarify the contents of the social insurance system in China. According to the Social Insurance Law, employees will participate in pension insurance, work-related injury insurance, medical insurance, unemployment insurance and maternity insurance and the employers must, together with their employees or separately, pay for the social insurance premiums for such employees.

As a result of the implementation of these and any future rules and regulations designed to enhance the standard for labor protection, our labor costs may continue to increase. Furthermore, as the interpretation and implementation of these new laws and regulations are still evolving, we cannot assure you that our employment practice will at all times be deemed fully in compliance, which may cause us to face labor disputes or governmental investigations. If we are deemed in violation of such labor laws and regulations, we could be subject to penalties, compensations to the employees and loss of reputation, and as a result our business, financial condition and results of operations could be materially and adversely affected.

Further, labor disputes, work stoppages or slowdowns at our operating subsidiaries or project sites or affecting the operations of our business partners could disrupt our daily operation or our expansion plans, which could have a material adverse effect on our business and results of operations.

***Interpretation of the PRC laws and regulations involves uncertainty and the current legal environment in China could limit the legal protections available to you***

Our core business is conducted in China and is governed by PRC laws and regulations. Our principal operating subsidiaries are located in China and are subject to the PRC laws and regulations. The PRC legal system is a civil law system based on written statutes, and prior court decisions have limited precedential value and can only be used as a reference. Additionally, PRC written laws are often principle-oriented and require detailed interpretations by the enforcement bodies to further apply and enforce such laws. Since 1979, the PRC legislature has promulgated laws and regulations in relation to economic matters such as foreign investment, corporate organization and governance, commercial transactions, taxation and trade, with a view to developing a comprehensive system of commercial law, including laws relating to property ownership and development. However, because these laws and regulations have not been fully

developed, and because of the limited volume of published cases and the non-binding nature of prior court decisions, interpretation of PRC laws and regulations involves a degree of uncertainty and the legal protection available to you may be limited. Depending on the governmental agency or the presentation of an application or case to such agency, we may receive less favorable interpretations of laws and regulations than our competitors. In addition, any litigation in China may be protracted and result in substantial costs and diversion of resources and management attention. All these uncertainties may cause difficulties in the enforcement of our land use rights, entitlements under our permits, and other statutory and contractual rights and interests.

***The national and regional economies in China and our prospects may be adversely affected by natural disasters, acts of God, and occurrence of epidemics***

Our business is subject to general economic and social conditions in China. Natural disasters, epidemics and other acts of God which are beyond our control may adversely affect the economy, infrastructure and livelihood of the people in China. Some regions in China, including the cities where we operate, are under the threat of flood, earthquake, sandstorm, snowstorm, fire or drought. In addition, past occurrences of epidemics, depending on their scale, have caused different degrees of damage to the national and local economies in China. A recurrence of SARS, H5N1 avian flu, H1N1 swine flu or H7N9 avian flu, especially in the cities where we have operations, may result in material disruptions to our property development and our sales and marketing, which in turn may adversely affect our financial condition and results of operations.

***We cannot guarantee the accuracy of facts, forecasts and other statistics with respect to China, the PRC economy, the PRC real estate industry and the selected PRC regional data contained in this offering memorandum***

Facts, forecasts and other statistics in this offering memorandum relating to China, the PRC economy, the PRC real estate industry and the selected PRC regional data have been derived from various official or other publications available in China and may not be consistent with other information compiled within or outside China. However, we cannot guarantee the quality or reliability of such source materials. They have not been prepared or independently verified by us, the Initial Purchasers or any of our or their affiliates or advisors (including legal advisors), or other participants in this offering and, therefore, we make no representation as to the accuracy of such facts, forecasts and statistics. We have, however, taken reasonable care in the reproduction and/or extraction of the official and other publications for the purpose of disclosure in this offering memorandum. Due to possibly flawed or ineffective collection methods or discrepancies between published information and market practice, these facts, forecasts and statistics in this offering memorandum may be inaccurate or may not be comparable to facts, forecasts and statistics produced with respect to other economies. Further, there can be no assurance that they are stated or compiled on the same basis or with the same degree of accuracy as in other jurisdictions. Therefore, you should not unduly rely upon the facts, forecasts and statistics with respect to China, the PRC economy, the PRC real estate industry and the selected PRC regional data contained in this offering memorandum.

***It may be difficult to enforce any judgments obtained from non-PRC courts against us in the PRC***

Substantially all of our assets are located within the PRC. The PRC does not have treaties providing for the reciprocal recognition and enforcement of judgments of courts with the United States, the United Kingdom, Japan or some other countries. Therefore, it may be difficult for our Notes holders to enforce against us in the PRC any judgments obtained from non-PRC courts.

## Risks Relating to the Notes

***Our Company is a holding company and payments with respect to the Notes are structurally subordinated to liabilities, contingent liabilities and obligations of our subsidiaries***

Our Company is a holding company with no material operations. We conduct our operations through our PRC subsidiaries. The Notes will not be guaranteed by any current or future PRC subsidiaries. Our primary assets are ownership interests in our PRC subsidiaries, which are held through the Subsidiary Guarantors and certain existing Non-Guarantor Subsidiaries and may be held by JV Subsidiary Guarantors or New Non-Guarantor Restricted Subsidiaries (as defined herein) in the future. The Subsidiary Guarantors do not and the JV Subsidiary Guarantors (if any) may not, have material operations. Accordingly, our ability to pay principal and interest on the Notes and the ability of the Subsidiary Guarantors and JV Subsidiary Guarantors (if any) to satisfy their obligations under the Subsidiary Guarantees or JV Subsidiary Guarantees (if any) will depend upon our receipt of principal and interest payments on the intercompany loans and distributions of dividends from our subsidiaries.

Creditors, including trade creditors of Non-Guarantor Subsidiaries and any holders of preferred shares in such entities, would have a claim on the Non-Guarantor Subsidiaries' assets that would be prior to the claims of holders of the Notes. As a result, our payment obligations under the Notes will be effectively subordinated to all existing and future obligations of our Non-Guarantor Subsidiaries, including their obligations under guarantees they have issued or will issue in connection with our business operations, and all claims of creditors of our Non-Guarantor Subsidiaries will have priority as to the assets of such entities over our claims and those of our creditors, including holders of the Notes. As of December 31, 2016, our Non-Guarantor Subsidiaries had consolidated indebtedness and other liabilities outstanding owed to third parties in the amount of RMB87,167 million (US\$12,555 million), capital commitments of RMB27,186 million (US\$3,916 million) and financial guarantees of RMB21,843 million (US\$3,146 million). The Notes and the Indenture permit us, the Subsidiary Guarantors, the JV Subsidiary Guarantors (if any) and our Non-Guarantor Subsidiaries to incur additional indebtedness and issue additional guarantees, subject to certain limitations. In addition, our secured creditors or those of any Subsidiary Guarantor or JV Subsidiary Guarantor (if any) would have priority as to our assets or the assets of such Subsidiary Guarantor or JV Subsidiary Guarantor (if any) securing the related obligations over claims of holders of the Notes.

Under the terms of the Notes, a Subsidiary Guarantee required to be provided by a subsidiary of the Company under the terms of the Notes may be replaced by a limited-recourse guarantee, or JV Subsidiary Guarantee, following the sale or issuance to, a third party of an equity interest in such subsidiary or its direct or indirect majority shareholders (subject to the satisfaction of certain conditions). Recovery under a JV Subsidiary Guarantee is limited to an amount equal to our proportional interest in the issued share capital of such Subsidiary Guarantor multiplied by the fair market value of the total assets in such JV Subsidiary Guarantor and its subsidiaries, on a consolidated basis, as of the date of the last fiscal quarter end of the Company. As a result, the amount that may be recovered by the Trustee pursuant to a JV Subsidiary Guarantee (compared to a Subsidiary Guarantee) is reduced, which in turn may affect your ability to recover any amounts due under the Notes.

***We have substantial indebtedness and may incur substantial additional indebtedness in the future, which could adversely affect our financial health and our ability to generate sufficient cash to satisfy our outstanding and future debt obligations***

We now have, and will continue to have after the offering of the Notes, a substantial amount of indebtedness. Our total indebtedness, including both current and non-current borrowings, as of December 31, 2015 and 2016, was RMB72,118.2 million and RMB87,536.8 million (US\$12,607.9 million), respectively. Our gearing ratio was 521.3% and 307.9% as of December 31, 2015 and 2016, respectively.

Our substantial indebtedness could have important consequences to you. For example, it could:

- limit our ability to satisfy our obligations under the Notes and other debt;
- increase our vulnerability to adverse general economic and industry conditions;
- require us to dedicate a substantial portion of our cash flow from operations to servicing and repaying our indebtedness, thereby reducing the availability of our cash flow to fund working capital, capital expenditures and for other general corporate purposes;

- limit our flexibility in planning for or reacting to changes in our businesses and the industry in which we operate;
- place us at a competitive disadvantage compared to our competitors that have less debt;
- limit, along with the financial and other restrictive covenants of our indebtedness, among other things, our ability to borrow additional funds; and
- increase the cost of additional financing.

In the future, we may from time to time incur substantial additional indebtedness and contingent liabilities. Under the Notes, our ability to incur additional debt is subject to the limitation on indebtedness and preferred stock covenant. Under such covenant, we may incur certain indebtedness if we can, among other things, satisfy the Fixed Charge Coverage Ratio (as defined in “Description of the 2020 Notes,” “Description of the 2021 Notes,” “Description of the 2022 Notes” and “Description of the 2024 Notes”). The Fixed Charge Coverage Ratio is derived by dividing Consolidated EBITDA by Consolidated Fixed Charges (each as defined in “Description of the 2020 Notes,” “Description of the 2021 Notes,” “Description of the 2022 Notes” and “Description of the 2024 Notes”). Because our definition of Consolidated Net Income (which is a significant component of Consolidated EBITDA) includes any net after tax gains arising from our sale of certain investment properties (or the stock of subsidiaries holding such properties) as a result of the difference between the original cost and the cash sale price, and our definition of Consolidated Interest Expense excludes the interest expense on indebtedness of third parties that we guarantee (except to the extent that such interest expense is actually paid by us), our Consolidated EBITDA could be substantially larger and our Consolidated Interest expense could be smaller when compared to other similarly situated PRC issuers whose covenants do not typically include such net after tax gains in the definition of Consolidated Net Income and would typically include any interest expense accruing on indebtedness of any other person guaranteed by such issuers and their subsidiaries in the definition of Consolidated Interest Expense. As a result, our ability to incur additional debt under the Fixed Charge Coverage Ratio could be substantially larger when compared to such other issuers. In addition, we may, pursuant to certain exceptions to the Fixed Charge Coverage Ratio requirement, incur additional indebtedness which could be sizeable. In particular, we may incur indebtedness to finance the acquisition of certain property via acquiring the capital stock of an entity and this entity needs not become a restricted subsidiary, subject to certain conditions. If we or our subsidiaries incur additional debt, the risks that we face as a result of our already substantial indebtedness and leverage could intensify.

Our ability to generate sufficient cash to satisfy our outstanding and future debt obligations will depend upon our future operating performance, which will be affected by prevailing economic conditions and financial, business and other factors, many of which are beyond our control. We anticipate that our operating cash flow will be sufficient to meet our anticipated operating expenses and to service our debt obligations as they become due. However, there is no assurance that we will be able to generate sufficient cash flow for these purposes. If we are unable to service our indebtedness, we will be forced to adopt an alternative strategy that may include actions such as reducing or delaying capital expenditures, selling assets, restructuring or refinancing our indebtedness or seeking equity capital. These strategies may not be instituted on satisfactory terms, if at all.

On the other hand, our ability to meet the Fixed Charge Coverage Ratio requirement may be affected by events beyond our control. We cannot assure you that we will be able to meet these ratios. Certain of our financing arrangements also impose operating and financial restrictions on our business. See “Description of Material Indebtedness and Other Obligations.” Such restrictions in the Indentures and our other financing arrangements may negatively affect our ability to react to changes in market conditions, take advantage of business opportunities we believe to be desirable, obtain future financing, fund required capital expenditures, or withstand a continuing or future downturn in our business or the general economy. Any of these factors could materially and adversely affect our ability to satisfy our obligations under the Notes and other debt.

***Our subsidiaries are subject to restrictions on the payment of dividends and the repayment of shareholder loans or advances to us and our subsidiaries***

As a holding company, we depend on the receipt of dividends and the interest and principal payments on shareholder loans or advances from our subsidiaries, including our PRC subsidiaries, to satisfy our obligations, including our obligations under the Notes. The ability of our subsidiaries to pay dividends and make payments on shareholder loans or advances is subject to, among other things, distributable earnings, cash flow conditions, restrictions contained in the articles of association of our subsidiaries, applicable laws and restrictions contained in the debt instruments or agreements of such subsidiaries. In particular, a substantial number of our PRC subsidiaries holding a significant number of our projects are, directly or indirectly, restricted from paying dividends or making payment on shareholder loans. See “Description of Material Indebtedness and Other Obligations.” Furthermore, such restrictions may adversely affect the calculation of our Consolidated Net Income, and in turn our ability to undertake additional financing, investment or other transactions under the terms of the Notes. In addition, if any of our subsidiaries raises capital by issuing equity securities to third parties, dividends declared and paid with respect to such equity securities would not be available to us to make payments on the Notes. These restrictions could reduce the amounts that we receive from our subsidiaries, which would restrict our ability to meet our payment obligations under the Notes and the obligations of the Subsidiary Guarantors or JV Subsidiary Guarantors (if any) under the Subsidiary Guarantees or JV Subsidiary Guarantees, as the case may be.

PRC laws and regulations permit payment of dividends only out of accumulated profits as determined in accordance with PRC accounting standards and regulations and such profits differ from profits determined in accordance with HKFRS in certain significant respects, including the use of different bases of recognition of revenue and expenses. Our PRC subsidiaries are also required to set aside a portion of their after-tax profits according to PRC accounting standards and regulations to fund certain reserves that are not distributable as cash dividends. In practice, our PRC project companies may pay dividends only after they have completed not only the project development, at least the development of a phase or a stand-alone tower or building, and the revenue recognition but also the required government tax clearance and foreign exchange procedures. In addition, dividends paid by our PRC subsidiaries to their non-PRC parent companies will be subject to a 10% withholding tax, unless there is a tax treaty between the PRC and the jurisdiction in which the overseas parent company is incorporated, which specifically exempts or reduces such withholding tax. Pursuant to avoidance of double taxation arrangements between Hong Kong and the PRC, if the non-PRC parent company is a Hong Kong resident and directly holds a 25% or more interest in the PRC enterprise, such withholding tax rate may be lowered to 5%, although there is uncertainty under a recent circular regarding whether intermediate Hong Kong holding companies will remain eligible for benefits under this arrangement. As a result of such restrictions, there could be timing limitations on payments from our PRC subsidiaries to meet payments required by the Notes or satisfy our obligations under the Subsidiary Guarantees or JV Subsidiary Guarantees, as the case may be, and there could be restrictions on payments required to redeem the Notes at maturity or as required for any early redemption.

Furthermore, although we currently do not have any offshore shareholder loans to our PRC subsidiaries, we may resort to such offshore lending in the future, rather than equity contributions, to our PRC subsidiaries to finance their operations. In such events, the market interest rates that our PRC subsidiaries can pay with respect to offshore loans generally may not exceed comparable interest rates in the international finance markets. The interest rates on shareholder loans paid by our subsidiaries, therefore, are likely to be lower than the interest rate for the Notes. Our PRC subsidiaries are also required to pay a 10% (or 7% if the interest is paid to a Hong Kong resident) withholding tax on our behalf on the interest paid under any shareholder loan. Prior to payment of interest and principal on any such shareholder loan, the PRC subsidiaries (as foreign-invested enterprises in China) must present evidence of payment of the withholding tax on the interest payable on any such shareholder loan and evidence of registration with SAFE, as well as any other documents that SAFE or its local branch may require.

As a result of the foregoing, we cannot assure you that we will have sufficient cash flow from dividends or payments on intercompany loans or advances from our subsidiaries to satisfy our obligations under the Notes or the obligations of the Subsidiary Guarantors or JV Subsidiary Guarantors (if any) under the Subsidiary Guarantees or JV Subsidiary Guarantees, as the case may be.



***PRC regulation of loans to and direct investments in PRC entities by offshore holding companies may delay or prevent us from using the proceeds of this offering to make loans or additional capital contributions to our PRC operating subsidiaries***

According to the existing PRC rules and regulations relating to supervision of foreign debt, loans by foreign companies to their subsidiaries in China, such as our PRC subsidiaries established as foreign-invested enterprises in China, are considered foreign debt, and such loans must be registered with the relevant local branches of SAFE. Such rules and regulations also provide that the total outstanding amount of such foreign debt borrowed by any foreign-invested enterprise may not exceed the difference between its total investment and its registered capital, each as approved by the relevant PRC authorities. In addition, in July 2007, SAFE issued a circular indicating that it would not process any foreign debt registration or conversion of foreign debt for foreign-invested enterprises in the real estate sector that was approved by the local office of MOFCOM, and registered with MOFCOM after June 1, 2007. Foreign invested-enterprises include joint ventures and wholly foreign owned enterprises established in China, such as most of our PRC subsidiaries. Therefore, the proceeds of the current offering that will be used for land acquisitions and developments in China may only be transferred to our PRC subsidiaries as equity investments and not as loans. Equity contributions by us and our non-PRC subsidiaries to our PRC subsidiaries will require approvals from or filing with the commerce department of the local government and the local banks, which may take considerable time and result in delays of receiving the contribution. This may in turn adversely affect the financial condition of the PRC subsidiaries and cause delays to the development undertaken by such PRC subsidiaries. We might not be able to obtain necessary approvals for our PRC subsidiaries at all.

The PRC government may introduce new policies that could further restrict our ability to use funds raised outside China. Our borrowings from sources outside of China as a percentage of our total borrowings has been increasing and may continue to increase in the future. Due to restrictions imposed by the PRC laws and regulations, we may not be able to use all or any of the funds that we raise outside of China, including the net proceeds from the current offering, as we contemplated, which may have a material and adverse effect on our business, results of operations, financial condition and prospects.

***We may be subject to risks presented by fluctuations in exchange rates between Renminbi and other currencies, particularly the U.S. dollar***

The Notes are denominated in U.S. dollars, while substantially all of our revenues are generated by our PRC operating subsidiaries and are denominated in Renminbi. Pursuant to reforms of the exchange rate system announced by PBOC on July 21, 2005, Renminbi-to-foreign currency exchange rates are allowed to fluctuate within a narrow and managed band against a basket of foreign currencies, rather than being effectively linked to the U.S. dollar. Further, from May 18, 2007, PBOC enlarged the floating band for the trading prices in the inter-bank foreign exchange market of Renminbi against the U.S. dollar from 0.3% to 0.5% around the central parity rate, effective on May 21, 2007. The floating band was further widened to 1.0% on April 16, 2012 and 2.0% on March 17, 2014. These changes in currency policy resulted in Renminbi appreciating against the U.S. dollar by approximately 26.9% from July 21, 2005 to December 31, 2013. The PRC government may adopt further reforms of its exchange rate system, including making the Renminbi freely convertible in the future. If such reforms were implemented and resulted in the devaluation of the Renminbi against the U.S. dollar, our financial condition and results of operations could be adversely affected because of our substantial U.S. dollar denominated indebtedness and other obligations. Such a devaluation could also adversely affect the value, translated or converted into U.S. dollars or otherwise, of our earnings and our ability to satisfy our obligations under the Notes.

There are limited hedging instruments available in China to reduce our exposure to exchange rate fluctuations between the Renminbi and other currencies. Following the offering of the Notes, we may enter into foreign exchange or interest rate hedging arrangements in respect of our U.S. dollar-denominated liabilities under the Notes. These hedging arrangements may require us to pledge or transfer cash and other collateral to secure our obligations under the arrangements, and the amount of collateral required may increase as a result of mark-to-market adjustments. The Initial Purchasers and their affiliates may enter into such hedging arrangements

permitted under the Indenture, and these arrangements may be secured by pledges of our cash and other assets as permitted under the Indenture. If we were unable to provide such collateral, it could constitute a default under such hedging arrangements.

Any hedging obligation entered into or to be entered into by us or our subsidiaries, may contain terms and conditions that may result in the early termination, in whole or in part, of such hedging obligation upon the occurrence of certain termination or analogous events or conditions (howsoever described), including such events relating to us and/or any of our subsidiaries, and the terms and conditions of such hedging obligation(s) may provide that, in respect of any such early termination, limited or no payments may be due and payable to, or that certain payments may be due and payable by, us and/or any of our subsidiaries (as relevant) in respect of any such early termination. Any such early termination, in whole or in part, of any such hedging obligation(s), and the payment and any other consequences and effects of such early termination(s), may be material to our financial condition and/or any of our subsidiaries and may be material in relation to the performance of our or their respective obligations under or in relation to the Notes (if applicable), any indebtedness or any other present or future obligations and commitments.

***The terms of the Notes permit us to make investments in Unrestricted Subsidiaries and minority owned joint ventures***

In light of land prices, sizes of projects, the competitive landscape and other factors, we may from time to time consider developing properties jointly with other property developers. As a result, we may need to make investments in joint ventures (including joint ventures in which we may own less than a 50% equity interest) and such joint ventures may or may not be Restricted Subsidiaries under the Indentures governing the Notes. Although the Indentures governing the Notes restricts us and our Restricted Subsidiaries from making investments in Unrestricted Subsidiaries or joint ventures, these restrictions are subject to important exceptions and qualifications, including, among others, that we may, subject to certain conditions, make investments in Unrestricted Subsidiaries and minority owned joint ventures in an aggregate amount not to exceed 15% of our total assets without having to satisfy the Fixed Charge Coverage Ratio. See “Description of the 2020 Notes,” “Description of the 2021 Notes,” “Description of the 2022 Notes” and “Description of the 2024 Notes.”

***We may designate members of the “Restructuring Group” as Unrestricted Subsidiaries under the Indentures if and when we decide to proceed with the Restructuring, which members will not be subject to various covenants under the Indentures.***

Although we do not have any specific plan yet, we may designate members of the Restructuring Group (as defined in “Description of the 2020 Notes”, “Description of the 2021 Notes,” “Description of the 2022 Notes” and “Description of the 2024 Notes”) as Unrestricted Subsidiaries under the Indentures, if and when we consider appropriate, subject to certain conditions, including, among others, that our Board of Directors has determined in good faith that the designation of Unrestricted Subsidiaries is necessary to obtain approval from the relevant stock exchange for the Restructuring. Following such designation:

- interest expenses on Indebtedness (as defined in the Indentures) of such entity will not be included in the calculation of our Consolidated Interest Expense under the Indentures, other than such interest expenses on Indebtedness that is Guaranteed and paid by us or a Restricted Subsidiary;
- the net income of the Restructuring Group will not be included in the calculation of our Consolidated Net Income and Consolidated EBITDA under the Indentures except to the extent of the cash actually distributed to us or any Restricted Subsidiary as a dividend or other distribution from the Restructuring Group;
- any Investment by us or any Restricted Subsidiary in the Restructuring Group would need to satisfy the “Limitation on Restricted Payments” covenant; and
- future transactions between us or any Restricted Subsidiary on the one hand and any member of the Restructuring Group on the other will need to comply with the requirements in the “Limitation on Transactions with Shareholders and Affiliates” covenant, except for those that (i) are entered into in connection with the Restructuring, or (ii) are entered into in the ordinary course of business, on fair and reasonable terms and are disclosed in the offering documents issued in connection



with the Restructuring, or any amendment, modification, extension or replacement thereof, subject to certain conditions.

As a result of any such designation, the value of assets subject to the restrictive covenants under the Indentures may decrease and the market price and trading of the Notes may be materially affected. Accordingly, you are cautioned as to our potential designation of Unrestricted Subsidiaries under the Indentures, notably the members within the Restructuring Group, and our ability to designate further Unrestricted Subsidiaries subject to the conditions set forth in the Indentures.

***We may not be able to repurchase or repay the Notes upon certain change of control events***

We must offer to purchase or repay the Notes, upon the occurrence of certain change of control triggering events. See the sections entitled “Description of the 2020 Notes,” “Description of the 2021 Notes,” “Description of the 2022 Notes” and “Description of the 2024 Notes.”

The source of funds for any such purchase or payment would be our available cash or third-party financing. However, we may not have sufficient available funds at the time of the occurrence of any change of control event to make purchases or payment of the outstanding Notes. Our failure to make the offer to purchase or repay, or to purchase or repay, the outstanding Notes would constitute an event of default under the Notes. The event of default may, in turn, constitute an event of default under other indebtedness, any of which could cause the related debt to be accelerated after any applicable notice or grace periods. If our other debt were to be accelerated, we may not have sufficient funds to purchase or repay the Notes and repay the debt.

In addition, the definition of change of control events for purposes of the indentures does not necessarily afford protection for the holders of the Notes in the event of some highly leveraged transactions, including certain acquisitions, mergers, refinancings, restructurings or other recapitalizations. These types of transactions could, however, increase our indebtedness or otherwise affect our capital structure or credit ratings. The definition of change of control events for purposes of the indentures also includes a phrase relating to the sale of “all or substantially all” of our assets. Although there is a limited body of case law interpreting the phrase “substantially all,” there is no precise established definition under applicable law. Accordingly, our obligation to make an offer to purchase or repay the Notes and the ability of a holder of the Notes to require us to purchase or repay its Notes pursuant to the offer as a result of a highly-leveraged transaction or a sale of less than all of our assets may be uncertain.

***The insolvency laws of the Cayman Islands and other local insolvency laws may differ from U.S. bankruptcy law or those of another jurisdiction with which holders of the Notes may be familiar***

Because we are incorporated under the laws of the Cayman Islands, an insolvency proceeding relating to us or any such Subsidiary Guarantor, even if brought in the United States, would likely involve Cayman Islands insolvency laws, the procedural and substantive provisions of which may differ from comparable provisions of United States federal bankruptcy law. In addition, our other Subsidiary Guarantors are incorporated or may be incorporated in the BVI or Hong Kong and the insolvency laws of the BVI and Hong Kong may also differ from the laws of the United States or other jurisdictions with which the holders of the Notes may be familiar.

We conduct substantially all of our business operations through PRC-incorporated subsidiaries in China. The Subsidiary Guarantors, as equity holders in our PRC subsidiaries, are necessarily subject to the bankruptcy and insolvency laws of China in a bankruptcy or insolvency proceeding involving any of such PRC subsidiaries. The PRC laws and regulations relating to bankruptcy and insolvency and the legal proceedings in that regard may significantly differ from those of the United States and other jurisdictions with which the holders of the Notes may be familiar. You should analyze the risks and uncertainties carefully before you invest in our Notes.

***We may be unable to obtain and remit foreign exchange***

Our ability to satisfy our obligations under the Notes depends solely upon the ability of our PRC subsidiaries to obtain and remit sufficient foreign currency to pay dividends to us and, if applicable, to repay shareholder loans. Our PRC subsidiaries must present certain documents to SAFE, its authorized branch, or the designated foreign exchange bank, for approval before they can obtain and remit foreign currencies out of China, including, in the case of dividends,

evidence that the relevant PRC taxes have been paid and, in the case of shareholder loans, evidence of the registration of the loan with SAFE. Prior to payment of interest and principal on any shareholder loan we make to our PRC subsidiaries, the relevant PRC subsidiary must also present evidence of payment of the 10% (or 7% if the interest is paid to a Hong Kong resident) withholding tax on the interest payable in respect of such shareholder loan. If any PRC subsidiary for any reason fails to satisfy any of the PRC legal requirements for remitting foreign currency payments, the PRC subsidiary will be unable to pay us dividends or interest and principal on shareholder loans, which may affect our ability to satisfy our obligations under the Notes.

***If we are unable to comply with the restrictions and covenants in our debt agreements or the Indentures, there could be a default under the terms of these agreements or the Indentures, which could cause repayment of our debt to be accelerated, or we could be required to redeem our debt***

If we are unable to comply with the restrictions and covenants in the Indentures or our current or future debt obligations and other agreements, there could be a default or a redemption obligation under the terms of these agreements. For example, the terms of our Mandatorily Exchangeable Bonds require us to seek to satisfy certain mandatory exchange conditions as soon as reasonably practicable after the resumption of trading of our ordinary shares on the Hong Kong Stock Exchange. The trading of our ordinary shares resumed on the Hong Kong Stock Exchange on March 27, 2017, but we had not been able to achieve the Mandatory Exchange Conditions within 60 days from that date. Even though we aim to prevent such failure from continuing for a period of 30 consecutive days, there is no assurance that we will be able to achieve either or both of the Mandatory Exchange Conditions within this timeframe. Should we fail to do so, there will be an event of default under the Mandatorily Exchangeable Bonds or we may be required to redeem the Mandatorily Exchangeable Bonds at a premium. See “Description of Material Indebtedness and Other Obligations — Debt Restructuring — Mandatorily Exchangeable Bonds.” In the event of a default under these agreements, the holders of the debt could terminate their commitments to lend to us, accelerate repayment of the debt and declare all outstanding amounts due and payable or terminate the agreements, as the case may be. Furthermore, some of our debt agreements, including the Indentures, contain cross-acceleration or cross-default provisions. As a result, our default under one debt agreement may cause the acceleration of repayment of not only such debt but also other debt, including the Notes, or result in a default under our other debt agreements, including the Indenture. If any of these events occur, we cannot assure you that our assets and cash flow would be sufficient to repay in full all of our indebtedness, or that we would be able to find alternative financing. Even if we could obtain alternative financing, we cannot assure you that it would be on terms that are favorable or acceptable to us.

***Our operations are restricted by the terms of the Notes and other obligations which could limit our ability to plan for or to react to market conditions or meet our capital needs, which could increase your credit risk***

The indentures governing the Notes and the documents governing our certain other obligations include a number of significant restrictive covenants. Further, if not all of the holders of the Existing Notes tender to exchange for the Notes in the Concurrent Exchange Offer, we would continue to be subject to the indentures governing the Existing Notes, which contain similar significant restrictive covenants. These covenants restrict, among other things, our ability, and the ability of our Restricted Subsidiaries, to:

- incur or guarantee additional indebtedness and issue disqualified or preferred stock;
- declare dividends on capital stock or purchase or redeem capital stock;
- make investments or other specified restricted payments;
- issue or sell capital stock of Restricted Subsidiaries;
- guarantee indebtedness of Restricted Subsidiaries;
- sell assets;
- create liens;
- enter into sale and leaseback transactions;
- engage in any business other than permitted business;

- enter into agreements that restrict the Restricted Subsidiaries' ability to pay dividends, transfer assets or make intercompany loans;
- enter into transactions with shareholders or affiliates; and
- effect a consolidation or merger.

These covenants could limit our ability to plan for or react to market conditions or to meet our capital needs. Our ability to comply with these covenants may be affected by events beyond our control, and we may have to curtail some of our operations and growth plans to maintain compliance.

***A trading market for the Notes may not develop, and there are restrictions on resale of the Notes***

The Notes are a new issue of securities for which there is currently no trading market. Although approval in-principle has been received from the SGX-ST for the listing and quotation of the Notes on the SGX-ST, we cannot assure you that we will obtain or be able to maintain a listing on the SGX-ST, or that, if listed, a liquid trading market will develop. We have been advised that the Initial Purchasers intend to make a market in the Notes, but the Initial Purchasers are not obligated to do so and may discontinue such market making activity at any time without notice. In addition, the Notes are being offered pursuant to exemptions from registration under the U.S. Securities Act and, as a result, you will only be able to resell your Notes in transactions that have been registered under the U.S. Securities Act or in transactions not subject to or exempt from registration under the U.S. Securities Act. See the section entitled "Transfer Restrictions." We cannot predict whether an active trading market for the Notes will develop or be sustained.

***Certain transactions that constitute "connected transactions" under the Listing Rules will not be subject to the "Limitation on Transactions with Shareholders and Affiliates" covenant***

Our shares are listed on the Hong Kong Stock Exchange and we are required to comply with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "Listing Rules"), which provide, among other things, that any transaction between a listed company or any of its subsidiaries, on the one hand, and a "connected person" of such listed company, on the other hand, is a "connected transaction" that, if the value of such transaction exceeds the applicable *de minimis* thresholds, will require the prior approval of the independent shareholders of such listed company. The definition of "connected person" to a listed company includes, among others, any 10% or more shareholder of (i) such listed company or (ii) any subsidiary of such listed company. The concept of "connected person" also captures "associates," which include, among others, (a) any subsidiary of such "connected person," (b) any holding company of such "connected person" and any subsidiary of such holding company, and (c) any company in which such entity or entities mentioned in (a) and (b) above taken together has/have the power to exercise control, directly or indirectly, of 30% or more of the voting power of such company.

The "Limitation on Transactions with Shareholders and Affiliates" covenant in the Notes only applies to transactions between the Company or any Restricted Subsidiary, on the one hand, and (x) any holder (or any affiliate of such holder) of 10% or more of the shares of the Company or (y) any affiliate of the Company, on the other hand. As such, transactions between the Company or any Restricted Subsidiary, on the one hand, and an affiliate of any Restricted Subsidiary, on the other hand, will not be captured by such covenant, even though they are subject to the independent shareholders' requirement under the Listing Rules. As a result, we are not required by the terms of the Notes to ensure that any such transactions are on terms that are fair and reasonable, and we will not need to deliver officers' certificates or procure the delivery of fairness opinions of accounting, appraisal or investment banking firms to the trustee of the Notes for any such transactions.

***The liquidity and price of the Notes following the offering may be volatile***

The price and trading volume of the Notes may be highly volatile. Factors such as variations in our revenues, earnings and cash flows, proposals for new investments, strategic alliances and/or acquisitions, changes in interest rates, fluctuations in price for comparable companies, government regulations and changes thereof applicable to our industry and general economic conditions nationally or internationally could cause the price of the Notes to change.

Any such developments may result in large and sudden changes in the trading volume and price of the Notes. We cannot assure you that these developments will not occur in the future.

***There may be less publicly available information about us than is available in certain other jurisdictions***

There may be less publicly available information about companies listed in Hong Kong than is regularly made available by public companies in certain other countries. In addition, the financial information in this offering memorandum has been prepared in accordance with HKFRS, which differ in certain respects from generally accepted accounting principles in other jurisdictions, or other GAAPs, which might be material to the financial information contained in this offering memorandum. We have not prepared a reconciliation of our consolidated financial statements and related footnotes between HKFRS and other GAAPs. In making an investment decision, you must rely upon your own examination of us, the terms of the offering and our financial information. You should consult your own professional advisers for an understanding of the differences between HKFRS and other GAAPs and how those differences might affect the financial information contained in this offering memorandum.

***We will follow the applicable corporate disclosure standards for debt securities listed on the SGX-ST, which standards may be different from those applicable to debt securities listed in certain other countries***

We will be subject to continuing listing obligations in respect of the Notes to be listed on the SGX-ST. The disclosure standards imposed by the SGX-ST may be different than those imposed by securities exchanges in other countries or regions such as the United States or Hong Kong. As a result, the level of information that is available may not correspond to what investors in the Notes are accustomed to.

**Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral**

***Our initial Subsidiary Guarantors do not currently have significant operations and certain Subsidiary Guarantees may in some cases be replaced by limited-recourse guarantees***

We conduct substantially all of our business operations through our PRC subsidiaries, but none of our current PRC subsidiaries will provide a Subsidiary Guarantee or JV Subsidiary Guarantee either upon issuance of the Notes or at any time thereafter. No future subsidiaries that are organized under the laws of the PRC, or that are not permitted by applicable law or regulation to guarantee the Notes (the “Exempted Subsidiaries”), will provide a Subsidiary Guarantee or JV Subsidiary Guarantee at any time in the future. Moreover, the Notes will not be guaranteed by certain Other Non-Guarantor Subsidiaries. In addition, certain of our offshore subsidiaries will not be required to guarantee the Notes if the consolidated assets of these subsidiaries (other than the Exempted Subsidiaries) do not exceed 20% of our total assets. As a result, the Notes will be effectively subordinated to all the debt and other obligations, including contingent obligations and trade payables, of the PRC subsidiaries. See the sections entitled “Description of the 2020 Notes — The Subsidiary Guarantees and the JV Subsidiary Guarantees,” “Description of the 2021 Notes — The Subsidiary Guarantees and the JV Subsidiary Guarantees,” “Description of the 2022 Notes — The Subsidiary Guarantees and the JV Subsidiary Guarantees” and “Description of the 2024 Notes — The Subsidiary Guarantees and the JV Subsidiary Guarantees” for a list of the existing Non-Guarantor Subsidiaries (other than our PRC subsidiaries).

The initial Subsidiary Guarantors that will guarantee the Notes do not have significant operations. In addition, the Subsidiary Guarantors guarantee our obligations under the Notes and the Exchange Convertible Bonds. We cannot assure you that the initial Subsidiary Guarantors or any subsidiaries that may become Subsidiary Guarantors or JV Subsidiary Guarantors in the future will have the funds necessary to satisfy our financial obligations under the Notes if we are unable to do so. See the section entitled “— Risks Relating to the Notes — We are a holding company and payments with respect to the Notes are structurally subordinated to liabilities, contingent liabilities and obligations of our subsidiaries.”

Under the terms of the Notes, if no less than 20% of the Capital Stock of a Subsidiary Guarantor is sold to a third party (whether through sale of existing shares or issuance of new shares), such Subsidiary Guarantor may either substitute its Subsidiary Guarantee for JV Subsidiary Guarantee or release its Subsidiary Guarantee and do not provide any guarantee for

the Notes, as long as the consolidated assets of all Restricted Subsidiaries organized outside the PRC (other than the Exempted Subsidiaries) that are not Subsidiary Guarantors or JV Subsidiary Guarantors do not account for more than 20% of our total assets.

In addition, in the case of a subsidiary or any entity established after the original issue date of the Notes that is incorporated outside the PRC, a limited-recourse JV Subsidiary Guarantee may be provided following the sale or issuance to a third party of no less than 20% of equity interest in such subsidiary, or purchase from a third party of an equity interest in such entity such that it becomes our subsidiary (subject to the satisfaction of certain conditions). Recovery under a JV Subsidiary Guarantee is limited to an amount equal to our proportional interest in the issued share capital of such JV Subsidiary Guarantor multiplied by the fair market value of the total assets in such JV Subsidiary Guarantor and its subsidiaries, on a consolidated basis, as of the date of the last fiscal year end of the Company.

***The Subsidiary Guarantees or JV Subsidiary Guarantees may be challenged under applicable insolvency or fraudulent transfer laws, which could impair the enforceability of the Subsidiary Guarantees or JV Subsidiary Guarantees***

Under bankruptcy laws, fraudulent transfer laws, insolvency or unfair preference or similar laws in the Cayman Islands, the BVI, Hong Kong and other jurisdictions where future Subsidiary Guarantors or JV Subsidiary Guarantors (if any) may be established, a guarantee could be voided, or claims in respect of a guarantee could be subordinated to all other debts of that guarantor if, among other things, the guarantor, at the time it incurred the indebtedness evidenced by, or when it gives, its guarantee:

- incurred the debt with the intent to hinder, delay or defraud creditors or was influenced by a desire to put the beneficiary of the guarantee in a position which, in the event of the guarantor's insolvency, would be better than the position the beneficiary would have been in had the guarantee not been given;
- received less than reasonably equivalent value or fair consideration for the incurrence of such guarantee;
- was insolvent or rendered insolvent by reason of the incurrence of such guarantee;
- was engaged in a business or transaction for which the guarantor's remaining assets constituted unreasonably small capital; or
- intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they mature.

The measure of insolvency for purposes of the foregoing will vary depending on the laws of the applicable jurisdiction. Generally, however, a guarantor would be considered insolvent at a particular time if it were unable to pay its debts as they fell due or if the sum of its debts was then greater than all of its properties at a fair valuation or if the present fair saleable value of its assets was then less than the amount that would be required to pay its probable liabilities in respect of its existing debts as they became absolute and matured.

In addition, a guarantee may be subject to review under applicable insolvency or fraudulent transfer laws in certain jurisdictions or subject to a lawsuit by or on behalf of creditors of the guarantor. In such case, the analysis set forth above would generally apply, except that the guarantee could also be subject to the claim that, since the guarantee was not incurred for the benefit of the guarantor, the obligations of the guarantor thereunder were incurred for less than reasonably equivalent value or fair consideration.

In an attempt to limit the applicability of insolvency and fraudulent transfer laws in certain jurisdictions, the obligations of the Subsidiary Guarantors or JV Subsidiary Guarantors (if any) under the Subsidiary Guarantees or JV Subsidiary Guarantors (as the case may be) will be limited to the maximum amount that can be guaranteed by the applicable Subsidiary Guarantor or JV Subsidiary Guarantor (if any) without rendering the guarantee, as it relates to such Subsidiary Guarantor or JV Subsidiary Guarantor (if any), voidable under such applicable insolvency or fraudulent transfer laws.

If a court voids a Subsidiary Guarantee or JV Subsidiary Guarantee (as the case may be), subordinates such guarantee to other indebtedness of the Subsidiary Guarantor or JV Subsidiary Guarantor, or holds the Subsidiary Guarantee or JV Subsidiary Guarantee (as the case may be) unenforceable for any other reason, holders of the Notes would cease to have a claim against



that Subsidiary Guarantor or JV Subsidiary Guarantor based upon such guarantee, would be subject to the prior payment of all liabilities (including trade payables) of such Subsidiary Guarantor or JV Subsidiary Guarantor (as the case may be), and would solely be creditors of us and any Subsidiary Guarantors or JV Subsidiary Guarantors whose guarantees have not been voided or held unenforceable. We cannot assure you that, in such an event, after providing for all prior claims, there would be sufficient assets to satisfy the claims of the holders of the Notes.

***The pledge of certain Collateral may in some circumstances be voidable***

The pledge of the Collateral may be voidable as a preference under insolvency or fraudulent transfer or similar laws of Hong Kong, the Cayman Islands and the BVI at any time within six months of the perfection of the pledge or, under some circumstances, within a longer period. Pledges of capital stock of future Subsidiary Guarantors may also be voidable as a preference under relevant insolvency or fraudulent transfer or similar laws. In addition, the pledge of certain Collateral may be voided based on the analysis set forth under the section entitled “— The Subsidiary Guarantees or JV Subsidiary Guarantees may be challenged under applicable insolvency or fraudulent transfer laws, which could impair the enforceability of the Subsidiary Guarantees or JV Subsidiary Guarantees” above.

If the pledges of the Collateral were to be voided for any reason, holders of the Notes would have only an unsecured claim against us and the Subsidiary Guarantor Pledgors.

***The pledge of certain Collateral may be released under certain circumstances***

If we dispose of not less than 20% of the shares of a Subsidiary Guarantor, the Subsidiary Guarantees provided by such Subsidiary Guarantor and its subsidiaries, and the Collateral comprising the shares of these companies, may be released if the consolidated assets of our non-PRC subsidiaries (other than the Exempted Subsidiaries) that do not guarantee the Notes do not account for more than 20% of our total assets immediately following such release.

Moreover, in the event the conditions applicable to the replacement of a Subsidiary Guarantee with a JV Subsidiary Guarantee are satisfied, we are permitted to release the pledge of the shares granted by such Subsidiary Guarantor, as well as the pledge of the shares granted by the subsidiaries of such Subsidiary Guarantor. We are only required to deliver a replacement share pledge for the shares that we continue to hold in such JV Subsidiary Guarantor (but not the subsidiaries of such JV Subsidiary Guarantor) following the sale of the equity interests in such Subsidiary Guarantor. As a result, in the event we sell minority equity interests in our Subsidiary Guarantors or otherwise create JV Subsidiary Guarantors in accordance with the terms of the Indenture, the Collateral will be reduced in value and scope, and holders of the Notes would be subject to increased risks.

***The Trustee may request the holders of the Notes to provide an indemnity and/or security to its satisfaction***

In certain circumstances the Trustee may (at its sole discretion) request the holders of the Notes to provide an indemnity and/or security to its satisfaction before it takes actions on behalf of the holders of the Notes. The Trustee shall not be obliged to take any such actions if not indemnified to its satisfaction. Negotiating and agreeing to an indemnity and/or security can be a lengthy process and may impact on when such actions can be taken. The Trustee may not be able to take actions, notwithstanding the provision of an indemnity and/or security to it, in breach of the terms of the Indenture governing the Notes and in circumstances where there is uncertainty or dispute as to the applicable laws or regulations and, to the extent permitted by the agreements and the applicable law, it will be for the holders of the Notes to take such actions directly.

***The value of the Collateral is unlikely to be sufficient to satisfy our obligations under the Notes and other pari passu secured indebtedness***

The Collateral consists only of the capital stock of certain of the initial Subsidiary Guarantors. The security interest in respect of certain Collateral may be released upon the disposition of such Collateral and any proceeds from such disposition may be applied, prior to repaying any amounts due under the Notes, to repay other debt or to make investments in properties and assets that will not be pledged as additional Collateral.

The ability of the Trustee, on behalf of the holders of the Notes, to foreclose on the Collateral upon the occurrence of an Event of Default or otherwise will be subject to the terms of the Intercreditor Agreement, as well as in certain instances to perfection and priority status.



Although procedures will be undertaken to support the validity and enforceability of the security interests, we cannot assure you that the Trustee or holders of the Notes will be able to enforce the security interest.

The value of the Collateral in the event of a liquidation will depend upon market and economic conditions, the availability of buyers and similar factors. No independent appraisals of any of the Collateral have been prepared by or on behalf of us in connection with this offering of the Notes. Accordingly, we cannot assure you that the proceeds of any sale of the Collateral following an acceleration of the Notes will be sufficient to satisfy, or will not be substantially less than, amounts due and payable on the Notes. By its nature, the Collateral, which consists solely of the capital stock of any existing or future Subsidiary Guarantor, is likely to be illiquid and is unlikely to have a readily ascertainable market value. Likewise, we cannot assure you that the Collateral will be saleable or, if saleable, that there will not be substantial delays in its liquidation.

The Collateral will be shared on a *pari passu* basis by the holders of the Notes, the holders of the Exchange Convertible Bonds and the holders of any outstanding Existing HY Notes and may be shared on a *pari passu* basis with holders of other indebtedness ranking *pari passu* with the Notes that we may issue in the future. Accordingly, in the event of a default on the Notes or the other secured indebtedness and a foreclosure on the Collateral, any foreclosure proceeds would be shared by the holders of secured indebtedness in proportion to the outstanding amounts of each class of such secured indebtedness. The value of the Collateral securing the Notes and the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors is unlikely to be sufficient to satisfy the obligations of the Company and each of the Subsidiary Guarantor Pledgors under the Notes and the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors, and the Collateral securing the Notes and such Subsidiary Guarantees may be reduced or diluted under certain circumstances, including the issuance of Additional Notes (as defined herein) or other *pari passu* indebtedness and the disposition of assets comprising the Collateral, subject to the terms of the Indentures.

***The Intercreditor Agreement may impact the ability of the Company and the Subsidiary Guarantors to pay amounts due under the Notes and the Subsidiary Guarantees and the Intercreditor Agreement may limit the rights of holders of the Notes to the Collateral***

The Common Security Trustee is required to take action to enforce the Collateral in accordance with the instructions of the holders of the Notes and the holders of the Exchange Convertible Bonds given under and in accordance with the Intercreditor Agreement. Any enforcement action taken by the Common Security Trustee will adversely affect the Company's entitlement to receive distributions from the Collateral, which will, in turn, have an adverse impact on the Company's ability to fulfill its payment obligations under the Notes. Further, the Subsidiary Guarantors' ability to pay under the Subsidiary Guarantees will be adversely affected. The ability of holders of the Notes to enforce the Collateral is restricted under the Intercreditor Agreement, as only the Common Security Trustee is permitted to take enforcement actions. If an event of default occurs under the Notes, the holders holding 25% of the outstanding amount of a series of Notes and other secured parties under the Intercreditor Agreement may decide whether to take any enforcement action and may thereafter, through their respective trustee or agent, in accordance with the Intercreditor Agreement, instruct the Common Security Trustee to take enforcement action against the Collateral. By virtue of the instructions given to the Common Security Trustee described above, actions may be taken in respect of the Collateral that may be adverse to holders of such series of Notes. In such event, the only remedy available to holders of such series of Notes would be to sue for payment under the Notes and the Subsidiary Guarantees.

The Common Security Trustee, acting in its capacity as such, shall have such duties with respect to the Collateral pledged, assigned or granted pursuant to the Intercreditor Agreement and the Security Documents as are set forth in the Intercreditor Agreement. Under certain circumstances, the Common Security Trustee may have obligations under the Security Documents or the Intercreditor Agreement that are in conflict with the holders of the Notes. The Common Security Trustee will not be under any obligation to exercise any rights or powers conferred under the Intercreditor Agreement or any of the Security Documents for the benefit of the holders of the Notes or the Exchange Convertible Bonds, unless such holders or lender have offered to the Common Security Trustee indemnity and/or security satisfactory to the Common Security Trustee against any loss, liability or expense.

## USE OF PROCEEDS

We estimate that the proceeds from this offering, after deducting the estimated rebate to be paid to private banks in connection with the purchase of the Notes by their private bank clients and other estimated expenses payable in connection with this offering, will be approximately US\$780 million. We intend to use the net proceeds to first redeem the (i) remaining Existing Notes in accordance with the indentures governing the Existing Notes, and (ii) the Mandatorily Exchangeable Bonds (or any Exchange Convertible Bonds issued pursuant to terms of the Mandatorily Exchangeable Bonds) in accordance with the trust deed governing the Mandatorily Exchangeable Bonds (or the trust deed governing the Exchange Convertible Bonds, as applicable), subject to the right of holders of the Mandatorily Exchangeable Bonds or the Exchange Convertible Bonds, as applicable, to reject such redemption, with any remainder to be used for general corporate purposes.

## EXCHANGE RATE INFORMATION

### China

PBOC sets and publishes daily a base exchange rate with reference primarily to the supply and demand of Renminbi against a basket of currencies in the market during the prior day. PBOC also takes into account other factors, such as the general conditions existing in the international foreign exchange markets. From 1994 to July 20, 2005, the conversion of Renminbi into foreign currencies, including Hong Kong dollars and U.S. dollars, was based on rates set daily by PBOC on the basis of the previous day's inter-bank foreign exchange market rates and then current exchange rates in the world financial markets. On July 21, 2005, the PRC government introduced a managed floating exchange rate system to allow the value of the Renminbi to fluctuate within a regulated band based on market supply and demand and by reference to a basket of currencies. On May 18, 2007, PBOC enlarged the floating band for the trading prices in the inter-bank foreign exchange market of the Renminbi against the U.S. dollar from 0.3% to 0.5% around the central parity rate, effective on May 21, 2007. The floating band was further widened to 1.0% on April 16, 2012 and 2.0% on March 17, 2014. In August 2015, the PBOC moved to devalue the Renminbi against the U.S. dollar and announced a policy change allowing a more market-based determination of the official fixing rate. Following such announcement, the Renminbi depreciated significantly against the U.S. dollar. The PRC government may from time to time make further adjustments to the exchange rate system in the future. PBOC authorized the China Foreign Exchange Trading Centre to announce the central parity exchange rate of certain foreign currencies against the Renminbi on each business day. This rate is set as the central parity for the trading against the Renminbi in the inter-bank foreign exchange spot market and the over-the-counter exchange rate for the business day.

The following table sets forth the noon buying rate for U.S. dollars in New York City for cable transfer in Renminbi as certified for customs purposes by the Federal Reserve Bank of New York for the periods indicated:

Period	Exchange Rate			
	Period End	Average <sup>(1)</sup>	High	Low
	(RMB per US\$1.00)			
2012 . . . . .	6.2301	6.2290	6.3879	6.2221
2013 . . . . .	6.0537	6.1412	6.2438	6.0537
2014 . . . . .	6.2046	6.1704	6.2591	6.0402
2015 . . . . .	6.4778	6.2869	6.4896	6.1870
2016 . . . . .	6.9430	6.6549	6.9580	6.4480
December . . . . .	6.9430	6.9198	6.9580	6.8771
2017				
January . . . . .	6.8768	6.8907	6.9575	6.8360
February . . . . .	6.8665	6.8694	6.8821	6.8517
March . . . . .	6.8832	6.8940	6.9132	6.8687
April . . . . .	6.8900	6.8876	6.8988	6.8778
May . . . . .	6.8098	6.8843	6.9060	6.8098

Source: Federal Reserve H.10 Statistical Release

Note:

(1) Determined by averaging the rates on the last business day of each month during the relevant year, except for monthly average rates, which are determined by averaging the daily rates during the respective months.

## Hong Kong

The Hong Kong dollar is freely convertible into other currencies, including the U.S. dollar. Since October 17, 1983, the Hong Kong dollar has been linked to the U.S. dollar at the rate of HK\$7.80 to US\$1.00. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the "Basic Law"), which came into effect on July 1, 1997, provides that no foreign exchange control policies shall be applied in Hong Kong.

The market exchange rate of the Hong Kong dollar against the U.S. dollar continues to be determined by the forces of supply and demand in the foreign exchange market. However, against the background of the fixed rate system which applies to the issuance and withdrawal of Hong Kong currency in circulation, the market exchange rate has not deviated significantly from the level of HK\$7.80 to US\$1.00. In May 2005, the Hong Kong Monetary Authority broadened the 22-year-old trading band from the original rate of HK\$7.80 per U.S. dollar to a rate range of HK\$7.75 to HK\$7.85 per U.S. dollar. The Hong Kong government has indicated its intention to maintain the link within that rate range. Under the Basic Law, the Hong Kong dollar will continue to circulate and remain freely convertible. The Hong Kong government has also stated that it has no intention of imposing exchange controls in Hong Kong and that the Hong Kong dollar will remain freely convertible into other currencies, including the U.S. dollar. However, no assurance can be given that the Hong Kong government will maintain the link at HK\$7.80 to US\$1.00 or at all.

The following table sets forth the noon buying rate for U.S. dollars in New York City for cable transfer in Hong Kong dollars as certified for customs purposes by the Federal Reserve Bank of New York for the periods indicated:

Period	Exchange Rate			
	Period End	Average <sup>(1)</sup>	High	Low
	(HK\$ per US\$1.00)			
2012 . . . . .	7.7507	7.7556	7.7699	7.7493
2013 . . . . .	7.7539	7.7565	7.7654	7.7503
2014 . . . . .	7.7531	7.7554	7.7669	7.7495
2015 . . . . .	7.7507	7.7519	7.7686	7.7495
2016 . . . . .	7.7534	7.7618	7.8270	7.7505
December . . . . .	7.7534	7.7586	7.7674	7.7534
2017				
January . . . . .	7.7579	7.7560	7.7580	7.7540
February . . . . .	7.7627	7.7596	7.7627	7.7575
March . . . . .	7.7714	7.7658	7.7714	7.7611
April . . . . .	7.7779	7.7737	7.7806	7.7687
May . . . . .	7.7929	7.7864	7.7933	7.7775

Source: Federal Reserve H.10 Statistical Release

Note:

(1) Determined by averaging the rates on the last business day of each month during the relevant year, except for monthly average rates, which are determined by averaging the daily rates during the respective months.

## CAPITALIZATION AND INDEBTEDNESS

The following table sets forth our cash and bank balances, current borrowings, non-current borrowings, total equity and total capitalization as of December 31, 2016:

- on an actual basis; and
- as adjusted to give effect to the issue of the Notes in this offering after deducting the estimated rebate to be paid to private banks in connection with the purchase of the Notes by their private bank clients and other estimated expenses payable by us in connection with this offering.

The as-adjusted information below is illustrative only and, other than disclosed in the second bullet point above, does not take into account any changes in our borrowings and capitalization after December 31, 2016. For the avoidance of doubt, the as-adjusted information below does not give effect to the Concurrent Exchange Offer and the issuance of any Exchange Notes.

	As of December 31, 2016			
	Actual		As adjusted	
	(RMB in thousands)	(US\$ in thousands) (unaudited)	(RMB in thousands)	(US\$ in thousands) (unaudited)
<b>Cash and bank balances</b> <sup>(1)</sup> . . . . .	16,572,631	2,386,955	21,988,171	3,166,955
<b>Current borrowings:</b>				
Borrowings . . . . .	7,762,301	1,118,004	7,762,301	1,118,004
<b>Non-current borrowings:</b>				
Borrowings <sup>(2)(3)</sup> . . . . .	79,774,515	11,489,920	79,774,515	11,489,920
Notes to be issued <sup>(4)</sup> . . . . .	—	—	5,415,540	780,000
<b>Total equity</b> . . . . .	23,046,399	3,319,372	23,046,399	3,319,372
<b>Total capitalization</b> <sup>(5)</sup> . . . . .	102,820,914	14,809,292	108,236,454	15,589,292

- (1) Cash and bank balances include cash and bank balances of RMB10,819.1 million (US\$1,558.3 million), restricted cash of RMB5,696.6 million (US\$820.5 million) and short-term bank deposits of RMB56.9 million (US\$8.2 million).
- (2) We have, since December 31, 2016, in the ordinary course of business, entered into additional financing arrangements to finance our property developments and for general corporate purposes. These changes in our borrowings after December 31, 2016 have not been reflected in this capitalization table.
- (3) Our borrowings do not include capital commitments or contingent liabilities. As of December 31, 2016, our capital commitments were RMB27,186.3 million (US\$3,915.6 million) and our contingent liabilities, which were in the form of guarantees that we have provided to our customers in relation to their purchases of our properties, amounted to RMB21,843.2 million (US\$3,146.1 million).
- (4) Representing the proceeds from this offering, after deducting the estimated rebate to be paid to private banks in connection with the purchase of the Notes by their private bank clients and other estimated expenses payable in connection with this offering.
- (5) Total capitalization equals total non-current borrowings plus total equity.

Except as otherwise disclosed in this offering memorandum, there has been no material adverse change in our capitalization since December 31, 2016.

## SELECTED CONSOLIDATED FINANCIAL AND OTHER DATA

The following table presents our selected financial and other data. The selected consolidated statement of profit or loss and other comprehensive income data for 2015 and 2016 and the selected consolidated statement of financial position data as of December 31, 2015 and 2016 set forth below (except for EBITDA data) have been derived from our consolidated financial statements as of and for the year ended December 31, 2016, as audited by Grant Thornton Hong Kong Limited, included elsewhere in this offering memorandum. Our financial results for any past period are not, and should not be taken as, an indication of our performance, financial position or results of operations in future periods. Our financial statements have been prepared and presented in accordance with HKFRS, which differ in certain respects from generally accepted accounting principles in other jurisdictions. The selected financial data below should be read in conjunction with the section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and the notes to those statements included elsewhere in this offering memorandum.

### Selected Consolidated Statement of profit or loss and other Comprehensive Income and Other Selected Financial Data

	For the year ended December 31,		
	2015	2016	2016
	(RMB in thousands)	(RMB in thousands)	(US\$ in thousands)
			(unaudited)
Revenue . . . . .	10,926,535	17,771,517	2,559,631
Cost of sales . . . . .	(10,583,158)	(15,459,546)	(2,226,638)
<b>Gross profit</b> . . . . .	343,377	2,311,971	332,993
Other losses, net . . . . .	(216,339)	(560,512)	(80,731)
Selling and marketing costs . . . . .	(559,419)	(842,695)	(121,373)
Administrative expenses . . . . .	(1,066,169)	(1,745,262)	(251,370)
Changes in fair value of investment properties . . .	3,824,520	4,161,371	599,362
Changes in fair value of financial derivatives . . . .	(42,219)	(21,500)	(3,097)
<b>Operating profit</b> . . . . .	2,283,751	3,303,373	475,784
Share of results of associates . . . . .	(3,586)	(40,578)	(5,844)
Share of results of joint ventures . . . . .	—	8,223	1,184
Finance costs, net . . . . .	(2,106,444)	(2,120,366)	(305,396)
Gain on extinguishment of financial liabilities . . .	—	716,143	103,146
<b>Profit before income tax</b> . . . . .	173,721	1,866,795	268,874
Income tax expenses . . . . .	(1,428,205)	(2,214,306)	(318,926)
<b>Loss for the year</b> . . . . .	(1,254,484)	(347,511)	(50,052)



	For the year ended December 31,		
	2015	2016	2016
	(RMB in thousands)	(RMB in thousands)	(US\$ in thousands)
			(unaudited)
<b>Other comprehensive loss, including reclassification adjustments</b>			
Items that will be reclassified subsequently to profit or loss			
Changes in fair value of available-for-sale financial assets, net of tax . . . . .	—	(210)	(30)
<b>Other comprehensive loss for the year, including reclassification adjustments . . . . .</b>	<b>—</b>	<b>(210)</b>	<b>(30)</b>
<b>Total comprehensive loss for the year . . . . .</b>	<b>(1,254,484)</b>	<b>(347,721)</b>	<b>(50,082)</b>
<b>(Loss)/profit for the year attributable to:</b>			
Equity holders of the Company . . . . .	(1,121,577)	(612,380)	(88,201)
Non-controlling interests . . . . .	(132,907)	264,869	38,149
	<u>(1,254,484)</u>	<u>(347,511)</u>	<u>(50,052)</u>
<b>Total comprehensive (loss)/income attributable to:</b>			
Equity holders of the Company. . . . .	(1,121,577)	(612,590)	(88,231)
Non-controlling interests . . . . .	(132,907)	264,869	38,149
	<u>(1,254,484)</u>	<u>(347,721)</u>	<u>(50,082)</u>
<b>Other Financial Data</b>			
EBITDA <sup>(1)</sup> . . . . .	(1,145,317)	1,666,885	240,081
EBITDA margin <sup>(2)</sup> . . . . .	(10.5)%	9.4%	9.4%

(1) EBITDA for any period consists of profit or loss for the period, changes in fair value of investment properties, changes in fair value of financial derivatives, net finance cost (excluding net exchange gains/losses), capitalized interest charged to cost of sales, income tax expense, depreciation, amortization of intangible assets, amortization of land use rights, share-based payments and write down of completed properties held for sale and provisions for properties under development. EBITDA is not a standard measure under HKFRS. EBITDA is a widely used financial indicator of a company's ability to service and incur debt. EBITDA should not be considered in isolation or construed as an alternative to cash flows, net income or any other measure of financial performance or as an indicator of our operating performance, liquidity, profitability or cash flows generated by operating, investing or financing activities. In evaluating EBITDA, we believe that investors should consider, among other things, the components of EBITDA such as sales and operating expenses and the amount by which EBITDA exceeds capital expenditures and other charges. We have included EBITDA because we believe it is a useful supplement to cash flow data as a measure of our performance and our ability to generate cash flow from operations to cover debt service and taxes. EBITDA presented herein may not be comparable to similarly titled measures presented by other companies. Investors should not compare our EBITDA to EBITDA presented by other companies because not all companies use the same definition. See the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations — Non-GAAP Financial Measures" for a reconciliation of our profit or loss for the years ended December 31, 2015 and 2016 under HKFRS to our definition of EBITDA. Investors should also note that EBITDA as presented herein may be calculated differently from Consolidated EBITDA as defined and used in the Indenture governing the Notes. Interest expense excludes amounts capitalized. See the sections entitled "Description of the 2020 Notes — Definitions," "Description of the 2021 Notes — Definitions," "Description of the 2022 Notes — Definitions" and "Description of the 2024 Notes — Definitions" for a description of the manner in which Consolidated EBITDA is defined for purposes of the Indentures governing the Notes.

(2) EBITDA margin is calculated by dividing EBITDA by revenue.

## Selected Consolidated Statement of Financial Position Data

	As of December 31,		
	2015 (RMB in thousands)	2016 (RMB in thousands)	2016 (US\$ in thousands) (unaudited)
<b>Assets</b>			
Non-current assets . . . . .	22,478,677	34,602,673	4,983,822
Current assets . . . . .	105,067,998	131,219,294	18,899,509
Total assets . . . . .	<u>127,546,675</u>	<u>165,821,967</u>	<u>23,883,331</u>
<b>Equity and Liabilities</b>			
Non-current liabilities . . . . .	41,568,239	83,977,948	12,095,340
Current liabilities . . . . .	72,778,791	58,797,620	8,468,619
Total liabilities . . . . .	<u>114,347,030</u>	<u>142,775,568</u>	<u>20,563,959</u>
Total equity . . . . .	<u>13,199,645</u>	<u>23,046,399</u>	<u>3,319,372</u>
Total equity and liabilities . . . . .	<u>127,546,675</u>	<u>165,821,967</u>	<u>23,883,331</u>

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*The following discussion should be read in conjunction with the section entitled "Selected Consolidated Financial and Other Data" and our consolidated financial statements, including the notes thereto, included elsewhere in this offering memorandum. All significant intra-group transactions, balances and unrealized gains on intra-group transactions have been eliminated.*

*Our consolidated financial statements were prepared in accordance with HKFRS, which differ in certain material respects from generally accepted accounting principles in other jurisdictions. In this section of the offering memorandum, references to "2015" and "2016" refer to our financial years ended December 31, 2015 and 2016, respectively.*

### **Overview**

We are a leading PRC property developer with a sizable and diversified land bank of approximately 21.3 million sq.m. GFA in 31 cities across five regions. According to "Top 200 Real Estate Enterprise Property Developers by Sales in 2016" jointly compiled and issued by CRIC and China Real Estate Appraisal Center, we were ranked 46th nationwide in terms of GFA sold in 2016. We focus on mass market housing demand and are primarily engaged in the development of large-scale residential properties as well as integrated commercial properties.

Headquartered in Shenzhen, the Special Economic Zone adjacent to Hong Kong, we have historically focused our property development in the Pearl River Delta region. Our well-established position in the Pearl River Delta region is supported by our geographically diversified development portfolio, including projects in Greater Shenzhen, Foshan, Guangzhou and Zhuhai. Leveraging our success in the Pearl River Delta region, we have also expanded into other areas in China, including Shanghai, Hangzhou, Taizhou, Suzhou, Nanjing, Changzhou, Taicang and Jiangyin in the Yangtze River Delta region, Chengdu, Chongqing and Nanchong in the Western China region, Changsha, Wuhan and Zhuzhou in the Central China region, and Shenyang, Yingkou, Benxi, Panjin, Anshan, Weifang, Liaoyang, Dalian, Dandong, Huludao and Qingdao in the Pan-Bohai Bay Rim. With our in-depth property development experience and the dedication that we have demonstrated throughout our operational history, we intend to expand into other regions in China.

As of December 31, 2016, we had a total of 101 property development projects, including completed properties, properties under development and properties for future development, in 31 cities in China. As of December 31, 2016, we had completed properties with a total GFA of approximately 19,448,712 sq.m., and had a land bank with an estimated total GFA of approximately 21.3 million sq.m., including completed properties held for sale with a total GFA of approximately 2,115,574 sq.m., properties under development with an estimated total GFA of approximately 6,787,761 sq.m. and properties for future development with an estimated total GFA of approximately 12,364,991 sq.m. Our contracted sales were RMB9,254 million and RMB29,843 million (US\$4,298 million) in 2015 and 2016, respectively. Our contracted GFA was approximately 1,255,279 sq.m. and 2,269,379 sq.m. in 2015 and 2016, respectively.

Our revenue was RMB10,926.5 million and RMB17,771.5 million (US\$2,559.6 million), respectively, for the years ended December 31, 2015 and 2016. In 2015 and 2016, our revenue was primarily generated from sales of our developed properties, which amounted to approximately 94.2% and 94.2% of our revenue, respectively. Our remaining revenue in 2015 and 2016 included rental income, revenue from our property management services, revenue from hotel and catering operations, revenue from cinema, department store and cultural centre operations and revenue from other operations.

### **Key Factors Affecting Our Results of Operations**

Our business, results of operations and financial condition have been, and we expect will continue to be, affected by a number of key factors and material risks, many of which are beyond our control. Please refer to the section entitled "Risk Factors." These factors and risks include the following:

#### ***Economic conditions, speed of urbanization and demand for residential and commercial properties in China, particularly in the Pearl River Delta region***

Our business is heavily dependent on the performance of the real estate market in China, particularly in the Pearl River Delta region. The performance of the PRC real estate industry is

subject to continued growth in the economy, the rate of urbanization and the resultant demand for properties in China. The key factors that we consider to be important to our operations include (1) general economic development, including the global economy and the overall economic growth in China, (2) growth conditions in the private sector and (3) urban planning. Economic growth attributable to the private business sector has increased the general level of disposable income and the number of middle to upper-middle income households, which are our primary target customers. Developments in the economy and the rate of urbanization have in the past increased the supply of and demand for residential properties and affected pricing trends in the property sector in the cities and regions where we operate in China. We believe that these factors will continue to significantly affect our results of operations.

#### ***The regulatory environment and measures affecting the real estate industry in China***

Our business and results of operations have been, and will continue to be, affected by the regulatory environment in China, PRC governmental policies and measures taken by the PRC government on property development and related industries. In recent years, the PRC government has implemented a series of measures with a view to control the growth of the economy, including the real estate markets. While the real estate industry is regarded as a pillar industry by the PRC government, the PRC government has taken various restrictive measures to discourage speculation in the real estate market and to increase the supply of affordable residential properties. From time to time, the PRC government adjusts or introduces macroeconomic control policies to encourage or restrict development in the private property sector through regulating, among others, land grants, pre-sales of properties, bank financing and taxation. Measures taken by the PRC government to control money supply, credit availability and fixed assets also have a direct impact on our business and results of operations. The PRC government may introduce initiatives which may affect our access to capital and the means in which we may finance our property development. See “Regulations” for more details on the relevant PRC laws and regulations.

#### ***Ability to acquire suitable land at suitable prices***

To have a steady stream of properties available for sale and to achieve continuous growth in the long term, we need to replenish and increase land reserves suitable for development. Based on our current development plans, we have sufficient land reserves for property developments for the next five years. We expect competition among property developers for land reserves that are suitable for property development to remain intense. In addition, PRC government policies and measures on land supply may further intensify competition for land in China among property developers. For example, although privately held land use rights are not prevented from being traded in the secondary market, the statutory means of public tender, auction and listing-for-sale practice in respect of the grant of state-owned land use rights is likely to increase competition for available land and to increase land acquisition costs. Furthermore, in November 2009, the PRC government raised the minimum down-payment of land premium to 50% and required the land premium to be fully paid within one year after the signing of a land grant contract, subject to limited exceptions. In March 2010, the Ministry of Land and Resources promulgated a notice to strictly regulate the transfer of land for commercial buildings. According to the notice, the area of a parcel of land granted for commodity residential development should be strictly restricted in accordance with the catalog of restricted use of land and the minimum price of the land transfer should not be less than 70% of the benchmark price of the place where the land being transferred is located, and the real estate developer’s bid deposit should not be less than 20% of the minimum transfer price. See “Regulations.” These changes of policy may materially and adversely affect our cash flow and our ability to acquire suitable land for our operations.

#### ***Land and construction costs***

Our results of operations are affected by key components of our cost of sales, such as land costs and construction costs. In 2015 and 2016, our land costs recognized in cost of sales were RMB2,577.1 million and RMB4,437.1 million (US\$639.1 million), respectively, and our land cost as a percentage of our property sales revenue was approximately 25.0% and 26.5%, respectively. Land premiums have generally been increasing over the past 10 years in China. We believe that land premiums will continue to rise as the PRC economy continues to develop. Another key component of our cost of sales is construction costs, which are susceptible to the price volatility of construction materials such as steel and cement.

### ***Access to and cost of financing***

Borrowing is an important source of funding for our property developments. As of December 31, 2015 and 2016, our outstanding borrowings amounted to RMB72,118.2 million and RMB87,536.8 million (US\$12,607.9 million), respectively. The effective interest rates on our bank borrowings included in non-current liabilities as of December 31, 2015 and 2016 were approximately 6.3% and 6.8%, respectively. The effective interest rates on our bank borrowings included in current liabilities decreased from 7.6% as of December 31, 2015 to 6.7% as of December 31, 2016. As commercial banks in China link the interest rates on their bank loans to benchmark lending rates published by the PBOC, any increase in such benchmark lending rates will increase the interest costs for our developments. Our ability and flexibility to use bank loans to finance our property projects are also affected by the measures taken by the PRC government from time to time to restrain money supply and credit availability for fixed asset investments, particularly with respect to the property development sector. In addition to bank borrowings, we have also accessed capital markets for our financing requirements. See “Description of Material Indebtedness and Other Obligations.” An increase in our finance costs would negatively affect our profitability and results of operations and the availability of financing will affect our ability to engage in our project development activities, which will negatively affect our results of operations.

### ***Pre-sale and progress of property development***

Pre-sales constitute the most important source of our operating cash inflow during our project development. PRC law allows us to pre-sell properties before their completion upon obtaining the pre-sale permit from the relevant governmental authorities and requires us to use the pre-sale proceeds to develop the relevant pre-sale property projects. However, we do not recognize revenue from the pre-sale of a property until the property has been delivered to the purchaser. The progress of property development may affect our ability to deliver properties to our customers within the specified time limit and in turn affect the amount and timing of cash inflows from pre-sales. In addition, reduced cash inflow from pre-sales of our properties will increase our reliance on external financing and will impact our ability to finance our continuing property developments.

### ***LAT***

We are subject to LAT with respect to the appreciated value of land. LAT applies to both domestic and foreign developers and investors in real properties in China, irrespective of whether they are corporate entities or individuals. For the years ended December 31, 2015 and 2016, we made LAT prepayments of RMB153.0 million and RMB835.4 million (US\$120.3 million), respectively and LAT provisions of RMB186.9 million and RMB493.8 million (US\$71.1 million), respectively. We prepay LAT on the basis of our pre-sale proceeds in accordance with requirements of PRC tax authorities and provide for unpaid LAT liabilities based on our best estimate according to our understanding of prevailing tax rules. Actual LAT liabilities are, however, subject to determination by the tax authorities upon completion of the property development projects and, because the PRC government has not published clear and comprehensive guidelines in this regard, the tax authorities may disagree that our provisions are sufficient to cover all actual LAT obligations as of each balance sheet date in respect of our past LAT liabilities. See “Regulations.”

### ***Fair Value of Investment Properties***

We hold investment properties for rental income or capital appreciation. We consider the estimated long-term growth potential, overall market conditions and our cash flows and financial condition when we decide whether to sell or hold our completed properties for long-term investment purposes. Going forward, we intend to continue to consider the above factors in deciding whether to sell or lease our completed properties and we expect to increase our investment property portfolio over time. In accordance with HKFRS, gains or losses (as applicable) arising from changes in the fair value of our investment properties should be accounted for in our consolidated profit or loss, which may have a substantial effect on our profits. Total GFA of completed investment properties we held for rental income was 409,795 sq.m. and 408,665 sq.m. as of December 31, 2015 and 2016, respectively. Our investment properties were revalued by an independent property valuer as of December 31, 2015 and 2016, respectively, using the income capitalization approach and direct comparison method, as applicable, which reflected market conditions at those dates. The fair value of our investment

properties may have been higher or lower had the valuer used a different set of bases or assumptions, or had the valuation been conducted by other qualified independent professional valuers using a different set of bases and assumptions. In addition, upward revaluation adjustments reflect unrealized capital gains on our investment properties as of the relevant reporting dates and do not generate any cash inflow for our operations or potential dividend distribution to our shareholders. The amount of revaluation adjustments has been, and will continue to be, subject to market fluctuations. If similar levels of fair value gains cannot be sustained in the future, our results of operations can be adversely impacted. See “Risk Factors — Risks Relating To the Business — The fair value of our investment properties is likely to fluctuate from time to time and may decrease significantly in the future, which may materially and adversely impact our profitability.”

### **Critical Accounting Policies**

The preparation of our consolidated financial statements in conformity with HKFRS requires the use of certain critical accounting estimates. It also requires our management to exercise its judgment in the process of applying our accounting policies. Therefore, the consolidated financial statements included in this offering memorandum may not necessarily reflect our results of operations, financial position and cash flows in the future or what they would have been had we been a separate, stand-alone entity during the periods presented.

Critical accounting policies are those accounting policies that are reflective of significant judgments and uncertainties and that potentially yield materially different results under different assumptions and conditions.

When reviewing our consolidated financial statements, you should consider (i) our selection of critical accounting policies, (ii) the judgment and other uncertainties affecting the application of such policies, and (iii) the sensitivity of reported results to changes in conditions and assumptions. We believe the following accounting policies involve the most significant judgment and estimates used in the preparation of our consolidated financial information. In addition, we discuss our revenue recognition policy below because of its significance, even though it does not involve significant estimates or judgments.

#### ***Revenue recognition***

Revenue is shown after eliminating sales with the companies comprising our Group. Revenue is recognized when the amount of revenue can be reliably measured, it is probable that future economic benefits will flow to the Group and specific criteria have been met for each of the activities as described below:

##### *Sales of properties*

###### *(1) Completed properties held for sale*

Revenue from sales of completed properties held for sale is recognized when the risks and rewards of properties are transferred to the purchasers, which occurs when the construction of relevant properties has been completed and the properties have been delivered to the purchasers and collectability of related receivables is reasonably assured.

###### *(2) Properties under development/held for sale and proposed development projects*

Revenue from sales of properties under development and proposed development projects is recognized when the risks and rewards of properties or projects are transferred to the purchasers, which occurs when the relevant properties or projects have been delivered to the purchasers and collectability of related receivables is reasonably assured.

Deposits and instalments received on properties sold prior to the date of revenue recognition are included in the consolidated statement of financial position as advance proceeds received from customers and deposits received under current liabilities.

##### *Rental income*

Rental income from properties under operating leases is recognized on a straight-line basis over the lease terms.

##### *Property management services*

Revenue arising from property management is recognized in the accounting period in which the service is rendered, using a straight-line basis over the term of the contract.



#### *Hotel operation income*

Hotel revenue from room rental, food and beverage sales and other ancillary services is recognized when the goods are delivered and the services are rendered.

#### *Catering income*

Revenue from restaurant operations is recognized when food, beverages and services are delivered or rendered to customers and collectibility of the related receivables is reasonably assured.

#### *Hire income from charter*

Hire income from time charter is accounted for as operating lease and is recognised on a straight-line basis over the period of each time charter contract.

#### *Passenger transportation agency service*

Revenues from passenger transportation agency service are recognised based on net agencies fee upon departure of ferries at terminals.

#### ***Fair value of investment properties***

An investment property is measured initially at its cost, including related transaction costs and where applicable borrowing costs. After initial recognition, investment properties are carried at fair value, representing open market value determined at each reporting date by external valuers. Fair value is based on active market prices, adjusted, if necessary, for any difference in the nature, location or condition of the specific asset. If this information is not available, we use alternative valuation methods such as recent prices on less active markets or discounted cash flow projections. Subsequent expenditure is charged to the asset's carrying amount only when it is probable that future economic benefits associated with the item will flow to us and the cost of the item can be measured reliably. All other repairs and maintenance costs are expensed in profit or loss during the financial period in which they are incurred.

#### ***Properties under development***

For accounting purposes, properties under development include properties for which we have obtained the relevant land use rights certificates. Properties under development are stated at the lower of cost and net realizable value. Net realizable value is determined by reference to the sale proceeds of properties sold in the ordinary course of business, less applicable variable selling expenses and the anticipated costs to completion, or by management estimates based on marketing conditions. Development cost of properties comprises construction costs, land use rights in relation to properties under development for subsequent sale, borrowing costs on qualifying assets and professional fees incurred during the development period. The assessment of carrying amount of properties under development requires the use of our judgment and estimates. We will make provision to revise these estimates when events or changes in circumstances indicate that the carrying amounts may not be realized.

#### ***Completed properties held for sale***

Completed properties remaining unsold at the end of each of the two years ended December 31, 2015 and 2016 are included in current assets and are measured at the lower of cost and net realizable value. Cost comprises development costs attributable to the unsold properties and borrowing costs. Net realizable value is determined by reference to the sale proceeds of properties sold in the ordinary course of business, less applicable variable selling expenses, or by management estimates based on prevailing marketing conditions. The assessment of the carrying amount of completed properties for sale requires the use of our judgment and estimates. We will make provision to revise these estimates when events or changes in circumstances indicate that the carrying amounts may not be realized.

#### ***Prepayments for proposed development projects and deposits for land acquisition***

We assess the carrying amounts of deposits for land acquisitions and prepayments for proposed development projects according to their recoverable amounts, taking into account estimated net sales value based on prevailing market conditions. Provision is made when events or changes in circumstances indicate that the carrying amounts may not be realized. The assessment requires the use of judgment and estimates.

### ***Borrowings and borrowing costs***

Borrowings are initially recognized at fair value, net of transaction costs incurred. Borrowings are subsequently stated at amortized cost using the effective interest method. Borrowings are classified as current liabilities unless there is an unconditional right to defer settlement of the liability for at least 12 months after the respective reporting date.

General and specific borrowing costs directly attributable to the acquisition, construction or production of qualifying assets, which are assets that necessarily take a substantial period of time to get ready for their intended use or sale, are added to the cost of those assets, until such time as the assets are substantially ready for their intended use or sale. Investment income earned on the temporary investment of specific borrowings pending their expenditure on qualifying assets is deducted from the borrowing costs eligible for capitalization. Other borrowing costs are recognized as an expense in the period which they are incurred.

### ***Income taxes, withholding taxes and deferred taxation***

Significant judgment is required in determining the provision for income taxes and withholding taxes. There are many transactions and calculations for which the ultimate determination is uncertain during the ordinary course of business. Where the final tax outcome of these matters is different from the amounts that were initially recorded, such difference will impact the income tax, withholding tax and deferred tax provision in the period when such determination is made.

Deferred income tax is recognized, using the liability method, on temporary differences arising between the tax bases of assets and liabilities and their carrying amounts in the consolidated financial statements. However, deferred income tax is not accounted for if it arises from initial recognition of an asset or liability in a transaction which is not a business combination and, at the time of the transaction, affects neither accounting nor taxable profit or loss. Deferred income tax is determined using the tax rates (and laws) that have been enacted or substantively enacted by the reporting date and are expected to apply when the related deferred income tax asset is realised or the deferred income tax liability is settled.

Deferred income tax liabilities have not been established for income tax and withholding tax that would be payable on certain profits of PRC subsidiaries to be repatriated and distributed by way of dividends as the directors consider that the timing of the reversal of the related temporary differences can be controlled and such temporary differences will not be reversed in the foreseeable future.

Deferred income tax assets relating to certain temporary differences and tax losses are recognized when management considers to be probable that future taxable profit will be available against which the temporary differences or tax losses can be utilised. The outcome of their actual utilization may be different.

### ***LAT***

Our property developments are subject to LAT. LAT is levied at progressive rates ranging from 30% to 60% on the appreciation of land value, being the proceeds of sales of properties less deductible expenditures including lease charges of land use rights and all property development expenditures, which is included in the consolidated statements of comprehensive income as cost of sales. We make LAT provisions based on our calculation in accordance with relevant government regulations. The tax bureaus in general have not strictly enforced the LAT regulations, and many localities have not published settlement rules. Accordingly, significant judgment is required in determining the amount of LAT. We recognize LAT based on our management's best estimates according to our understanding of the tax rules. The final tax outcome could be different from the amounts that were initially recorded, and these differences will impact the income tax provision in the periods in which such taxes have been finalized with local tax authorities. See “— Key Factors Affecting Our Results of Operations — LAT” and the section entitled “Risk Factors — Risks Relating to the Businesses — Our LAT provisions and prepayments may not be sufficient to meet our LAT obligations.”

## Certain Profit or Loss Items

### Revenue

Revenue primarily comprises the fair value of the consideration received or receivable for the sales of properties, including completed properties held for sale and properties under development, and provision of services in the ordinary course of business. We generally recognize our revenue from sales of properties after the properties have been sold and delivered to the purchasers. We pre-sell our properties under development in accordance with PRC pre-sale regulations. In respect of pre-sales of completed properties held for sale, we do not recognize the proceeds from pre-sales until we have completed the construction of these properties and delivered the properties to the purchasers. Typically there is a time gap ranging from 6 to 18 months between the time we commence pre-sale of the properties under development and the delivery of the properties. We record the proceeds received from the pre-sold properties as advance proceeds received from customers, an item of current liabilities on our consolidated statement of financial position and as a part of cash inflows from operating activities on our consolidated cash flow statements. We generate a small portion of revenue from the rental income derived from our investment properties, property management services, hotel and catering operations, cinema, department store and cultural center operations and other operations.

### Cost of sales

Cost of sales comprises primarily land costs, construction costs, capitalized borrowing costs, business taxes and other direct costs related to property development, property investment and property management. The table below sets forth breakdowns by these categories of our cost of sales for 2015 and 2016, respectively.

	For the year ended of December 31,		
	2015	2016	2016
	(RMB in millions)	(RMB in millions)	(US\$ in millions)
			(unaudited)
Land costs . . . . .	2,577.1	4,437.1	639.1
Construction costs . . . . .	6,116.9	7,467.2	1,075.5
Capitalized borrowing costs . . . . .	992.2	2,187.0	315.0
Business taxes . . . . .	624.3	737.2	106.2
Other direct costs related to property development, property investment and property management . . . . .	272.7	631.0	90.8
Total cost of sales . . . . .	<u>10,583.2</u>	<u>15,459.5</u>	<u>2,226.6</u>

*Land costs.* Land costs represent costs relating to the acquisition of the rights to occupy, use and develop land, including land premiums, deed taxes and government surcharges and demolition and resettlement cost. The land costs are recognized as part of cost of sales upon the completion and delivery of relevant properties to the purchasers. In 2015 and 2016, our GFA delivered was 1,132,290 sq.m., 1,866,540 sq.m., respectively, and our average land costs per sq.m. of GFA were approximately RMB2,276.0 and RMB2,377.2 (US\$342.4), respectively, as measured by dividing the aggregate land costs recognized as cost of sales in our consolidated statements of comprehensive income by the aggregate saleable GFA of properties delivered within these periods. Our average land costs per sq.m. of GFA remained fairly stable from 2015 to 2016.

*Construction costs.* Construction costs represent costs for the design and construction of a property project, consisting primarily of fees paid to our contractors, including contractors responsible for civil engineering construction, landscaping, equipment installation and interior decoration, as well as infrastructure construction costs, design costs and certain government surcharges. The construction costs are recognized as part of cost of sales upon the completion and delivery of relevant properties to the purchasers. Our construction costs are affected by a number of factors such as price movements for construction materials, location and types of properties, choices of materials and investments in ancillary facilities. In 2015 and 2016, our construction costs were RMB6,116.9 million and RMB7,467.2 million (US\$1,075.5 million), respectively.

*Capitalized borrowing costs.* Capitalized borrowing costs are general and specific borrowing costs directly attributable to the acquisition, constructions or production of our property development projects that are released to profit or loss as part of the cost of sales when the properties are sold.

*Business taxes.* Revenues from property development and property investment are subject to business taxes of 5%, and revenue from property management is also subject to business taxes of 5%. In March 2016, the Ministry of Finance and State Administration of Taxation jointly issued the Circular on Comprehensively Promoting the Pilot Program of the Collection of Value-added Tax in Lieu of Business Tax (《關於全面推開營業稅改徵增值稅試點的通知》), pursuant to which we are subject to value-added tax instead of business tax since May 2016.

***Other losses, — net***

Net other losses primarily consist of write-down of completed properties held for sale and properties under development net of government subsidy income and gain on disposal of available-for-sale financial assets.

***Selling and marketing costs***

Selling and marketing costs include advertising expenses, sales and agency commissions and other expenses relating to sales and promotion of our properties.

***Administrative expenses***

Administrative expenses comprise primarily staff costs, office expenses, directors' emoluments, depreciation, legal and professional fees, travel expenses and donations.

***Changes in fair value of investment properties***

We hold certain properties, such as the commercial properties in Shenzhen Kaisa Center Shenzhen Woodland Height Phases 4 and 6 and Huizhou Kaisa Center, and retail space and car parking spaces in Guangzhou Jinmao, Shenzhen Kaisa Financial Center, Shenzhen Kaisa City Plaza, Shenzhen Yantian City Plaza, Shanghai Pudong Project, Shenzhen Kaisa Golden Bay International Park, Dalian Kaisa Plaza, Zhuzhou Golden World, Shenyang Kaisa Center, Huizhou Kaisa Center Phase 1 and Phase 2, Jiangyin Kaisa Plaza and Anshan Yaguang Project for rental income or capital appreciation. Changes in fair values of investment properties are recognized in the consolidated profit or loss in the year such changes arise. The fair values of our investment properties as of December 31, 2015 and 2016 were determined by independent property valuers. The amounts of revaluation adjustments have been, and may continue to be, significantly affected by the prevailing property markets. See “— Critical Accounting Policies — Fair Value of Investment Properties.”

***Changes in fair value of financial derivatives***

On April 19, 2013, we entered into the 2012 ISDA Master Agreement with The Hongkong and Shanghai Banking Corporation Limited, as the swap counterparty, to manage our foreign exchange rate risk arising from the issuance of the Renminbi denominated April 2013 Notes (“2013 HSBC Swap”). The changes in fair value of our financial derivatives in 2015 reflected the changes in fair value of the 2013 HSBC Swap. The decrease in fair value of our financial derivatives of approximately RMB42.2 million in 2015, was mainly attributable to the depreciation of Renminbi against the U.S. dollar during 2015. As a result of our Debt Restructuring, the 2013 HSBC Swap has been terminated.

Pursuant to our Debt Restructuring, we issued CVRs and Mandatorily Exchangeable Bonds on July 21, 2016. See “Description of Material Indebtedness and Other Obligations Debt Restructuring.” The CVRs and the derivative component of the Mandatorily Exchange Bonds are measured at fair value at each reporting date. The decrease in fair value of financial derivatives of approximately RMB21.5 million (US\$3.1 million) in 2016 was primarily attributable to the increase in fair value of the derivative component of the Mandatorily Exchangeable Bonds.

### **Finance income**

Finance income comprises interest income on bank deposits.

### **Finance costs**

Finance costs comprise primarily interest expenses on bank borrowings and other borrowings, net of capitalized borrowing costs. Since the construction period for a project does not necessarily coincide with the interest payment period of the relevant loan, not all of the interest costs related to a project can be capitalized. As a result, our finance costs fluctuate from period to period.

### **Income tax expenses**

Income tax expenses represent PRC enterprise income tax payable, deferred income tax and LAT payable by our subsidiaries. The following table sets forth our tax provision for the periods indicated:

	For the year ended December 31,		
	2015	2016	2016
	(RMB in thousands)	(RMB in thousands)	(US\$ in thousands)
			(unaudited)
Current income tax			
— PRC enterprise income tax . . . . .	258,557	674,476	97,145
— PRC LAT . . . . .	178,701	465,003	66,974
Under-provision in prior years			
— PRC LAT . . . . .	8,200	28,819	4,151
Deferred income tax . . . . .	982,747	1,046,008	150,656
Total income tax expenses . . . . .	<u>1,428,205</u>	<u>2,214,306</u>	<u>318,926</u>

For 2015 and 2016, we recognized enterprise income tax (including deferred income tax) of RMB1,241.3 million and RMB1,720.5 million (US\$247.8 million), respectively. The fluctuations in our enterprise income taxes during 2015 and 2016 were primarily attributable to the fluctuations in loss/profit before income tax.

No Hong Kong profits tax was provided for each of 2015 and 2016 as we had no assessable profits for those periods. The Company is incorporated in the Cayman Islands as an exempted company with limited liability under the Companies Law (Revised) of Cayman Islands and, accordingly, is exempt from payment of income tax as there are no laws enacted in the Cayman Islands which impose any tax to be levied on profits, income, gains or appreciations.

Under the PRC tax laws effective prior to January 1, 2008, dividends paid by our PRC subsidiaries to us were exempt from PRC income tax. However, pursuant to the Enterprise Income Tax Law and its implementation rules that became effective on January 1, 2008, dividends payable by foreign-invested enterprises, such as subsidiaries and joint ventures in China, to their foreign investors are subject to a withholding tax at a rate of 10% unless such foreign investors' jurisdiction of incorporation has a tax treaty with the PRC that provides for a different withholding tax arrangement. See "Regulations."



## Results of Operations

The table below summarizes our consolidated results for 2015 and 2016:

	For the year ended December 31,		
	2015 (RMB in thousands)	2016 (RMB in thousands)	2016 (US\$ in thousands) (unaudited)
Revenue . . . . .	10,926,535	17,771,517	2,559,631
Cost of sales . . . . .	(10,583,158)	(15,459,546)	(2,226,638)
<b>Gross profit</b> . . . . .	343,377	2,311,971	332,993
Other losses, net . . . . .	(216,339)	(560,512)	(80,731)
Selling and marketing costs . . . . .	(559,419)	(842,695)	(121,373)
Administrative expenses . . . . .	(1,066,169)	(1,745,262)	(251,370)
Changes in fair value of investment properties . . . . .	3,824,520	4,161,371	599,362
Changes in fair value of financial derivatives . . . . .	(42,219)	(21,500)	(3,097)
<b>Operating profit</b> . . . . .	2,283,751	3,303,373	475,784
Share of results of associates . . . . .	(3,586)	(40,578)	(5,844)
Share of results of joint ventures. . . . .	—	8,223	1,184
Finance costs, net . . . . .	(2,106,444)	(2,120,366)	(305,396)
Gain on extinguishment of financial liabilities. . . . .	—	716,143	103,146
<b>Profit before income tax</b> . . . . .	173,721	1,866,795	268,874
Income tax expenses . . . . .	(1,428,205)	(2,214,306)	(318,926)
<b>Loss for the year</b> . . . . .	(1,254,484)	(347,511)	(50,052)
<b>Other comprehensive loss, including reclassification adjustments</b>			
Items that will be reclassified subsequently to profit or loss			
Changes in fair value of available-for-sale financial assets, net of tax . . . . .	—	(210)	(30)
<b>Other comprehensive loss for the year, including reclassification adjustments</b> . . . . .	—	(210)	(30)
<b>Total comprehensive loss for the year</b> . . . . .	(1,254,484)	(347,721)	(50,082)
<b>(Loss)/profit for the year attributable to:</b>			
Equity holders of the Company . . . . .	(1,121,577)	(612,380)	(88,201)
Non-controlling interests . . . . .	(132,907)	264,869	38,149
	(1,254,484)	(347,511)	(50,052)
<b>Total comprehensive (loss)/income attributable to:</b>			
Equity holders of the Company . . . . .	(1,121,577)	(612,590)	(88,231)
Non-controlling interests . . . . .	(132,907)	264,869	38,149
	(1,254,484)	(347,721)	(50,082)

## Segment information

During 2015 and 2016, we derived most of our revenue from sales of properties we developed. The following table sets out our revenue in each business segment and the percentage of revenue represented by each segment for the periods indicated.

	For the year ended December 31,				
	2015		2016		
	(RMB in millions)		(RMB in millions)	(US\$ in millions)	
				(unaudited)	
Sales of properties . . . . .	10,291.9	94.2%	16,739.0	2,410.9	94.2%
Rental income . . . . .	232.2	2.1%	228.1	32.9	1.3%
Property management services. . . . .	224.1	2.1%	271.6	39.1	1.5%
Hotel and catering operations . . . . .	67.2	0.6%	82.0	11.8	0.5%
Cinema, department store and cultural center operations . . . . .	111.1	1.0%	253.3	36.5	1.4%
Others . . . . .	—	—	197.5	28.4	1.1%
Total . . . . .	<u>10,926.5</u>	<u>100.0%</u>	<u>17,771.5</u>	<u>2,559.6</u>	<u>100.0%</u>

### 2016 compared to 2015

**Revenue.** Our revenue increased by RMB6,845.0 million, or 62.6%, to RMB17,771.5 million (US\$2,559.6 million) in 2016 from RMB10,926.5 million in 2015, mainly attributable to an increase in sales of properties. Our revenue is primarily generated from five business segments: property development, property investment, property management, hotel and catering operations and cinema, department store and cultural center operations.

**Sales of properties.** Our revenue from sales of properties increased by RMB6,447.1 million, or 62.6%, to RMB16,739.0 million (US\$2,410.9 million) in 2016 from RMB10,291.9 million in 2015. This increase was primarily attributable to an increase in the total GFA delivered to approximately 1,866,540 sq.m. in 2016 from approximately 1,132,290 sq.m. in 2015.

**Rental income.** Our rental income decreased by RMB4.1 million, or 1.8%, to RMB228.1 million (US\$32.9 million) in 2016 from RMB232.2 million in 2015.

**Property management services.** Our revenue from property management services increased by RMB47.5 million, or 21.2%, to RMB271.6 million (US\$39.1 million) in 2016 from RMB224.1 million in 2015. The increase was primarily attributable to the increased GFA under property management.

**Hotel and catering operations.** Our revenue from hotel and catering operations increased by RMB14.7 million, or 21.8%, to RMB82.0 million (US\$11.8 million) in 2016 from RMB67.2 million in 2015. This increase was mainly attributable to the expansion of our hotel and catering operations in the Pearl River Delta.

**Cinema, department store and cultural center operations.** Revenue from cinema, department store and cultural center operations increased by RMB142.2 million, or 128.0%, to RMB253.3 million (US\$36.5 million) in 2016 from RMB111.1 million in 2015. The increase was primarily attributable to the expansion of our cinema, department store and cultural center operations in 2016.

**Cost of sales.** Our cost of sales increased by RMB4,876.4 million, or 46.1%, to RMB15,459.5 million (US\$2,226.6 million) in 2016 from RMB10,583.2 million in 2015, primarily due to the increase in the total GFA delivered.

**Gross profit.** As a result of the above, our gross profit increased by RMB1,968.6 million, or 573.3%, to RMB2,312.0 million (US\$333.0 million) in 2016 from RMB343.4 million in 2015. Our gross profit margin increased to 13.0% in 2016 from 3.1% in 2015, primarily due to less construction costs per sq.m. of recognized property sales in 2016.

**Other losses, net.** We had net other losses of RMB560.5 million (US\$80.7 million) in 2016, as compared to net other losses of RMB216.3 million in 2015. Our net other losses in 2016

mainly comprised write-down of completed properties held for sale and properties under development of RMB670.6 million (US\$96.6 million) and other losses of approximately RMB37.6 million (US\$5.4 million), partially offset by government subsidy income of RMB80.1 million (US\$11.5 million), gain on disposal of available-for-sales financial assets of RMB38.5 million (US\$5.5 million) and dividend income received from available-for-sales financial assets of RMB20.8 million (US\$3.0 million). Our net other losses in 2015 mainly comprised write-down of completed properties held for sale and properties under development of RMB240.3 million and other losses of RMB27.8 million, partially offset by government subsidy income of RMB53.7 million.

***Selling and marketing costs.*** Our selling and marketing costs increased by RMB283.3 million, or 50.6%, to RMB842.7 million (US\$121.4 million) in 2016 from RMB559.4 million in 2015. The increase in selling and marketing costs was in line with the increase in our sales for the year ended December 31, 2016.

***Administrative expenses.*** Our administrative expenses increased by RMB679.1 million, or 63.7%, to RMB1,745.3 million (US\$251.4 million) in 2016 from RMB1,066.2 million in 2015. The increase was primarily attributable to the increase in staff costs, legal and professional fees and office expenses.

***Changes in fair value of investment properties.*** The increase in fair value of our investment properties was RMB4,161.4 million (US\$599.4 million) in 2016 and RMB3,824.5 million in 2015. The increase in fair value of our investment properties in 2015 and 2016 was in line with prevailing market conditions of general increases in rental levels of comparable properties.

***Changes in fair value of financial derivatives.*** The decrease in fair value of financial derivatives was RMB21.5 million (US\$3.1 million) in 2016 and RMB42.2 million in 2015. The decrease in fair value of our financial derivatives in 2016 was primarily attributable to the change in fair value of the derivative component of the Mandatorily Exchangeable Bonds. The decrease in fair value of financial derivatives in 2015 was primarily attributable to the increase in fair value of the 2013 HSBC Swap, which was in turn due to the depreciation of Renminbi against the U.S. dollar in 2015.

***Finance costs, net.*** Our net finance costs increased by RMB14.0 million, or 0.7%, to RMB2,120.4 million (US\$305.4 million) in 2016 from RMB2,106.4 million in 2015. The increase was mainly due to the increase in net exchange loss by RMB242.4 million. The net exchange loss mainly arose from the depreciation of Renminbi against the U.S. dollar, which increased our payment of interest in Renminbi terms to service our US dollar denominated offshore financings.

***Gain on Extinguishment of Financial Liabilities.*** On July 21, 2016, the Debt Restructuring was effected whereby our 2012 Notes, January 2013 Notes, March 2013 Notes, April 2013 Notes, 2014 Notes, Convertible Bonds and Original Offshore Facilities (the “Original Offshore Debts”) were exchanged for the Existing Notes, Mandatorily Exchangeable Bonds and CVRs (the “New Offshore Debts”). For those exchanges with substantially different terms, the Original Offshore Debts were derecognized and the New Offshore Debts were recognized at their fair values at the effective date. A gain of approximately RMB716.1 million (US\$103.1 million) was recognized for the year ended December 31, 2016, representing the difference between the carrying amount of the related Original Offshore Debts derecognized and the fair value of the related New Offshore Debts recognized, net of the related fees paid and transaction costs.

***Income tax expenses.*** Our income tax expenses increased by RMB786.1 million, or approximately 55.0%, to RMB2,214.3 million (US\$318.9 million) in 2016 from RMB1,428.2 million in 2015. The increase was primarily attributable to the increase in operating profit before tax in 2016.

***Loss for the year.*** As a result of the foregoing, our loss for the year decreased by approximately RMB907.0 million, or 72.3%, to RMB347.5 million (US\$50.1 million) in 2016 from RMB1,254.5 million in 2015.

## Liquidity and Capital Resources

The following table presents selected cash flow data from our consolidated cash flow statements for the periods indicated:

	As of December 31,		
	2015	2016	2016
	(RMB in millions)	(RMB in millions)	(US\$ in millions)
			(unaudited)
Net cash (used in)/generated from operating activities . . . . .	(5,283)	6,963	1,003
Net cash used in investing activities . . . . .	(915)	(11,947)	(1,721)
Net cash generated from financing activities . . . . .	5,399	13,468	1,940
Cash and cash equivalents at the end of the year . . . . .	2,325	10,819	1,558

### *Operating activities*

In 2016, our net cash generated from operating activities of RMB6,962.8 million (US\$1,002.9 million) was attributable to cash generated from operations of RMB13,103.1 million (US\$1,887.2 million), offset by interest paid of RMB4,959.3 million (US\$714.3 million) and income tax paid of RMB1,181.0 million (US\$170.1 million). We recorded cash used in operations before changes in working capital of RMB25.1 million (US\$3.6 million), primarily attributable to loss for the year of RMB347.5 million (US\$50.1 million), as adjusted by changes in fair value of investment properties of RMB4,161.4 million (US\$599.4 million), partially offset by income tax expenses of RMB2,214.3 million (US\$318.9 million) and net exchange losses of RMB1,237.3 million (US\$178.2 million). Changes in working capital contributed to a net cash inflow of RMB13,128.1 million (US\$1,890.8 million) consisting primarily of an increase in advance proceeds received from customers and deposits received of RMB13,447.6 million (US\$1,936.9 million), a decrease in properties under development and completed properties held for sale of RMB10,091.6 million (US\$1,453.5 million) and a decrease in debtors, deposits and other receivables of RMB7,662.8 million (US\$1,103.7 million), partially offset by an increase in other payables of RMB5,809.1 million (US\$836.7 million), an increase in restricted cash of RMB4,727.2 million (US\$680.9 million), a decrease in accrued construction costs of RMB3,886.9 million (US\$559.8 million) and an increase in prepayments for proposed development projects of RMB3,053.5 million (US\$439.8 million).

In 2015, our net cash used in operating activities of RMB5,282.6 million was attributable to interest paid of RMB4,820.6 million, income tax paid of RMB370.6 million and cash used in operations of RMB91.4 million. We recorded cash used in operations before changes in working capital of RMB1,132.5 million, primarily attributable to loss for the year of RMB1,254.5 million, as adjusted by changes in fair value of investment properties of RMB3,824.5 million, partially offset by income tax expenses of RMB1,428.2 million and interest expense of RMB1,122.2 million. Changes in working capital contributed to a net cash inflow of RMB1,041.1 million consisting primarily of a decrease in properties under development and completed properties held for sale of RMB4,121.9 million, partially offset by a decrease in advance proceeds received from customers and deposits received of RMB1,246.9 million and an increase in debtors, deposits and other receivables of RMB1,138.4 million.

### *Investing activities*

In 2016, our net cash used in investing activities was RMB11,946.8 million (US\$1,720.7 million), which was primarily attributable to acquisition of subsidiaries (net of cash acquired) and additions to investment properties.

In 2015, our net cash used in investing activities was RMB915.3 million, which was primarily attributable to additions to investment properties.

### *Financing activities*

In 2016, our net cash generated from financing activities was RMB13,468.0 million (US\$1,939.8 million), which was primarily attributable to proceeds from bank and other borrowings of RMB39,746.2 million (US\$5,724.6 million), partially offset by repayments of bank and other borrowings of RMB27,108.5 million (US\$3,904.4 million).

In 2015, our net cash generated from financing activities was RMB5,398.6 million, which was primarily attributable to proceeds from bank and other borrowings of RMB23,481.4 million, partially offset by repayments of bank and other borrowings of RMB20,982.9 million.

**Capital commitment**

*Commitments for property development expenditure*

We incur capital expenditure primarily for our property development. The following table sets forth the commitments for our property development expenditure as of the dates indicated:

	As of December 31,		
	2015	2016	2016
	(RMB in millions)	(RMB in millions)	(US\$ in millions)
			(unaudited)
Contracted but not provided for . . . . .	24,511.8	27,186.3	3,915.6

The continued increase in our commitments for property development expenditures during the years ended December 31, 2015 and 2016 was primarily due to our increased commitments for the construction costs, which were in line with our enlarged scale of property development activities, and to a lesser extent, due to our commitments arising from land acquisition activities.

**Operating lease commitments**

The following table sets forth our future aggregate minimum lease payments under non-cancellable operating leases in respect of land and buildings as of the dates indicated:

	As of December 31,		
	2015	2016	2016
	(RMB in millions)	(RMB in millions)	(US\$ in millions)
			(unaudited)
Not later than one year . . . . .	22.9	27.3	3.9
Later than one year and not later than five years . . . . .	14.3	29.9	4.3
Later than five years . . . . .	0.6	0.3	0.0
Total . . . . .	37.8	57.5	8.2

As of December 31, 2015 and 2016, our operating lease commitments were RMB37.8 million and RMB57.5 million (US\$8.2 million), respectively.

**Capital resources and cash management**

Property development projects require substantial capital expenditure for land acquisition and construction. The financing methods for our projects vary and are subject to limitations imposed by PRC regulations and monetary policies. Historically, we have primarily financed our expenditures and working capital through internal funds, proceeds from pre-sales and sales of properties, borrowings from banks and other funds raised from the capital markets from time to time. Our cash flow and results of operations of our operating subsidiaries affect our liquidity. See the section entitled “Risk Factors — We experienced net cash outflows from operating activities in the past and maintain a significant amount of indebtedness, which may materially and adversely affect our liquidity and our ability to service our indebtedness.”

As of December 31, 2015 and 2016, the carrying amount of our cash and bank deposits was approximately RMB3,308.0 million and RMB16,572.6 million (US\$2,387.0 million), respectively. Pursuant to relevant regulations in the PRC, certain of our property development companies are required to place a certain amount of pre-sales proceeds received at designated bank accounts as guarantee deposits for construction of the relevant properties. Such guarantee deposits will be released after pre-sold properties are completed or their property ownership certificates are issued, whichever is the earlier. Additionally, as of December 31, 2016, some of

our cash was deposited in certain banks as guarantee deposits for the benefit of mortgage loan facilities granted by the banks to the purchasers of the our properties. The aggregate of the above guarantee deposits amounted to approximately RMB5,696.6 million (US\$820.5 million) as of December 31, 2016.

We seek to manage our working capital to ensure collection and deployment of our funds. We use our annual budget, supplemented by our monthly cash flow projections, to forecast and manage our cash inflows and outflows. In addition, we prepare cash flow projections on a monthly basis to monitor our cash flow in connection with land acquisition, construction cost payments, financings, repayments of loans, taxes and other expenses. Our finance division also prepares daily cash flow summaries for our senior management to monitor and manage daily collection and use of cash.

We seek to manage the level of our liquid assets to ensure the availability of sufficient cash flows to meet any unexpected cash requirements arising from our business. In addition, we seek to effectively manage our future cash flows and reduce our exposure to unexpected adverse changes in economic conditions through a number of alternative plans, including adjusting our development schedule to ensure that we have available resources to finance our projects, implementing cost control measures, adopting more flexible approach to pricing for our property sales, and renegotiating payment terms with counterparties in certain land-related contractual arrangements. We will continue to assess these alternative plans on an ongoing basis and may choose to adopt them if necessitated by our then-existing financial conditions and cash requirements.

We monitor our capital and indebtedness levels by reviewing our gearing ratio, which is equal to net debt (total borrowings net of cash and cash equivalents, bank deposits and restricted cash) divided by total equity. Our gearing ratio, as of December 31, 2015 and 2016, was 521.3% and 307.9%, respectively. We also monitor our indebtedness level generally through monthly review of our management accounts including balance sheets, income statements and cash flow statements to assess our financial condition and maintain our indebtedness at a reasonable level.

#### Indebtedness

	As of December 31,		
	2015	2016	2016
	(RMB in millions)	(RMB in millions)	(US\$ in millions)
			(unaudited)
Bank borrowings. . . . .	33,393.4	50,106.9	7,216.9
Other borrowings . . . . .	38,724.8	37,429.9	5,391.0
	<u>72,118.2</u>	<u>87,536.8</u>	<u>12,607.9</u>

We had onshore borrowings in the PRC of RMB52,547.8 million and RMB66,587.7 million (US\$9,590.6 million) as of December 31, 2015 and 2016, respectively, representing 72.9% and 76.1% of our total indebtedness as of each respective date. Our offshore borrowings outside the PRC were RMB19,570.4 million and RMB20,949.1 million (US\$3,017.3 million) as of December 31, 2015 and 2016, respectively.

We have, since December 31, 2016, in the ordinary course of business, entered into additional financing arrangements to finance our property developments and for general corporate purposes. We continue to evaluate our financing requirements and monitor our capital and indebtedness levels and may from time to time retire or refinance some of our existing indebtedness through opportunistic repurchases, tender offers or otherwise, depending on market conditions.



## Borrowings

The following table sets forth our outstanding borrowings as of the dates indicated.

	As of December 31,		
	2015	2016	2016
	(RMB in millions)	(RMB in millions)	(US\$ in millions) (unaudited)
Borrowings included in non-current liabilities:			
Existing Notes . . . . .	—	18,799.8	2,707.7
Mandatorily Exchangeable Bonds (excluding the derivative component) . . . . .	—	1,453.0	209.3
Bank borrowings			
— secured . . . . .	24,998.8	43,896.4	6,322.4
Bank borrowings			
— unsecured . . . . .	1,270.0	3,454.0	497.5
Other borrowings			
— secured . . . . .	10,299.4	10,931.3	1,574.4
Other borrowings			
— unsecured . . . . .	460.0	1,240.0	178.6
Loans from a related company . . . . .	1,377.0	—	—
	<u>38,405.2</u>	<u>79,774.5</u>	<u>11,489.9</u>
Borrowings included in current liabilities:			
2012 Notes, January 2013 Notes, March 2013 Notes, April 2013 Notes and 2014 Notes . . . . .	16,098.6	—	—
Convertible Bonds . . . . .	1,625.8	—	—
Bank borrowings			
— secured . . . . .	4,515.2	112.8	16.2
Bank borrowings			
— unsecured . . . . .	2,609.5	2,643.7	380.8
Other borrowings			
— secured . . . . .	5,983.3	300.0	43.2
Other borrowings			
— unsecured . . . . .	1,380.7	1,828.8	263.4
Loans from a related company . . . . .	1,500.0	2,877.0	414.4
	<u>33,713.0</u>	<u>7,762.3</u>	<u>1,118.0</u>
	<u>72,118.2</u>	<u>87,536.8</u>	<u>12,607.9</u>

Our total borrowings amounted to RMB72,118.2 million and RMB87,536.8 million (US\$12,607.9 million), respectively, as of December 31, 2015 and 2016. The increase in our total borrowings during the two years ended December 31, 2016 was primarily due to additional funds needed for our acquisition of land reserves for future development (excluding payments for land premiums) and financing new development projects. We used the proceeds from these borrowings to finance our property development and for corporate and working capital purposes. As of December 31, 2015 and 2016, the effective interest rate was approximately 6.3% and 6.8%, respectively, for our bank borrowings included in non-current liabilities and approximately 7.6% and 6.7%, respectively, for our bank borrowings included in current liabilities. Changes in interest rates have affected and will continue to affect our financing costs and, ultimately, our results of operations.

Our borrowings as of December 31, 2016 were denominated in Renminbi, except for the Existing Notes, Mandatorily Exchangeable Bonds and bank and other borrowings with aggregate amounts of RMB20,673.9 million and RMB280.1 million denominated in U.S. dollars and Hong Kong dollars, respectively.

The table below sets forth the maturity profiles of our borrowings as of the dates indicated:

	As of December 31,		
	2015	2016	2016
	(RMB in millions)	(RMB in millions)	(US\$ in millions)
			(unaudited)
Within one year . . . . .	33,713.0	7,762.3	1,118.0
Between two and five years . . . . .	37,186.0	78,916.5	11,366.3
Over five years . . . . .	1,219.2	858.0	123.6
<b>Total</b> . . . . .	<b>72,118.2</b>	<b>87,536.8</b>	<b>12,607.9</b>

As of December 31, 2016, we had total bank borrowings in an aggregate amount of RMB50,106.9 million (US\$7,216.9 million), which comprised RMB2,756.5 million (US\$397.0 million) included in the current liabilities and RMB47,350.4 million (US\$6,819.9 million) included in the non-current liabilities.

Commercial banks in China typically require guarantees or security interests for our borrowings. As of December 31, 2015 and 2016, RMB45,796.7 million and RMB55,240.5 million (US\$7,956.3 million), respectively, of our outstanding bank and other borrowings were secured by property and equipment, land use rights, investment properties, properties under development, completed properties held for sale and/or certain shares of our subsidiaries owned by us, with carrying amounts totaling RMB56,613.5 million and RMB59,933.2 million (US\$8,632.2 million), respectively.

Our bank borrowings are primarily used for our property developments. When applying the bank loans to finance a project, we refer to our property development schedule for the project to determine the maturity date of such loans. During the years ended December 31, 2015 and 2016, most of our property developments were residential projects that were completed or expected to be completed within two and a half years.

As of December 31, 2016, approximately RMB13,142.2 million (US\$1,892.9 million) of our Trust Financing Loans was outstanding. See “Description of Material Indebtedness and Other Obligations — Trust Financing Loans.”

### ***Debt Restructuring***

On July 21, 2016, our Debt Restructuring was effected whereby our 2012 Notes, January 2013 Notes, March 2013 Notes, April 2013 Notes, 2014 Notes, Convertible Bonds and Original Offshore Facilities were exchanged for the Existing Notes, the Mandatorily Exchangeable Bonds and the CVRs. See “Description of Material Indebtedness and Other Obligations — Debt Restructuring” for details. The table below sets forth breakdowns of our Existing Notes, Mandatorily Exchangeable Bonds and CVRs.

	Principal Amount	Maturity
	(in US\$)	
Mandatorily Exchangeable Bonds . . . . .	259,486,248	December 31, 2019
Series A Notes . . . . .	277,460,905	December 31, 2019
Series B Notes . . . . .	499,429,957	June 30, 2020
Series C Notes . . . . .	610,414,552	December 31, 2020
Series D Notes . . . . .	665,906,865	June 30, 2021
Series E Notes . . . . .	721,398,993	December 31, 2021
<b>Total</b> . . . . .	<b>3,034,097,520</b>	
CVRs . . . . .	16,283,470	December 31, 2021

## Gearing ratio

We monitor capital on the basis of the gearing ratio. Our gearing ratio equals net debt divided by total equity. Net debt is calculated as total borrowings (including current and non-current borrowings, as shown in the consolidated statements of financial position) less cash and cash equivalents, bank deposits and restricted cash.

The following table sets out our gearing ratios as of the dates indicated:

	As of December 31,		
	2015	2016	2016
	(RMB in millions)	(RMB in millions)	(US\$ in millions)
			(unaudited)
Total borrowings . . . . .	72,118.2	87,536.8	12,607.9
Less: cash and cash equivalents . . . . .	2,324.5	10,819.1	1,558.3
Less: bank deposits . . . . .	15.5	56.9	8.2
Less: restricted cash . . . . .	969.4	5,696.6	820.5
Net debt . . . . .	68,808.8	70,964.2	10,220.9
Total equity . . . . .	13,199.6	23,046.4	3,319.4
<b>Gearing ratio . . . . .</b>	<b>521.3%</b>	<b>307.9%</b>	<b>307.9%</b>

## Current ratio

Our current ratio is calculated as current assets divided by current liabilities. As of December 31, 2015 and 2016, our current ratio was 1.4 and 2.2, respectively.

## Financial Guarantees

We typically arrange for various banks to provide mortgage loans to the purchasers of our properties who require mortgage loans. In accordance with market practice, we make arrangements with various domestic banks to provide mortgage facilities to purchasers of our properties. Furthermore, we are required to provide guarantees to these banks in respect of mortgages offered to our customers. Pursuant to the terms of the guarantees, upon default in mortgage payments by a purchaser, we would be responsible for repaying the outstanding mortgage principal together with accrued interest and penalties owed by the defaulting purchaser to the bank, and we would be entitled to assume legal title to and possession of the related property. These guarantees will be released upon the earlier of (i) the satisfaction of the mortgage loan by the purchaser of the property; and (ii) the issuance of the property ownership certificate for the mortgaged property and the completion of the registration of the mortgage, which is generally available within six months to one year after the purchaser takes possession of the relevant property. If a purchaser defaults on the mortgage payment, we may be required to repurchase the underlying property by paying off the mortgage loan. If we fail to do so, the mortgagee bank may auction the underlying property under the relevant PRC laws and regulations and recover the balance from us if the outstanding loan amount exceeds the net foreclosure sale proceeds. In line with industry practice, we do not conduct independent credit evaluations on our customers but rely on the credit checks conducted by the mortgagee banks.

As of December 31, 2015 and 2016, the outstanding guarantees for mortgage loans of the purchasers of our properties were equal to RMB15,105.9 million and RMB21,843.2 million (US\$3,146.1 million), respectively. The fluctuations of our financial guarantees were in line with the fluctuations of our pre-sales and sales activities and were also affected by the timing of our property delivery.

## Off-Balance Sheet Commitments and Arrangements

Except for the financial guarantees set forth above, we have not entered into any off-balance sheet guarantees or other commitments to guarantee the payment obligations of any third parties. We do not have any variable interest in any unconsolidated entity that provides financing, liquidity, market risk or credit support to us or engages in leasing or hedging or research and development services with us.

## **Market Risks**

We are, in the normal course of business, exposed to market risks primarily relating to fluctuations in interest rates, commodity prices, foreign exchange rates and the inflation rate.

### ***Interest rate risk***

We are exposed to cash flow interest rate risk due to the fluctuation of the prevailing market interest rate on bank borrowings which carry prevailing market interest rates. Our interest rate risk primarily arises from the floating interest rate of domestic bank loans.

An increase in interest rates may also adversely affect prospective purchasers' ability to obtain financing and depress overall housing demand. Higher interest rates may adversely affect our revenue and profits. PBOC benchmark one-year lending rates in China (which directly affects the property mortgage rates offered by commercial banks in the PRC) as of December 31, 2015 and 2016, were 4.35% and 4.35%, respectively. We cannot assure you that PBOC will not raise lending rates in the future or that our business, financial condition and results of operations will not be adversely affected as a result of these adjustments. We do not currently use any derivative instruments to modify the nature of our debt so as to manage our interest rate risk. However, our management will consider hedging significant interest rate exposure should the need arise.

### ***Commodities risk***

We are exposed to fluctuations in the prices of raw materials for our property developments, primarily steel and cement. Accordingly, rising prices for construction materials will affect our construction costs in the forms of increased fees payable to our contractors. As a result, fluctuations in the prices of our construction materials have a significant impact on our results of operations.

### ***Foreign exchange risk***

We are subject to foreign exchange risk arising from future commercial transactions and recognized assets and liabilities such as cash and cash equivalents and loans which are denominated in a currency that is not Renminbi. As of December 31, 2016, we had cash and bank balances of approximately RMB19.2 million in U.S. dollars, and approximately RMB68.8 million in Hong Kong dollars. Our Existing Notes, Mandatorily Exchangeable Bonds and CVRs had an aggregate outstanding principal amount of US\$3,050.4 million as of December 31, 2016. We also had other offshore banking facilities of US\$60.7 million in U.S. dollars and HK\$313.1 million in Hong Kong dollars, respectively, as of December 31, 2016. Our functional currency is Renminbi, so bank balances and borrowings denominated in foreign currencies are subject to retranslation at each reporting date. Fluctuation of the exchange rates of Renminbi against foreign currencies could affect the our results of operations. Appreciation of the Renminbi against the U.S. dollar generally results in a gain arising from our U.S. dollar-denominated debt and a loss arising from our bank deposits in Hong Kong dollars and U.S. dollars. A depreciation of the Renminbi against the U.S. dollar would have the opposite effect. In addition, a depreciation of Renminbi would negatively affect the value of dividends paid by our PRC subsidiaries, which may in turn affect our ability to service foreign currency denominated debts.

Because Renminbi is not freely convertible, our ability to reduce the foreign exchange risk is limited. You should refer to "Risk Factors — Risks Relating to China — Changes in government control of currency conversion and in PRC foreign exchange regulations may adversely affect our business operations" for additional risk disclosure. We do not have a foreign currency hedging policy. However, our management monitors foreign exchange exposure and will consider hedging significant foreign currency exposure should the need arise.

## ***Inflation***

According to the National Bureau of Statistics of China, China's overall national inflation rate, as represented by the general consumer price index, was approximately 1.4% and 2.0% in 2015 and 2016, respectively. Deflation could negatively affect our business as it would be a disincentive for prospective property buyers to make a purchase.

## **Non-GAAP Financial Measures**

We use EBITDA to provide additional information about our operating performance. EBITDA refers to our earnings before the following items:

- changes in fair value of investment properties;
- changes in fair value of financial derivatives;
- net finance cost (excluding net exchange gains/losses);
- capitalized interest charged to cost of sales;
- income tax expense;
- depreciation;
- amortization of intangible assets;
- amortization of land use rights;
- share-based payments; and
- write down of completed properties held for sale and provisions for properties under development.

EBITDA is not a standard measure under HKFRS. As the property development business is capital intensive, capital expenditure requirements and levels of debt and interest expenses may have a significant impact on the profit for the year of companies with similar operating results. Therefore, we believe the investor community commonly uses this type of financial measure to assess the operating performance of companies in our market sector.

We operate in a capital intensive industry. We use EBITDA in addition to profit or loss for the year because profit or loss for the year includes many accounting items, for example, those associated with write down of completed properties held for sale and provisions for properties under development, capital expenditures, depreciation, amortization of intangible assets, amortization of land use rights, change in fair value of investment properties and financial derivatives and net finance costs (excluding net exchange gains/losses). These accounting items may vary between companies depending on the method of accounting adopted by a company. By minimizing differences in capital expenditures and the associated depreciation expenses as well as reported tax positions, land use rights amortization, change in fair value of investment properties and interest income and expense, EBITDA provides further information about our operating performance and an additional measure for comparing our operating performance with other companies' results. Funds depicted by this measure may not be available for debt service due to covenant restrictions, capital expenditure requirements and other commitments.

The following table reconciles our losses for the years ended December 31, 2015 and 2016 under HKFRS to our definition of EBITDA.

	For the year ended December 31,		
	2015	2016	2016
	(RMB in thousands)	(RMB in thousands)	(US\$ in thousands)
			(unaudited)
Loss for the year . . . . .	(1,254,484)	(347,511)	(50,052)
<b>Adjustments:</b>			
Changes in fair value of investment properties . . .	(3,824,520)	(4,161,371)	(599,362)
Changes in fair value of financial derivatives . . . .	42,219	21,500	3,097
Net finance cost (excluding net exchange gains/losses) . . . . .	1,111,480	883,036	127,184
Capitalized interest charged to cost of sales . . . .	992,230	2,186,978	314,990
Income tax expense . . . . .	1,428,205	2,214,306	318,926
Depreciation . . . . .	104,841	101,369	14,600
Amortization of intangible assets . . . . .	—	85,796	12,357
Amortization of land use rights . . . . .	6,286	6,286	905
Share-based payments . . . . .	8,150	5,881	847
Write down of completed properties held for sale and provisions for properties under development . . . . .	240,276	670,615	96,589
EBITDA . . . . .	<u>(1,145,317)</u>	<u>1,666,885</u>	<u>240,081</u>
EBITDA margin . . . . .	<u>(10.5)%</u>	<u>9.4%</u>	<u>9.4%</u>

You should not consider our definition of EBITDA in isolation or construe it as an alternative to profit or loss for the year or as an indicator of operating performance or any other standard measure under HKFRS. Our EBITDA measures may not be comparable to similarly titled measures used by other companies.



## INDUSTRY OVERVIEW

The information in the section below has been derived, in part, from various government publications and third party professional databases unless otherwise indicated. This information has not been independently verified by us or the Initial Purchasers or any of our and their respective affiliates or advisors. The information may be incomplete, out-of-date or inconsistent with other information compiled within or outside China.

### The PRC Real Estate Industry

#### Urbanization

From 2001 to 2015, according to the CEIC Data Company Ltd, China's urbanization rate (i.e., the proportion of population residing in urban areas) increased from 37.7% to 56.1%, and the urban population increased from 481 million to 771 million during the same period, representing a CAGR of 3.4%.

The following table sets forth China's urbanization rate for the years indicated.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2001-2015 CAGR
Urban population (in millions)	481	502	524	543	562	583	606	624	645	670	691	712	731	749	771	3.4%
Total population (in millions)	1,276	1,285	1,292	1,300	1,308	1,314	1,321	1,328	1,335	1,341	1,347	1,354	1,361	1,368	1,375	0.5%
Urbanization rate (%)	37.7	39.1	40.5	41.8	43	44.3	45.9	47	48.3	49.9	51.3	52.6	53.7	54.8	56.1	—
Per capita disposable income for urban households (RMB)	6,860	7,703	8,472	9,422	10,493	11,759	13,786	15,781	17,175	19,109	21,810	24,565	26,955	28,844	31,195	11.4%

Sources: CEIC Data Company Ltd and National Bureau of Statistics of China

#### Commodity Property Sales

The continuous upward trend in the China real estate industry is backed by rising prices and strong demand. According to CEIC Data Company Ltd, a total GFA of 1,000.4 million sq.m. was completed in the PRC in 2015.

The table below sets forth certain information on the major supply and demand indicators for the years indicated.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Investment in Real Estate (RMB in billions)	634.4	779.1	1,015.4	1,315.8	1,590.9	1,942.3	2,528.9	3,120.3	3,624.2	4,825.9	6,179.7	7,180.4	8,601.3	9,503.6	9,597.9
Total GFA completed (mm sq.m.)	298.7	349.8	414.6	526.4	534.2	558.3	606.1	665.4	726.8	787.4	926.2	994.2	1,014.0	1,074.6	1,000.4
Total GFA sold (mm sq.m.)	224.1	268.1	337.2	453.6	554.9	618.6	773.5	659.7	947.6	1,047.6	1,093.7	1,113.0	1,305.5	1,206.5	1,284.9
Residential GFA Sold (mm sq.m.)	199.4	237.0	297.8	397.2	495.9	554.2	701.4	592.8	861.8	933.8	965.3	984.7	1,157.2	1,051.9	1,124.1
Average price of properties (RMB/sq.m.)	2,170.0	2,250.0	2,359.0	2,778.0	3,167.7	3,366.8	3,863.9	3,800.0	4,681.0	5,032.0	5,357.1	5,791.0	6,237.0	6,324.0	3,793.0
Average price of residential (RMB/sq.m.)	2,017.0	2,092.0	2,197.0	2,608.0	2,937.0	3,119.3	3,645.2	3,576.0	4,459.0	4,725.0	4,993.2	5,429.9	5,850.0	5,933.0	6,473.0

Source: CEIC Data Company Ltd

Prices for real estate in China also increased from 2001 to 2015. According to CEIC Data Company Ltd, the average price per sq.m. of properties increased from RMB2,170.0 per sq.m. in 2001 to RMB3,793.0 per sq.m. in 2015.

## The Real Estate Market in Guangdong Province

The real GDP growth rate of Guangdong Province exceeded the national growth rate in each of the past ten years and the per capita GDP of Guangdong Province was significantly higher than the national average. The table below sets out selected economic statistics for Guangdong Province for the periods indicated.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Nominal GDP (RMB in billions)	1,203.9	1,350.2	1,584.5	1,886.5	2,255.7	2,658.8	3,177.7	3,679.7	3,948.3	4,601.3	5,321.0	5,706.8	6,216.4	6,781	7,281.3
Real GDP growth rate (%)	10.5	12.4	14.8	14.8	14.1	14.8	14.9	10.4	9.7	12.4	10.0	8.2	8.5	7.8	8.0
Per capita GDP (RMB)	13,852	15,365	17,798	20,876	24,647	28,534	33,272	37,638	39,436	44,736	50,807	54,095	58,833	63,469	67,503
Per capita disposable income for urban households (RMB)	10,415	11,137	12,380	13,628	14,770	16,016	17,699	19,733	21,575	23,898	26,897	30,227	33,090	32,148	34,757

Note:

(1) N/A represents not available or not applicable, as the case may be

Source: CEIC Data Company Ltd

According to CEIC Data Company Ltd, properties with a total GFA of 77.1 million sq.m. were completed in Guangdong Province in 2015, of which 44.4 million sq.m. was residential property. Total GFA sold was 116.8 million sq.m. in 2015, of which 105.0 million sq.m. was residential property.

## The Real Estate Market in Greater Shenzhen

### Shenzhen

Shenzhen's GDP reached approximately RMB1,750.3 billion in 2015. In 2015, Shenzhen's per capita GDP was RMB157,985. The table below sets out selected economic statistics for Shenzhen for the periods indicated.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Nominal GDP (RMB in billions)	248.2	297.0	358.6	428.2	495.1	581.4	680.2	778.7	820.1	958.2	1,150.5	1,295.0	1,450.0	1,600.2	1,750.3
Real GDP growth rate (%)	14.3	15.8	19.2	17.3	15.1	16.6	14.8	12.1	10.7	12.2	10.0	10.0	10.5	8.8	8.9
Per capita GDP (RMB)	34,822	40,369	47,029	54,236	60,801	68,441	76,274	83,431	84,147	94,297	110,421	123,247	136,947	149,497	157,985
Per capita disposable income for urban households (RMB)	22,673	24,939	23,885	25,875	28,665	32,015	33,593	26,729	29,245	32,381	36,505	40,742	44,653	48,672	44,633

Note:

(1) N/A represents not available or not applicable, as the case may be

Source: CEIC Data Company Ltd

According to CEIC Data Company Limited, a total GFA of approximately 8.3 billion sq.m. was sold in Shenzhen in 2015, which represented an increase of approximately 56.1% from 2014. Building sales increased 114.3% from RMB131.7 billion in 2014 to approximately RMB282.2 billion in 2015.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
GFA completed (sq.m. in millions)	7.3	8.9	10.2	6.8	9.5	8.5	6.4	6.3	4.0	3.4	3.3	4.3	3.5	4.3	3.6
GFA sold (sq.m. in millions)	3.8	3.8	4.1	3.8	11.2	7.5	5.6	4.7	7.6	4.7	5.0	5.3	5.9	5.3	8.3
Average price of residential properties (RMB/sq.m.)	5,507	5,267	5,793	6,385	6,996	8,848	13,370	12,823	14,389	18,954	21,037	18,996	23,427	24,040	33,661
Revenue (RMB in millions)	22,394	22,119	25,758	25,788	85,135	70,303	77,991	59,109	111,388	89,255	106,087	103,009	143,625	131,667	282,214

Source: CEIC Data Company Ltd

### Dongguan

Dongguan's GDP reached approximately RMB627.5 billion in 2015, representing a per capita GDP of approximately RMB75,616. The table below sets out selected economic statistics for Dongguan for the periods indicated.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Nominal GDP (RMB in billions)	99.2	118.7	145.3	180.6	218.3	262.8	316.0	370.3	376.4	424.6	473.5	501.0	549.0	588.1	627.5
Real GDP growth rate (%)	18.0	18.5	19.5	19.6	19.5	19.2	18.3	14.0	5.3	10.3	8.0	N/A	9.8	7.8	0.1
Per capita GDP (RMB)	15,268	18,131	22,174	27,554	33,287	39,173	45,057	50,471	48,988	52,798	57,470	60,557	66,109	70,604	75,616
Per capita disposable income for urban households (RMB)	16,938	16,949	18,471	20,526	22,882	25,320	28,209	30,275	33,045	35,690	39,513	42,944	46,594	36,764	39,793

Note:

(1) N/A represents not available or not applicable, as the case may be

Source: CEIC Data Company Ltd

According to the Statistics Bureau of Guangdong Province and the Statistics Bureau of Dongguan, a total GFA of approximately 10.8 million sq.m. was sold in Dongguan in 2015, which represented an approximately 61.9% increases from 2014. Building sales increased 107.6% from RMB64.4 billion in 2014 to approximately RMB107.6 billion in 2015.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
GFA completed (sq.m. in millions)	1.1	1.3	2.6	1.4	1.3	1.7	1.4	1.0	3.1	3.0	2.4	3.6	2.6	2.6	3.3
GFA sold (sq.m. in millions)	0.8	0.7	1.7	1.6	3.2	3.8	5.7	5.1	6.0	5.1	6.0	6.4	8.0	6.7	10.8
Average price of residential properties (RMB/sq.m.)	2,512	2,906	3,341	3,297	3,671	4,138	5,058	5,412	5,775	7,111	7,645	8,486	9,066	9,685	9,992
Revenue (RMB in millions)	N/A	1,150	4,800	5,920	11,940	16,124	29,499	28,860	35,300	37,377	45,961	54,238	72,807	64,413	107,612

Note:

(1) N/A represents not available or not applicable, as the case may be

Sources: Statistics Bureau of Guangdong Province, Dongguan Bureau of Statistics and CEIC Data Company Ltd

## Huizhou

Huizhou's GDP reached approximately RMB314.0 billion in 2015, and it had a per capita GDP of approximately RMB66.231. The table below sets out selected economic statistics for Huizhou for the periods indicated.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Nominal GDP . . . . .	47.9	52.7	58.6	68.6	80.4	92.9	111.8	130.4	141.5	173.0	209.7	236.8	267.8	300.1	314.0
Real GDP growth rate . . . . .	10.3	11.1	13.9	15.1	15.9	16.6	17.6	11.6	13.2	18.0	14.6	12.6	13.6	10.0	9.0
Per capita GDP . . . . .	14,590	15,529	16,860	19,189	21,909	24,503	28,288	31,748	33,142	38,650	45,331	50,874	57,144	63,665	66,231
Per capita disposable income for urban households (RMB) . . . . .	10,014	10,691	12,673	13,822	14,884	15,991	17,310	19,481	21,278	23,565	26,609	29,965	32,992	27,300	30,057

Note:

(1) N/A represents not available or not applicable, as the case may be

Sources: CEIC Data Company Ltd and Huizhou statistical

According to the CEIC Data Company Ltd., a total GFA of approximately 13.0 million sq.m. was sold in Huizhou in 2015, which represented an increase of approximately 32.1% from 2014. Building sales rose by 35.9%, from approximately RMB58.9 billion in 2014 to approximately RMB80.0 billion in 2015.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
GFA completed (sq.m. in millions) . . . . .	0.6	0.9	1.0	0.9	1.3	1.7	2.1	2.4	5.5	5.6	5.0	5.1	6.3	7.6	4.5
GFA sold (sq.m. in millions) . . . . .	0.5	0.6	0.9	1.0	1.5	2.5	3.9	3.0	5.4	6.3	8.0	8.3	11.5	9.8	13.0
Average price of residential properties (RMB/sq.m.) . . . . .	1,683	1,992	1,836	2,076	2,226	2,840	3,771	3,930	4,111	4,817	5,480	N/A	N/A	N/A	N/A
Revenue (RMB in millions) . . . . .	788	1,324	1,670	2,288	3,797	7,579	15,333	12,194	23,201	31,117	44,177	47,840	67,210	58,880	80,038

Sources: Statistics Bureau of Guangdong Province and CEIC Data Company Ltd

## The Real Estate Market in Guangzhou

In 2015, Guangzhou's nominal GDP reached approximately RMB1,810.1 billion, while real GDP grew approximately 8.4% in 2015.

The table below sets forth selected economic statistics for Guangzhou for the years indicated:

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Nominal GDP (RMB in billions) . . . . .	284.2	370.4	375.9	445.0	515.4	608.2	714.0	828.7	913.8	1,074.8	1,242.3	1,355.1	1,542.0	1,670.7	1,810.1
Real GDP growth rate (%) . . . . .	12.7	13.2	15.2	15.0	12.9	14.8	15.3	12.5	11.7	13.2	11.3	10.5	11.6	8.6	8.4
Per capita GDP (RMB) . . . . .	28,537	32,339	38,399	45,906	53,809	62,495	69,673	76,440	79,383	87,458	97,588	105,909	N/A	N/A	N/A
Per capita disposable income for urban households (RMB) . . . . .	14,416	13,361	14,765	16,882	18,288	19,850	22,469	25,317	27,610	30,659	34,438	38,054	42,049	42,955	46,734.6

Note:

(1) N/A represents not available or not applicable, as the case may be

Sources: CEIC Data Company Ltd and National Bureau of Statistics of China

According to CEIC Data Company Limited, the total GFA of completed properties in 2015 in Guangzhou was approximately 15.1 million which represented an approximately 21.3% decrease from 2014. The average selling price per sq.m. of residential properties in Guangzhou in 2015 was approximately RMB14,083, representing a decrease of approximately 4.5% from 2014. The table below sets out key statistics relating to the real estate market in Guangzhou for the periods indicated.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
GFA completed (sq.m. in millions) . . . . .	8.5	10.8	11.4	9.5	10.6	9.9	8.8	10.6	10.8	10.9	12.9	12.9	11.4	19.2	15.1
GFA sold (sq.m. in millions) . . . . .	5.6	7.3	8.2	8.7	12.7	13.2	13.5	10.2	13.8	14.1	11.9	13.3	17.0	15.4	16.5
Average price of residential properties (RMB/sq.m.) . . . . .	4,047	3,995	3,999	4,356	5,041	6,152	8,439	8,781	8,988	10,615	10,926	12,001	13,954	14,739	14,083
Revenue (RMB in millions) . . . . .	23,796	30,579	34,338	39,593	68,271	86,229	117,202	93,507	128,615	167,506	144,526	175,476	260,607	242,076	241,547

Source: CEIC Data Company Limited

### **The Real Estate Market in Zhuhai**

Zhuhai's GDP reached approximately RMB202.5 billion in 2015. The table below sets out selected economic statistics for Zhuhai for the periods indicated.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Nominal GDP (RMB in billions) . . . . .	36.8	40.9	47.7	55.2	63.5	74.6	89.5	99.7	103.9	120.9	140.5	150.4	166.2	185.7	202.5
Real GDP growth rate (%) . . . . .	12.1	12.3	17.5	13.8	13.1	16.4	16.7	9.0	6.6	12.9	11.3	7.0	10.5	10.3	10.0
Per capita GDP (RMB) . . . . .	29,222	31,457	35,781	40,311	45,320	52,189	61,303	66,798	68,042	77,889	89,793	95,471	104,800	115,900	124,700
Per capita disposable income for urban households (RMB) . . . . .	15,879	15,320	16,602	18,347	18,908	17,671	20,516	20,949	22,859	25,382	28,731	32,978	36,375	35,287	38,322

Note:

(1) N/A represents not available or not applicable, as the case may be

Source: CEIC Data Company Ltd

According to CEIC Data Company Ltd., the total GFA of completed properties in 2015 in Zhuhai was approximately 2.0 million sq.m, which represented an increase of approximately 18.2% from 2014.

## The Real Estate Market in Sichuan Province

### The Real Estate Market in Chengdu

Chengdu's GDP reached approximately RMB1,080.1 billion in 2015, representing a per capita GDP of approximately RMB74,273. The table below sets out selected economic statistics for Chengdu for the periods indicated.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Nominal GDP (RMB in billions)	149.2	166.7	187.1	218.6	237.1	275.0	332.4	390.1	450.3	555.1	685.5	813.9	910.9	1,005.7	1,080.1
Real GDP growth rate (%)	13.1	13.1	13.0	13.6	13.5	13.8	15.3	12.1	14.7	15.0	15.2	13.0	10.2	8.9	7.9
Per capita GDP (RMB)	14,677	16,277	18,051	20,777	19,627	25,171	26,525	30,855	35,215	48,510	49,438	57,624	63,977	70,019	74,273
Per capita disposable income for urban households (RMB)	N/A	8,972	9,641	10,394	11,359	12,789	14,849	16,943	18,659	20,835	23,932	27,194	29,968	32,665	33,476

Note:

(1) N/A represents not available or not applicable, as the case may be

Sources: CEIC Data Company Ltd and National Bureau of Statistics of China

According to CEIC Data Company Ltd, the total GFA of completed properties in 2015 in Chengdu was approximately 14.4 million sq.m, which represented an approximately 32.3% decrease from 2014. The average selling price per sq.m. of residential commodity properties was RMB6,584 in 2015, representing a 0.7% increase from 2014. The total buildings sales value in 2015 was RMB206.1 billion, representing a decrease of 0.7% from 2014.

## The Real Estate Market in Hunan Province

### The Real Estate Market in Changsha

Changsha's GDP reached approximately RMB851.0 billion in 2015, representing a per capita GDP of approximately RMB115,443. The table below sets out selected economic statistics for Changsha for the years indicated.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Nominal GDP (RMB in billions)	72.8	81.3	92.9	113.4	152.0	179.9	219.0	300.1	374.5	454.7	561.9	640.0	715.3	782.5	851.0
Real GDP growth rate (%)	12.1	12.7	14.0	15.0	14.9	14.8	16.0	15.1	14.7	15.5	14.5	13.0	12.0	10.5	9.9
Per capita GDP (RMB)	12,443	13,747	14,810	18,036	23,968	27,982	33,711	45,765	56,620	66,443	79,530	89,903	99,570	107,683	115,443
Per capita disposable income for urban households (RMB)	8,704	8,868	9,943	11,029	12,434	13,924	16,153	18,282	20,004	22,284	25,481	30,288	33,662	36,826	39,961

Note:

(1) N/A represents not available or not applicable, as the case may be

Sources: CEIC Data Company Ltd and National Bureau of Statistics of China

According to CEIC Data Company Ltd, the total GFA of completed properties in 2015 in Changsha was approximately 13.5 million sq.m, which represented an approximately 4.4% decrease from 2014. The average selling price per sq.m. of residential commodity properties was RMB5,544 in 2015, representing a 1.6% increase from 2014. The total buildings sales value in 2015 was RMB111.7 billion, representing an increase of 20.3% from 2014.



## The Real Estate Market in Shanghai

Shanghai's GDP reached approximately RMB2,496.5 billion in 2015, representing a per capita GDP of approximately RMB103,100. The table below sets out selected economic statistics for Shanghai for the periods indicated.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Nominal GDP (RMB in billions)	521.0	574.1	669.4	807.3	927.8	1,057.2	1,249.4	1,407.0	1,504.6	1,716.6	1,919.6	2,018.2	2,160.2	2,356.1	2,496.5
Real GDP growth rate (%)	10.5	11.3	12.3	14.2	11.4	12.7	15.2	9.7	8.2	10.3	8.2	7.5	7.7	7.0	6.9
Per capita GDP (RMB)	31,799	33,958	38,486	44,839	49,649	54,858	62,041	66,932	69,164	76,075	82,560	85,373	90,100	97,300	103,100
Per capita disposable income for urban households (RMB)	12,884	13,250	14,868	16,683	18,645	20,668	23,623	26,675	28,838	31,838	36,231	40,188	43,851	47,710	49,867

Note:

(1) N/A represents not available or not applicable, as the case may be

Sources: CEIC Data Company Ltd and National Bureau of Statistics of China

According to CEIC Data Company Ltd, the total GFA of completed properties in 2015 in Shanghai was approximately 26.5 million sq.m, which represented an approximately 14.4% increase from 2014. The average selling price per sq.m. of residential properties was RMB21,501 in 2015, representing a 31.0% increase from 2014. The total buildings sales value in 2015 was RMB509.4 billion, representing a decrease of 45.5% from 2014.

## The Real Estate Market in Liaoning Province

### The Real Estate Market in Shenyang

Shenyang's GDP reached approximately RMB728.1 billion in 2015, representing a per capita GDP of approximately RMB87,833. The table below sets out selected economic statistics for Shenyang for the periods indicated.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Nominal GDP (RMB in billions)	123.6	140.0	160.3	190.1	208.4	252.0	322.1	386.0	426.9	501.8	591.5	660.3	715.9	709.9	728.1
Real GDP growth rate (%)	10.1	13.1	14.2	15.5	16.0	16.7	22.8	16.3	14.1	14.1	12.3	10.0	8.8	6.0	3.5
Per capita GDP (RMB)	16,257	18,266	20,575	24,156	28,241	33,798	41,767	49,166	54,654	62,357	72,648	80,480	86,850	85,816	87,833
Per capita disposable income for urban households (RMB)	6,386	7,050	7,961	8,924	10,098	11,651	14,607	17,013	18,475	20,541	23,326	26,431	29,074	31,720	36,643

Note:

(1) N/A represents not available or not applicable, as the case may be

Sources: CEIC Data Company Ltd and National Bureau of Statistics of China

According to CEIC Data Company Ltd, the total GFA of completed properties in 2015 in Shenyang was approximately 10.4 million sq.m, which represented an approximately 15.4% decrease from 2014. The average selling price per sq.m. of residential commodity properties was RMB6,416, representing a 9.4% increase from 2014. The total buildings sales value in 2015 was RMB73.1 billion, representing a decrease of 21.6% from 2014.

### Macroeconomic Conditions in Yingkou

Yingkou's GDP reached approximately RMB151.4 billion in 2015, representing a per capita GDP of approximately RMB61,925. The table below sets out selected economic statistics for Yingkou for the years indicated.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Nominal GDP (RMB in billions)	19.2	21.8	25.3	31.8	38.0	45.7	57.0	70.4	79.9	100.2	122.3	138.1	151.3	159.1	151.4
Real GDP growth rate (%)	11.6	12.5	16.1	21.2	20.4	18.8	21.3	20.3	20.3	17.8	13.9	10.8	9.6	6.5	4.5
Per capita GDP (RMB)	8,481	9,549	11,074	13,867	16,487	19,810	24,597	30,177	34,104	41,452	50,309	56,583	61,937	65,075	61,925
Per capita disposable income for urban households (RMB)	N/A	6,454	7,318	8,128	9,009	10,135	12,143	14,352	15,858	18,055	20,894	23,986	26,600	28,222	30,458

Note:

(1) N/A represents not available or not applicable, as the case may be

Sources: CEIC Data Company Ltd and National Bureau of Statistics of China

### Macroeconomic Conditions in Anshan

Anshan's GDP reached approximately RMB234.9 billion in 2015, representing a per capita GDP of approximately RMB67,675. The table below sets out selected economic statistics for Anshan for the years indicated.

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Nominal GDP (RMB in billions)	64.2	70.9	79.0	100.6	101.8	113.6	134.4	160.8	173.0	212.5	242.0	262.9	262.3	238.6	234.9
Real GDP growth rate (%)	10.0	11.0	13.1	16.1	16.2	15.6	16.3	16.6	17.2	16.0	12.0	9.6	8.9	3.2	3.0
Per capita GDP (RMB)	18,636	20,609	22,909	28,900	29,338	32,644	38,387	45,830	49,301	58,426	68,818	74,901	74,940	68,369	67,675
Per capita disposable income for urban households (RMB)	N/A	6,851	7,434	8,262	9,463	10,761	12,857	15,074	16,530	18,423	21,297	24,194	26,662	27,846	29,943

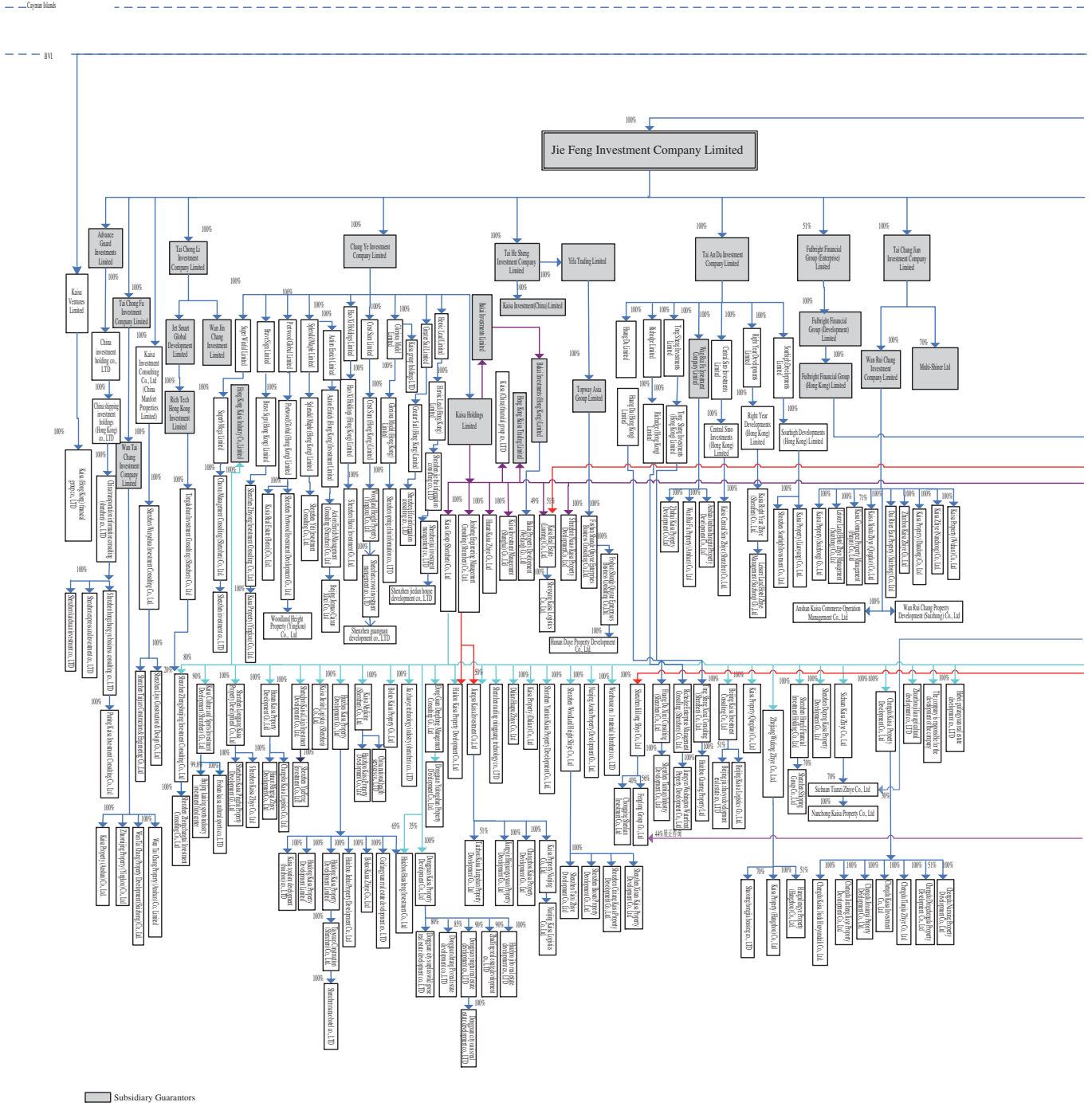
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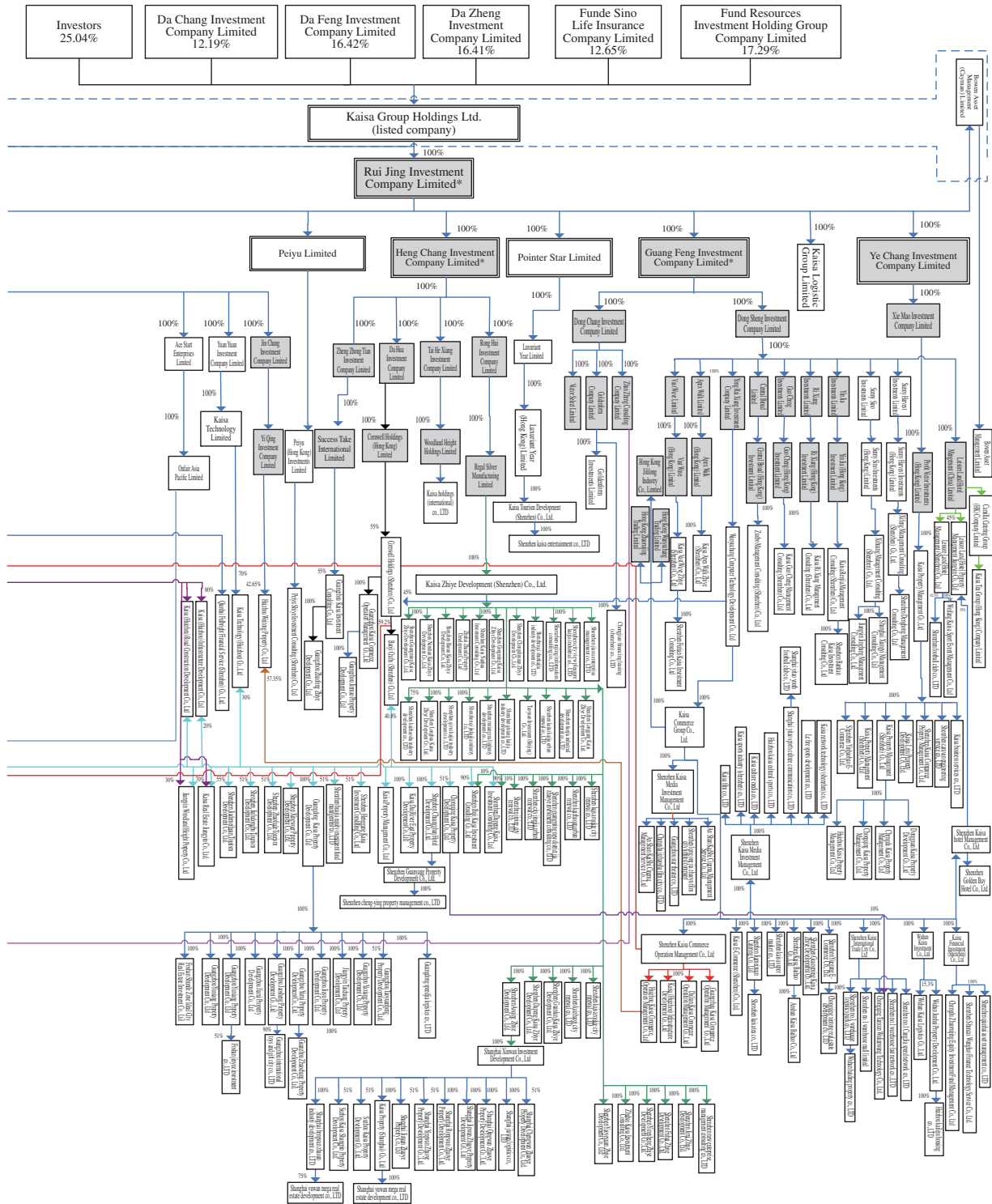
(1) N/A represents not available or not applicable, as the case may be

Sources: CEIC Data Company Ltd and National Bureau of Statistics of China

# CORPORATE STRUCTURE

The following chart shows our corporate structure as of the date of this offering memorandum:





## BUSINESS

### Overview

We are a leading PRC property developer with a sizable and diversified land bank of approximately 21.3 million sq.m. GFA in 31 cities across five regions. According to “Top 200 Real Estate Enterprise Property Developers by Sales in 2016” jointly compiled and issued by CRIC and China Real Estate Appraisal Center, we were ranked 46th nationwide in terms of GFA sold in 2016. We focus on mass market housing demand and are primarily engaged in the development of large-scale residential properties as well as integrated commercial properties.

Headquartered in Shenzhen, the Special Economic Zone adjacent to Hong Kong, we have historically focused our property development in the Pearl River Delta region. Our well-established position in the Pearl River Delta region is supported by our geographically diversified development portfolio, including projects in Greater Shenzhen, Foshan, Guangzhou and Zhuhai. Leveraging our success in the Pearl River Delta region, we have also expanded into other areas in China, including Shanghai, Hangzhou, Taizhou, Suzhou, Nanjing, Changzhou, Taicang and Jiangyin in the Yangtze River Delta region, Chengdu, Chongqing and Nanchong in the Western China region, Changsha, Wuhan and Zhuzhou in the Central China region, and Shenyang, Yingkou, Benxi, Panjin, Anshan, Weifang, Liaoyang, Dalian, Dandong, Huludao and Qingdao in the Pan-Bohai Bay Rim. With our in-depth property development experience and the dedication that we have demonstrated throughout our operational history, we intend to expand into other regions in China.

We focus primarily on development of the following:

- Residential properties. Our large-scale residential properties are generally located in suburban areas with access to public transport and other urban facilities in selected cities in China. These properties include apartments, serviced apartments and townhouses, often with complementary commercial facilities, restaurants and community facilities. The principal target customers for our residential properties are middle to upper-middle income households. We often develop our residential properties in a number of phases. We believe our multi-phased approach has enabled us to manage our capital resources efficiently and has increased our returns through the higher average selling prices which we expect to achieve at subsequent development phases.
- Commercial properties. Our integrated commercial properties are generally located in CBDs in selected cities in China. Since 2005, we have increased the commercial property development in our portfolio. Guangzhou Jinmao, our completed commercial project, is located in a prime location within Guangzhou’s CBD and consists of a premium grade office building and retail space. In December 2010, we completed Guangzhou Kaisa Plaza, a commercial project which comprises primarily one high-rise office building with retail space, located in Guangzhou’s Tianhe CBD. In March 2011, the Shenzhen Municipal Government announced its landmark projects in response to the Central Government’s 12th Five-Year Plan, and included in the landmark project list is a trophy project in the heart of Shenzhen CBD — Shenzhen Kaisa Global Center. Our other commercial projects are expected to consist of a mixture of office buildings and retail spaces.

As of December 31, 2016, we had a total of 101 property development projects, including completed properties, properties under development and properties for future development, in 31 cities in China. As of December 31, 2016, we had completed properties with a total GFA of approximately 19,448,712 sq.m., and had a land bank with an estimated total GFA of approximately 21.3 million sq.m., including completed properties held for sale with a total GFA of approximately 2,115,574 sq.m., properties under development with an estimated total GFA of approximately 6,787,761 sq.m. and properties for future development with an estimated total GFA of approximately 12,364,991 sq.m. Our contracted sales were RMB9,254 million and RMB29,843 million (US\$4,298 million) in 2015 and 2016, respectively. Our contracted GFA was approximately 1,255,279 sq.m. and 2,269,379 sq.m. in 2015 and 2016, respectively.

Our revenue was RMB10,926.5 million and RMB17,771.5 million (US\$2,559.6 million) in 2015 and 2016, respectively.

We have historically contracted out construction works of all our development projects to construction contractors, and intend to continue to outsource substantially all of our construction works. We cooperate with Centaline and World Union to jointly promote our developed properties in different regional markets in China. Going forward, we will continue to improve the management of our sales through our dedicated sales team and intend to continue to engage professional property sales agencies to provide marketing and sales services for our properties in China.

We intend to continue to focus on developing residential and commercial properties in the Pearl River Delta region and further diversify geographically through expansion into other promising markets in China. In addition to our focus on residential and commercial development projects, we also aim to increase our investment properties and consequentially our rental income. We intend to retain certain of our commercial properties for long-term investment purposes. In managing our investment property portfolio, we will take into account the estimated long-term growth potential, overall market conditions and our cash flows and financial conditions.

### Recent Developments

Subsequent to December 31, 2016, we acquired the parcels of land as set forth in the table below.

Location	Attributable interest (%)	Number of Land Parcels	Site Area (sq.m.)	Total Planned GFA	Attributable GFA per maximum allowed plot ratio (sq.m.)	Consideration (RMB in million)	Type
Guangzhou . . . . .	70	1	78,913	409,703	316,443	1,960	Commercial <sup>(1)</sup>
Huizhou . . . . .	100	4	176,724	565,710	441,810	373	Residential <sup>(1)</sup>
Foshan . . . . .	100	1	14,406	84,811	72,031	380	Commercial
Shenyang . . . . .	100	1	12,947	49,532	38,840	239	Residential
Shanghai . . . . .	100	2	23,638	55,429	42,543	84	Residential
Shaoxing . . . . .	70	1	19,852	62,699	47,939	21	Residential
Zhuhai . . . . .	100	1	16,088	35,848	28,958	217	Residential
<b>Total . . . . .</b>		<b>11</b>	<b>342,568</b>	<b>1,263,732</b>	<b>988,570</b>	<b>3,274</b>	

(1) Urban redevelopment projects.

Our total contracted sales for the five months ended May 31, 2017 amounted to approximately RMB14,265 million with the total contracted GFA of approximately 930,616 sq.m., representing increases of approximately 30.2% and 13.0% as compared with the corresponding period in 2016, respectively. The average selling price for the five months ended May 31, 2017 amounted to approximately RMB15,328 per sq.m., representing an increase of approximately 15.2% as compared with the corresponding period in 2016.



## **Our Competitive Strengths**

We believe we have the following competitive strengths:

### ***Market leadership in the Pearl River Delta region with a national footprint***

We are a leading property developer in the Pearl River Delta region and have an increasing presence in other select strategic cities with high economic growth potential in China.

We are well-recognized in the Pearl River Delta region with a proven track record of successfully bringing to market reputable residential properties. Leveraging our success in the Pearl River Delta region, we have expanded into other areas in China, including Shanghai, Hangzhou, Taizhou, Suzhou, Nanjing, Changzhou, Taicang and Jiangyin in the Yangtze River Delta region, Chengdu, Chongqing and Nanchong in the Western China region, Changsha, Wuhan and Zhuzhou in the Central China region, and Shenyang, Yingkou, Benxi, Panjin, Anshan, Weifang, Liaoyang, Dalian, Dandong, Huludao and Qingdao in the Pan-Bohai Bay Rim. According to “Top 200 Real Estate Enterprise Property Developers by Sales in 2016” jointly compiled and issued by CRIC and China Real Estate Appraisal Center, we were ranked 46th nationwide in terms of GFA sold in 2016.

We believe that “Kaisa” evokes our high standard of industry practice and that the market recognition of “Kaisa” is further supplemented by our award winning property management services for properties we developed. We customize services to meet the particular needs and requirements of the community and focus particularly on maintaining customer satisfaction. We believe that by providing quality property management services, we will be able to improve the appeal of our products to customers and distinguish our products from those of our competitors.

We believe that our well-established position and operating expertise will enable us to successfully capture market share and mass market housing demand nationwide.

### ***Quality land bank acquired at relatively low cost through various channels, including redevelopment***

Our land acquisition team adopts a coordinated approach during the land acquisition process. We believe our insight into development trends in our target regions has enabled us to acquire large tracts of land at relatively low cost. We acquired our land reserves at relatively low cost as our reserves consist mostly of parcels of land located in selected cities where, we believe, the value of acquired land had not been fully recognized at the time of acquisition.

We intend to continue to leverage our extensive experience, in-depth local knowledge and business and technical expertise in managing urban redevelopment projects to take advantage of the incentives and preferential policies for promoting urbanization and redevelopment announced by the Shenzhen Municipal Government in October 2009. As of December 31, 2016, we secured urban redevelopment projects with a total GFA of 0.2 million sq.m., all of which were located in Shenzhen.

We also have experience building our land reserves through acquiring and renovating distressed and uncompleted properties. While certain distressed properties present potential for achieving profitability at relatively low cost, this land acquisition approach requires the ability to resolve the numerous problems that rendered the properties distressed, to perform an evaluation and complete the property acquisition on a timely basis, and to devise and execute a comprehensive turn-around solution. Regardless, we have been able to acquire parcels of land by acquiring uncompleted distressed property developments at relatively low cost. We believe that the relatively low cost of our land reserves has enhanced our ability to respond to changing market conditions by adjusting prices while maintaining profitability.

### ***Responsiveness to market trends and prudent financial management***

Our knowledge of real estate markets and our understanding of market trends in China enable us to respond effectively to market conditions and changes. Our business model incorporates the key market factors that influence housing growth in China, particularly in the cities and regions where we operate or into which we intend to expand. In selecting sites for our residential developments, we focus on identifying suburban areas with access to road networks, public transport and urban facilities. We conduct in-depth internal market analysis, together with our site research and additional market information provided by third-party sources, which enable us to better assess the risks, costs and potential returns associated with potential sites for development. By being proactive and responsive, we believe that we have been able to utilize our understanding of market fundamentals to guide our land reserve strategy. In addition, we closely monitor our cash flows and financial position with a view to achieving a balanced capital structure. We manage and seek to improve our liquidity profile by taking advantage of capital efficient projects, such as redevelopment of old urban areas, primary land development and joint venture projects with financial investors, and by instituting proactive cost controls and conservative budgeting procedures.

We have also exploited new market opportunities by identifying and acquiring distressed and uncompleted residential and commercial properties in Shenzhen and Guangzhou. We generally develop plans to achieve profitability through an analysis of various factors pertaining to the properties, including their valuation, execution, market repositioning and promotion. With our responsiveness to market conditions and innovative approach, as well as our growing track record of bringing such properties to market, we believe we have the ability to take advantage of similar market opportunities in the future.

### ***Experienced and long-serving senior management team and continuous recruitment of management talent***

Our senior management team members have extensive experience in the PRC real estate industry and expertise in strategic planning and business management. Certain of our core management members, including our founder and Chairman, Mr. Kwok Ying Shing, have led the growth of our business. To retain management talent and align their interests with those of us, we offer competitive compensation, stock option plans and a cohesive team-based working environment. We believe that our highly experienced senior management members will enable us to maintain the growth of our business. In recent years, we have attracted and hired, through a selective recruitment process, a number of seasoned managers and professionals from the real estate industry in China. We continually seek to attract and retain management talent in accordance with our aim to further expand our business operations.

### **Our Business Strategies**

We aim to continue to grow as a leading property developer with a national presence in key economic regions in China. We have developed the following business strategies to pursue our growth objectives:

#### ***Continue to enhance profit margin from urban redevelopments in Shenzhen and the rest of the Pearl River Delta region and achieve further geographical diversification in China***

We intend to continue to consolidate our leading market position in Shenzhen and the rest of the Pearl River Delta region. We believe that the Pearl River Delta region will remain one of the most economically dynamic regions in China, and that we will be able to continue to capitalize on the mass market housing demand for residential property as well as other types of property we develop in this region. In particular, we intend to continue to leverage our extensive experience, in-depth local knowledge and business and technical expertise in managing urban redevelopment projects to take advantage of the incentives and preferential policies on promoting urbanization and redevelopment announced by the Shenzhen government in October 2009. We also intend to continue to enhance profit margin from urban redevelopment and capture the growth opportunities of the Pearl River Delta region in light of the continuing improvement and expansion of the metro network and successive completion of the inter-city high speed railways.

In addition, we intend to further geographically diversify our revenue portfolio by opportunistically expanding our business operations in first-tier cities and provincial capitals following our successful expansion into several regions across China. We have entered into selected cities beyond the Pearl River Delta region. We plan to pursue further revenue geographical diversification through expansion into other select high-growth areas and major cities in China.

***Further enhance asset turnover and cost efficiency through standardized product lines and a scalable business model***

We have been focusing on an asset-turnover business model in order to capture the robust housing demand in China. We intend to continue to develop standardized product lines to achieve rapid asset turnover and expand the scale of our development while keeping costs competitive. We have developed certain standardized product lines which we have implemented in cities across China, and we believe that such product lines offer comfortable and convenient community living environments. We believe standardized product lines and development processes will allow us to achieve efficient use of capital and other resources and develop new projects on a timely basis.

We segment the development process into various stages and maintain a systematic approach to manage and control the major steps of our developments, including site selection and land acquisition, detailed project planning and design work, development management and construction, sales and pre-sale, and after-sale services. Our turnover time from land acquisition to pre-sales in many lower-tier cities typically range from six and a half months to nine months. We intend to further standardize our scalable property development model and optimize our development process by establishing certain standard criteria and operational guidelines that may be replicated across projects. We believe that by replicating standardized and scalable practices and methodologies in strategically selected cities, we will be able to effectively expand our business and enter into new geographic markets as attractive opportunities arise.

***Continue to focus on residential mass market and commercial property development while selectively expanding our land bank and diversify our business***

We will continue to focus on residential mass market and commercial property developments. We intend to continue to develop mixed-use and multifunctional complexes comprising high-end office space, hotels, shopping centers, entertainment facilities and restaurants. We believe demand for office buildings, retail space and other types of commercial properties will continue to increase as commercial activities grow in China. We seek to achieve and maintain a balanced development structure by further diversifying into commercial property markets, while continuing to develop residential properties, particularly in the mass market housing segment.

We intend to increase our holdings of the commercial properties which we develop for long-term investment purposes so as to enhance the overall value of our property portfolio and to increase the proportion of recurring rental income. The commercial properties we intend to develop and retain include office space, retail space and hotels. We intend to enter into tenancy agreements with reputable international and local tenants to secure recurring rental income. We believe the diversification of our property portfolio will reduce our reliance on one particular sector of the market.

We will continue to selectively expand our land reserves for new property developments in order to sustain our continued growth and to execute our business expansion plan. We will continue to acquire land through acquisitions of controlling equity interests in parties that hold land use rights. In addition to building our land reserves through the public tender, auction and listing-for-sale process, we intend to take advantage of our experience in revamping distressed properties and continue to acquire distressed properties with good development potential. Furthermore, we intend to continue to participate in the redevelopment projects for old urban areas and villages in Shenzhen to gain access to land that is suited for our property development plans.

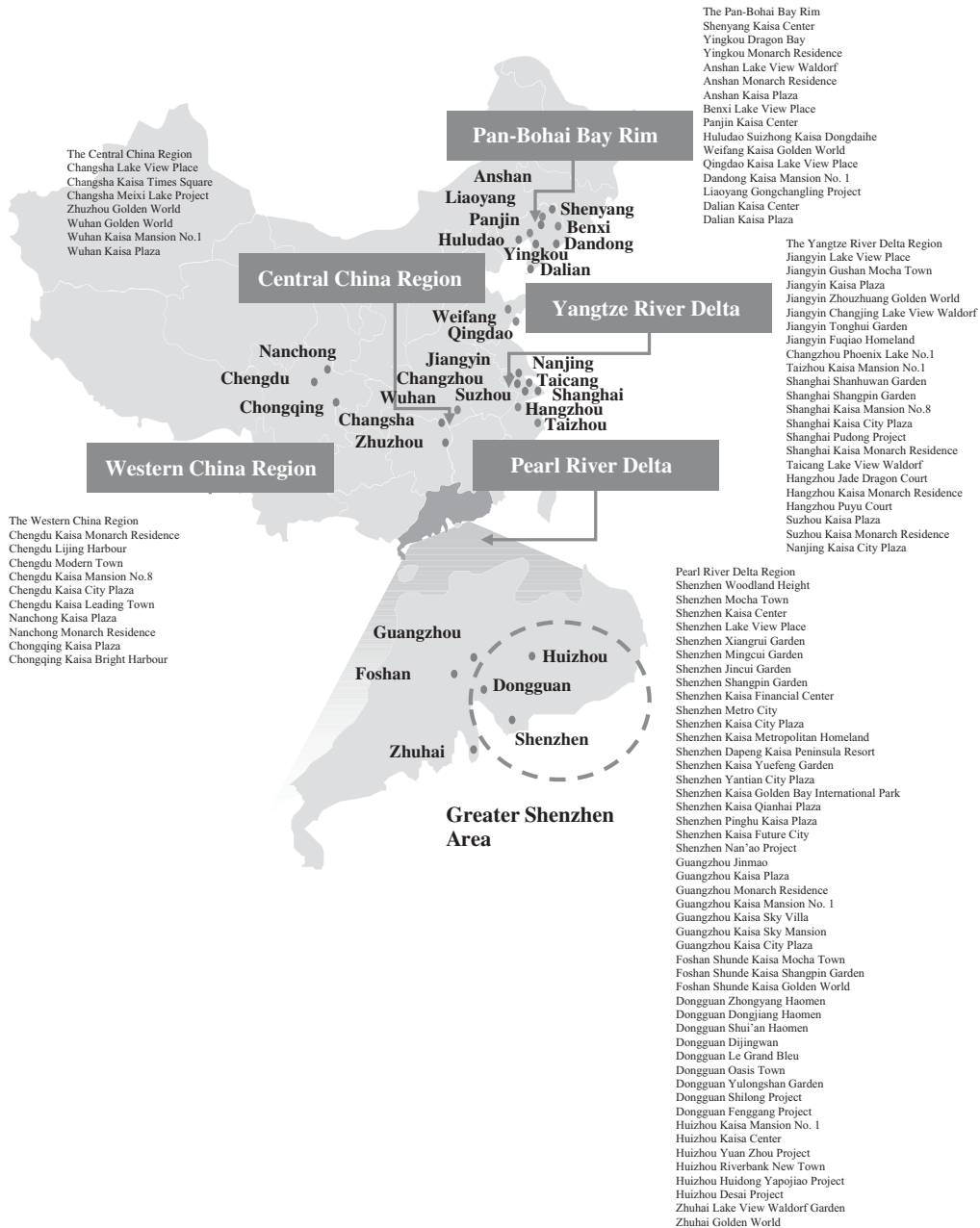
We are actively seeking to diversify our business. For example, in November 2016, we acquired 21.7% equity interest in Mega Medical Technology Limited, a Hong Kong Stock Exchange listed company engaging in supply of dental equipment and consumables, and became its largest shareholder. We intend to further promote our brand name and increase our overall competitiveness through such diversification. We also continue to evaluate our business model and strive to optimize our business portfolio, and may further restructure our property management business through a spin-off. As of the date of this offering memorandum, there is no definite timetable or execution plan with respect to such restructuring, and such restructuring may or may not materialize.

**Further enhance our brand recognition**

We intend to enhance the brand awareness of “Kaisa” not only in the Pearl River Delta region, but in other selected cities and regions in China. We intend to continue to promote our brand, “Kaisa,” by focusing on product quality, site planning, layout and architectural design and customer service. We seek to distinguish ourselves by continuing to provide value-added products that meet the needs of our local middle to upper-middle income target mass market customers, and to continue to build our product reliability through “risk announcement” practices. We have a branding team to promote recognition of our brand and products. In addition, we will continue to advertise “Kaisa” across a variety of media, including newspapers, the Internet, television, radio and outdoor advertisements, and by participating in property exhibitions and organizing promotional events. Our goal is to further enhance “Kaisa” as a national brand.

**Description of Our Property Developments**

The map below shows the geographical distribution of our property development projects as of December 31, 2016:



As of December 31, 2016, the total GFA of our land bank was 21.3 million sq.m., located in the five regions shown in the below table:

The Pearl River Delta . . . . .	55%
The Pan-Bohai Bay Rim . . . . .	22%
The Western China Region . . . . .	11%
The Central China Region . . . . .	3%
The Yangtze River Delta . . . . .	9%

As of December 31, 2016, approximately 80% of our land bank is located in first- and key second-tier cities, including 3.1 million sq.m. located in Shenzhen.

As of December 31, 2016, we had a total of 101 property development projects in the following three categories:

- completed properties, comprising completed properties sold, each property held for sale and each investment property for which we have completed construction and received a construction works acceptance and compliance certificate from the relevant governmental authorities;
- properties under development, comprising each property for which we hold a land use rights certificate and a construction works commencement permit; and
- properties for future development, comprising properties for which (i) we have obtained land use rights certificates but have not received a construction works commencement permit; and (ii) we have not obtained land use rights certificates but have entered into a land grant contract or obtained confirmation from the relevant land and resources bureau that we have been selected as the winner of the public listing-for-sale process.

Our classification of projects reflects the basis on which we operate our business and may differ from classifications employed for other purposes or by other developers. Each property project or project phase may involve multiple land use rights certificates, construction permits, pre-sale permits, completion certificates and other permits and certificates which may be issued at different stages of their developments.

The table below sets forth project-by-project information for our 101 property development projects as of December 31, 2016:

No.	Project	Location	Type <sup>(1)</sup>	Project Phase	Site Area (sq.m.)	Total GFA (sq.m.)	Total GFA			Interest Attributable to us
							Completed Properties (sq.m.)	Properties under Development (sq.m.)	Properties held for Future Development (sq.m.)	
<b>The Pearl River Delta</b>										
1	Shenzhen Woodland Height <sup>(6)</sup>	Shenzhen	Residential	1-8	160,514	580,135	580,135	-	-	100%
2	Shenzhen Mocha Town	Shenzhen	Residential	1-7	185,724	735,299	735,299	-	-	100%
3	Shenzhen Kaisa Center <sup>(2)(6)</sup>	Shenzhen	Residential	-	5,966	98,241	98,241	-	-	100%
4	Shenzhen Lake View Place	Shenzhen	Residential	1-5	182,064	388,626	388,626	-	-	100%
5	Shenzhen Xiangrui Garden	Shenzhen	Residential	-	57,984	143,796	143,796	-	-	100%
6	Shenzhen Mingcui Garden	Shenzhen	Residential	1-4	102,439	394,663	394,663	-	-	100%
7	Shenzhen Jincui Garden	Shenzhen	Residential	-	9,066	105,830	105,830	-	-	100%
8	Shenzhen Shangpin Garden <sup>(8)</sup>	Shenzhen	Residential	-	45,829	231,572	231,572	-	-	100%
9	Shenzhen Kaisa Financial Center <sup>(8)</sup>	Shenzhen	Commercial	-	14,411	142,000	-	-	142,000	100%
10	Shenzhen Metro City <sup>(2)</sup>	Shenzhen	Residential	-	5,241	124,479	124,479	-	-	100%
11	Shenzhen Kaisa City Plaza	Shenzhen	Residential	1-4	242,172	1,548,278	934,751	210,227	403,300	100%
12	Shenzhen Kaisa Metropolitan Homeland <sup>(2)</sup>	Shenzhen	Residential	-	19,393	138,892	138,892	-	-	100%
13	Shenzhen Dapeng Kaisa Peninsula Resort	Shenzhen	Commercial	1-2	48,256	186,466	186,466	-	-	100%
14	Shenzhen Kaisa Yuefeng Garden	Shenzhen	Residential	1-2	47,890	165,455	165,455	-	-	100%
15	Shenzhen Yantian City Plaza <sup>(8)</sup>	Shenzhen	Residential	1-3	128,902	646,937	100,211	-	546,726	100%
16	Shenzhen Kaisa Golden Bay International Park <sup>(3)</sup>	Shenzhen	Commercial	1-4	869,800	516,030	-	-	516,030	51%
17	Shenzhen Kaisa Qianhai Plaza	Shenzhen	Residential	1-2	49,582	295,749	146,060	149,689	-	51%
18	Shenzhen Pinghu Kaisa Plaza <sup>(3)(10)</sup>	Shenzhen	Residential	-	168,430	475,000	-	-	475,000	100%
19	Shenzhen Kaisa Future City <sup>(3)</sup>	Shenzhen	Residential	1-2	48,773	260,000	-	-	260,000	80%
20	Shenzhen Nan'ao Project	Shenzhen	Commercial	-	25,966	51,930	-	-	51,930	100%
21	Guangzhou Jinmao <sup>(2)(7)</sup>	Guangzhou	Commercial	-	14,192	233,322	233,322	-	-	100%
22	Guangzhou Kaisa Plaza	Guangzhou	Commercial	-	7,106	117,522	117,522	-	-	100%
23	Guangzhou Monarch Residence	Guangzhou	Residential	-	7,707	56,666	56,666	-	-	100%
24	Guangzhou Kaisa Mansion No. 1	Guangzhou	Residential	-	15,178	86,138	-	86,138	-	100%
25	Guangzhou Kaisa Sky Villa	Guangzhou	Residential	1-2	65,627	230,577	-	135,798	94,779	100%
26	Guangzhou Kaisa Sky Mansion	Guangzhou	Residential	-	19,671	80,854	-	80,854	-	100%
27	Guangzhou Kaisa City Plaza	Guangzhou	Residential	1-4	190,742	776,318	-	776,318	-	100%



No.	Project	Location	Type <sup>(1)</sup>	Project Phase	Site Area (sq.m.)	Total GFA (sq.m.)	Total GFA				Interest Attributable to us
							Completed Properties (sq.m.)	Properties under Development (sq.m.)	Properties held for Future Development (sq.m.)		
28	Foshan Shunde Kaisa Mocha Town	Foshan	Residential	1-2	71,200	234,422	234,422	–	–	–	100%
29	Foshan Shunde Kaisa Shangpin Garden	Foshan	Residential	–	32,819	98,021	98,021	–	–	–	100%
30	Foshan Shunde Kaisa Golden World	Foshan	Residential	1-9	197,584	645,921	336,560	133,426	175,936	–	100%
31	Dongguan Zhongyang Haomen	Dongguan	Residential	1-4	82,742	377,481	377,481	–	–	–	100%
32	Dongguan Dongjiang Haomen	Dongguan	Residential	1-3	86,324	243,296	243,296	–	–	–	100%
33	Dongguan Shui'an Haomen	Dongguan	Residential	1-2	70,734	200,386	200,386	–	–	–	80%
34	Dongguan Dijingwan	Dongguan	Residential	–	46,474	155,432	155,432	–	–	–	100%
35	Dongguan Le Grand Bleu	Dongguan	Residential	1-4	239,050	717,084	217,023	158,773	341,288	–	100%
36	Dongguan Oasis Town	Dongguan	Residential	–	65,021	150,772	150,772	–	–	–	100%
37	Dongguan Yulongshan Garden	Dongguan	Residential	–	33,910	109,180	109,180	–	–	–	100%
38	Dongguan Shilong Project <sup>(10)</sup>	Dongguan	Residential	–	5,567	10,131	–	–	10,131	–	100%
39	Dongguan Fenggang Project <sup>(3)</sup>	Dongguan	Residential	–	140,022	303,258	–	–	303,258	–	100%
40	Huizhou Kaisa Mansion No. 1	Huizhou	Residential	–	89,998	260,577	–	260,577	–	–	100%
41	Huizhou Kaisa Center <sup>(6)(8)</sup>	Huizhou	Commercial	1-3	70,859	722,945	554,386	168,559	–	–	100%
42	Huizhou Yuan Zhou Project <sup>(4)</sup>	Huizhou	Residential	–	20,400	61,200	–	–	61,200	–	100%
43	Huizhou Riverbank New Town	Huizhou	Residential	1-10	1,663,969	4,326,239	709,019	338,654	3,278,567	–	100%
44	Huizhou Huidong Yapojiao Project	Huizhou	Residential	1-3	169,331	295,754	–	–	295,754	–	100%
45	Huizhou Desai Project	Huizhou	Residential	1-5	289,178	642,616	–	–	642,616	–	51%
46	Zhuhai Lake View Waldorf Garden <sup>(3)</sup>	Zhuhai	Residential	1-4	164,354	550,431	180,316	–	370,115	–	100%
47	Zhuhai Golden World	Zhuhai	Residential	1-4	192,711	317,948	109,456	150,557	57,935	–	100%
<b>The Western China Region</b>											
48	Chengdu Kaisa Monarch Residence	Chengdu	Residential	1-6	182,666	1,041,531	1,041,531	–	–	–	100%
49	Chengdu Lijing Harbour	Chengdu	Residential	1-7	150,071	761,542	761,542	–	–	–	100%
50	Chengdu Modern Town	Chengdu	Commercial	1-2	133,269	362,420	362,420	–	–	–	100%
51	Chengdu Kaisa Mansion No.8	Chengdu	Residential	1-6	120,570	633,275	340,848	–	292,427	–	80%
52	Chengdu Kaisa City Plaza	Chengdu	Residential	1-4	112,195	460,901	268,097	192,804	–	–	100%
53	Chengdu Kaisa Leading Town	Chengdu	Residential	1-2	57,837	342,533	129,086	213,447	–	–	100%
54	Nanchong Kaisa Plaza	Nanchong	Residential	–	29,541	116,390	116,390	–	–	–	100%

No.	Project	Location	Type <sup>(1)</sup>	Project Phase	Site Area (sq.m.)	Total GFA (sq.m.)	Total GFA			Interest Attributable to us
							Completed Properties (sq.m.)	Properties under Development (sq.m.)	Properties held for Future Development (sq.m.)	
55	Nanchong Monarch Residence	Nanchong	Residential	1-8	256,187	813,638	813,638	–	–	100%
56	Chongqing Kaisa Plaza	Chongqing	Residential	1-3	119,767	456,003	216,853	–	239,150	100%
57	Chongqing Kaisa Bright Harbour	Chongqing	Residential	1-10	324,330	986,637	159,499	88,377	738,761	100%
<b>The Pan-Bohai Bay Rim</b>										
58	Shenyang Kaisa Center <sup>(8)</sup>	Shenyang	Commercial	–	21,423	292,331	–	292,331	–	100%
59	Yingkou Dragon Bay	Yingkou	Residential	–	220,669	593,302	333,391	–	259,911	100%
60	Yingkou Monarch Residence	Yingkou	Residential	–	71,922	233,745	233,745	–	–	100%
61	Anshan Lake View Waldorf	Anshan	Residential	1-2	257,090	390,325	206,590	–	183,735	100%
62	Anshan Monarch Residence <sup>(3)</sup>	Anshan	Residential	1-2	129,739	389,216	–	–	389,216	100%
63	Anshan Kaisa Plaza <sup>(2)(3)(6)</sup>	Anshan	Commercial	1-2	11,238	85,148	72,264	12,884	–	100%
64	Benxi Lake View Place	Benxi	Residential	–	122,200	323,120	253,271	69,849	–	100%
65	Panjin Kaisa Center	Panjin	Residential	1-2	52,812	355,786	170,716	–	185,070	100%
66	Huludao Suizhong Kaisa Dongdaihe <sup>(3)</sup>	Huludao	Residential	1-4	1,269,571	1,976,565	47,581	914,084	1,014,900	100%
67	Weifang Kaisa Golden World	Weifang	Residential	1-4	128,018	131,112	–	131,112	–	100%
68	Qingdao Kaisa Lake View Place	Qingdao	Residential	1-3	229,864	393,353	179,701	88,167	125,485	100%
69	Dandong Kaisa Mansion No. 1	Dandong	Residential	1-4	133,340	331,542	124,946	89,315	117,281	100%
70	Liaoyang Gongchangling Project	Liaoyang	Residential	–	372,427	108,570	–	108,570	–	100%
71	Dalian Kaisa Center	Dalian	Commercial	–	26,610	156,239	–	156,239	–	100%
72	Dalian Kaisa Plaza	Dalian	Commercial	–	15,955	78,454	78,454	–	–	100%
<b>The Central China Region</b>										
73	Changsha Lake View Place	Changsha	Residential	1-4	673,536	938,203	938,203	–	–	100%
74	Changsha Kaisa Times Square	Changsha	Residential	–	21,770	108,731	108,731	–	–	100%
75	Changsha Meixi Lake Project	Changsha	Residential	1-3	147,067	444,314	–	184,334	259,980	100%
76	Zhuzhou Golden World	Zhuzhou	Residential	1-3	222,182	597,728	597,728	–	–	100%
77	Wuhan Golden World	Wuhan	Residential	1-3	181,493	605,941	605,941	–	–	100%
78	Wuhan Kaisa Mansion No.1	Wuhan	Residential	–	40,351	156,136	–	156,136	–	100%
79	Wuhan Kaisa Plaza	Wuhan	Residential	–	26,861	143,162	–	–	143,162	100%

No.	Project	Location	Type <sup>(1)</sup>	Project Phase	Site Area (sq.m.)	Total GFA (sq.m.)	Total GFA			Interest Attributable to us
							Completed Properties (sq.m.)	Properties under Development (sq.m.)	Properties held for Future Development (sq.m.)	
<b>The Yangtze River Delta</b>										
80 . . .	Jiangyin Lake View Place	Jiangyin	Residential	1-3	225,533	272,274	272,274	-	-	100%
81 . . .	Jiangyin Gushan Mocha Town	Jiangyin	Residential	1-4	76,465	132,849	132,849	-	-	100%
82 . . .	Jiangyin Kaisa Plaza <sup>(8)</sup>	Jiangyin	Residential	1-3	158,240	553,177	553,177	-	-	100%
83 . . .	Jiangyin Zhouzhuang Golden World	Jiangyin	Residential	1-2	103,589	220,546	220,546	-	-	100%
84 . . .	Jiangyin Changjing Lake View Waldorf	Jiangyin	Residential	1-2	93,275	149,763	149,763	-	-	100%
85 . . .	Jiangyin Tonghui Garden	Jiangyin	Residential	-	41,440	73,615	73,615	-	-	100%
86 . . .	Jiangyin Fuqiao Homeland	Jiangyin	Residential	-	35,801	134,535	134,535	-	-	100%
87 . . .	Changzhou Phoenix Lake No.1	Changzhou	Residential	1-2	101,819	253,356	253,356	-	-	100%
88 . . .	Taizhou Kaisa Mansion No.1	Taizhou	Residential	1-3	192,505	327,303	73,408	-	253,896	51%
89 . . .	Shanghai Shanhuwan Garden	Shanghai	Residential	1-4	104,796	140,151	140,151	-	-	100%
90 . . .	Shanghai Shangpin Garden	Shanghai	Residential	-	23,307	84,448	84,448	-	-	100%
91 . . .	Shanghai Kaisa Mansion No.8	Shanghai	Residential	1-2	143,053	251,926	116,474	-	135,452	100%
92 . . .	Shanghai Kaisa City Plaza	Shanghai	Residential	1-3	117,255	331,724	124,978	206,746	-	100%
93 . . .	Shanghai Pudong Project	Shanghai	Commercial	-	11,088	77,811	-	77,811	-	100%
94 . . .	Shanghai Kaisa Monarch Residence	Shanghai	Residential	1-2	90,642	212,240	-	212,240	-	100%
95 . . .	Taicang Lake View Waldorf	Taicang	Residential	1-3	87,741	201,346	201,346	-	-	100%
96 . . .	Hangzhou Jade Dragon Court	Hangzhou	Residential	-	39,376	98,041	98,041	-	-	100%
97 . . .	Hangzhou Kaisa Monarch Residence	Hangzhou	Residential	-	36,595	100,849	100,849	-	-	100%
98 . . .	Hangzhou Puyu Court	Hangzhou	Residential	-	74,779	207,476	-	207,476	-	100%
99 . . .	Suzhou Kaisa Plaza	Suzhou	Residential	1-2	33,234	123,216	-	123,216	-	100%
100 . . .	Suzhou Kaisa Monarch Residence	Suzhou	Residential	1-2	59,629	197,069	-	197,069	-	100%
101 . . .	Nanjing Kaisa City Plaza <sup>(3)</sup>	Nanjing	Residential	1-3	109,832	415,986	-	415,986	-	100%
<b>Total<sup>(5)</sup></b>						<b>14,293,437</b>	<b>38,601,464</b>	<b>19,448,712</b>	<b>6,787,761</b>	<b>12,364,991</b>

*Notes:*

- 1 *Residential properties include apartments, serviced apartments and townhouses, often with complementary commercial facilities, restaurants and community facilities.*
- 2 *The projects are renovation developments of once distressed assets and partially completed properties.*
- 3 *Including*
  - (i) Shenzhen Kaisa Golden Bay International Park;
  - (ii) a portion of land with a site area of 38,512 sq.m. for Shenzhen Pinghu Kaisa Plaza;
  - (iii) Shenzhen Kaisa Future City;
  - (iv) Dongguan Fenggang Project;
  - (v) a portion of land with a site area of 114,851 sq.m. for Zhuhai Lake View Waldorf Garden;
  - (vi) a portion of land with a site area of 121,709 sq.m. for Anshan Monarch Residence;
  - (vii) a portion of land with a site area of 3,208 sq.m. for Anshan Kaisa Plaza;
  - (viii) a portion of land with a site area of 457,756 sq.m. for Huludao Suizhong Kaisa Dongdaihe;for which as at December 31, 2016, we had not obtained the land use rights certificates, but had entered into land grant contracts or obtained confirmation from the relevant land and resources bureau that we had been selected as the winner of the public listing-for-sale process.
- 4 Based on our internal project plans but subject to the governmental approval.
- 5 Including completed properties sold.
- 6 Including certain commercial spaces held for investment. Such commercial spaces are held either under long term lease (for Shenzhen Woodland Height, with GFA of approximately 4,959 sq.m.) or medium term lease (for Shenzhen Woodland Height, Shenzhen Kaisa Center, Phase 1 of Huizhou Kaisa Center and a portion of Anshan Kaisa Plaza, with GFA attributable to us of approximately 7,927 sq.m., 19,170 sq.m., 12,008 sq.m. and 34,113 sq.m., respectively).
- 7 Including certain commercial spaces and car parks held for investment under medium term lease, with an aggregate GFA of approximately 43,503 sq.m.
- 8 Including certain office and commercial spaces held for investment. Such office and commercial spaces are held either under medium term lease (for Phase 2 of Huizhou Kaisa Center, Shenzhen Kaisa Financial Center, Shenzhen Yantian City Plaza, Jiangyin Kaisa Plaza and Shenyang Kaisa Center, with GFA of approximately 141,241 sq.m., 142,000 sq.m., 66,736 sq.m., 58,008 sq.m. and 113,219 sq.m., respectively).
- 9 As of December 31, 2016, completed properties held for sale had a total GFA of approximately 2,115,574 sq.m.
- 10 As of May 31, 2017, for a portion of land with an area of 129,918 sq.m. for Shenzhen Pinghu Kaisa Plaza as well as the land of Dongguan Shilong Project, we had entered into contractual arrangements to acquire these land parcels, however, we had not obtained any land grant confirmation letter, entered into any land grant agreement or obtained any land use rights certificates.

## Properties Under Development

The table below sets forth certain information of our property projects or project phases under development as of December 31, 2016. We have obtained land use rights certificates and construction works commencement permits for all of our properties under development.

Project	City	Project Phase	Total GFA or Estimated Total GFA		Saleable GFA or Estimated Total Saleable GFA	Commencement Time	Status of Pre-sale permit	Estimated Completion Time	Interest Attributable to us
			(sq.m.)	(sq.m.)					
Shenzhen Kaisa City Plaza	Shenzhen	4(2)	210,227	2,654	2,654	July 2014	Not yet obtained	2019 2nd quarter	100%
Shenzhen Kaisa Qianhai Plaza	Shenzhen	2	149,689	113,449	113,449	March 2016	Not yet obtained	2018 2nd quarter	51%
Guangzhou Kaisa Mansion No. 1	Guangzhou	-	86,138	37,852	37,852	January 2015	Not yet obtained	2018 3rd quarter	100%
Guangzhou Kaisa Sky Villa	Guangzhou	1	135,798	43,208	43,208	December 2016	Not yet obtained	2018 4th quarter	100%
Guangzhou Kaisa Sky Mansion	Guangzhou	-	80,854	31,210	31,210	July 2014	Yes	2017 1st quarter	100%
Guangzhou Kaisa City Plaza	Guangzhou	1	486,725	180,926	180,926	August 2014	Yes	2017 1st quarter	100%
Guangzhou Kaisa City Plaza	Guangzhou	2	113,419	84,120	84,120	December 2015	Not yet obtained	2019 2nd quarter	100%
Guangzhou Kaisa City Plaza	Guangzhou	3	60,914	60,914	60,914	December 2015	Not yet obtained	2019 2nd quarter	100%
Guangzhou Kaisa City Plaza	Guangzhou	4	115,259	64,191	64,191	December 2015	Not yet obtained	2019 2nd quarter	100%
Foshan Shunde Kaisa Golden World	Foshan	6(3)	43,154	42,789	42,789	April 2016	Yes	2017 4th quarter	100%
Foshan Shunde Kaisa Golden World	Foshan	8	90,272	89,211	89,211	August 2011	Not yet obtained	2018 4th quarter	100%
Dongguan Le Grand Bleu	Dongguan	2	158,773	158,773	158,773	May 2016	Not yet obtained	2019 2nd quarter	100%
Huizhou Kaisa Mansion No. 1	Huizhou	-	260,577	221,490	221,490	April 2014	Yes	2017 2nd quarter	100%
Huizhou Kaisa Center	Huizhou	3	168,559	108,439	108,439	August 2013	Yes	2017 2nd quarter	100%
Huizhou Riverbank New Town	Huizhou	3(3)	23,421	20,233	20,233	February 2014	Not yet obtained	2018 2nd quarter	100%
Huizhou Riverbank New Town	Huizhou	5	177,623	143,176	143,176	September 2016	Not yet obtained	2019 1st quarter	100%
Huizhou Riverbank New Town	Huizhou	6	107,939	87,712	87,712	December 2016	Not yet obtained	2019 1st quarter	100%
Huizhou Riverbank New Town	Huizhou	8	29,671	28,758	28,758	September 2015	Not yet obtained	2018 2nd quarter	100%
Zhuhai Golden World	Zhuhai	2	58,515	41,543	41,543	March 2012	Not yet obtained	2018 4th quarter	100%
Zhuhai Golden World	Zhuhai	3	92,042	78,503	78,503	December 2012	Not yet obtained	2019 3rd quarter	100%
Chengdu Kaisa City Plaza	Chengdu	3	96,246	84,977	84,977	February 2016	Yes	2018 2nd quarter	100%
Chengdu Kaisa City Plaza	Chengdu	4	96,558	80,041	80,041	April 2016	Not yet obtained	2018 2nd quarter	100%
Chengdu Kaisa Leading Town	Chengdu	2	213,447	154,624	154,624	April 2015	Yes	2017 4th quarter	100%
Chongqing Kaisa Bright Harbour	Chongqing	2	88,377	78,201	78,201	May 2015	Yes	2017 2nd quarter	100%
Shenyang Kaisa Center	Shenyang	-	292,331	96,278	96,278	May 2012	Yes	2017 2nd quarter	100%
Anshan Kaisa Plaza	Anshan	1-2	12,884	12,884	12,884	October 2016	Not yet obtained	2017 4th quarter	100%
Benxi Lake View Place	Benxi	-	69,849	62,150	62,150	August 2012	Yes	2017 2nd quarter	100%

Project	City	Project Phase	Total GFA or Estimated Total GFA (sq.m.)	Saleable or Estimated Total Saleable GFA (sq.m.)	Commencement Time	Status of Pre-sale permit	Estimated Completion Time	Interest Attributable to us
Huludao Suizhong Kaisa Dongdaihe . . . . .	Huludao	1	633,596	482,917	October 2011	Yes	2017 1st quarter	100%
Huludao Suizhong Kaisa Dongdaihe . . . . .	Huludao	2	280,488	271,349	August 2013	Yes	2017 4th quarter	100%
Weifang Kaisa Golden World . . . . .	Weifang	1	27,922	15,855	November 2012	Yes	2017 3rd quarter	100%
Weifang Kaisa Golden World . . . . .	Weifang	2	103,190	60,898	May 2013	Not yet obtained	2019 4th quarter	100%
Qingdao Kaisa Lake View Place . . . . .	Qingdao	2	88,167	69,645	May 2014	Yes	2017 4th quarter	100%
Dandong Kaisa Mansion No. 1 . . . . .	Dandong	2	89,315	57,209	June 2016	Yes	2017 4th quarter	100%
Liaoyang Gongchangling Project . . . . .	Liaoyang	-	108,570	40,290	April 2014	Yes	2019 2nd quarter	100%
Dalian Kaisa Center . . . . .	Dalian	-	156,239	118,619	September 2013	Yes	2017 4th quarter	100%
Changsha Meixi Lake Project . . . . .	Changsha	1	78,634	52,393	May 2015	Yes	2017 4th quarter	100%
Changsha Meixi Lake Project . . . . .	Changsha	2	105,700	89,347	December 2015	Not yet obtained	2017 4th quarter	100%
Wuhan Kaisa Mansion No.1 . . . . .	Wuhan	-	156,136	119,219	November 2014	Yes	2017 4th quarter	100%
Shanghai Kaisa City Plaza . . . . .	Shanghai	2	78,431	53,808	December 2013	Yes	2017 4th quarter	100%
Shanghai Kaisa City Plaza . . . . .	Shanghai	3	128,315	83,859	March 2014	Yes	2017 4th quarter	100%
Shanghai Pudong Project . . . . .	Shanghai	-	77,811	77,811	March 2016	Not yet obtained	2018 4th quarter	100%
Shanghai Kaisa Monarch Residence . . . . .	Shanghai	-	212,240	141,267	June 2016	Yes	2018 4th quarter	100%
Hangzhou Puyu Court . . . . .	Hangzhou	-	207,476	140,336	May 2014	Yes	2017 2nd quarter	100%
Suzhou Kaisa Plaza . . . . .	Suzhou	1	72,448	57,227	August 2014	Yes	2017 4th quarter	100%
Suzhou Kaisa Plaza . . . . .	Suzhou	2	50,768	36,607	March 2016	Yes	2018 2nd quarter	100%
Suzhou Kaisa Monarch Residence . . . . .	Suzhou	1-2	197,069	167,509	November 2014	Yes	2017 4th quarter	100%
Nanjing Kaisa City Plaza . . . . .	Nanjing	1	119,186	68,455	November 2014	Yes	2017 1st quarter	100%
Nanjing Kaisa City Plaza . . . . .	Nanjing	2	118,189	83,302	February 2016	Yes	2018 2nd quarter	100%
Nanjing Kaisa City Plaza . . . . .	Nanjing	3	178,611	127,878	April 2016	Not yet obtained	2018 1st quarter	100%
<b>Total</b> . . . . .			<b>6,787,761</b>	<b>4,621,452</b>				



## Properties Held for Future Development

The table below sets forth certain information of our property projects held for future development as of December 31, 2016:

Project	Location	Project Phase	Estimated Total GFA (sq.m.)	Estimated Completion Time <sup>(1)</sup>
Shenzhen Kaisa Financial Center . . . . .	Shenzhen	–	142,000	2020
Shenzhen Kaisa City Plaza . . . . .	Shenzhen	3	403,300	2020
Shenzhen Yantian City Plaza . . . . .	Shenzhen	1-3	546,726	2019
Shenzhen Kaisa Golden Bay International Park . . . . .	Shenzhen	1-4	516,030	2019
Shenzhen Pinghu Kaisa Plaza . . . . .	Shenzhen	–	475,000	2019
Shenzhen Kaisa Future City . . . . .	Shenzhen	1-2	260,000	2019
Shenzhen Nan'ao Project . . . . .	Shenzhen	–	51,930	2020
Guangzhou Kaisa Sky Villa . . . . .	Guangzhou	–	94,779	2019
Foshan Shunde Kaisa Golden World . . . . .	Foshan	6-9	175,936	2017
Dongguan Le Grand Bleu . . . . .	Dongguan	3-4	341,288	2019
Dongguan Shilong Project . . . . .	Dongguan	–	10,131	2019
Dongguan Fenggang Project . . . . .	Dongguan	–	303,258	2020
Huizhou Yuan Zhou Project . . . . .	Huizhou	–	61,200	2018
Huizhou Riverbank New Town . . . . .	Huizhou	7-10	3,278,567	2017
Huizhou Huidong Yapojiao Project . . . . .	Huizhou	1-3	295,754	2017
Huizhou Desai Project . . . . .	Huizhou	1-5	642,616	2018
Zhuhai Lake View Waldorf Garden . . . . .	Zhuhai	2-3	370,115	2018
Zhuhai Golden World . . . . .	Zhuhai	3-4	57,935	2017
Chengdu Kaisa Mansion No.8 . . . . .	Chengdu	4-6	292,427	2018
Chongqing Kaisa Plaza . . . . .	Chongqing	2-3	239,150	2017
Chongqing Kaisa Bright Harbour . . . . .	Chongqing	3-10	738,761	2018
Yingkou Dragon Bay . . . . .	Yingkou	2	259,911	2020
Anshan Monarch Residence . . . . .	Anshan	1-2	389,216	2018
Anshan Lake View Waldorf . . . . .	Anshan	2	183,735	2020
Panjin Kaisa Center . . . . .	Panjin	2	185,070	2018
Huludao Suizhong Kaisa Dongdaihe . . . . .	Huludao	2-4	1,014,900	2018
Qingdao Kaisa Lake View Place . . . . .	Qingdao	3	125,485	2019
Dandong Kaisa Mansion No. 1 . . . . .	Dandong	2-3	117,281	2018
Changsha Meixi Lake Project . . . . .	Changsha	1-2	259,980	2018
Wuhan Kaisa Plaza . . . . .	Wuhan	–	143,162	2019
Taizhou Kaisa Mansion No.1 . . . . .	Taizhou	2-3	253,896	2018
Shanghai Kaisa Mansion No.8 . . . . .	Shanghai	2	135,452	2018
<b>Total . . . . .</b>			<b>12,364,991</b>	

Note:

1. For projects with multiple phases, the estimated time for completing the first phase of the project.

The site area information in this offering memorandum is derived on the following basis:

- before a land use rights certificate has been issued, the site area information in respect of the related development or phase is derived from figures set out in the relevant land grant contract or the preliminary approval documents (excluding the areas earmarked for public infrastructure and facilities); and
- if a land use rights certificate has been issued, the site area information relating to the relevant development or phase of the development is derived from the land use rights certificate.

The commencement time for each project or project phase refers to the date or estimated date for beginning construction of the first building.

The completion time for each project or project phase refers to the date on which the completion certificate is duly issued.

If no completion certificate has been issued, the completion time is estimated based on our management's best belief and knowledge. These estimates do not represent commitments and are subject to change.

A property is considered sold when the risks and rewards of property are transferred to the purchasers, which occurs when the construction of relevant property has been completed, the property has been delivered to the purchasers and collectibility of related receivables is reasonably assured.

### **Contractual Arrangements**

In China, land use rights can be obtained in the primary market or the secondary market. See “— Land Acquisition.” Land acquisitions in the secondary market are usually not subject to the public tender, auction and listing-for-sale requirements and can be completed by agreements among the relevant parties through private negotiation. In particular, under existing rules and regulations in Shenzhen, land use rights may be acquired through redevelopment programs without going through the public tender, auction and listing-for-sale process. From time to time, we may enter into contractual arrangements to participate in land acquisitions or development in the secondary market. In most cases, we are required to prepay deposits, advances or other consideration under these contractual arrangements. These deposits, down payments or other consideration are unsecured obligations and have been accounted for as prepayments for proposed development projects in our consolidated financial statements. We acquired six land parcels with approximately 1.6 million sq.m. of attributable GFA in 2016, including 0.7 million sq.m. of attributable GFA for our urban redevelopment projects. As of December 31, 2016, our prepayments for proposed development projects were approximately RMB13,620.4 million (US\$1,961.7 million).

Our contractual arrangements for land acquisition and development as of December 31, 2016 can be broadly divided into the following categories (a project may fall under more than one category):

- *Redevelopment* — we enter into agreements with the local government or government-affiliated entities to provide demolition and resettlement services and secure the required financing in specified old urban areas, such as old industrial areas, old business districts, old residential areas and old villages, with an aim to eventually acquire land use rights to land that we redevelop. The local government or government-affiliated entities are mainly responsible for the required government filings and applications for the redevelopment project to ensure that such project is approved as an old urban area redevelopment project. As of December 31, 2016, we had three redevelopment projects, for which we have not yet obtained the underlying land use rights. Based on the framework cooperation agreements we had entered into as of December 31, 2016, we expect to acquire urban redevelopment projects with a site area of approximately 13.2 million sq.m., including approximately 8.3 million sq.m. in Shenzhen, 4.5 million sq.m. in Guangzhou, 0.2 million sq.m. in Shanghai and 0.2 million sq.m. in Zhuhai.
- *Cooperative or joint development* — we enter into cooperative or joint development contractual arrangements with independent third parties to jointly develop projects. In such arrangements, we may not hold 100% of the rights and interests in such projects. We typically are responsible for sourcing the development funds required for the joint development, preparation, planning and development of the properties and the additional facilities.

- *Primary land development* — as of December 31, 2016, we had one primary land development in Shenyang. Our work primarily includes funding the clearing and preparation of the land, design and consultation for the overall project, relocation and resettlement of incumbent residents and installation of infrastructure.

## Property Development

We maintain a systematic development approach although each project development is designed to cater to the preferences of the specific target market. The diagram below summarizes the major stages typically involved in our development of a property project:

Land Acquisition	Project Planning and Pre-development Issues	Design	Construction	Pre-sale and Sale	After Sales Services
<ul style="list-style-type: none"> <li>• Land identification/evaluation</li> <li>• Equity target acquisition/due diligence</li> <li>• Market analysis</li> <li>• Feasibility study</li> <li>• Land acquisition</li> </ul>	<ul style="list-style-type: none"> <li>• Market analysis</li> <li>• Production positioning</li> <li>• Development planning and designing/conceptual design</li> </ul>	<ul style="list-style-type: none"> <li>• Outline design</li> <li>• Structural design</li> <li>• Construction design</li> <li>• Drawing</li> <li>• Landscape design</li> <li>• Interior design</li> <li>• Property management proposal</li> </ul>	<ul style="list-style-type: none"> <li>• Contractor selection</li> <li>• Supplies procurement</li> <li>• Construction monitoring</li> <li>• Completion check acceptance</li> <li>• Development project ownership</li> </ul>	<ul style="list-style-type: none"> <li>• Promote to potential purchasers</li> <li>• Apply for pre-sale permits</li> <li>• Sale and selling management</li> <li>• Possession</li> <li>• Deliver possession properties</li> <li>• Mortgage and</li> <li>• Registration support</li> </ul>	<ul style="list-style-type: none"> <li>• Unit property ownership certificates</li> <li>• Property management</li> <li>• Client service</li> <li>• Client activities and survey</li> <li>• Data analysis</li> <li>• Client database</li> </ul>

Going forward, we intend to further standardize our scalable property development model and optimize our development process by establishing certain standard criteria and operational guidelines that may be replicated across our property projects.

## Site Selection And Market Evaluation

We believe site selection and market evaluation are major determining factors for the success of our property development business. Prior to acquiring a parcel of land, our management will consider key market factors that influence housing growth in the local area and make an informed decision based on market analysis and site research performed by our land acquisition team as well as the additional market information provided by third-party sources. These pre-acquisition measures help us acquire land prudently and develop our projects with clear market positioning from the outset. The key factors we consider in site selection are the following:

- size and population of the city;
- general economic condition and development prospect in the private business sector;
- infrastructure, urban planning and the development plan of the city by the local government;
- anticipated demand for private residential and commercial properties;
- purchasing power of the residents;
- income levels;
- site area and suitability for a large-scale residential property development or for an integrated commercial property development;
- location within the city, proximity to the city center, access to transport and commercial facilities;
- surrounding environment;
- existing and potential property developments in the area and historical property demand in that area;
- overall competitive landscape; and
- overall cost structure.

We typically select sites for our residential developments in suburban areas with access to public transport and other urban facilities. We typically select sites for our commercial developments in prime locations of CBDs in selected cities.

## Land Acquisition

Under current PRC laws and regulations, land use rights for the purpose of industrial use, commercial use, tourism, entertainment and commodity housing development must be granted by the government through public tender, auction or listing-for-sale. When deciding to whom to grant the land use rights, the relevant authorities will consider not only the tender price, but also the credit history and qualifications of the tenderer and its development proposal. When land use rights are granted by way of a tender, an evaluation committee consisting of no fewer than five members and in odd numbers (including a representative of the grantor and other experts) evaluates and selects the tenders that have been submitted. If land use rights are granted by way of an auction, a public auction is held by the relevant local land bureau and the land use rights are granted to the highest bidder.

Under current PRC laws and regulations, original grantees of land use rights may sell, assign or transfer the land use rights granted to them in the secondary markets. The “primary market” commonly refers to the grant of state-owned land use rights by relevant government authorities, and the “secondary market” commonly refers to the acquisition of land use rights from entities or persons which hold granted land use rights. PRC laws allow grantees of land use rights to dispose of the land use rights granted to them through secondary market sales, subject to the terms and conditions of the land use rights grant contracts and relevant laws and regulations. Unless otherwise required by relevant PRC laws and regulations, land acquisition in the secondary market is not subject to mandatory public tender, auction or listing-for-sale and can be accomplished by agreement among the relevant parties.

During the years ended December 31, 2015 and 2016, we successfully acquired land through the following means:

- public tender, auction and listing-for-sale organized by the relevant government authorities;
- acquisition of controlling equity interests in companies that possess the land use rights for targeted land; and
- participation in redevelopment projects for old urban areas and villages.

We intend to continue to expand our land reserves for new property developments through the primary market as well as the secondary market. The table below sets forth our land acquisition in 2016:

<u>Time of Acquisition</u>	<u>Location</u>	<u>Attributable Interest</u>	<u>Site Area</u>	<u>Attributable GFA</u>	<u>Consideration</u>	<u>Type</u>
			(sq.m.)	(sq.m.)	(RMB in millions)	
August 2016 . . . . .	Shenzhen	100%	25,966	51,930	780.0	Commercial
October 2016 . . . . .	Huizhou	51%	289,160	642,174	2,393.0	Commercial and Residential
October 2016 . . . . .	Wuhan	100%	26,996	105,434	1,436.0	Commercial and Residential
November 2016 . . . . .	Shenzhen	100%	168,430	475,000	1,363.8	Commercial and Residential
December 2016 . . . . .	Chongqing	100%	34,787	86,968	175.0	Commercial and Residential
December 2016 . . . . .	Shenzhen	80%	48,773	260,000	1,801.9	Commercial and Residential
			<u>594,112</u>	<u>1,621,506</u>	<u>7,949.7</u>	

## Financing of Property Developments

Historically our main sources of funding for our property developments are internal funds, proceeds from pre-sales and sales of properties and borrowings from banks and other financial institutions. From time to time, we also seek to obtain further funding to finance our project developments by accessing the international capital markets.

Our financing methods vary from project to project and are subject to limitations imposed by PRC regulations and monetary policies.

## **Project Planning and Design Work**

We have an engineering and procurement division and a design management division which work with our project managers as well as external designers and architects in project planning and design phases. Our senior management is regularly involved in our land acquisition and development process, especially in the master planning and architectural design of our projects. We have established written procedures to manage our planning and design process. By implementing these procedures, we can unify planning and overall coordination. We also implement a series of review and design guidelines for our planned projects.

We engage external design firms to carry out design work for our projects according to our design standards and guidelines. We select the design firm based on an evaluation of their proposed concept designs, technical capacities and track record in developing similar projects. Our design management division coordinates and works with the selected design firms in major aspects of the design process, including product positioning, master planning, concept design, layout and architectural design, landscape design and interior design.

Our design contracts generally include a price list and basis for calculating the design fees such as price per sq.m. of GFA and dispute resolution provisions. We generally make payments in installments according to the progress of a project and settle the balance of the contract amounts after the project has passed the requisite government inspections and acceptances. We adopt procedures for project monitoring and quality control during the construction process to ensure that the project construction complies with design drawings, regulations, technical standards and contract requirements.

## **Project Management**

We maintain a systematic development approach even though each project is specifically designed to cater to the target market. We have established various centralized divisions to oversee and control the major steps of our developments. These centralized divisions include the investment and development division, the engineering and procurement division, the design management division, the cost management division, the finance division and the customer services and sales division. Our investment and development division is responsible for performing market and site analysis on the feasibility of potential projects and preparing the preliminary budget for each new project. Our engineering and procurement division manages our material procurement and project construction. Our design management division is responsible for ensuring that construction is conducted in accordance with our planning, project design and construction drawings. Our cost management division focuses on cost control in our project development process, particularly land acquisition, project planning and design, construction and finance. Our finance division is responsible for providing senior management with the relevant cost and other financial information in relation to our operations. Our customer services and sales division works with our other centralized divisions throughout the development process to ensure that our products meet market trends and regional preferences. The involvement of these centralized divisions in the process of a project development enables us to achieve consistency in project management and synergies across our various projects.

In order to effectively carry out daily development functions in projects in various cities and regions, we have established project companies in the respective cities or regions to implement the significant strategic decisions by our centralized divisions.

## **Procurement**

We directly purchase certain major building materials and equipment such as aluminum alloys and elevators from suppliers and engage them for the installation of such materials and equipment. The amount paid for materials directly procured by us constitutes only a small portion of our total costs of materials because most construction materials are procured through our construction contractors. We have established a screening and bidding process to select material suppliers. We make decisions in selecting suppliers based on a set of factors including product quality, production capacity, management and implementation capability, track record and after-sales services. Our construction contractors are responsible for procuring most construction materials. For procurement of key construction materials, we typically designate a few brands which the contractors are required to procure.

## **Project Construction**

We have historically contracted out all of our construction work to independent construction companies. These construction companies carry out various work including foundation leveling, civil engineering construction, equipment installation, internal decoration, landscaping and various engineering work. Under relevant PRC laws and regulations, a construction company is required to hold the relevant construction qualification certificate for the type of construction it undertakes. We have guidelines for selecting construction companies and typically invite at least three qualified construction companies to bid through a tender process. We limit our selection of construction contractors to those which have obtained the relevant construction certificates and necessary licenses, including construction enterprise qualification certificates, safety permits and permits for production of industrial products. When selecting construction contractors, we consider various factors including quality and safety, reputation, track record in similar-size projects, technical and construction capabilities and proposed construction schedule and price.

The construction contracts we enter into with construction companies typically provide for the completion date of the construction projects, quality and safety requirements mandated by relevant PRC laws and regulations and our quality standards and other specifications. Our construction contracts generally provide progressive payment arrangements according to construction phases until approximately 95% of the total contract price is paid. We typically withhold 5% of the contract sum for one to two years after the completion of construction as the additional quality warranty retention. During the two years ended December 31, 2016, we did not experience any material problems with services provided by our third-party construction contractors.

## **Quality Control and Construction Supervision**

We emphasize quality control and adopt our quality control procedures to ensure that our properties and services comply with relevant rules and regulations relating to quality, safety and total permitted GFA and meet market standards. We adopt written selection and specification requirements for procurement of each type of material and equipment, including brand requirements, quality, technical standards, sample inspection and random quality inspection. We impose ingredient specifications for certain important construction materials such as cement. In addition, construction materials must go through the procedures of submission, sampling and testing before they are used in our projects.

We have adopted a construction plan design manual, which sets out the general classifications and illustrative guidelines for the quality specifications and parameters of our construction projects. It contains various aspects of design requirements, including construction and decoration, structural design, power supply, drainage and air conditioning systems, as well as environmental protection matters. In addition, we have adopted a manual for the general design of residential projects, which sets out the guidelines and requirements for our residential developments by classes and standards in terms of applications, environmental and economic functions, safety, and durability.

We have formulated internal control standards and procedures to regulate all major processes and procedures in our construction works. We require external contractors to adhere to the guidelines in respect of our standards and procedures, comply with relevant PRC laws and regulations in carrying out their work, and report any deviations and instances of non-compliance. Our project engineers perform on-site supervision during our construction process and conduct progressive inspections at each construction phase. We assign evaluation teams to perform on-site evaluation reviews of our existing contractors periodically with respect to construction quality, safety control and their compliance with the relevant PRC regulations and standards relating to building materials and workmanship. We also prepare detailed quality evaluation reports for each unit of our projects after construction completion.

In addition, we engage independent third-party supervisory companies to monitor, control and manage the construction progress of our projects, including quality, cost control, safety, quality control of construction materials and equipment, and to conduct on-site inspection. Our contracts with supervisory companies generally set out payment terms, fee calculation methods and dispute resolution provisions. The supervisory fees are generally determined either at a negotiated percentage of the total construction cost of the construction project, or according to the number of supervisory personnel persons deployed. We generally make progressive payments



to our supervisory companies according to construction phases until they complete the relevant services.

We are not responsible for any labor problems in respect of workers employed by our contractors or accidents and injuries that may be incurred by those workers on our construction sites if such accidents or injuries were not caused by us. These risks are borne by our contractors as provided for in our contracts with them. During the two years ended December 31, 2016, we were not aware of any non-compliance by the construction contractors of the PRC laws and regulations relating to environmental protection, health and safety or labor disputes raised by our contractors or subcontractors.

We provide our customers with a warranty for the quality of the structure of the construction pursuant to the Measures on the Sales of Commodity Housing (《商品房銷售管理辦法》) and Regulations for the Operations of Urban Property Development (《城市房地產開發經營管理條例》). In addition, we also provide a quality warranty on certain fittings and fixtures, if applicable, usually for a period of two years according to the published national standards.

### **Pre-Sale**

In line with market practice, we pre-sell properties prior to the completion of their construction. Under applicable PRC laws and regulations, the following conditions must be met prior to commencing any pre-sale of any particular property development:

- the land premium has been fully paid and the relevant land use rights certificate has been duly issued;
- the construction land planning permit, construction works planning permit and the construction works commencement permit have been duly issued;
- the funds contributed to the property development may not be less than 25% of the total amount required to be invested in the project;
- the progress and the expected completion date and delivery date of the construction work have been ascertained; and
- a pre-sale permit has been duly issued by the relevant construction bureau or real estate administration authority.

In addition, our pre-sale activities are subject to the relevant regulations of the cities where our property projects are located. Our Directors confirm that we complied with the relevant regulations in relation to the pre-sale of properties in the cities where we have undertaken pre-sale activities during the years ended December 31, 2015 and 2016. During the two years ended December 31, 2016, we did not encounter any defaults committed by our customers in pre-sales or sales contracts that had a material adverse effect on our business operations or financial condition. See the section entitled “Risk Factors — Risks Relating to the Real Estate Industry in China — We are exposed to contractual, legal and regulatory risks related to pre-sales.”

### **Sales and Marketing**

Our sales team in our customer services and sales division is responsible for executing our overall marketing strategy and sales and product promotion plans. We provide training programs and courses to our sales staff with different levels of experience. Our sales team conducts market analysis, prepares promotional designs and project brochures, organizes on-site promotions, arranges advertising campaigns, recommends pricing, sets sales-related policies and manages our customer relationships.

We cooperate with Centaline and World Union to jointly promote our products across different regional markets in China. Through cooperating with Centaline and World Union, we believe that we are able to share their national and regional market research and information, sell and pre-sell our properties through their property sales network in China and promote our products with their professional assistance and resources. We generally enter into one-year non-exclusive sales agency agreements for the sales agency services provided by Centaline and World Union on a project-by-project basis. Pursuant to these agreements, their project teams assist with our marketing and sales. In mainland China, all of us, Centaline and World Union may conduct on-site sales through the respective on-site sales representatives. Project managers from us and Centaline or World Union are jointly responsible for monitoring the overall sales

and supervising their respective sales personnel, who are subject to the relevant joint sales administration agreements entered into between Centaline or World Union and us. In general, the price, discount and all other conditions of sales conducted by Centaline or World Union and us for the same project are identical. Under these agreements, Centaline and World Union are generally entitled to a sales commission upon the execution of the relevant property purchase contract. We believe that the range of the sales commission we pay to Centaline and World Union is in line with industry practice. The sales commission is calculated and settled in cash at the end of each calendar month during the term of the sales agency agreement. Going forward, we will continue to improve the management of our sales through our sales team and intend to engage professional property sales agencies to carry out marketing and sales services for our property projects in China.

We promote our products through various media including newspapers, the Internet, television, radio and outdoor billboards. We also conduct advertising campaigns by means of direct mail, phone text messages, and project promotional materials. As part of our sales strategy, we conduct on-site promotion and display units to potential customers.

### **Delivery and After-Sales Services**

We endeavor to deliver our products to our customers in a timely manner. We closely monitor the progress of construction of our property projects and conduct pre-delivery property inspections to ensure the quality of our properties. The time frame for delivery is set out in the sale and purchase agreements entered into with our customers. Once a property project or project phase has passed the requisite inspections and is ready for delivery, our customer services and sales division will notify our customers, and together with representatives of the construction contractors and third-party supervisory companies, inspect the properties prior to delivery to ensure quality. Furthermore, our customer services and sales division generally assists the purchasers of our properties with mortgage financing applications, title registrations and obtaining their property ownership certificates.

Our after-sales services is customer-oriented. Our objective is to ensure continued customer satisfaction. Our customer services and sales division is responsible for our after-sale services for each of our various projects. We offer multiple communication channels for our customers to provide feedback and complaints about our products or services, including a customer service telephone hotline. We also study customer satisfaction through third-party research. We also cooperate with our property management companies to handle customer complaints. We seek to make timely adjustments to products and services to meet our customers' needs. As part of our after-sales services, we provide our existing customers with "Joy Club" (佳族會), our internal bimonthly publication, to introduce our culture, brand, various projects and promotional activities.

### **Payment Arrangements**

Purchasers of our residential properties, including those purchasing pre-sale properties, may arrange for mortgage loans with banks. We typically require a purchaser to pay a deposit no less than RMB30,000 upon signing of a preliminary sale and purchase agreement. A formal sale and purchase agreement would be arranged within seven days. If the purchaser later decides not to enter into a formal sale and purchase agreement, the purchaser will forfeit the deposit. The purchasers typically make a down payment as required by the applicable regulations on the date of execution of the formal sales and purchase agreement. Mortgage applications and approvals are the purchaser's own responsibility, and we assist them on an as-needed basis. The payment terms of sales and pre-sales of properties are substantially identical.

In accordance with industry practice, we provide guarantees to banks with respect to the mortgage loans they offer to our purchasers. These guarantees are released upon the earlier of (i) the satisfaction of the mortgage loan by the purchaser of the property and (ii) the issuance of property ownership certificate for the mortgaged property and the completion of the registration of the mortgage, which is generally available within six months to one year after the purchaser takes possession of the relevant property. In line with industry practice, we do not conduct independent credit checks on our purchasers but rely on the credit checks conducted by the mortgagee banks. As of December 31, 2015 and 2016, our outstanding guarantees over the mortgage loans of our customers amounted to RMB15,105.9 million and RMB21,843.2 million (US\$3,146.1 million), respectively. In 2015 and 2016, we did not experience any instances where we had to honor our guarantee obligations as a result of a failure by our customers to

repay their mortgage loans. See “Risk Factors — Risks Relating to the Business — We guarantee mortgage loans of our customers and may be liable to the mortgagee banks if our customers default on their mortgage payments.”

### **Property Management**

We have eight property management companies, Kaisa Property Management (Shenzhen) Co., Ltd., Dongguan Kaisa Property Management Co., Ltd., Huizhou Kaisa Property Management Co., Ltd., Chongqing Kaisa Property Management Co., Ltd., Shenzhen Kaisa Commerce Property Management Co., Ltd., Shenzhen Jiake Intelligence Engineering Co., Ltd., Kaisa (Suizhong) Hotel Service Management Co., Ltd. and Chengdu Kaisa Property Management Co., Ltd., which currently manage the properties we developed. All these companies are our indirect wholly-owned subsidiaries. The property management agreements between our property management companies and the property owners set forth the scope and the quality requirements of the services provided by our property management companies. Our property management companies typically provide after-sales services to purchasers of our properties, including maintenance of public areas and facilities, rental of car parking spaces, security, operation of clubhouse, gardening and landscaping and other services. The property management agreements also set forth the payment arrangements of management fees. In 2015 and 2016, we derived revenue from our property management services of RMB224.1 million and RMB271.6 million (US\$39.1 million), respectively. Under PRC laws and regulations, the owners’ association of a residential community has the right to change property management companies pursuant to certain procedures. As of December 31, 2016, owners of all of our property developments who had become statutorily entitled to choose their property management companies continued to choose our property management companies to manage their properties. See “Risk Factors — Risk Relating to Our Business — Property owners may terminate our engagement as the provider for property management services.”

### **Hotel Development and Operation**

We currently operate three hotels in Shenzhen and Huizhou. The two hotels in Shenzhen are being operated under our own brand “Keyu Hotel (可域酒店)”. We, through Marriott, operated Marriott Golden Bay Resort, an ocean front hotel located on Jinshawan Beach in Huizhou. Marriott Golden Bay Resort has a site area of 34,449 sq.m. and a total GFA of 41,700 sq.m. We intend to redevelop Marriott Golden Bay Resort to further enhance its attraction to individual and corporate customers and marketability. According to our current preliminary redevelopment plan, the redeveloped complex is expected to consist of a renovated hotel and serviced apartments. As of December 31, 2016, we had commenced the redevelopment of this hotel. Under the current preliminary redevelopment plan, the redevelopment is expected to be completed in 2017.

We intend to launch a few new hotels under our own brands “Keyu Hotel (可域酒店)” and “Orientino Hotels (鉞域酒店)” in the near future. We will also engage internationally recognized hotel management companies to manage and operate some of our hotels upon the completion of their construction. We believe that by engaging hotel management companies to manage our hotels, we will be able to benefit from their reputation and brand recognition, hotel management and operating experience, an advanced management model as well as global reservation systems and employee training programs.

In November 2016, we launched the Kaisa Golden Bay International Park Project (佳兆業金沙灣國際樂園項目) in Shenzhen. We expect the project to be one of the largest coastal holiday resorts in Shenzhen upon its completion.

### **Investment Properties**

We develop commercial properties such as office buildings, retail stores and car parking spaces for leasing purposes. We believe these properties help to maintain our recurring revenue. Our commercial leases are generally for terms of three to four years. If there are anchor tenants renting relatively large areas at our commercial properties, or whose presences are expected to attract other tenants, we may consider offering them leases for terms of between ten and 20 years, with annual rental reviews with reference to fixed percentage increases. Rents are typically determined based on prevailing market rates and calculated on a per square meter basis. We may choose to sell the commercial properties we have developed when we believe that sales would generate a better return on investment than rental. We intend to retain certain of our commercial properties under development and for future development for long-term investment

purposes. In managing our investment property portfolio we will take into account estimated long-term growth potential, overall market conditions and our cash flows and financial condition. The rental income derived from our investment properties represented 2.1% and 1.3%, respectively, of our revenue in 2015 and 2016.

### **Properties Used by Us**

Our corporate headquarters is in Shenzhen Kerry Center, located in Luohu District, Shenzhen, with a GFA of approximately 542 sq.m. Our office premises in Shenzhen primarily consist of Rooms 3303-04 in the Kerry Center, which was acquired by us in 2006, and most of the office space on the 5th floor of the Shenzhen Kaisa Center, which was retained and owned by us since 2006. In addition, as of December 31, 2016, we rented properties in various cities in the PRC. We use these rented properties primarily as office premises.

### **Competition**

We believe that the property markets in the Pearl River Delta region and other parts of China are highly fragmented. We compete with other real estate developers based on a number of factors including product quality, service quality, price, financial resources, brand recognition, ability to acquire proper land reserves and other factors. Our existing and potential competitors include private and public developers in the PRC and Hong Kong. Our competitors may have more experience and resources than we do. We believe we maintain a competitive position with our well-known “Kaisa” brand in the Pearl River Delta region. We have entered the Western China region, the Central China region, the Yangtze River Delta region and the Pan-Bohai Bay Rim. We believe major barriers to enter into these markets include a potential new entrant’s limited knowledge of local property market conditions and limited brand recognition in these markets. For more information on competition, please refer to the section titled “Risk Factors — Risks Relating to the Real Estate Industry in China — Intensified competition may adversely affect our business and our financial condition.”

### **Intellectual Property Rights**

As of December 31, 2016, we had registered 841 trademarks in the PRC and five trademarks in Hong Kong. The PRC Trademark Office will determine whether the trademarks are able to be registered, whether our application for trademark registration is in compliance with the relevant laws and regulations in relation to trademarks, and whether the trademark is identical with or similar to other trademarks that have been registered or accepted in respect of identical or similar goods or services. Our other trademark applications were still under the review of the PRC Trademark Office as of December 31, 2016. We did not experience any infringement of our intellectual property rights during the two years ended December 31, 2016, and we are not aware of any material unauthorized use of our brand name or logo or other forms of our brand image as of December 31, 2016. We believe that although the registration of our certain trademarks is pending, our business operation will not be materially affected. Our Directors confirm that we had not committed any infringement of intellectual property rights as of December 31, 2016.

### **Insurance**

We maintain group accident insurance for our employees. The insurance primarily insures our employees for personal injuries in our workplace or on our construction sites. We also maintain property damage or third-party liability insurance for our workplace, construction sites or property developments for some of our projects. Under PRC law, these types of insurance are not mandatory and may be purchased on a voluntary basis. We and our construction contractors monitor the quality and safety measures adopted at our construction sites to lower the risks of damage to our property and liabilities that may be attributable to us. We re-evaluate the risk profile of the property development business and adjust our insurance practices from time to time. We believe we have sufficient insurance coverage in place and that our insurance practice is in line with the customary practice in the PRC real estate industry.

However, there are risks that are not covered, and we are self-insured for money losses, damages and liabilities that may arise in our business operations. See the section entitled “Risk Factors — Risks Relating to the Business — We may suffer certain losses not covered by insurance.”

## **Employees**

As of December 31, 2016, we had approximately 9,944 full-time employees.

The remuneration package of our employees includes salary, bonus, share options and other cash subsidies. In general, we determine employee salaries based on each employee's qualification, position and seniority. We have designed an annual review system to assess the performance of our employees, which forms the basis of our determination on salary raise, bonus and promotion. We are subject to social insurance contribution plans organized by the PRC local governments. In accordance with the relevant national and local labor and social welfare laws and regulations, we are required to pay, on behalf of our employees, a monthly social insurance premium covering pension insurance, medical insurance, unemployment insurance and housing reserve fund. See "Risk Factors — Risks Relating to China — Our operations and financial performance could be adversely affected by labor shortages, increase in labor costs, changes to the PRC labor-related laws and regulations or labor disputes." We believe the salaries and benefits that our employees receive are competitive in comparison with market rates.

Our employees do not negotiate their terms of employment through any labor union or by way of collective bargaining agreements. We believe our relationship with our employees is good. We have not experienced significant labor disputes which adversely affected or are likely to have an adverse effect on the operations of our business had occurred.

## **Environmental And Safety Matters**

We are subject to PRC environmental laws and regulations as well as environmental regulations promulgated by local governments. We are required to engage qualified agencies to conduct an environmental assessment and submit an environmental impact assessment report to the relevant government authorities for approval before construction begins. Under relevant PRC laws and regulations, when there is a material change in respect of the construction site, or the scale or nature of a project, a property developer must submit a new environmental impact assessment report for approval. During the course of construction, the property developer and the construction companies must take measures to minimize air pollution, noise pollution and water and waste discharge. Upon completion of each property development, the relevant government authorities will inspect the site to ensure that applicable environmental standards have been met. The resulting report is then submitted together with other specified documents to the local construction administration authorities for the record. See the section entitled "Risk Factors — Risks Relating to the Real Estate Industry in China — Potential liability for environmental damages could result in substantial cost increases."

During the course of property development, our construction may result in the creation of dust, noise, waste water and solid construction waste. Our construction contractors, under the construction contracts, are responsible for performing all necessary measures to prevent pollution and enhance environmental control of the construction sites and to comply with relevant laws and regulations. We endeavor to comply with relevant PRC laws and regulations on environmental protection and safety by (i) engaging qualified construction contractors and requiring the construction contractors to take steps to minimize adverse environmental impact during construction and to be responsible for the final clean up of the construction site, (ii) monitoring the project at every stage to ensure the construction process is in compliance with the environmental protection and safety laws and regulations, and (iii) requiring the construction contractors to immediately remedy any default or non-compliance.

Inspections of each of our completed property projects by the relevant PRC government authorities to date have not revealed any environmental liability which we believe would have a material adverse effect on our business operations or financial condition.

During the two years ended December 31, 2016, we did not experience any material environmental pollution incidents and we incurred insignificant costs in connection with our compliance with environmental and safety laws and regulations. All of our completed property projects and properties under construction had received the requisite environmental approvals according to the timeline imposed by the relevant PRC government authorities.

We monitor the safety measures adopted by our construction contractors and safety aspects of the construction process through engaging independent third-party supervisory companies to oversee compliance with environmental and health and safety laws and regulations. See



“— Quality Control and Construction Supervision” for further details. In relation to workplace safety on our construction sites, our construction contractors are generally responsible for any accidents or injuries not caused by us. We also require our construction contractors to purchase accident insurance to cover their workers and to adopt appropriate safety measures, including providing workers with safety training.

We believe that our operations are in compliance with currently applicable national and local environmental and health and safety laws and regulations in all material respects. We intend to continue to comply with relevant PRC environmental and health and safety laws and regulations, to engage only qualified construction contractors with good environmental protection and safety track records and to require the construction contractors to strictly comply with relevant laws and regulations relating to environment and health and safety and to maintain appropriate insurance. We will also continue to educate our employees in relation to the importance of environmental and safety and health issues and to keep abreast of developments in PRC environmental laws and regulations.

### **Internal Control**

We engaged Grant Thornton Advisory Services Limited, an external professional adviser, in August 2016 to conduct an independent internal control review and to assist our management to improve our internal control system. We have adopted various measures to enhance our internal control procedures. The enhanced internal controls measures include: (1) segregating the internal audit function from the operational functions, (2) assigning the internal audit function to handle the whistle-blowing function, (3) strengthening document retention procedures, (4) strengthening approval procedures on the use of company chops, (5) defining detail requirements on supporting documents for accounting recording, (6) putting in place guidelines specifying documents for accounting personnel’s inspection before release of on-line bank payment, (7) segregating fund sourcing and internal fund transfer functions and implementing additional control procedures, (8) enforcing restrictions on transactions with fund remittance agents, (9) implementing policies and procedures on transactions of significant monetary amounts or transactions not in the normal course of business, (10) setting up automatic approval processes in the office automation system in line with delegation of authority and (11) introducing collective approval from the board in approving transactions involving significant monetary amounts. Our board of directors considered that our enhanced internal control system was adequate and effective.

### **Legal Proceedings And Material Claims**

During the two years ended December 31, 2016, we were involved in legal proceedings or disputes in the ordinary course of business, including claims primarily relating to contract disputes with our contractors, our purchasers and financial institutions. We are currently involved in certain outstanding lawsuits of which the amounts in dispute exceed RMB5.0 million with some financial institutions, contractors, co-development partners, tenants and individuals. Other than the aforementioned, we are not implicated in or aware of any other material legal proceedings or claims currently existing or pending against us. See the section entitled “Risk Factors — Risks Relating to the Business — We may be involved from time to time in disputes, administrative, legal and other proceedings arising out of our operations or subject to fines and sanctions in relation to our non-compliance with certain PRC laws and regulations, and may face significant liabilities as a result.”

During the two years ended December 31, 2016, we did not encounter any circumstances that led to material construction delays or received any material claims from our customers for our failure to complete any pre-sold project on time or for our delay in the delivery of ownership certificates except as disclosed in this offering memorandum. See the section entitled “Risk Factors — Risks Relating to the Business — We may not be able to complete our projects according to schedule or on budget.”



## REGULATIONS

The following discussion summarizes the principal laws, regulations, policies and administrative directives to which we are subject.

### **The PRC Legal System**

The PRC legal system is based on the PRC Constitution and is made up of written laws, regulations, directives and local laws, of Special Administrative Regions and laws resulting from international treaties entered into by the PRC government. Court verdicts do not constitute binding precedents. However, they are used for the purposes of judicial reference and guidance.

The National People's Congress of the PRC, or NPC, and the Standing Committee of the NPC are empowered by the PRC Constitution to exercise the legislative power of the State. The NPC has the power to amend the PRC Constitution and enact and amend basic laws governing State agencies and civil and criminal matters. The Standing Committee of the NPC is empowered to enact and amend all laws except for the laws that are required to be enacted and amended by the NPC.

The State Council is the highest organ of the State administration and has the power to enact administrative rules and regulations. The ministries and commissions under the State Council are also vested with the power to issue orders, directives and regulations within the jurisdiction of their respective departments. All administrative rules, regulations, directives and orders promulgated by the State Council and its ministries and commissions must be consistent with the PRC Constitution and the national laws enacted by the NPC. In the event that a conflict arises, the Standing Committee of the NPC has the power to annul administrative rules, regulations, directives and orders.

At the regional level, the provincial and municipal congresses and their respective standing committees may enact local rules and regulations and the people's governments may promulgate administrative rules and directives applicable to their own administrative areas. These local laws and regulations must be consistent with the PRC Constitution, the national laws and the administrative rules and regulations promulgated by the State Council.

The State Council, provincial and municipal governments may also enact or issue rules, regulations or directives in new areas of the law for experimental purposes. After gaining sufficient experience with experimental measures, the State Council may submit legislative proposals to be considered by the NPC or the Standing Committee of the NPC for enactment at the national level.

The PRC Constitution vests the power to interpret laws in the Standing Committee of the NPC. According to the Decision of the Standing Committee of the NPC Regarding the Strengthening of Interpretation of Laws passed in June 1981, the Supreme People's Court, the State Council and its ministries and commissions are also vested with the power to interpret rules and regulations that they have promulgated. At the regional level, the power to interpret regional laws is vested in the regional legislative and administrative bodies which promulgate such laws.

### **The PRC Judicial System**

Under the PRC Constitution and the Law of Organization of the People's Courts, the judicial system is made up of the Supreme People's Court, the local courts, military courts and other special courts. The local courts are comprised of the basic courts, the intermediate courts and the higher courts. The basic courts are organized into civil, criminal, economic and administrative divisions. The intermediate courts are organized into divisions similar to those of the basic courts, and are further organized into other special divisions, such as the intellectual property division. The higher level court supervise the basic and intermediate courts. The people's procuratorates also have the right to exercise legal supervision over the civil proceedings of courts of the same level and lower levels. The Supreme People's Court is the highest judicial body in China. It supervises the administration of justice by all other courts.

The courts employ a two-tier appellate system. A party may appeal against a judgment or order of a local court to the court at the next higher level. First judgments or orders of the Supreme People's Court are also final. If, however, the Supreme People's Court or a court at a higher level finds an error in a judgment which has been given in any court at a lower level, or the presiding judge of a court finds an error in a judgment which has been given in the court over which he presides, the case may then be retried according to the judicial supervision procedures.

The Civil Procedure Law of the PRC adopted in April 1991, amended in October 2007 August 2012 respectively, sets forth the criteria for instituting a civil action, the jurisdiction of the courts, the procedures to be followed for conducting a civil action and the procedures for enforcement of a civil judgment or order. All parties to a civil action conducted within the PRC must comply with the Civil Procedure Law. Generally, a civil case is initially heard by a local court of the municipality or province in which the defendant resides. The parties to a contract may, by express agreement, select a jurisdiction where civil actions may be brought, provided that the jurisdiction is either the plaintiff's or the defendant's place of residence, the place of execution or implementation of the contract or the object of the action. However, such selection can not violate the stipulations of grade jurisdiction and exclusive jurisdiction in any case.

A foreign individual or enterprise generally has the same litigation rights and obligations as a citizen or legal person of the PRC. If a foreign country's judicial system limits the litigation rights of PRC citizens and enterprises, the PRC courts may apply the same limitations to the citizens and enterprises of that foreign country within the PRC. If any party to a civil action refuses to comply with a judgment or order made by a court or an award granted by an arbitration panel in the PRC, the aggrieved party may apply to the court to request for enforcement of the judgment, order or award. There are time limits imposed on the right to apply for such enforcement. If a party fails to satisfy a judgment made by the court within the stipulated time, the court will, upon application by either party, mandatorily enforce the judgment.

A party seeking to enforce a judgment or order of a court against a party who is not located within the PRC and does not own any property in the PRC may apply to a foreign court with proper jurisdiction for recognition and enforcement of the judgment or order. A foreign judgment or ruling may also be recognized and enforced by the court according to the PRC enforcement procedures if the PRC has entered into, or acceded to, an international treaty with the relevant foreign country, which provides for such recognition and enforcement, or if the judgment or ruling satisfies the court's examination according to the principal of reciprocity, unless the court finds that the recognition or enforcement of such judgment or ruling will result in a violation of the basic legal principles of the PRC, its sovereignty or security, or for reasons of social and public interests.

### **Establishment of a Real Estate Development Enterprise**

According to the PRC Law on Administration of Urban Real Estate (《中華人民共和國城市房地產管理法》) promulgated by the Standing Committee of the NPC, effective in January 1995, amended in August 2009, a real estate developer is defined as an enterprise that engages in the development and operation of real estate for the purpose of making profits. Under the Regulations on Administration of Development of Urban Real Estate (《城市房地產開發經營管理條例》) promulgated by the State Council in July 1998, and amended on January 8, 2011, an enterprise that is to engage in development of real estate must satisfy the following requirements:

- its registered capital must be RMB1 million or more; and
- it must have four or more full-time professional real estate/construction technicians and two or more full-time accounting officers, each of whom must hold the relevant qualification certificate.

The local government of a province, autonomous region or municipality directly under the PRC central government may, based on local circumstances, impose more stringent requirements on the registered capital and the professional personnel of a real estate developer.

To establish a real estate development enterprise, the developer must apply for registration with the administration for industry and commerce. The developer must also report its establishment to the real estate development authority in the location of its registration, within 30 days of the receipt of its business license. Where a foreign-invested enterprise is to be established to engage in the development and operation of real estate, it must also comply with the relevant requirements under the PRC laws and administrative regulations regarding foreign-invested enterprises and apply for approvals or filings relating to foreign investments in China.

Under the Catalog of Guidance on Industries for Foreign Investment (Revised in 2015) (《外商投資產業指導目錄》(2015)), promulgated by MOFCOM and NDRC on (“Guidance Catalog”), March 10, 2015, effective on April 10, 2015, the construction of golf course and villas falls within the category of industries in which foreign investment is prohibited, construction and operation of large theme parks falls within the restricted category, and other real estate development falls within the category of industries in which foreign investment is permitted.

A foreign investor intending to engage in the development and sale of real estate in China may establish an equity joint venture, a cooperative joint venture or a wholly foreign owned enterprise by the foreign investor in accordance with the PRC laws and administrative regulations governing foreign-invested enterprises.

In July 2006, the MOHURD, MOFCOM, NDRC, PBOC, SAIC and SAFE jointly issued an Opinion on Standardizing the Admittance and Administration of Foreign Capital in the Real Estate Market (《關於規範房地產市場外資進入和管理的意見》), which provides, among other things, that an overseas entity or individual investing in real estate in China other than for self-use must apply for the establishment of a foreign invested real estate enterprise (“FIREE”) in accordance with applicable PRC laws and may only conduct operations within the authorized business scope. The joint opinion attempts to impose additional restrictions on the establishment and operation of FIREE by regulating the amount of registered capital as a percentage of total investment in certain circumstances, limiting the validity of approval certificates and business licenses to one year, restricting the ability to transfer equity interests of a FIREE or its projects and prohibiting the borrowing of money from domestic and foreign lenders where its registered capital is not paid up or the land use rights not obtained. In addition, the joint opinion also limits the ability of foreign individuals to purchase commodity residential properties in China.

In May 2007, MOFCOM and SAFE issued the Circular on Strengthening and Regulating the Examination and Approval and Supervision of Foreign Direct Investment in the Real Estate Sector (《關於進一步加強、規範外商直接投資房地產業審批和監管的通知》) (“Circular 50”). Under Circular 50, prior to applying for establishment of real estate companies, foreign investors must first obtain land use rights and building ownership, or must have entered into pre-sale or pre-grant agreements with respect to the land use rights or building ownership. If foreign-invested enterprises in China engage in real estate development or operations or if FIREEs in China engage in new real estate project developments, they must first apply to the relevant PRC governmental authorities to expand their scope of business or scale of operations in accordance with the PRC laws and regulations related to foreign investments. In addition, the local PRC governmental authorities must file with MOFCOM for record their approvals of establishment of FIREEs, and must exercise due control over foreign investments in high-end properties. Foreign exchange authorities may not allow capital-account foreign exchange sales and settlements by FIREEs that have been established in contravention of these requirements.

In connection with the filing requirement, MOFCOM issued the Notice on the Proper Filings of Foreign Investment in the Real Estate Sector (《關於做好外商投資房地產業備案工作的通知》) in June 2008 to authorize the competent MOFCOM at the provincial level to verify and check the filing documents.

Moreover, in November 2010, MOFCOM promulgated the Notice on Strengthening Administration of the Approval and Registration of Foreign Investment into Real Estate Industry (《關於加強外商投資房地產業審批備案管理的通知》), which provides that, among other things, in the case that a real estate enterprise is established within the PRC with overseas capital, it is prohibited to purchase and/or sell real estate properties completed or under construction within the PRC for arbitrage purposes. The local MOFCOM authorities are not permitted to approve foreign-invested investment companies to engage in the real estate development and management.

According to the Several Opinions of the State Council on Further Strengthening the Utilization of Foreign Investment (《關於進一步做好利用外資工作的若干意見》), promulgated by the State Council on April 6, 2010, and the Notice on Devolution of Authority for Foreign Investment Projects (《關於做好外商投資項目下放核准權限工作的通知》) promulgated by NDRC on May 4, 2010, except where approval by the relevant departments under the State Council is required by the Catalog of the Projects which Shall be Approved by the Government (《政府核准的投資項目目錄》), foreign investment in encouraged and permitted industries with a total investment of US\$300 million or less must be examined and approved by NDRC branches at the provincial level. Pursuant to the Notice on Issues Related to Devolution of Authority of Examination and

Approval of Foreign Investment (《關於下放外商投資審批權限有關問題的通知》), promulgated by MOFCOM on June 10, 2010, MOFCOM branches at the provincial level are responsible for the examination and approval of establishment and modifications of foreign-invested enterprises in encouraged or permitted industries with a total investment of less than US\$300 million and with a total investment of less than US\$50 million in restricted industries.

On November 11, 2015, MOFCOM and SAFE jointly issued the “Circular on Further Improving the Record-filing for Foreign Investment in Real Estate” (《關於進一步改進外商投資房地產備案工作的通知》). According to this circular, the record-filing procedure has been cancelled. On September 3, 2016, the Standing Committee of the NPC adopted a decision on amending the law of foreign invested companies which became effective from October 1, 2016. Upon the effectiveness of the decision, the establishment of the foreign invested enterprise and its subsequent changes will be required to be filed with the relevant authorities instead of obtaining approvals from relevant commerce authorities as required by the existing PRC laws, except for the foreign invested enterprises which are subject to the special administrative measures regarding foreign investment entry. On September 30, 2016, the SAIC issued a circular on relevant issues of the registration of foreign invested enterprises to implement the decision. On October 8, 2016, NDRC and MOFCOM jointly issued a notice according to which the industries falling within the categories in which foreign investment is prohibited or restricted and those falling within the encouraged category subject to relevant requirements of equity or senior management under the Guidance Catalog, will be subject to the special administrative measures for foreign investment entry. On the same day, MOFCOM promulgated the “Provisional Measures for Filing Administration of Establishment and Changes of Foreign-invested Enterprises” (《外商投資企業設立及變更備案管理暫行辦法》). On January 14, 2017, NDRC issued the Circular on Effectively Implementing Foreign Capital-related Work in the Catalog of Investment Projects Subject to Governmental Approval (2016 Version)(《關於做好貫徹落實《政府核准的投資項目目錄(2016年本)》有關外資工作的通知》), according to which, 1) any project of the restricted category with a total investment (including capital increase) for USD300 million or above as included in the Guidance Catalog shall be approved by NDRC, and any project with a total investment (including capital increase) for USD2 billion and above shall be submitted to the State Council for filing, 2) any project of the restricted category with a total investment (including capital increase) for less than USD300 million as included in the Guidance Catalog shall be approved by the provincial government, and 3) the foreign investment projects beyond the scope of projects subject to approval and not in the prohibited category as provided in the Guidance Catalog shall be presented to local development and reform commissions for filing.

### **Qualifications of a Real Estate Developer**

Under the Provisions on Administration of Qualifications of Real Estate Developers (《房地產開發企業資質管理規定》) (the “Provisions on Administration of Qualifications”) promulgated by the Ministry of Construction in March 2000 and amended in May 2015, a real estate developer must apply for registration of its qualifications according to such Provisions on Administration of Qualifications. An enterprise may not engage in property development without a qualification classification certificate for real estate development. The Ministry of Construction oversees the qualifications of real estate developers with national operations, and local real estate development authorities at or above the county level oversee the qualifications of local real estate developers.

In accordance with the Provisions on Administration of Qualifications, real estate developers are classified into four classes.

- Class 1 qualifications are subject to preliminary examination by the construction authorities at the provincial level and final approval of the Ministry of Construction. A class 1 real estate developer is not restricted as to the scale of its real estate projects and may undertake a real estate development anywhere in the country.
- Class 2 or lower qualifications are regulated by the construction authorities at the provincial level subject to delegation to lower level government agencies. A real estate developer of class 2 or lower may undertake a project with a gross floor area of less than 250,000 square meters subject to confirmation by the construction authorities at the provincial level.



Under the relevant PRC laws and regulations, the real estate development authorities will examine applications for registration of qualifications submitted by real estate developers by considering the professional personnel in their employ, financial condition and operating results. A real estate developer that passes the qualification examination will be issued a qualification certificate of the relevant class by the qualification examination authority. A developer of any qualification classification may only engage in the development and sale of real estate within its approved scope of business and may not engage in business which is limited to another classification.

For a newly established real estate developer, the real estate development authority will issue a provisional qualification certificate, if it is an eligible developer, within 30 days of receipt by the authority of the application. The provisional qualification certificate will be effective for one year from its date of issue and may be extended for not more than two additional years with the approval of the real estate development authority. The real estate developer must apply for qualification classification to the real estate development authority within one month before expiration of the provisional qualification certificate.

### **Development of a Real Estate Project**

Under the Interim Regulations of the People's Republic of China on Grant and Assignment of the Use Right of State-owned Urban Land (《中華人民共和國城鎮國有土地使用權出讓和轉讓暫行條例》) promulgated by the State Council in May 1990, China adopted a system to grant and assign the right to use state-owned land. A land user must pay a land premium to the state as consideration for the grant of the right to use a land site within a specified period of time, and the land user may assign, lease out, mortgage or otherwise commercially exploit the land use rights within the term of use. Under the relevant PRC laws and regulations, the land administration authority at the city or county level may enter into a land grant contract with the land user to provide for the grant of land use rights. The land user must pay the land premium as provided by the land use rights grant contract. After payment in full of the land premium, the land user may register with the land administration authority and obtain a land use rights certificate which evidences the acquisition of land use rights. The relevant PRC laws and regulations provide that land use rights for a site intended for real estate development must be obtained through grant except for land use rights which may be obtained through premium-free allocation by the PRC government pursuant to the PRC laws or the stipulations of the State Council. Government-allocated land is not allowed to be transferred unless the transfer is approved by the relevant PRC government authorities and the land premium as determined by the relevant PRC government authorities has been paid.

At the stages of examination, approval or record-filing for a construction project, the construction or the developer entity must make a preliminary application for construction on the relevant site to the relevant land administration authority in accordance with the Measures for Administration of Examination and Approval for Construction Sites (《建設用地審查報批管理辦法》) promulgated by the Ministry of Land and Resources in March 1999 and amended on November 30, 2010 and November 2016 respectively, and the Measures for Administration of Preliminary Examination of Construction Project Sites (《建設項目用地預審管理辦法》) promulgated by the Ministry of Land and Resources in July 2001, as amended in October 2004, November 2008 and November 2016 respectively. After receiving the preliminary application, the land administration authority will carry out preliminary examinations of various aspects of the construction project in compliance with the overall zoning plans and land supply policy of the government, and will issue a preliminary approval in respect of the project site if its examination proves satisfactory. The land administration authority at the relevant city or county will sign a land use rights grant contract with the land user and issue an approval for the construction site to the construction entity or the developer.

Under the Measures for Control and Administration of Grant and Assignment of Right to Use Urban State-owned Land (《城市國有土地使用權出讓轉讓規劃管理辦法》) promulgated by the Ministry of Construction in December 1992 and amended in January 2011, the grantee under a land grant contract, i.e. a real estate developer, must further apply for a permit for construction site planning from the relevant municipal planning authority. After obtaining such permit, a real estate developer will organize the necessary planning and design work. Planning and design proposals in respect of a real estate development project are again subject to relevant reporting and approval procedures required under the Law of the People's Republic of China on Urban and Rural Planning (《中華人民共和國城鄉規劃法》) promulgated by the NPC in October 2007 and

amended in April 2015 and local statutes on municipal planning. Upon approval by the authorities, a permit for construction works planning will be issued by the relevant municipal planning authority.

In accordance with the Regulations for the Expropriation of Compensation for Housing on State-owned Land (《國有土地上房屋徵收與補償條例》) promulgated by the State Council and implemented in January, 2011, with regard to the expropriation of the housing of entities and individuals on the State-owned land for the need of public interest, the owners of the housing being expropriated shall be offered a fair compensation.

Compensation offered by governments at municipal and county levels that make housing expropriation decisions regarding parties with housing being expropriated includes: (i) compensation for the value of the housing being expropriated; (ii) compensation for relocation and temporary settlement caused by expropriation of housing; and (iii) compensation for the loss arising from the suspension of production and operation caused by expropriation of housing.

The amount of compensation for the value of housing being expropriated may not be less than the market price of the real estate similar to it on the announcement date of the housing expropriation decision. The value of housing being expropriated must be appraised and determined by a real estate price appraisal institution with corresponding qualifications according to the housing expropriation appraisal measures. A party that objects to the appraised value of the housing being expropriated may apply to the real estate price appraisal institution for review of the appraisal. A party that objects to the review result may apply to the real estate price appraisal expert committee for authentication.

The parties whose housing is being expropriated may choose monetary compensation, or may choose to exchange the property rights of the housing. If the parties whose housing is being expropriated choose to exchange the property rights of the housing, governments at municipal and county levels must provide housing used for the exchange of property rights, and calculate and settle the difference between the value of housing being expropriated and the value of housing used for the exchange of property rights. If residential housing of an individual is expropriated due to renovation of an old urban district and the individual chooses to exchange for the property rights of the housing in the area being renovated, governments at municipal and county levels that make housing expropriation decisions must provide the housing in the area being renovated or the nearby area.

When the site has been properly prepared and is ready for the commencement of construction works, the developer must apply for a permit for commencement of works from the construction authorities at or above the county level according to the Measures for Administration of Granting Permission for Commencement of Construction Works (《建築工程施工許可管理辦法》) promulgated by the MOHURD in June 2014. According to the Notice Regarding Strengthening and Regulating the Administration of Newly-commenced Projects (《國務院辦公廳關於加強和規範新開工項目管理的通知》) issued by the General Office of the State Council on November 17, 2007, before commencement of construction, all kinds of projects shall fulfill certain conditions, including, among other things, compliance with national industrial policy, development plan, land supply policy and market access standard, completion of all approval and filing procedures, compliance with zoning plan in terms of site and planning, completion of proper land use procedures and obtaining proper environmental valuation approvals and construction permit or report.

The development of a real estate project must comply with various laws and legal requirements on construction quality, safety standards and technical guidance on architecture, design and construction work, as well as provisions of the relevant contracts. On January 30, 2000, the State Council promulgated and implemented the Regulation on the Quality Management of Construction Projects (《建設工程質量管理條例》), which sets the respective quality responsibilities and liabilities for developers, construction companies, reconnaissance companies, design companies and construction supervision companies. In August 2008, the State Council issued the Regulations on Energy Efficiency for Civil Buildings (《民用建築節能條例》), which reduces the energy consumption of civil buildings and improves the efficiency of the energy utilization. According to this regulation, the design and construction of new buildings must meet the mandatory criteria on energy efficiency for buildings, and failure to meet such criteria will result in no commencement of construction or acceptance upon completion. Among other things, this regulation sets forth additional requirements for property developers in the sale of commodity buildings in this respect. According to the Administrative Measures for Reporting



Details Regarding Acceptance Examination Upon Completion of Buildings and Municipal Infrastructure (《房屋建築和市政基礎設施工程竣工驗收備案管理辦法》) enacted by the Ministry of Construction in April 2000 and amended on October 19, 2009 and the Provisions on Acceptance Examination Upon Completion of Buildings and Municipal Infrastructure (《房屋建築和市政基礎設施工程竣工驗收規定》) which were promulgated by the MOHURD in December 2013, after completion of work for a project, a property developer is required to apply for the acceptance examination to the property development authority under the people's government on or above the county level and report details of the acceptance examination, upon which the "Record of acceptance examination upon project completion" is issued. For a housing estate or other building complex project, an acceptance examination is required to be conducted upon completion of the whole project and where such a project is developed in phases, separate acceptance examination is required to be carried out for each completed phase.

### **Land for Property Development**

In April 1988, the NPC amended the PRC Constitution to permit the transfer of land use rights in accordance with the laws and regulations. In December 1988, the National People's Congress amended the Land Administration Law (《中華人民共和國土地管理法》) to permit the transfer of land use rights in accordance with the laws and regulations.

Pursuant to the Measures on Disposal of Idle Land (《閑置土地處置辦法》) promulgated by the Ministry of Land and Resources on April 28, 1999, idle land fees may be imposed on land that has not been developed for one year from the contractual construction commencement date. Land use rights may be forfeited to the government without compensation to the developer if the land has not been developed for two years as required by the laws and regulations, and allotted for other purposes. Under current PRC laws and regulations on land administration, land for property development may be obtained only by grant except for land use rights obtained through allocation. Under the Regulations on the Grant of State-owned Land Use Rights Through Public Tender, Auction and Listing-for-Sale promulgated by the Ministry of Land and Resources (《招標拍賣掛牌出讓國有土地使用權規定》) in May 2002 and amended in September 2007, land for commercial use, tourism, entertainment and commodity housing development must be granted by public tender, auction or listing-for-sale. Under these regulations, the relevant land administration authority at city or county level, or the grantor, is responsible for preparing the public tender or auction documents and must make an announcement 20 days prior to the day of public tender or auction with respect to the particulars of the land parcel and the time and venue of the public tender or auction. The grantor must also verify the qualification of the bidding and auction applicants, accept an open public auction to determine the winning tender or hold an auction to ascertain a winning bidder. The grantor and the winning tender or bidder will then enter into a confirmation followed by the execution of a contract for assignment of state-owned land use rights. Over the years, the Ministry of Land and Resources has promulgated further rules and regulations to define the various circumstances under which the state-owned land use rights may be granted by means of public tender, auction and listing-for-sale or by agreement. Under the Regulation on Grant of State-owned Land Use Rights by Agreements (《協議出讓國有土地使用權規定》) promulgated by the Ministry of Land and Resources on June 11, 2003, except for a project that must be granted through tender, auction and listing as required by the relevant laws and regulations, land use right may be granted through transfer by agreement and the land premium for the transfer by agreement of the state-owned land use right shall not be lower than the benchmark land price.

The Urgent Notice on Further Governing and Rectifying Land Market and Strengthening Administration of Land (《關於深入開展土地市場治理整頓嚴格土地管理的緊急通知》) issued by the General Office of the State Council on April 29, 2004 restated the principle of strict administration of the approval process for the construction land and protection of the basic farmland.

The Notice on Issues Relating to Strengthening the Land Control (《關於加強土地調控有關問題的通知》) promulgated by the State Council on August 31, 2006 sets forth the administration of the receipt and disbursement of the land premium, modifies the tax policies relating to the construction land, and builds up the system of publicity for the standards of the lowest price with respect to the granted state-owned land use right.

In March 2007, the NPC adopted the PRC Property Rights Law (《中華人民共和國物權法》), which became effective on October 1, 2007. According to the Property Rights Law, when the term of the right to use construction land for residential (but not other) purposes expires, it will be

renewed automatically. Unless it is otherwise prescribed by any law, the owner of construction land use rights has the right to transfer, exchange, and use such land use rights as equity contributions or collateral for financing. If the state takes the premises owned by entities or individuals, it must compensate the property owners in accordance with law and protect the lawful rights and interests of the property owners.

In September 2007, the Ministry of Land and Resources further promulgated the Regulations on the Grant of State-owned Construction Land Use Rights Through Public Tender, Auction and Listing-for-Sale (《招標拍賣掛牌出讓國有建設用地使用權規定》) to require that land for industrial use, except land for mining, must also be granted by public tender, auction and listing-for-sale. Only after the grantee has paid the land premium in full under the land grant contract, can the grantee apply for the land registration and obtain the land use right certificates. Furthermore, land use rights certificates may not be issued in proportion to the land premium paid under the land grant contract.

In October 2007, the Standing Committee of National People's Congress promulgated the Law of the People's Republic of China Urban and Planning (《中華人民共和國城鄉規劃法》), pursuant to which, a construction planning permit must be obtained from the relevant urban and rural planning government authorities for building any structure, fixture, road, pipeline or other engineering project within an urban or rural planning area.

In November 2007, the Ministry of Land and Resources, the Ministry of Finance and PBOC jointly promulgated the Administration Measures on Land Reserves (《土地儲備管理辦法》), pursuant to which, local authorities should reasonably decide the scale of land reserves in accordance with the macro-control of the land market. Idle, unoccupied, and low-efficient state-owned construction land inventory shall be used as land reserves in priority.

In December, 2007, the Ministry of Land and Resources promulgated the Rules on Land Registration (《土地登記辦法》), which further stresses payment in full of the land premium prior to the application for the registration of state-owned construction land use rights.

In November 2009, the Ministry of Land and Resources issued a Circular on the Distribution of the Catalog for Restricted Land Use Projects (2006 Version Supplement) and the Catalog for Prohibited Land Use Projects (2006 Version Supplement) (《關於印發〈限制用地項目目錄(2006年本增補本)〉和〈禁止用地項目目錄(2006年本增補本)〉的通知》), as a supplement to its 2006 version. In this Circular, the Ministry of Land and Resources has set forth a ceiling for the land granted by local governments for development of commodity housing as follows: seven hectares for small cities and towns, 14 hectares for medium-sized cities; and 20 hectares for large cities.

In November 2009, the MOF, the Ministry of Land and Resources, PBOC, the PRC Ministry of Supervision and the PRC National Audit Office jointly promulgated the Notice on Further Enhancing the Revenue and Expenditure Control over Land Grant (《關於進一步加強土地出讓收支管理的通知》). The Notice raises the minimum down-payment for land premiums to 50% and requires the land premium to be fully paid within one year after the signing of a land grant contract, subject to limited exceptions. Any developer defaulting on any such payment may not participate in any new transactions of land grant.

In November 2009, the MOHURD and the Office of the Leading Group for Addressing Problems Regarding Unauthorized Change of Planning and Adjustment of the Floor Ratio in Real Estate Development under the Ministry of Supervision jointly promulgated the Notification on Further Unfolding of the Special Project to Address Problems Regarding Unauthorized Change of Planning and Adjustment of the Floor Area Ratio (《關於深入推進房地產開發領域違規變更規劃調整容積率問題專項治理的通知》) which re-emphasized the need to rectify, investigate and punish real estate developing companies committing any unauthorized adjustment of the floor area ratio.

In March 2010, the Ministry of Land and Resources promulgated the Notification on Issues Relating to Strengthening the Supply and Regulation of the Land for Real Estate Development (《關於加強房地產用地供應和監管的有關問題的通知》) which adopted measures to improve the regulation of land for real estate development. These include, among others, measures to improve the preparation and implementation of the plan of land supply, guarantee the supply of land for supportive housing development, improve the regime of public tender, auction and list-for-sale of land use right, enhance the supervision on the use of land, disclose information on the supply and grant of land and the status of the construction project on the land to the public, and conduct special inspection on outstanding problems in the field of land use.

Pursuant to the notification, the administration of land and resources of cities and counties shall establish a regime for developers to report the commencement and completion of construction projects. Under such regime, the developer shall report in writing to the respective administration of land and resources at the commencement and completion of the construction project. The commencement and completion date of construction set forth in the agreements may be postponed by reporting the reasons of delay to the respective administration of land and resources no later than 15 days prior to the expiration. The developer who fails to report accordingly shall be announced to the public and prohibited from participating in any new transactions of land grant for at least one year. Additionally, the land used for developing supportive housing, small-to-medium-size self-used residential commodity housing and reconstructing shantytown shall not be less than 70% of the total land supply for residential property development. The lowest land premium for the grant of land use right shall not be lower than 70% of the benchmark price for the land grade the granted land locates, and the deposit for the participation of tender shall not be lower than 20% of the lowest land premium. The land grant agreement shall be executed in writing within 10 days after the deal is reached, the down payment of the land grant price which shall not be less than 50% of the full land grant price shall be paid within one month after the land grant agreement is executed, and the land grant price shall be paid in full no later than one year after the land grant agreement is executed. A developer who defaults on the payment of the land premium, holds idle land, hoards or speculates in land, develops property on the land exceeding its actual development capacity or defaults on the performance of land grant agreement shall be banned from participating in any transactions of land grant for a certain period.

On September 21, 2010, the Ministry of Land and Resources and the Ministry of Housing and Urban Development jointly promulgated the Notice of Further Strengthening Control and Regulation of Land and Construction of Property Development (《關於進一步加強房地產用地和建設管理調控的通知》), which stipulated, among other things, that: (i) at least 70% of land designated for construction of urban housing must be used for economically affordable housing, housing for resettlement of shanty towns and small to medium-sized ordinary commercial housing; in areas with high housing prices, the supply of land designated for small to medium-sized, price-capped housing must be increased; (ii) developers and their controlling shareholders (as defined under PRC laws) are prohibited from participating in land biddings before the rectification of certain misconduct, including (1) illegal transfer of land use rights; (2) failure to commence required construction within one year from the delivery of land under land grant contracts due to such developers' own reasons; (3) noncompliance with the land development requirements specified in land grant contracts; and (4) crimes such as swindling land by forging official documents and illegal land speculation; (iii) developers are required to commence construction within one year from the date of delivery of land under the relevant land grant contract and complete construction within three years since commencement of the construction; (iv) development and construction of projects of low-density and large-sized housing must be strictly limited and the plot ratio of the planned GFA to the total site area of residential projects must be more than 1:1; and (v) the grant of two or more bundled parcels of lands and undeveloped land is prohibited.

In December 2010, the Ministry of Land and Resources promulgated the Notice on Strict Implementation of Policies Regarding Regulation and Control of Real Property Land and Promotion of the Healthy Development of Land Markets (《關於嚴格落實房地產用地調控政策促進土地市場健康發展有關問題的通知》), which provides, among other things, that: (i) cities and counties that have less than 70% of their land supply designated for social security housing projects, housing for redevelopment of shanty towns or small/medium residential units must not provide land for large-sized and high-end housing before the end of 2010; (ii) land and resource authorities in local cities and counties will report to the Ministry of Land and Resources and provincial land and resource authorities, respectively regarding land with a premium rate of more than 50%; (iii) land designated for affordable housing which is used for commodity property development against relevant policies or involved illegal income will be confiscated and the relevant land use rights will be withdrawn. Moreover, changing the plot ratio without approval is strictly prohibited.

On February 25, 2012, the Ministry of Land and Resources promulgated the Notice on Accomplishment of Real Estate Land Administration and Control in 2012 (《國土資源部關於做好2012年房地產用地管理和調控重點工作的通知》). The notice provides that:

- **The real estate control policy shall be firmly performed and the key tasks shall be clarified.** The real estate land administration and control is confronting fundamental requirements and key tasks that the control policy by central government shall be strictly implemented, the supervision and control shall be strengthened, while the price of real estate and land shall be stable and reasonable.
- **The real estate land supply shall be properly managed for the purpose of the welfare of the masses.** Relevant authorities shall compile the annual supply plan of land for residential purposes of year 2012 from a scientific and reasonable perspective. The planned land supply quantity shall be no smaller than the average quantity of the recent five years, no less than 70% among which shall be designated for social security housing projects, housing for redevelopment of shanty towns and small/medium residential units. The supply of land for social security housing projects shall be guaranteed. The supply of high-end housing land shall be strictly controlled and no land shall be permitted for the development of villas.
- **The land supply for social security housing projects shall be guaranteed.** The construction land permission procedure for social security housing projects shall be accelerated.
- **Unlawful acts shall be strictly punished and the development and construction shall be vigorously encouraged.** Unlawful acts, including any of the following ones, shall be prohibited: a land use right is granted over a parcel of land where the land area exceeds the size approved by the relevant competent authorities; more than one parcel of land is granted to the same bidder at the same time; a land use right is granted over a parcel of land where the demolition of buildings erected on such land has not been carried out of the occupants of such land have not been compensated for the demolition and resettlement; a land use right is granted over a parcel of land with a plot ratio of less than one. A reporting system shall be implemented according to which, when concluding a land grant contract, a provision providing land users report to land and resources authorities in a written form before or at the commencement and completion of a project.
- **Supervision analysis and media propaganda shall be strengthened to provide a positive guidance towards the market.** Relevant local departments shall strengthen the supervision over land price. A record filing system of abnormal land purchases shall be implemented and improved.

On May 22, 2012, the Ministry of Land and Resources amended the Measures on Disposal of Idle Land (《閒置土地處置辦法》), which were originally published in April 1999. This amendment includes the following significant changes or new provisions:

- **Emphasizing the key purposes of regulating idle land.** The current version of Measures on Disposal of Idle Land re-emphasize the importance of suppressing intentional reservations of land for the purpose of resale. For example, it provides that if the real estate developer intentionally delays the commencement of construction and development for the purpose of reserving the land for resale with bad faith, and before the condition of such land is reviewed and disposed of by the government, the government should neither accept new applications for land use by the same holder of land use rights, nor register the status of transfer, lease, mortgage or information change of the land considered to be idle.
- **Readdressing the disposal method of idle land.** Consistent with the April 1999 version, the amended Measures on Disposal of Idle Land once again addressed the method of disposal of idle land. If the real estate developer fails to commence the construction and development of the land for one year, the government should issue the Notice on Imposition of Land Idleness Penalty Fees to the holder of land use right. The penalty fees should be 20% of the price that the holder paid for obtaining the land use right. If the holder of land use rights failed to commence the construction and development of the land for two years, the government should issue the Notice on Decision of Withdrawal of Land Use Right to the holder, thereby withdrawing the



holder's right to use land for free. However, compared with the 1999 version, the amended Measures on Disposal of Idle Land specify the procedure for determining and disposing of idle land, including:

1. Once relevant governmental authority suspects that a tract of land has become idle, it should initiate investigation within 30 days therefrom and issue a "notice on investigation of idle land" to the holder of land use right. The holder of land use right should submit explanatory materials about the development condition and reason for land idleness to the government within 30 days upon the receipt of such notice.
  2. After investigation, if the government decides that the investigated land has become idle, it should issue a "notice on confirmation of idle land" to the investigated holder of land use rights, which will specify the facts and grounds for determining that the land concerned has become idle. Relevant information of the idle land will also be published on the governmental authority's official website after issuance of such notice.
  3. If the idleness of land was caused by the real estate developer rather than the government, the governmental authority is entitled to impose penalty fees for the idleness or even withdraw the decision for granting the land use right. However, before such penalty decisions are made, the government should notify the holder of the land use rights that the holder has the right to request a hearing.
  4. Once the government decides to impose penalty fees for land idleness, it should issue a "notice on imposition of land idleness penalty fees" to the holder of the land use rights, and the owner should pay the penalty fees within 30 days upon the receipt of the notice. If the government decides to withdraw the decision for granting land use right, the government should issue a "notice on decision of withdrawal of land use rights" to the holder, and the holder should cancel the registration of its land use rights from government's record within 30 days upon its receipt of such notice.
- **Specifying the circumstances where the delay of commencement of construction and development was caused by the government.** If the delay of commencement of construction and development was caused by the government, the real estate developer will not be directly subject to penalties for delays caused by the developer itself. The amended Measures on Disposal of Idle Land specify the following circumstances where the delay of commencement of construction and development is considered to be caused by the government:
    1. Where the land fails to be delivered to the holder of the land use rights in accordance with the time limit and conditions as prescribed in the land transfer contract or the land allocation decision, with the result that the conditions for commencing the construction and development of the project are not met;
    2. Where relevant land-use planning is modified, with the result that the owner of the land use rights cannot commence construction and development;
    3. Where the land-use planning and construction conditions need to be modified in light of new policies issued by the government;
    4. Where the construction and development of the land cannot be commenced due to complaints lodged by the general public in connection with the land;
    5. Where the construction and development of the land cannot be commenced due to military control or protection of historic and cultural relics; and
    6. Where other acts of any government or government agency cause the delay.

According to the Circular on the Distribution of the Catalog for Restricted Land Use Projects (2012 Edition) and the Catalog for Prohibited Land Use Projects (2012 Edition) (《關於印發《限制用地項目目錄(2012年本)》和《禁止用地項目目錄(2012年本)》的通知》) promulgated by the Ministry of Land and Resources in May 2012, the transferred area of the residential housing projects should not exceed (i) seven hectares for small cities and towns, (ii) 14 hectares for medium-sized cities, and (iii) 20 hectares for large cities, and plot ratio must be more than 1.0. The MOHURD and the Ministry of Land and Resources jointly issued the

Circular of Relevant Work on Strengthening the Recent Administration and Control of Housing and Land Supply (《關於加強近期住房及用地供應管理和調控有關工作的通知》) dated April 1, 2017 which provides, among others, that cities and counties that have more than one million inhabitants should make three-year (2017-2019) and a five-year (2017-2021) plans for housing land supply, and make the plans public by the end of June 2017. The circular further requires that local governments should adjust the size, structure and timing of land supply for residential housing in due course depending on the period of the inventory cycle of commodity housing: where such period is longer than 36 months, no more land is to be supplied; land supply shall be reduced in size if the said period is over 18 months but shorter than 36 months; more land shall be provided in the case of a period of longer than six months but shorter than 12 months; however, if the current inventory could be sold in less than six months, land shall be supplied in a significant scale at a fast pace. In addition, the circular stipulates that local authorities should adopt the examination system of land acquisition capital to insure the property developers acquiring land with internal funds and the property developers should be disqualified for any land bid backed by capital from questionable sources and prohibited from bidding for land within stipulated time limit.

### **Sale of Commodity Houses**

Under the Measures for Administration of Sale of Commodity Houses (《商品房銷售管理辦法》) promulgated by the Ministry of Construction in April 2001, sale of commodity houses can include both sales before the completion of the properties, or pre-sale, and sales after the completion of the properties.

Any pre-sale of commodity buildings must be conducted in accordance with the Measures for Administration of Pre-sale of Commodity Buildings in Urban Area promulgated by the Ministry of Construction in November 1994 (《城市商品房預售管理辦法》), as amended in August 2001 and July 2004, and other related regulations. The pre-sale regulations provide that any pre-sale of commodity properties is subject to specified procedures. According to the current PRC laws and regulations, a pre-sale permit must be in place before a commodity building may be put to pre-sale. Specifically, a developer intending to sell a commodity building before its completion must apply to the real estate development authorities for a pre-sale permit. A commodity building may be sold before completion only if:

- the purchase price has been paid in full for the grant of the land use rights involved and a land use rights certificate has been properly obtained;
- a construction planning permit and a construction permit have been properly obtained;
- funds invested in the development of the commodity buildings for pre-sale represent 25% or more of the total investment in the project and the construction progress as well as the completion and delivery dates have been properly ascertained; and
- a pre-sale permit has been obtained.

The pre-sale proceeds of commodity buildings must be used to develop the relevant project so pre-sold.

Commodity buildings may be put to post-completion sale and delivery after they have passed the acceptance examination and otherwise satisfy the various preconditions for such sale. Before the post-completion sale of a commodity building, the developer must, among other things, submit a real estate development project manual and other documents relating to the project evidencing the satisfaction of the preconditions for post-completion sale to the real estate development authority for its record.

On April 13, 2010, MOHURD issued the *Notice on Further Enhancing the Supervision of the Real Estate Market and Perfecting the Pre-sale System of Commodity Houses* (《關於進一步加強房地產市場監管完善商品住房預售制度的有關問題的通知》). Pursuant to the notice, without the pre-sale approval, the commodity properties are not permitted to be pre-sold and the real estate developer are not allowed to charge the buyer any deposit or pre-payment or payment of the similar nature. In addition, the notice urges local governments to enact regulations on sale of completed commodity properties in light of the local conditions, and encourages property developers to sell completed commodity properties.



The *Provisions on Sales of Commodity Properties at Clearly Marked Price* (《商品房銷售明碼標價規定》) was promulgated by the NDRC on March 16, 2011 and became effective on May 1, 2011. According to the provisions, any real estate developer or real estate agency (“real estate operators”) is required to mark the selling price explicitly and clearly for both newly-build and second-hand commodity properties. The provisions require real estate operators to clearly indicate the prices and relevant fees of commodity properties, as well as other factors affecting the prices of commodity properties to the public. With respect to the real estate development projects that have received property pre-sale permit or have completed the filing procedures for the sales of constructed properties, real estate operators shall announce all the commodity properties available for sales on at once within the specified time limit. Furthermore, with regard to a property that has been sold out, real estate operators are obliged to disclose this information and to disclose the actual transaction price. Real estate operators cannot sell commodity properties beyond the explicit marked price or charge any other fees not explicitly marked. Moreover, real estate operators may neither mislead properties purchasers with false or irregular price marking, nor engage in price fraud by using false or misleading price marking methods.

### **Transfer of Real Estate**

According to the PRC laws and the *Provisions on Administration of Transfer of Urban Real Estate* (《城市房地產轉讓管理規定》) promulgated by the Ministry of Construction in August 1995, as amended in August 2001, a real estate owner may sell, gift or otherwise legally transfer the property to another natural person or legal entity. When transferring a building, the ownership of the building and the land use rights to the site on which the building is situated are transferred together. The parties to a transfer must enter into a written real estate transfer contract and register the transfer with the real estate administration authority having jurisdiction over the location of the real estate within 90 days of the execution of the transfer contract.

Where the land use rights are originally obtained by grant, the real property may only be transferred on the condition that:

- the land premium has been paid in full for the granted land use rights as required by the land grant contract and a land use rights certificate has been properly obtained; and
- in the case of a project in which buildings are being developed, development representing more than 25% of the total investment has been completed; or
- in case of a whole land lot development project, construction works have been carried out as planned, water supply, sewerage, electricity supply, heat supply, access roads, telecommunications and other infrastructure or utilities have been made available, and the site has been leveled and made ready for industrial or other construction purposes.

If the land use rights are originally obtained by grant, the term of the land use rights after transfer of the real estate will be the remaining portion of the original term in the land grant contract. In the event that the assignee intends to change the use of the land provided in the land grant contract, consent must first be obtained from the original land use rights grantor and the planning administration authority at the relevant city or county and an agreement to amend the land grant contract or a new land grant contract must be signed in order to, inter alia, change the use of the land and adjust the land premium accordingly.

If the land use rights are originally obtained by allocation, such allocated land use right may be changed to granted land use rights upon approval by the government vested with the necessary approval power as required by the State Council. After the government authorities vested with the necessary approval power approve such change, the grantee must complete the formalities for the grant of the land use rights and pay the land premium according to the relevant statutes. Assignment of Land for commercial use, tourism, entertainment and commodity housing development must be conducted through public tender, auction or listing-for-sale under the current PRC laws and regulations.

## **Leases of Buildings**

The Measures for Administration of Lease of Commodity Housing (《商品房屋租賃管理辦法》) promulgated by the MOHURD on December 1, 2010 and implemented on February 1, 2011, requires parties to a leasehold arrangement of a property shall register the leasing agreement with property administrative authorities within 30 days after entering into such leasing agreement under local government at the municipal or county level where the property is situated. In addition, enterprise may be imposed a fine of RMB1,000 to RMB10,000 and individuals of RMB1,000 or less if they do not register leasing agreement within time limit required by competent authorities. On June 3, 2016, the General Office of the State Council issued the Opinions on Accelerating the Cultivation and Development of Leasing Market (《國務院辦公廳關於加快培育和發展住房租賃市場的若干意見》), which encourages real estate developers to carry out house leasing businesses. The said opinions support real estate developers to utilize built residential properties or newly built residential properties to carry out leasing businesses. The opinions also encourage real estate developers to put up the residential properties for rent and to cooperate with residential property leasing enterprises to develop rental properties.

## **Mortgages of Real Estate**

Under the PRC Urban Real Estate Administration Law (《中華人民共和國城市房地產管理法》) promulgated by the Standing Committee of the National People's Congress in July 1994, the PRC Security Law (《中華人民共和國擔保法》) promulgated by the NPC in June 1995, and the Measures for Administration of Mortgages of Urban Real Estate (《城市房地產抵押管理辦法》) promulgated by the Ministry of Construction in May 1997, as amended in August 2001, when mortgage is created on the ownership of a building legally obtained, such mortgage must be simultaneously created on the land use rights of the land on which the building is situated. The mortgagor and the mortgagee must sign a mortgage contract in writing. China has adopted a system to register mortgages of real estate. After a real estate mortgage contract has been signed, the parties to the mortgage must register the mortgage with the real estate administration authority at the location where the real estate is situated. A real estate mortgage contract will become effective on the date of registration of the mortgage. If a mortgage is created on the real estate in respect of which a property ownership certificate has been obtained legally, the registration authority will, when registering the mortgage, make an entry under "third party rights" on the original property ownership certificate and then issue a certificate of third party rights to the mortgagee. If a mortgage is created on the commodity building put to pre-sale or on works in progress, the registration authority will, when registering the mortgage, record the details on the mortgage contract. If construction of a real property is completed during the term of a mortgage, the parties involved will re-register the mortgage of the real property after issue of the certificates evidencing the rights and ownership to the real estate.

The PRC Property Rights Law promulgated in March 2007 that became effective in October 2007 further widens the scope of assets that can be mortgaged, allowing for any asset associated with property rights to be mortgaged as collateral unless a specific prohibition under another law or regulation applies.

## **Property Financing**

The Circular on Further Strengthening the Management of Loans for Property Business (《關於進一步加強房地產信貸業務管理的通知》) (Yinfa [2003] No. 121) issued by PBOC on June 5, 2003 specifies the requirements for banks to provide loans for the purposes of property development and individual residential mortgage as follows:

- commercial banks shall issue loans applied for by property development enterprises on through property development loans, and shall not issue in the form of property development cash flow loans or any other forms. Any kind of loan cannot be granted for the projects which do not have land-use rights certificates, construction land planning permits, construction works planning permits and construction commencement permits. Where non-property loans are issued to property development enterprises, commercial banks shall observe the principle of "recovering only, and no issuing." The proprietary capital (owner's equity) of property development enterprises applying for loans shall be no less than 30% of the total development investment. Property loans extended by commercial banks may only be used for local housing projects and may not be used cross-regionally;

- property loans may be granted to property enterprises who are qualified for property development, rank high in credibility and have no overdue payment for construction. Such loans must be given in full support of residential housing projects which conform to the purchasing capacity of families with medium-to-low income, and must be properly restricted where projects involve building properties of large size and/or cover large area, such as luxury commodity houses and villas. For property enterprises with commodity houses of high vacancy rate and debt ratio, strict approval procedures must be applied to their new property development loans and their activities must also be subject to close monitoring;
- loans to land reserve institutions shall be mortgage loans, the amount of which shall not exceed 70% of the assessed value of purchased lands, and the term of loans shall not exceed two years. Commercial banks shall not issue loans to property development enterprises for the purpose of paying for land premiums; and
- commercial banks shall further expand the spectrum of individual housing loans to allow more people to benefit from such loans. To reduce unnecessary interest for borrowers, commercial banks shall issue individual housing loans only to those who purchase housing where main structural development has already been completed. Where borrowers apply for individual housing loans to purchase their first residence for self-use, the ratio of down payment shall remain 20%; for second or further residences, the ratio of down payment shall be raised appropriately.

In a Circular on Facilitating the Continuously Healthy Development of Property Market (《關於促進房地產市場持續健康發展的通知》) issued by the State Council in August 2003, a series of measures were adopted by the government to control the property market, including on the lending for residential development. They included, among others, strengthening efforts in housing provident fund collection and the granting of loans, improving the guarantee mechanism of individual home loans and strengthening the monitoring over property loans.

Pursuant to the Guidance on Risk Management of Property Loans of Commercial Banks (《商業銀行房地產貸款風險管理指引》) issued by the CBRC on August 30, 2004, any property development enterprises applying for property development loans must have at least 35% of capital required for the development.

The Notice on Adjustment of the Housing Loan Policy and Deposit Rate of Excess Reserve for Commercial Banks (《關於調整商業銀行住房信貸政策和超額準備金存款利率的通知》), promulgated by PBOC in March 2005, has made adjustment to individual housing loan policies of commercial banks as well as individual housing fund loan rate. Pursuant to this notice, the preferential mortgage loan interest rate was replaced by the commercial loan interest rate subject to certain restrictions on the lower limit on such interest rates. In the urban areas or cities with rapidly increased real estate prices, minimum down payment ratio for individual housing loans was adjusted from 20%-30%. On May 24, 2006, the Opinion of MOHURD and Other Departments on Adjusting the Housing Supply Structure and Stabilizing Property Prices forwarded by the State Council (《關於調整住房供應結構穩定住房價格的意見》) (Guobanfa [2006] No. 37) reiterated the existing measures and ushered additional measures that aim to further curb rapid increases in property prices in large cities and to promote healthy development of the PRC property market. See “Regulations-Measures on Stabilizing Housing Price” below for more details.

The Opinion on Standardizing the Admittance and Administration of Foreign Capital in Property Market (《關於規範房地產市場外資准入和管理的意見》) enforced by MOFCOM, the MOHURD and the NDRC on July 11, 2006 provides that where any foreign-invested enterprises fails to make full payment of its registered capital, fails to obtain the land use rights certificate or fails to make its project development capital reach 35% of the total project investment amount, it shall not deal with any domestic or overseas loan and the administrative department of foreign exchange shall not approve the settlement of the foreign exchange loan thereof.

On May 26, 2010, MOHURD, PBOC, and the CBRC jointly issued the Circular on Standardizing the Assessing Criteria of the Second Home for Personal Mortgage Loans (《關於規範商業性個人住房貸款中第二套住房認定標準的通知》), under which a stricter standard will be adopted in assessing whether a house to be bought is a second home when granting mortgage loans. The new standard will be based on property ownership, not mortgage history, and the unit for the number of the houses will be determined in terms of family (including the borrower, his

spouse and minor children), rather than individuals. Home buyers are required to provide a registration record from the local housing registration system when applying for mortgage loans. If it is impossible to check the purchasing record, loan applicants are required to submit a certification listing the number of homes owed by the applicant's family. The banks will examine both the number of the homes owned by the applicant's family and the applicant's previous mortgage and purchasing record in order to counter speculative activities. The banks will define a loan applicant as a second-home buyer as long as the applicant has taken out a mortgage loan previously, or his family has a home ownership record in the housing registration system, or it is confirmed that his family has owned a property based on due diligence.

The Notice on Issues Relating to Standardizing Different Residential Mortgage Loan Policies (《關於完善差別化住房信貸政策有關問題的通知》) jointly issued by PBOC and CBRC on September 29, 2010 provides (also see in "Regulations-Measures on Stabilizing Housing Price"):

- all commercial banks shall suspend the granting of housing loans to resident families for purchasing third and further residences; commercial banks shall also suspend the granting of housing loans to non-local residents who cannot provide local tax payment proof or proof of social insurance payment for a period of one year or longer;
- for the purchase of commodity housing with loans, the down payment shall be adjusted to more than 30% of the total price; for families who purchase a second residence with a mortgage loan, the down payment shall not be less than 50%, and the loan rate shall not be less than 1.1 times the benchmark rate; and
- all commercial banks shall strengthen the management of consumption loans, and prohibit such loans from being used for purchasing houses. For property development enterprise with idle land, that change the use and nature of land, delay the time of construction initiation or complement, hold bank housing units for future sales, or have other records of violations of laws and regulations, all commercial banks shall suspend the granting of loans to them for new development projects and suspend the extension of loans. Any commercial banks which fails to earnestly implement the differential credit policies shall be seriously punished once the issued is ascertained.

On November 2, 2010, the Ministry of Finance, MOHURD, CBRC and PBOC jointly issued the Circular on Issues Concerning Policies on Regulation of Personal Housing Provident Fund Loan (《關於規範住房公積金個人住房貸款政策有關問題的通知》), which provides that where personal housing provident fund loan is used to buy the first ordinary self-use house and the floor area of the house is no more than 90 sq.m., the down-payment proportion shall not be lower than 20%; where the floor area of the house is more than 90 sq.m., the down-payment proportion shall not be lower than 30%. Only the housing provident fund-paying families whose floor area per capita is less than local average shall have access to personal housing provident fund loan which is used to buy the second house, and the loan shall be used to buy ordinary self-use house so as to improve dwelling conditions. Where the personal housing provident fund loan is used to buy the second house, the down-payment proportion shall not be lower than 50%, and the interest rate of such loan shall not be less than 1.1 times of the interest rate of the personal housing provident fund loan for the purchase of the first house. Personal housing provident fund loan for the purchase of a third or more houses by housing provident fund-paying families shall be suspended.

On March 8, 2011, the General Office of CBRC issued the Notice on Promoting Housing Financial Services and Strengthening Risk Management (《中國銀監會辦公廳關於做好住房金融服務加強風險管理的通知》), which stipulates that in handling the individual housing loan business financial institutions must strictly implement the provision that, with respect to families that purchase second residential properties through a loan, the down payment may not be less than 60%, and the loan interest rate may not be less than 1.1 times the benchmark rate.

To support the demand of purchasers of residential property and to promote the sustainable development of the real estate market, the PBOC and the CBRC jointly issued the Notice on Further Improving Financial Services for Residential Property (《關於進一步做好住房金融服務工作的通知》) on September 29, 2014, which provides that for any family that wishes to use a loan to purchase a residential property, the minimum down payment will be 30% of the property price and the minimum loan interest rate will be 70% of the benchmark lending interest rate, with the specific terms of such loan to be decided by the banking financial institution that



provides the loan, based on the risk profile of the borrower. Where a family that owns a residential property and has paid off its existing mortgage loan applies for a new mortgage loan to purchase another residential property to improve living conditions, the bank may apply mortgage loan policy for first-time purchasers of residential property. In cities that have lifted restrictions on the purchase of residential property by residents or those that have not imposed such restrictions, when a family that owns two residential properties or more and has paid off its existing mortgage loans applies for a new mortgage loan to purchase another residential property, the bank is required to assess the credit profile of the borrower, taking into consideration the solvency and credit standing of the borrower and other factors, to decide the down payment ratio and loan interest rate. In view of the local urbanization plan, banks may provide mortgage loans to non-local residents that meet the conditions required by the related policies. In March 2015, the PBOC, CBRC and MOHURD jointly issued a notice to lower the minimum down payment to 40% for households that own a residential property and have not paid off their existing mortgage loan applying for a new mortgage loan to purchase another ordinary residential property to improve their living conditions, and allow the bank to decide at its own discretion the down payment ratio and loan interest rate taking into consideration the solvency and credit standing of the borrower. On February 1, 2016, the PBOC and CBRC jointly issued the “Notice on the Adjustment of Individual Housing Loans Policies” (《關於調整個人住房貸款政策有關問題的通知》) which provides that in cities where property purchase control measures are not being implemented, the minimum down payment ratio for a personal housing commercial loan obtained by a household for purchasing its first ordinary residential property is, in principle, 25% of the property price, which can be adjusted downward by 5% by local authorities. For existing residential property household owners which have not fully repaid the previous loan and are obtaining further personal housing commercial loan to purchase an additional ordinary residential property for the purpose of improving living conditions, the minimum down payment ratio shall be not less than 30% which is lower than the previous requirement of not less than 40%.

### **Real Estate Management**

Under the Measures for the Administration of Qualifications of Property Service Enterprises (《物業服務企業資質管理辦法》) promulgated by the Ministry of Construction in March 2004, as amended in November 2007 and May 2015 respectively, a property service enterprise must apply for assessment of its qualification by the relevant qualification approval authority. An enterprise which passes such a qualification assessment will be issued a qualification certificate. No enterprise may engage in property management without undertaking a qualification assessment conducted by the relevant authority and obtaining a qualification certificate.

### **Insurance**

There is no mandatory provision under the PRC laws, regulations and government rules which require a property developer to take out insurance policies for its real estate developments. According to the common practice of the property industry in China, construction companies are usually required to submit insurance proposals in the course of tendering and bidding for construction projects. Construction companies must pay for the insurance premium at their own costs and take out insurance to cover their liabilities, such as third party’s liability risk, employer’s liability risk, risk of non-performance of contract in the course of construction and other kinds of risks associated with the construction and installation works throughout the construction period. The insurance coverage for all these risks will cease immediately after the completion and acceptance upon inspection of construction.

### **Measures on Stabilizing Housing Price**

The General Office of the State Council promulgated a Circular on Stabilizing Housing Price (《關於切實穩定住房價格的通知》) in March 2005, introducing measures to be taken to restrain the housing price from increasing too fast and to promote a stable development of the real estate market. In April 2005, the Ministry of Construction, NDRC, the Ministry of Finance, the Ministry of Land and Resources, PBOC, SAT and CBRC jointly issued an Opinions on Stabilizing Housing Prices (《關於做好穩定住房價格工作的意見》) containing the following guidance:

- Where the housing price is growing too fast, while the supply of ordinary commodity houses at medium or low prices and low-cost affordable houses is insufficient, the

housing construction should mainly involve projects of ordinary commodity houses at medium or low prices and low-cost affordable houses. The construction of low-density, high-end houses should be strictly controlled. The relevant local government authorities are authorized to impose conditions on planning and design such as the building height, plot ratio and green space and to impose such requirements as the selling price, type and gross floor area as preconditions on land assignment. The local governments are also required to strengthen their supervision of real estate developments in their jurisdictions.

- Where the price of land for residential use and the price for residential housing are growing too fast, the proportion of land supply for residential use to the total land supply should be appropriately raised, and the land supply for the construction of ordinary commodity houses at medium or low prices and low-cost affordable houses should be especially increased. Land supply for villa construction should continue to be suspended, and land supply for high-end housing property construction should be strictly restricted.
- Idle land fee must be imposed on land that has not been developed for one year from the contractual construction commencement date. Land use rights of land that has not been developed for two years must be forfeited without compensation.
- Commencing from June 1, 2005, a business tax upon transfer of a residential house by an individual within two years from his/her purchase will be levied on the entire sales proceeds from such sale. For an individual to transfer an ordinary residential house after two years from his/her purchase, the business tax will be exempted. For an individual to transfer a property other than an ordinary residential house after two years from his/her purchase, the business tax will be levied on the difference between the price of such sale and the original purchase price.
- Ordinary residential houses with medium or small gross floor areas and at medium or low prices may be granted preferential treatment such as planning permits, land supply, credit and taxation. Houses enjoying these preferential policies must satisfy the following conditions in principle: the plot ratio is above 1.0, the gross floor area of one single unit is less than 120 square meters, and the actual transfer price is lower than 120% of the average transfer price of comparable houses at comparable locations. The local governments at the provincial level may, based on their actual local circumstances, formulate specific standards for ordinary residential houses that may enjoy the preferential policies.
- Transfer of unfinished commodity properties by any pre-sale purchaser is forbidden. In addition, purchasers are required to buy properties in their real names. Any commodity property pre-sale contract must also be filed with the relevant government agencies electronically immediately after its execution.

The Notice on Adjustment of the Housing Loan Policy and Deposit Rate of Excess Reserve for Commercial Banks (《關於調整商業銀行住房信貸政策和超額準備金存款利率的通知》), promulgated by PBOC in March 2005, has made adjustment to individual housing loan policies of commercial banks as well as individual housing fund loan rate. Pursuant to this notice, the preferential mortgage loan interest rate was replaced by the commercial loan interest rate subject to certain restrictions on the lower limit on such interest rates. In the urban areas or cities with rapidly increased real estate prices, minimum down payment ratio for individual housing loans was adjusted from 20% to 30%. In May 2006, the Ministry of Construction, NDRC, PBOC and other relevant PRC government authorities jointly issued their Opinions on Housing Supply Structure and Stabilization of Property Prices (《關於調整住房供應結構穩定住房價格意見的通知》). These opinions reiterated the existing measures and ushered additional measures that aim to further curb rapid increases in property prices in large cities and to promote healthy development of the PRC property market. These measures include:

- requiring that at least 70% of the land supply approved by a local government for residential property development for any given year must be used for developing low-to medium-cost and small-to medium-size units and low-cost rental properties;
- requiring that at least 70% of residential projects approved or constructed on or after June 1, 2006 must consist of units with a unit floor area of less than 90 square meters per unit and that projects which have received approvals prior to this date but have not



obtained construction permits must adjust their planning in order to be in conformity with this new requirement, with the exception that municipalities under direct administration of the PRC central government, such as Beijing, Chongqing and Shanghai, provincial capitals and certain other cities may deviate from such ratio under special circumstances upon approval from the Ministry of Construction;

- increasing the minimum amount of down-payment from 20% to 30% of the purchase price of the underlying property if the underlying property has a unit floor area of 90 square meters or more, effective from June 1, 2006;
- prohibiting commercial banks from lending to real estate developers with an internal capital ratio, calculated by dividing the internal funds by the total project capital required for the relevant projects, of less than 35%, restricting the grant or extension of revolving credit facilities to property developers holding a large amount of idle land and vacant commodity properties, and prohibiting commercial banks from accepting commodity properties which have been vacant for more than three years as security for their loans; and
- imposing a business tax levy on the entire sales proceeds from transfer of properties if the holding period is shorter than five years, effective from June 1, 2006, as opposed to two years when such levy was initially implemented in June 2005, and allowing such business tax to be levied on the difference between the price for such re-sale and the original purchase price in the event that an individual transfers a property other than an ordinary residential property after five years from his/her date of purchase.

In May 2006, the Ministry of Land and Resources published an Urgent Notice to Tighten Up Land Administration (《當前進一步從嚴土地管理的緊急通知》). In this notice, the Ministry of Land and Resources stressed that local governments must adhere to their annual overall land use planning and land supply plans and tighten up the control on land supply for non-agricultural use. The notice requires local governments to suspend the supply of land for new villa projects to ensure adequate supply of land for more affordable housing. In this notice, the Ministry of Land and Resources also required the local governments to conduct thorough investigations of illegal land use and submit a report on such investigations to the Ministry by the end of October 2006.

In July 2006, the Ministry of Construction, NDRC, MOFCOM, PBOC, SAIC, and SAFE jointly issued an Opinion on Regulating the Access and Management of Foreign Capital in the Real Estate Market (《關於規範房地產市場外資准入和管理的通知》) (the “171 Opinion”). The 171 Opinion aims to tighten access by foreign capital to the PRC real estate market and to restrict property purchases in China by foreign institutions or individuals. It provides, among others, that a foreign institution or individual must establish a foreign-invested enterprise in order to purchase real property in China if the property is not intended for self use. The registered capital of such foreign-invested enterprise must amount to at least 50% of its total investments in PRC real properties if the amounts of such investments exceed US\$10 million. Branches and representative offices of foreign institutions in China and foreign individuals who work or study in China for more than one year may purchase real property for their own use but not for any other purposes. In addition, foreign institutions which have no branches or representative offices in China or foreign individuals who work or study in China for less than a year are prohibited from purchasing any real property in China. In September 2006, SAFE and the Ministry of Construction jointly issued a Notice in Respect of Foreign Exchange Issues in the Real Estate Market (《關於規範房地產市場外匯管理有關問題的通知》) (the “47 Notice”) to implement the 171 Opinion. The 47 Notice provides specific procedures for purchasing real properties by foreign institutions and foreign individuals. The 47 Notice also forbids a foreign invested real estate enterprise to apply for overseas loans if it has failed to pay its registered capital in full or failed to obtain the land use rights certificates, or its own capital funds do not reach 35% of the total investment for the project.

In July 2006, CBRC promulgated a Notice on Further Strengthening the Administration of Real Estate Credit (《關於進一步加強房地產信貸管理的通知》). The notice (i) prohibits providing loans to disqualified real estate developers including those whose own capital is less than 35% of the total capital required for the projects (not including affordable housing projects), or who have not obtained the relevant land use right certificates, construction land planning permits, construction work planning permits or construction work commencement permits; and (ii) prevents real estate developers from obtaining loans by project split-up or rolling-ahead development strategies.

In September 2007, the Ministry of Land and Resources issued the Notice on Implementation of the State Council's Certain Opinions on Resolving Difficulties of Housing for Low-income Urban Families and Further Strengthening Macro-control of Land Supply (《關於認真貫徹國務院〈關於解決城市低收入家庭住房困難的若干意見〉進一步加強土地供應調控的通知》) as amended on January 1, 2010, pursuant to which, at least 70% of the land supply arranged by the relevant land administration authority at city or county level for residential property development for any given year must be used for developing low-to-medium-cost and small- to medium-size units, low-cost rental properties and affordable housing.

In November 2007, the PRC government revised its Catalog of Guidance on Industries for Foreign Investment by, among other things, removing the development of ordinary residences from the foreign-investment-encouraged category and adding the secondary market residential property trading and brokering into the foreign-investment-restricted category. In July 2008, PBOC and CBRC jointly issued the Notice on Financially Promoting the Saving and Intensification of Use of Land (《關於金融促進節約集約用地的通知》), requiring that relevant financial institutions to strengthen the administration of construction land project loans, including the administration of commercial real estate credit loan.

In October 2008, PBOC issued the Notice on Extending the Downward Range of the Interest Rate for Commercial Personal Home Loans and Supporting the Residents in First-time Purchase of Ordinary Residential Homes (《關於擴大商業性個人住房貸款利率下浮幅度等有關問題的通知》), pursuant to which, since October 27, 2008, the bottom limit of the interest rate applicable to the commercial personal home loans has been extended, the minimum amount of down payment has been adjusted to 20% and the interest rate applicable to personal home loans financed by provident fund has been also reduced.

In October 2008, the Ministry of Finance and SAT issued the Notice on the Adjustments to Taxation on Real Property Transactions (《關於調整房地產交易環節稅收政策的通知》), pursuant to which, since November 1, 2008, the rate of deed tax has been reduced to 1% for a first-time home buyer of an ordinary residence with a unit floor area less than 90 square meters, individuals who sell or purchase residential properties are temporarily exempted from stamp duty and who sell residential properties are temporarily exempted from land value-added tax.

In December 2008, the General Office of the State Council issued the Several Opinions on Facilitating the Healthy Development of the Real Estate Market (《關於促進房地產市場健康發展的若干意見》), which aims to, among other things, encourage the consumption of the ordinary residence and support the real estate developer to handle the market change. Pursuant to this opinion, in order to encourage the consumption of the ordinary residence, from January 1, 2009 to December 31, 2009, business tax is imposed on the full amount of the sale income upon the transfer a non-ordinary residence by an individual within two years from the purchase date. For the transfer of non-ordinary residence which is more than two years from the purchase date and ordinary residence which is within two years from the purchase date, the business tax is to be levied on the difference between the sale income and the purchase price. In the case of an ordinary residence, the business tax is exempted if that transfer occurs after two years from the purchase date. Furthermore, individuals with an existing ordinary residence that is smaller than the average size for their locality may buy a second ordinary residence under favorable loan terms similar to first-time buyers. In addition, support for real estate developers to deal with the changing market is to be provided by increasing credit financing services to “low-to-medium-level price” or “small-to-medium-sized” ordinary commercial housing projects, particularly those under construction, and providing financial support and other related services to real estate developers with good credit standing for merger and acquisition activities.

In December 2008, the Ministry of Finance and SAT issued the Notice on the Policy of Business Tax on Re-sale of Personal Residential Properties (《關於個人住房轉讓營業稅政策的通知》), which reiterates the measures set forth in the above Several Opinions on Facilitating the Healthy Development of the Real Estate Market regarding the business tax.

In December 2009, the State Council terminated the policy on preferential treatment relating to business taxes payable upon transfers of residential properties by property owners as previously adopted in December 2008 by the PRC government in response to the global economic slowdown, and the Ministry of Finance and SAT jointly issued the Notice on Adjusting the Policy of Business Tax on Re-sale of Personal Residential Properties (《關於調整個人住房轉讓營業稅政策的通知》) to curtail speculation in the property market in response to the property price rises across the country. Pursuant to the Notice, effective from January 1, 2010, business

tax will be imposed on the full amount of the sale income upon the transfer of non-ordinary residence by an individual within five years, instead of two years, from the purchase date. For the transfer of non-ordinary residence which is more than five years from the purchase date and ordinary residence which is within five years of the purchase date, the business tax is to be levied on the difference between the sale income and the purchase prices. In the case of an ordinary residence, the business tax is exempted if that transfer occurs after five years from the purchase date.

In January 2010, the General Office of the State Council issued a Circular on Facilitating the Stable and Healthy Development of Property Market (《關於促進房地產市場平穩健康發展的通知》), which adopted a series of measures to strengthen and improve the regulation of the property market, stabilize market expectation and facilitate the stable and healthy development of the property market. These include, among others, measures to increase the supply of affordable housing and ordinary commodity housing, provide guidance for the purchase of property, restrain speculation of properties, and strengthen risk prevention and market supervision. Additionally, it explicitly requires each family (including a borrower, his or her spouse and children under 18), that has already purchased a residence through mortgage financing and have applied to purchase a second or more residences through mortgage financing, to pay a minimum down-payment of 40% of the purchase price on the second of more residences.

On April 17, 2010, the State Council announced a series of new measures in the Notice on Resolutely Curbing the Rapid Rising of the House Price in Certain Cities (《國務院關於堅決遏制部分城市房價過快上漲的通知》) to keep housing prices from rising too quickly in certain cities in conjunction with and subsequent to a meeting held on April 14, 2010. The new measures include, among other things:

- **Higher minimum down payment requirements**
  - o first-time home house buyers must make a down payment of at least 30% of the purchase price of the underlying property if the underlying property has a unit floor area of 90 sq.m. or more;
  - o second-time home buyers must make a down payment of at least 50% of the purchase price of the underlying property subject to a minimum mortgage loan interest rate at 110% of the relevant PBOC benchmark one-year lending interest rate; and
  - o commercial banks should significantly increase the ratio of minimum down payment to the purchase price and the minimum mortgage loan interest rate, respectively, for buyers who purchase a third or additional houses by mortgage financing.
- **Commercial banks' right to stop lending**
  - o in regions where house prices have been increasing too quickly, commercial banks may stop granting mortgage loans to home buyers who purchase a third or any additional houses;
  - o commercial banks are required to stop granting mortgage loans to home buyers who are not local residents and cannot provide evidence of payment of tax or social insurance contribution in such local area for more than one year; and
  - o the local governments may adopt interim measures to impose limits on the maximum number of units that one family may own.
- **Punishment of speculative developers**
  - o commercial banks are not allowed to lend to developers who hold idle land or manipulate land reserve or price; and
  - o the CSRC may suspend review of applications from speculative developers for listing of shares, restructuring or refinancing.

- **Disclosure of property ownership**

- o property developers who have filed with the local government information of the completed properties to be sold or who have obtained the pre-sale permits are required to disclose to the public the properties for sale all at once and within a specified period of time and sell the properties they develop exactly at the price provided to the local government.

On September 29, 2010, the Ministry of Finance, SAT and the Ministry of Housing and Urban Development jointly issued the Notice on Adjustments to Deed Tax and Individual Income Tax on Real Estate Transactions (《關於調整房地產交易環節契稅個人所得稅優惠政策的通知》), according to which, a family (including the purchaser, the purchaser's spouse and minor children) purchasing its first ordinary residential property will enjoy a 50% reduction on deed tax payment; in case that the GFA of fore-mentioned property is less than 90 sq.m., the deed tax rate will be 1%. Individuals who purchase another residential property within one year after selling their own residential properties shall no longer enjoy exemption or reduction of individual income tax.

On September 29, 2010, PBOC and CBRC jointly issued the Notice on Relevant Issues Regarding the Improvement of Differential Mortgage Loan Policies (《關於完善差別化住房信貸政策有關問題的通知》), according to which, the minimum down-payment has been raised to 30% of the purchase price of the commodity residential property, and commercial banks shall suspend granting mortgage loans to families that purchase a third or further residential property or non-local residents who fail to provide one-year or longer tax payment certificates or social insurance payment certificates. For a mortgage on the second residential property, the minimum down-payment must be 50% of the purchase price and the interest rate must be no less than 1.1 times that of the corresponding benchmark interest rate over the same corresponding period released by the PBOC.

On January 26, 2011, the State Council issued the Notice on Further Adjustment and Control of Property Markets (《關於進一步做好房地產市場調控工作有關問題的通知》) which requires, among other restrictive measures: (i) a minimum down-payment of 60% of the total purchase price with a minimum mortgage interest rate of 110% of the benchmark rate published by PBOC for the purchase of a second residential property; and (ii) in municipalities directly under the central government, cities listed on state plans, provincial capitals, and cities where the housing prices are overly high or increasing at an excessively high rate, local residents with two or more residential properties, non-local residents with one or more residential properties and non-local residents that are unable to provide documentation certifying payment of local tax or social insurance payment for a specified time period, are not permitted to purchase any residential properties located in the local administrative area.

On January 27, 2011, the Ministry of Finance and SAT jointly issued the Notice on Adjusting the Business Tax Policies upon Transferring Residential Properties by Individuals (《關於調整個人住房轉讓營業稅政策的通知》). Pursuant to the notice, business tax will be levied upon the transfer of a residential property held by an individual for less than five years and the amount of business tax to be paid will be calculated based on the full amount of the sale proceeds. For an individual transferring a non-ordinary residential property held for five years or more, the business tax to be paid will be calculated based on the difference between the sale proceeds and the original purchase price. An individual transferring an ordinary residential property held for five years or more will be exempted from the business tax.

On July 12, 2011, the State Council announced the PRC government's intention to impose austerity measures on second- and third-tier cities. The State Council ordered the Ministry of Construction to compile a list of second- and third-tier cities that will be affected by the austerity measures.

On July 19, 2012, Ministry of Land and Resources and MOHURD issued the Urgent Notice to Further Tighten Up Real Property Land Administration and Consolidate the Achievement of Macroeconomic Control of the Real Property Market (《國土資源部、住房城鄉建設部關於進一步嚴格房地產用地管理鞏固房地產市場調控成果的緊急通知》). According to this notice, the Ministry of Land and Resources, MOHURD and their respective local counterparts will continue to strictly regulate the market to prevent housing prices from rebounding. Local governments must ensure a supply of land for social security housing projects, and must try to increase the completion rate of such projects. Further, the governments will further improve the land price



evaluation procedure, thereby allowing for the reasonable determination of base prices for land auction. For those auctions in which the land prices may be raised to a significantly higher level, the governments must adjust the bidding method in a timely manner. For those lands which are expected to reach unprecedentedly high prices and those lands whose final deal prices have a premium rate of more than 50%, the government should adjust the land transfer scheme in a timely manner, such as by limiting the final home prices or requiring the land purchaser to build additional social security housing projects. Further, the government will continue enforcing the system for reporting unusual transactions, which requires that governments at city-level and county-level should, within two business days upon the signing of purchase confirmation letter or the dispatch of the letter of acceptance, submit the unusual transaction data to the national land market monitoring and administration system, thereby reporting the unusual transaction to the Ministry of Land and Resources and its agencies at the provincial level.

Additionally under this notice, the government emphasizes that the scope of land to be transferred should not exceed its scope limit, and some other acts will continue to be strictly prohibited, such as combining two or more separate tracts of land into one bidding subject, or transferring land without first completing the demolition and relocation work. The floor-area ratio of residential land should be no less than 1. Further, land allocation decision or land transfer contract should require real estate developer to commence the construction and development within one year after the land has been delivered to it and to complete the construction and development within three years. The government will strictly inspect the competence of bidders so as to prohibit any bank loan from being used for the payment of land price. The deposit for land auction or bidding should not be less than 20% of the base price. After the deal of land transfer has been reached, the land transfer agreement should be signed within 10 business days, 50% of the land price should be paid within one month after the signing of the land transfer agreement and the payment of remaining land price should be made within one year. Also, the government should prohibit the purchaser from purchasing land for a certain period if such a purchaser (a) failed to pay the land price in a timely manner; (b) intentionally left the land idle; (c) intentionally reserved land for the purpose of resale; (d) developed land beyond its development capability; or (e) failed to duly perform the land use contract.

On September 6, 2012, the Ministry of Land and Resources promulgated the Notice on Strictly Implementing Land Use Standards and Vigorously Promoting Economical and Intensive Land Use (《關於嚴格執行土地使用標準大力促進節約集約用地的通知》), which stipulates, among other things, that: (a) land use standards shall be strictly implemented and continuously improved. For industrial and commercial land transferred through lawful public tender, auction and listing-for-sale, the administration of land and resources of cities and counties shall establish the requirements related to land use standards for the schemes and announcement of land assignment, and include such requirements in assignment contracts and strictly enforce the requirements. Construction lands that are listed in the Catalog for Prohibited Land Use Projects, or that fail to conform to the prescribed conditions in the Catalog for Restricted Land Use Projects (《限制用地項目目錄》), or for which the intensity of investment, floor area ratio, construction coefficient, ratio of green land, or proportion of administrative offices and living facilities land fail to conform to relevant requirements for industrial projects or total area or each functional division area surpasses the required limits or the land area and floor area ratio fails to conform to the conditions of the residential land supply shall not pass the land supply and approval procedures; (b) the format and substantial content of land use standard shall be strictly examined; (c) the implementation of land use standard shall be further supervised and evaluated; and (d) the land use standard training program shall be given to the officials in land and resources authorities, and such the land use standards shall be widely publicized for the purpose of effectuation.

On November 5, 2012, the Ministry of Land and Resources, the Ministry of Finance, PBOC and CBRC jointly promulgated the Notice on Strengthening Land Reserves and Financing Administration (Guotuzi Fa [2012] No. 162) (《關於加強土地儲備與融資管理的通知》(國土資發[2012]162號)) in order to strengthen land bank institutions administration, determine the reasonable scale and structure of land bank, strengthen the administration of land pre-development, reservation and protection, and regulate the financing to land reservation and the use of land reservation funds.

On February 20, 2013, the executive meeting of the State Council chaired by Premier Wen Jiabao issued a document emphasizing the strict implementation of tightening measures for the real estate market. The measures include completing a system of responsibility for stabilizing housing prices; restraining purchases of residential housing for investment and speculation purposes; expanding the supply of both ordinary commodity housing and of land; accelerating construction of affordable housing projects; and strengthening market supervision.

On February 26, 2013, the General Office of State Council issued the Notice on Continuing to Effectively Regulate the Real Estate Market (《關於繼續做好房地產市場調控工作的通知》) (the “No. 17 Notice”) which requires, among other restrictive measures:

- (i) *Improving the responsibility system for stabilizing housing prices.* Municipalities directly under the central government, cities listed on state plans and provincial capitals (excluding Lhasa), must set an annual objective for controlling housing prices and publish annual new commodity housing price control target in the first quarter of the year.
- (ii) *Firmly restraining purchases of residential housing for investment and speculation purposes.* Municipalities directly under the central government, cities listed on state plans and provincial capitals (excluding Lhasa) which have implemented restrictions on the real estate market are required to cover all administrative areas of the cities as restricted areas, and restricted housing shall include new commodity housing and second-hand housing. Non-local residents who possess one or more residential properties or fail to continuously provide a certain number of years local tax payment certificates or social insurance payment certificates are to be barred from purchasing any residential properties located in the administrative area. For cities where housing prices are increasing at an excessively high rate, local branches of the PBOC may further raise the down-payment rate and mortgage interest rate for the purchase of a second residential property. In addition, the state will strictly enforce a 20% tax on home sale profits.
- (iii) *Expanding supply of ordinary commercial housing and its land use.* The overall housing land supply in 2013 shall not be lower than the average actual land supply in the past five years. Financial institutions, subject to credit requirements, are to prioritize requests for loans for ordinary commodity housing construction projects in which medium and small housing units constitute 70% or more of the total units in such construction project.
- (iv) *Accelerating the planning and construction of affordable housing projects.* All local regions shall actively advance the renovation of scattered shantytowns and ramshackle buildings, gradually carry out comprehensive redevelopment of old urban residential areas, and steadily develop urban villages. It is important to reinforce planning and overall coordination, to integrate the construction of affordable housing with urban development in view of the actual needs of urbanization and improving the housing conditions of residents.
- (v) *Strengthening market regulation and managing expectations.* All local regions shall raise the pre-sale threshold for commercial housing, and reinforce the management of commercial housing pre-sale licensing, so as to guide real estate developers to rationally determine housing prices, and steadily push forward the reform of the commercial housing pre-sale system.
- (vi) *Accelerating the establishment and development of a long-term mechanism to guide the healthy development of the real estate market.* All relevant departments shall press ahead with the reform of the real estate tax regime, improve the housing financial system and housing land supply mechanism, and push forward the housing industrialization.

Pursuant to the “No. 17 Notice”, local branches of the PBOC may further raise the minimum down-payment for the purchase of a second residential property in the case that the local housing prices are increasing at an excessively high rate. On April 7, 2013, Beijing raised the percentage of the minimum down payment for second-home purchases from 60% to 70% of the total purchase price. In October and November of 2013, certain branches of the PBOC in several major cities, such as Shanghai, Shenzhen, Guangzhou, Hangzhou, Shenyang and Changsha, also adjusted their differentiated credit extension policies based on housing types and raised the minimum down payment for second-home purchases to 65% or 70% of the purchase price.



On November 24, 2014, the State Council promulgated the Interim Regulations on Real Estate Registration (《不動產登記暫行條例》), effective from March 1, 2015, which provides for the following, among others:

- i) The Competent department of land and resources under the State Council shall be responsible for guiding and supervising the real estate registration of the State. The local government at or above the county level shall designate a department as the real estate registration authority within its administrative region which shall be subject to the guide and supervision by the competent real estate registration authority at the higher level.
- ii) The real estate authority shall establish a uniform real estate registration book to record the items including, without limitation, the nature condition, ownership conditions of the real estate, and restriction of rights.
- iii) The competent department of land and resources under the State Council shall, in coordination with other related departments, establish a uniform basic management platform for real estate registration information. The information registered by the real estate registration authorities at all levels shall be incorporated into the uniform basic platform to ensure the real-time sharing of registration information at the national, provincial, municipal and county level.
- iv) Any right holder or interested party may apply for inquiring about or copying the real estate registration materials and the registration authority shall not refuse to provide such information. Units and individuals inquiring about the real estate registration information shall not use such registration information for any other purpose and no such information may be disclosed to the public or others without the consent of the right holder.

The Implementing Rules of the Interim Regulations on Real Estate Registration (《不動產登記暫行條例實施細則》), which took effect on January 1, 2016, authorizes the real estate registration authority to perform site inspection following an acceptance of the application for real estate registration and sets out regulations regarding real estate registration information management.

On August 27, 2015, the MOHURD, the MOF and PBOC jointly issued the Notice on the Adjustment of the Rate of the Minimum Down Payment for Personal Housing Loans from Housing Provident Fund (《關於調整住房公積金個人住房貸款購房最低首付款比例的通知》) to further improve the policies on the personal housing loans from housing provident fund and support the needs of depositing workers, under which, from September 1, 2015, with regard to families which have already owned one house and settled the housing payment, when applying for loans from the housing provident fund for a second housing so as to improve living conditions, the lowest down payment rate will be reduced from 30% to 20%.

In September 2015, the State Council issued a Notice to Adjust and Promote the System of Capital Fund for Investment Projects in Fixed Assets (《關於調整和完善固定資產投資項目資本金制度的通知》), under which the minimum capital ratio remains 20% for affordable housing projects and ordinary commodity residential projects, and is decreased to 25% for other property projects.

On February 1, 2016, the PBOC and CBRC jointly issued the Notice on the Adjustment of Individual Housing Loans Policies (《關於調整個人住房貸款政策有關問題的通知》) which provides that in cities where property purchase control measures are not being implemented, the minimum down payment ratio for a personal housing commercial loan obtained by a household for purchasing its first ordinary residential property is, in principle, 25% of the property price, which can be adjusted downward by 5% by local authorities. For existing residential property household owners which have not fully repaid the previous loan and are obtaining further personal housing commercial loan to purchase an additional ordinary residential property for the purpose of improving living conditions, the minimum down payment ratio shall be not less than 30% which is lower than the previous requirement of not less than 40%.

On October 10, 2016, the MOHURD issued the Circular on Further Regulating Operations of Real Estate Developers to Safeguard the Real Estate Market Order (《關於進一步規範房地產開發企業經營行為維護房地產市場秩序的通知》), which requires that improper operations of real estate developers shall be investigated and punished according to law. The improper

operations include releasing or spreading false housing information and advertisements, maliciously pushing higher and artificially inflating housing prices by fabricating or spreading information on rising property price and other operations.

On February 13, 2017, the Asset Management Association of China issued the No. 4 Administrative Rules for the Filing of Private Equity and Asset Management Plans Issued by Securities and Futures Institutions (《證券期貨經營機構私募資產管理計劃備案管理規範第4號》) which stops the filing of private equity and asset management plans of securities and futures institutions which investing into the ordinary residential real estate projects in 16 cities including Beijing, Shanghai, Guangzhou, Hefei, Suzhou, Hangzhou, Tianjin, Wuhan, Chengdu etc.. It also prevents private equity and asset management plans from funding real estate development enterprises to pay land premium or supply working capital through multiple ways, including but not limited to entrusted loans, trust plans and receiving beneficial right of the assets.

### **Environmental Protection**

The laws and regulations governing the environmental protection requirements for real estate development in China include the PRC Environmental Protection Law (《中華人民共和國環境保護法》), the PRC Prevention and Control of Noise Pollution Law (《中華人民共和國環境噪聲污染防治法》), the PRC Environmental Impact Assessment Law (《中華人民共和國環境影響評價法》) and the PRC Administrative Regulations on Environmental Protection for Development Projects (《建設項目環境保護管理條例》). Pursuant to these laws and regulations, depending on the impact of the project on the environment, an environmental impact report, an environmental impact analysis table or an environmental impact registration form must be submitted by a developer before the relevant authorities grant approval for the commencement of construction of the property development. In addition, upon completion of the property development, the relevant environmental authorities will also inspect the property to ensure compliance with the applicable environmental protection standards and regulations before the property can be delivered to the purchasers.

### **Labor Law and Labor Contract Law**

Pursuant to the Labor Law of the PRC effective since January 1, 1995, the PRC Labor Contract Law effective since January 1, 2008, and the Implementing Regulations of the PRC Labor Contract Law effective since September 18, 2008, an employment relationship is established from the date when an employee commences working for an employer, and a written employment contract must be entered into on this same date. If an employment relationship has already been established with an employee but no written employment contract has been entered into simultaneously, a written employment contract must be entered into within one month from the date on which the employee commences work. If an employer fails to enter into a written employment contract with an employee within one year from the date on which the employment relationship is established, it must pay the employee twice his/her salary for each month of the eleven months' period and rectify the situation by subsequently entering into a written employment contract with the employee.

### **Regulation on Social Insurance and Housing Fund**

As required under Regulation of Insurance for Labor Injury, Provisional Insurance Measures for Maternity of Employees, Regulation of Unemployment Insurance, the Decision of the State Council on Setting up Basic Medical Insurance System for Staff Members and Workers in Cities and Towns, the Interim Regulations on the Collection and Payment of Social Insurance Premiums and the Interim Provisions on Registration of Social Insurance, business enterprises are obliged to provide their employees in China with welfare schemes covering pension insurance, unemployment insurance, maternity insurance, injury insurance and medical insurance. Any enterprise that fails to make social insurance contributions in accordance with the relevant regulations may be ordered to rectify the noncompliance and pay the required contributions within a stipulated deadline. If the enterprise fails to rectify the noncompliance by the stipulated deadline set out by the government authorities, it can be assessed a late fee by the relevant authority in the amount of 0.2% of the amount overdue per day from the original due date.

In addition, on October 28, 2010, the Standing Committee of the National People's Congress promulgated the Social Insurance Law, which became effective on July 1, 2011, to clarify the components of the social insurance system in China. According to the Social

Insurance Law, employees will participate in pension insurance, work-related injury insurance, medical insurance, unemployment insurance and maternity insurance and the employers must, together with their employees or separately, pay the social insurance premiums for such employees. According to the Social Insurance Law, an employer that fails to make social insurance contributions may be ordered to pay the required contributions within a stipulated deadline and be subject to a late fee of 0.05% of the amount overdue per day from the original due date by the relevant authority. If the employer continues to fail to rectify the delinquent social insurance contribution payment within such stipulated deadline, it may be subject to a fine ranging from one to three times the amount overdue.

According to Regulations on Management of Housing Fund, enterprises must register at and be subject to review by housing fund administration centers with competent jurisdictions, and open accounts of housing fund for their employees with the designated banks. Enterprises are also obliged to pay and deposit housing fund in full amount in a timely manner. Any enterprise that fails to make housing fund contributions may be ordered to rectify the noncompliance and pay the required contributions within a stipulated deadline; otherwise, an application may be made to a local court for compulsory enforcement.

### **Foreign Exchange Controls**

Under the PRC Foreign Currency Administration Rules (《中華人民共和國外匯管理條例》) promulgated in 1996 and revised in 1997 and as amended in 2008 and various regulations issued by SAFE and other relevant PRC government authorities, Renminbi is convertible into other currencies for the purpose of current account items, such as trade related receipts and payments and the payment interest and dividend. The conversion of Renminbi into other currencies and remittance of the converted foreign currency outside China for the purpose of capital account items, such as direct equity investments, loans and repatriation of investment, requires the prior approval from SAFE or its local office. Payments for transactions that take place within China must be made in Renminbi. Unless otherwise provided, PRC companies may repatriate foreign currency payments received from abroad or retain the same abroad under capital account items after obtaining the prior approval from SAFE or its local office. Foreign-invested enterprises may retain foreign exchange in accounts with designated foreign exchange banks subject to a cap set by SAFE or its local office. Foreign exchange proceeds under the current accounts may be either retained or sold to a financial institution engaging in settlement and sale of foreign exchange pursuant to relevant rules and regulations of the State. For foreign exchange proceeds under the capital accounts, approval from SAFE is required for its retention or sale to a financial institution engaging in settlement and sale of foreign exchange, except where such approval is not required under the rules and regulations of the State.

In October 2005, SAFE issued a Notice on Issues Relating to the Administration of Foreign Exchange in Fund-raising and Reverse Investment Activities of Domestic Residents Conducted via Offshore Special Purpose Companies (《關於境內居民通過境外特殊目的公司境外融資及返程投資外匯管理有關問題的通知》). According to the notice, a special purpose company refers to an offshore company established or indirectly controlled by PRC residents for the special purpose of carrying out financing of their assets or equity interest in PRC domestic enterprises. Prior to establishing or assuming control of a special purpose company, each PRC resident, whether a natural or legal person, must complete the overseas investment foreign exchange registration procedures with the relevant local SAFE branch. The notice applies retroactively. These PRC residents must also amend the registration with the relevant SAFE branch in the following circumstances: (1) the PRC residents have completed the injection of equity investment or assets of a domestic company into the special purpose company; (2) the overseas funding of the special purpose company has been completed; (3) there is a material change in the capital of the special purpose company. Under the rules, failure to comply with the foreign exchange registration procedures may result in restrictions being imposed on the foreign exchange activities of the violator, including restrictions on the payment of dividends and other distributions to its offshore parent company, and may also subject the violators to penalties under the PRC foreign exchange administration regulations.

On August 29, 2008, SAFE issued the Circular on the Relevant Operating Issues Concerning the Improvement of the Administration of the Payment and Settlement of Foreign Currency Capital of Foreign-Invested Enterprises (《關於完善外商投資企業外匯資本金支付結匯管理有關業務操作問題的通知》) (the “Circular No. 142”). Pursuant to Circular No. 142, a foreign-invested enterprise’s Renminbi fund received from the settlement of its foreign currency

capital must be used within the business scope as approved by the government authority that approved the establishment of such foreign-invested enterprise, and such Renminbi fund cannot be used for domestic equity investment unless it is otherwise provided for.

On May 10, 2013, SAFE issued Notice on Printing and Distributing “the Provisions on Foreign Exchange Administration over Direct Investment Made by Foreign Investors in China” and the Ancillary Documents (國家外匯管理局關於印發《外國投資者境內直接投資外匯管理規定》及配套文件的通知), which includes three appendices: (i) Provisions on Foreign Exchange Administration over Direct Investment Made by Foreign Investor (《外國投資者境內直接投資外匯管理規定》); (ii) List of Repealed Regulations on Foreign Exchange Administration over Direct Investment (《廢止境內直接投資外匯管理法規目錄》); and (iii) Operating Guidelines for Domestic Direct Investment Business (《境內直接投資業務操作指引》).

Provisions on Foreign Exchange Administration over Direct Investment Made by Foreign Investors (《外國投資者境內直接投資外匯管理規定》) (the “Provisions”) was promulgated on May 10, 2013 and effective on May 13, 2013, which contains a total of four chapters and 20 articles. The Provisions set out the general principles for foreign exchange control in direct investments of foreign investors and specific provisions on foreign exchange registration, foreign exchange account management, foreign exchange settlement and sales, as well as supervision and administration of banks engaging in the foreign exchange business related to direct investments of foreign investors. The Provisions apply to foreign investors setting up foreign investment enterprises, foreign investment projects and foreign-invested financial institutions in China through methods of new establishment, mergers or acquisitions, and obtaining the ownership right, control right and business management right of domestic enterprises. The Provisions also apply to domestic direct investments of investors from Hong Kong, Macao and Taiwan.

Operating Guidelines for Domestic Direct Investment Business (《境內直接投資業務操作指引》) (the “Guidelines”) was promulgated on May 11, 2013 and effective on May 13, 2013, which has two parts, 23 Clauses and three tables. The Guidelines provide advice for basic information registration of prior-period costs, basic information registration of the newly established foreign-invested enterprises, foreign-invested enterprises set up through mergers or acquisitions by foreign investors, registration to conform foreign investors’ cash and non-cash capital contributions, opening, entry and use of foreign exchange capital accounts, prior-period costs foreign exchange accounts, domestic asset realization accounts, domestic re-investment special accounts, security deposit special foreign exchange accounts, as well as transfer and remittance of foreign exchange funds for domestic direct investments. On March 30, 2015, SAFE issued the Notice on the Reform of the Administration of Foreign Exchange Registered Capital Settlement for Foreign-Invested Enterprises (《國家外匯管理局關於改革外商投資企業外匯資本金結匯管理方式的通知》) effective from June 1, 2015, under which, a reform on the administration of foreign exchange capital settlement for foreign-invested enterprises is carried out in China and foreign-invested enterprises may make equity investments within China by utilizing the RMB funds converted from their foreign exchange registered capital. Besides the remittance of equity transfer payments in the original foreign currency, foreign-invested enterprises mainly engaged in investment business (including foreign investment companies, foreign-invested venture capital enterprises and foreign-invested equity investment enterprises) are permitted to directly convert foreign capital funds into RMB funds or transfer the RMB funds converted from the foreign capital account to the bank account of the investee enterprise based on the actual investment scale on the premise that the domestic investment projects are authentic and in compliance. Equity investments within China by remitting the equity transfer payments in the original foreign currency by general foreign-invested enterprises other than the above enterprises shall be governed by the current domestic reinvestment laws and regulations. If such foreign-invested enterprises make equity investments in China by using converted RMB funds, the investee enterprise shall first register this domestic reinvestment activity with the administration of foreign exchange (bank) of its incorporation place and open a corresponding RMB account for depositing the converted RMB funds, and the foreign-invested enterprises shall then transfer the converted RMB funds into the above RMB account of the investee enterprise based on the actual investment scale. If the investee enterprise continues to make equity investments in China, the above principles shall apply. On June 9, 2016, SAFE issued the Notice to Reform and Regulate the Administration Policies of Foreign Exchange Capital Settlement (《關於改革和規範資本項目結匯管理政策的通知》) to further reform the foreign exchange capital settlement over the nationwide.



SAFE stressed in a post published on its website on 31 December 2016 that the authority is improving the application process for individual foreign exchange purchasing and reiterated that individuals are prohibited to buy foreign currencies to purchase overseas real estate.

According to Circular of the State Administration of Foreign Exchange on Further Advancing Foreign Exchange Administration Reform to Enhance Authenticity and Compliance Reviews (《國家外匯管理局關於進一步推進外匯管理改革完善真實合規性審核的通知》) issued by SAFE on 26 January 2017, funds for overseas loans under domestic guarantees are allowed to be transferred back for domestic use. Debtors can transfer back, directly or indirectly, the funds under guarantees for domestic use through issuing loans to or equity participation in domestic institutions.

### **Mainland China Taxation**

Because virtually all of our business operations are in mainland China and we carry out these business operations through operating subsidiaries and joint ventures organized under the PRC law, our PRC operations and our operating subsidiaries and joint ventures in mainland China are subject to PRC tax laws and regulations, which indirectly affect your investment in the Notes.

### **Dividends from our PRC Operations**

Under the PRC tax laws effective prior to January 1, 2008, dividends paid by our PRC subsidiaries or joint ventures to us were exempt from PRC income tax. However, pursuant to the Enterprise Income Tax Laws (《中華人民共和國企業所得稅法》), dividends payable by foreign invested enterprises, such as subsidiaries and joint ventures in China, to their foreign investors are subject to a withholding tax at a rate of 10% unless any lower treaty rate is applicable.

Under the Enterprise Income Tax Laws, enterprises established under the laws of foreign jurisdictions but whose “de facto management body” is located in China are treated as “resident enterprises” for PRC tax purposes, and are subject to PRC income tax on their worldwide income. For such PRC tax purposes, dividends from PRC subsidiaries to their foreign shareholders are excluded from such taxable worldwide income. Under the implementation rules of the Enterprise Income Tax Law, “de facto management bodies” are defined as the bodies that have material and overall management control over the business, personnel, accounts and properties of an enterprise. There is uncertainty as to how this new law and its implementation rules will be interpreted or implemented by relevant tax bureaus.

### **Our Operations in Mainland China**

Our subsidiaries and joint ventures through which we conduct our business operations in mainland China are subject to PRC tax laws and regulations.

### **Deed Tax**

Under the PRC Interim Regulation on Deed Tax (《中華人民共和國契稅暫行條例》) promulgated by the State Council in July 1997 and implemented in October 1997, deed tax is chargeable to transferees of land use rights and/or ownership in real properties within the territory of mainland China. These taxable transfers include:

- grant of use right of state-owned land;
- sale, gift and exchange of land use rights, other than transfer of right to manage rural collective land; and
- sale, gift and exchange of real properties.

Deed tax rate is between 3% to 5% subject to determination by local governments at the provincial level in light of the local conditions.

Pursuant to the Notice on Adjustment of Preferential Treatment Policies in respect of Deed Tax and Business Tax on Real Estate Transactions (《關於調整房地產交易環節契稅、營業稅優惠政策的通知》) promulgated by MOF, SAT and MOHURD on February 17, 2016 and implemented on February 22, 2016, the rate of deed tax payable for real estate transactions is adjusted downward as follows:

- (1) for an individual purchasing the only residential property for his/her household, the rate of deed tax is adjusted downward to 1% for a property of 90 sq.m. or less and to 1.5% for a property of more than 90 sq.m.; and

- (2) for an individual purchasing the second residential property for his/her household to improve the living conditions, the rate of deed tax is reduced to 1% for a property of 90 sq.m. or less and to 2% for a property of more than 90 sq.m.

If a taxpayer applies for tax preferential treatments, the competent real estate authority at the location of the property will issue written search results on the housing status of the taxpayer's household pursuant to his/her application or authorization and promptly provide the search results and the relevant housing status information to the tax authority. Detailed operation measures will be collectively formulated by the competent financial, tax and real estate departments of various provinces, autonomous region and municipalities.

Beijing, Shanghai, Guangzhou and Shenzhen are not subject to the above deed tax preferential treatment policies temporarily.

### **Corporate Income Tax**

Prior to the implementation of the Enterprise Income Tax Laws, our PRC subsidiaries and joint ventures were generally subject to a 33% corporate income tax. Under the Enterprise Income Tax Laws, effective from January 1, 2008, a unified enterprise income tax rate is set at 25% for both domestic enterprises and foreign-invested enterprises. The Enterprise Income Tax Laws provided certain relief to enterprises that were established prior to March 16, 2007, including (1) continuing to enjoy the previous preferential income tax rate during a five-year transition period if such enterprises were entitled to preferential income tax rates before the effectiveness of the Enterprise Income Tax Laws; (2) continuing to enjoy the preferential income tax rate until its expiry if such enterprises were entitled to tax holidays for a fixed period under the relevant laws and regulations. However, where the preferential tax treatment had not commenced due to losses or accumulated loss not being fully offset, such preferential tax treatment was deemed to commence from January 1, 2008. In addition, according to the Enterprise Income Tax Laws, dividends from PRC subsidiaries to their foreign corporate shareholders are subject to a withholding tax at a rate of 10% unless any lower treaty rate is applicable. However, under the Enterprise Income Tax Laws, enterprises established under the laws of foreign jurisdictions but whose "de facto management body" is located in China are treated as "resident enterprises" for PRC tax purposes, and are subject to PRC income tax on their worldwide income. Dividends from PRC subsidiaries to their foreign corporate shareholders that are treated as resident enterprises for the reason mentioned above will be excluded from such taxable worldwide income. Under the Enterprise Income Tax Laws, "de facto management bodies" are defined as the bodies that have material and overall management control over the business, personnel, accounts and properties of an enterprise. There is uncertainty as to how the Enterprise Income Tax Laws will be interpreted or implemented by relevant tax bureaus.

In addition, pursuant to the Arrangement between Mainland China and Hong Kong for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income (《內地和香港特別行政區關於所得避免雙重徵稅和防止偷漏稅的安排》) signed on August 21, 2006 and applicable in Hong Kong to income derived in any year of assessment commencing on or after April 1, 2007 and in mainland China to any year commencing on or after January 1, 2007, a company incorporated in Hong Kong is subject to withholding income tax at a rate of 5% on dividends it receives from its PRC subsidiaries if it holds a 25% or more equity interest in each such PRC subsidiary at the time of the distribution, or 10% if it holds less than a 25% equity interest in that subsidiary. On August 24, 2009, SAT issued the Notice Regarding the Publishing of the Administrative Measures for Non-residents to Enjoy the Treatment Under Taxation Treaties (Trial) (《關於印發〈非居民享受稅收協定待遇管理辦法(試行)的通知〉》), effective on October 1, 2009, and its supplemental regulation promulgated and effective on June 21, 2010, which provide that prior approvals from or filings with (as the case may be) the relevant local tax authorities are required before a non-resident taxpayer may enjoy any benefits under the relevant taxation treaties.

According to the Notice on the Prepayment of Enterprise Income Tax of the Real Estate Development Enterprises (《關於房地產開發企業所得稅預繳問題的通知》) issued by the SAT on April 11, 2008 and effective on January 1, 2008, as amended on January 4, 2011 tax prepayments in respect of income generated from pre-sales before completion of the construction of the buildings for residential, commercial use or other uses shall be paid upon the calculation of the estimated quarterly or monthly profit according to the preset estimated profit



rate and it must be readjusted according to the actual profit after the completion of the construction of the buildings and the settlement of the taxable costs.

On March 6, 2009, SAT issued the Measures Dealing with Income Tax of Enterprise Engaged in Real Estate Development and Operation (《房地產開發經營業務企業所得稅處理辦法》) effective on January 1, 2008, which specifically stipulates the rules regarding tax treatment of income and deduction of cost and fees, verification of calculated tax cost and tax treatment on certain matters of the real estate development enterprise according to the Enterprise Income Tax Law and its implementation rules.

On May 12, 2010, SAT promulgated the Notice on the Confirmation of Completion Conditions for Development of Products by Real Estate Development Enterprises (《關於房地產開發企業開發產品完工條件確認問題的通知》), which provides that a property will be deemed as completed when its delivery procedures (including move-in procedures) have commenced or when the property is in fact put in use. Real estate developers must conduct the settlement of cost in time and calculate the amount of corporate income tax for the current year.

### **Business Tax**

Under the PRC Interim Regulation on Business Tax (《中華人民共和國營業稅暫行條例》) of 1994, as amended in December 2008, and the Detailed Implementation Rules of the Interim Regulation of the PRC on Business Tax (《中華人民共和國營業稅暫行條例實施細則(2011年修訂)》) issued and implemented by MOF on December 25, 1993 and as amended on December 15, 2008 and October 28, 2011, services in China are subject to business tax. Taxable services include sale of real property in mainland China. The Business tax rate is between 3% to 20% depending on the type of services provided. Sale of real properties and other improvements on land are levied a business tax at the rate of 5% of the turnover of the selling enterprise payable to the relevant local tax authorities.

Pursuant to the Notice on the Full Implementation of Pilot Program for Transition from Business Tax to Value-Added Tax (《關於全面推開營業稅改徵增值稅試點的通知》) and the Implementing Measures for the Pilot Program for Transition from Business Tax to Value-added Tax (《營業稅改徵增值稅試點實施辦法》) issued by the MOF and SAT on March 23, 2016. On May 1, 2016, the “transitioning from business tax to value-added tax” scheme became effective. The sale of self-developed old real estate projects (refers to real estate projects launched time before April 30, 2016 stating on the construction works commencement permit) by common taxpayer among real estate developers shall be subject to a simple tax rate of 5%. Real estate developers selling real estate project by advance payment will be subject to an appreciation tax of 3% when receiving the advance payment.

Pursuant to the Interim Measures on the Management of Value Added Tax of Self-developed Real Estate Project by the Sale of Real Estate Developers (《房地產開發企業銷售自行開發的房地產項目增值稅徵收管理暫行辦法》) issued on March 31, 2016 and implemented on May 1, 2016 by SAT, “self-development” means infrastructure facilities and buildings erected on the land with land use rights which are developed by a real estate development company (“taxpayer”). These measures are also applicable to a development completed by a taxpayer after such project is taken over.

VAT is payable by taxpayers in the calendar month immediately following receipt of the presale proceeds of real estate self-development in accordance with the following formula:

$$\text{Prepaid VAT} = \text{Presale proceeds} \div (1 + \text{applicable rate or simplified rate}) \times 3\%$$

The applicable rate is 11%. Nevertheless, for taxpayers conducting old real estate projects and have chosen simplified tax method, the simplified rate of 5% will be applied in calculating the Prepaid VAT. Once simplified tax method is chosen, it will be applicable for 36 months.

Old real estate projects refer to (1) real estate projects with commencement dates of construction stated in the Construction Permits prior to April 30, 2016, and (2) construction projects which commencement dates of construction are not stated in the Construction Permits, or construction projects with commencement dates of construction stated in the construction contracts prior to April 30, 2016 but has yet to receive Construction Permits.

## Land Appreciation Tax

Under the PRC Interim Regulation on Land Appreciation Tax (《中華人民共和國土地增值稅暫行條例》) of 1994 and its implementation rules of 1995, LAT applies to both domestic and foreign investors in real properties in mainland China, irrespective of whether they are corporate entities or individuals. The tax is payable by a taxpayer on the appreciation value derived from the transfer of land use rights, buildings or other facilities on such land, after deducting the “deductible items” that include the following:

- payments made to acquire land use rights;
- costs and charges incurred in connection with the land development;
- construction costs and charges in the case of newly constructed buildings and facilities;
- assessed value in the case of old buildings and facilities;
- taxes paid or payable in connection with the transfer of the land use rights, buildings or other facilities on such land; and
- other items allowed by the Ministry of Finance.

The tax rate is progressive and ranges from 30% to 60% of the appreciation value as compared to the “deductible items” as follows:

Appreciation value	LAT rate
Portion not exceeding 50% of deductible items . . . . .	30%
Portion over 50% but not more than 100% of deductible items . . . . .	40%
Portion over 100% but not more than 200% of deductible items . . . . .	50%
Portion over 200% of deductible items . . . . .	60%

Exemptions from LAT are available in the following cases:

- Taxpayers constructing ordinary residential properties for sale (i.e. the residences built in accordance with the local standard for residential properties used by the general population, excluding deluxe apartments, villas, resorts and other high-end premises), where the appreciation amount does not exceed 20% of the sum of deductible items;
- Real estate taken over and repossessed according to laws due to the construction requirements of the state; and
- Due to redeployment of work or improvement of living standard, transfers by individuals of originally self-used residential properties, with five years or longer of self-used residence and with tax authorities’ approval.

According to a notice issued by the Ministry of Finance in January 1995, the LAT regulation does not apply to the following transfers of land use rights:

- real estate transfer contracts executed before January 1, 1994; and
- first time transfers of land use rights and/or premises and buildings during the five years commencing on January 1, 1994 if the land grant contracts were executed or the development projects were approved before January 1, 1994 and the capital has been injected for the development in compliance with the relevant regulations.

After the enactment of the LAT regulations and the implementation rules in 1994 and 1995, respectively, due to the long period of time typically required for real estate developments and their transfers, many jurisdictions, while implementing these regulations and rules, did not require real estate development enterprises to declare and pay the LAT as they did other taxes. Therefore, in order to assist the local tax authorities in the collection of LAT, the Ministry of Finance, SAT, Ministry of Construction and State Land Administration Bureau separately and jointly issued several notices to reiterate that, after the assignments are signed, the taxpayers should declare the tax to the local tax authorities where the real estate is located, and pay the LAT in accordance with the amount as calculated by the tax authority and within the time period as required. For those who fail to acquire proof as regards the tax paid or the tax exemption from

the tax authorities, the real estate administration authority will not process the relevant title change procedures, and will not issue the property ownership certificates.

SAT issued a further the Notice on Serious Handling of Administration of the Collection of Land Appreciation Tax (《關於認真做好土地增值稅徵收管理工作的通知》) in July 2002 to require local tax authorities to require prepayment of LAT on basis of proceeds from pre-sale of real estate.

In December 2006, SAT issued a Notice on the Administration of the Settlement of Land Appreciation Tax of Property Development Enterprises (《關於房地產開發企業土地增值稅清算管理有關問題通知》), which came into effect on February 1, 2007. The notice required settlement of LAT liabilities by real estate developers. Provincial tax authorities are given authority to formulate their implementation rules according to the notice and their local situation.

To further strengthen LAT collection, in May 2009, SAT released the Rules on the Administration of the Settlement of Land Appreciation Tax (《土地增值稅清算管理規程》), which came into force on June 1, 2009.

On May 19, 2010, SAT promulgated the Notice on Issues Regarding Land Appreciation Tax Settlement (《關於土地增值稅清算有關問題的通知》), which provides further clarifications and guidelines on LAT settlement, revenue recognition, deductible expenses, timing of assessment and other related issues.

On May 25, 2010, SAT issued the Notice on Strengthening the Collection of Land Appreciation Tax (《關於加強土地增值稅徵管工作的通知》), which provides for a minimum LAT prepayment rate at 2% for provinces in eastern China region, 1.5% for provinces in the central and northeastern China regions, and 1% for provinces in the western China region. The notice also delegated to the local tax authorities the authority to determine the applicable LAT prepayment rates based on the types of the properties in their respective regions.

On June 2, 2013, SAT issued the Notice of the State Administration of Taxation on Further Improving the Collection of Land Value-added Taxes (《關於進一步做好土地增值稅徵管工作的通知》), which requires the local taxation authorities further strengthening administration on the collection of LAT, in particular, the administration on the settlement of LAT, strict examination of deductions and reduction of assessment and collection projects.

### **Urban Land Use Tax and Buildings Tax**

Pursuant to the PRC Interim Regulations on Land Use Tax in respect of Urban Land (《中華人民共和國城鎮土地使用稅暫行條例》) promulgated by the State Council in September 1988, amended on December 31, 2006, January 8, 2011 and in December 2013, the land use tax in respect of urban land is levied according to the area of relevant land. The annual tax on urban land was between RMB0.6 and RMB30 per square meter.

**Buildings Tax.** Under the PRC Interim Regulations on Buildings Tax (《中華人民共和國房產稅暫行條例》) promulgated by the State Council in September 1986, and amended on January 8, 2011, buildings tax applicable to domestic enterprises is 1.2% if it is calculated on the basis of the residual value of a building and 12% if it is calculated on the basis of the rental. On January 27, 2011, the governments of Shanghai and Chongqing respectively issued measures for implementing pilot individual property tax schemes which became effective on January 28, 2011.

According to the Notice on Issues Relating to Assessment of Buildings Tax against Foreign-invested Enterprises and Foreign Individuals (《關於對外資企業及外籍個人徵收房產稅有關問題的通知》) issued by the Ministry of Finance and SAT in January 2009, the foreign-invested enterprises, foreign enterprises and foreign individuals are to be levied the same as domestic enterprise.

### **Stamp Duty**

Under the PRC Interim Regulations on Stamp Duty (《中華人民共和國印花稅暫行條例》) promulgated by the State Council in August 1988, and amended on January 8, 2011, for property transfer instruments, including those in respect of property ownership transfers, the duty rate is 0.05% of the amount stated therein; for permits and certificates relating to rights, including property ownership certificates and land use rights certificates, stamp duty is levied on an item-by-item basis of RMB5 per item.

## **Municipal Maintenance Tax**

Under the PRC Interim Regulations on Municipal Maintenance Tax (《中華人民共和國城市維護建設稅暫行條例》) promulgated by the State Council in 1985, and amended on January 8, 2011, any taxpayer, whether an individual or otherwise, of product tax, value-added tax or business tax is required to pay municipal maintenance tax calculated on the basis of product tax, value-added tax and business tax. The tax rate is 7% for a taxpayer whose domicile is in an urban area, 5% for a taxpayer whose domicile is in a county or a town, and 1% for a taxpayer whose domicile is not in any urban area or county or town.

According to the Circular Concerning Unification of Municipal Maintenance Tax and Education Surcharge for Foreign Investment and Domestic Enterprises and Individuals (《關於統一內外資企業和個人城市維護建設稅和教育費附加制度的通知》) issued by State Council on October 18, 2010, the municipal maintenance tax is applicable to foreign invested enterprises, foreign enterprises and foreign individuals from December 1, 2010.

## **Education Surcharge**

Under the Interim Provisions on Imposition of Education Surcharge (《徵收教育費附加的暫行稅規定》) promulgated by the State Council in April 1986 and amended on June 7, 1990, August 20, 2005 and January 8, 2011, any taxpayer, whether an individual or otherwise, of value-added tax, business tax or consumption tax is liable for an education surcharge, unless such taxpayer is required to pay a rural area education surcharge as provided by the Notice of the State Council on Raising Funds for Schools in Rural Areas (《國務院關於籌借農村學校辦學經費的通知》). The Education Surcharge rate is 3% calculated on the basis of consumption tax, value-added tax and business tax. According to the Circular Concerning Unification of Municipal Maintenance Tax and Education Surcharge for Foreign Investment and Domestic Enterprises and Individuals (《關於統一內外資企業和個人城市維護建設稅和教育費附加制度的通知》) issued by State Council on October 18, 2010, the education surcharge is applicable to foreign invested enterprises, foreign enterprises and foreign individuals from December 1, 2010.

## **Shenzhen City Reform Measures**

The People's Government of Shenzhen City published the Shenzhen City Reform Measures (《深圳市城書更新辦法》) on October 22, 2009. Under the Shenzhen City Reform Measures, "City Reform" refers to comprehensive clearing, redeveloping and resettlement activities within specified old urban areas, including old industrial zones, old commercial districts, "town-in-city" and old towns. On November 12, 2016, the People's Government of Shenzhen City amended the Shenzhen City Reform Measures

## **Certain Opinions on Promoting Redevelopment of "Three Types of Old Urban Areas" and Economic Use of Land**

On August 25, 2009, the People's Government of Guangdong Province published Certain Opinions on Promoting Redevelopment of "Three Types of Old Urban Areas" and Economic Use of Land (《關於推進(三舊)改造促進節約集約用地的若干意見》), which set forth the general guidelines and requirements for redevelopment of old towns, old factories and old villages, namely "Three Types of Old Urban Areas", within Guangdong Province. On September 14, 2016, the People's Government of Guangdong Province issued the Notice on Promoting the Redevelopment Level of "Three Types of Old Urban Areas" and Economic Use of Land (《關於提升(三舊)改造水平促進節約集約用地的通知》).

## MANAGEMENT

### Directors

Our Board of Directors consists of eight Directors, three of whom are independent non-executive Directors. Our Board of Directors has the general powers and duties for the management and conduct of our business. We have entered into service contracts with each of our Directors.

The table below sets forth certain information regarding our Directors:

Name	Age	Position
KWOK Ying Shing . . . . .	52	Chairman and Executive Director
SUN Yuenan . . . . .	53	Vice Chairman and Executive Director
ZHENG Yi . . . . .	36	Executive Director and Chief Executive Officer
YU Jianqing . . . . .	51	Executive Director
CHEN Shaohuan . . . . .	51	Non-Executive Director
ZHANG Yizhao . . . . .	46	Independent Non-Executive Director
RAO Yong . . . . .	57	Independent Non-Executive Director
LIU Xuesheng . . . . .	53	Independent Non-Executive Director

### Chairman and Executive Director

**KWOK Ying Shing** (郭英成), aged 52, is our Chairman and an executive Director. He is one of the founders of our Group and was our Chairman and a Director since our inception in 1999. He resigned as our Chairman and an executive Director in December 2014 and was re-appointed as our Chairman and an executive Director in April 2015. Mr. Kwok is primarily responsible for overall strategy, investment planning and human resource strategy of our Group. Mr. Kwok has extensive experience in real estate development, investment and financing management. He is the brother of Mr. Kwok Ying Chi, a former Director and a substantial shareholder of our Company. He is the father of Mr. Kwok Hiu Kwan, a substantial shareholder of our Company.

### Executive Directors

**SUN Yuenan** (孫越南), aged 53, is our an executive Director and a Vice Chairman. Mr. Sun is primarily responsible for investment and management of our Group. Mr. Sun joined us in July 2001 as chief administrative director of Kaisa Group (Shenzhen) Co., Ltd. (“Kaisa Group (Shenzhen)”) and has held various positions within our Group, including senior vice president of our Group, deputy general manager of Kaisa Group (Shenzhen) and general manager of Guangzhou Jinmao Property Development Co., Ltd. Mr. Sun has extensive regulatory and business administration experience in the real estate industry. From 1993 to 2001, Mr. Sun served in various positions, including deputy chief of administrative office, deputy chief of legal division and deputy chief of personnel division, in Hengyang Municipal Bureau of Land Resources, which oversaw land resources in the city of Hengyang, Hunan Province. Mr. Sun received a bachelor’s degree in law from the Correspondence Institute of the Academy of the Central Committee of the Communist Party of China in December 2001.

**ZHENG Yi** (鄭毅), aged 36, is an executive Director and the Chief Executive Officer of our Company. He is currently a President of our Group, who is in charge of general management of Kaisa Holding Group, Urban Development Group and Investment and Financing Group. Mr. Zheng joined us in July 2007 and has served as Investment Deputy Manager, President Secretary and President of the Real Estate Department among other positions. Prior to joining us, Mr. Zheng worked in Land and Real Estate Trading Center of Shenzhen. Mr. Zheng received the bachelor’s degree in law from Zhongnan University of Economics and Law in the PRC in July 2003.



**YU Jianqing (喻建清)**, aged 51, is an executive Director of our Company. Mr. Yu is primarily responsible for operation management. He graduated from Hengyang Institute of Technology (now known as University of South China) with a bachelor's degree in industrial and civil construction in July 1985, and obtained his MBA degree from The University of Northern Virginia in the United States in October 2006. Mr. Yu is in charge of the general management of Real Estate Group, Innovation Institute, Property Management Group and Technology Group. Mr. Yu joined us in March 2002 and has served as Chief Engineer of Kaisa Real Estate (Shenzhen), Vice General Manager of Kaisa Real Estate (Guangzhou), General Manager of Kaisa Real Estate (Chengdu), Senior Vice President, Operations President and Co-President among other positions. From March 2002 to October 2008, Mr. Yu served as the general manager of Guangzhou Branch, the general manager of Chengdu Branch and various other positions of our Group. From October 2008 to October 2011, Mr. Yu served as the president of Dongguan Huijing Group, a company which is principally engaged in property development and was mainly responsible for its overall operation management. From February 2012 to January 2013, Mr. Yu served as the president of Shenzhen Furui Group, a company which is principally engaged in property development and was mainly responsible for its overall operation management. Mr. Yu re-joined our Group as the general manager of the Beijing Branch of our Group in January 2013 and was promoted as the senior vice president of our Group in April 2013.

#### **Non-Executive Director**

**CHEN Shaohuan (陳少環)**, aged 51, is a non-executive Director of the Company. She was appointed as our non-executive Director on December 26, 2013. She received a Diploma in Economics and Management from the Social Science Faculty of South China University of Technology in the PRC in July 1987. Ms. Chen has joined Sino Life Insurance Co., Ltd. (生命人壽保險股份有限公司) ("Sino Life Insurance") since December 2013 and is currently the deputy general manager of the asset management centre of Sino Life Insurance. Prior to joining Sino Life Insurance, Ms. Chen was the manager of the investment division of Shenzhen Fengsheng Investment Group Company Limited (深圳市豐盛投資集團有限公司) from June 1995 to November 2013. Ms. Chen was also the deputy general manager of a subsidiary of Shenzhen Wuzi Group Company (深圳市物資總公司) engaging in construction material business from September 1983 to May 1995.

#### **Independent Non-Executive Directors**

**ZHANG Yizhao (張儀昭)**, age 46, is an independent non-executive Director of our Company. He was appointed as our independent non-executive Director on November 17, 2009. He is also a director of China Carbon Graphite Group Inc. (OTC BB: CHGI) and HH Biotechnology Holdings Company (OTC BB: HHBT). Mr. Zhang has over 19 years of experience in accounting and internal control, corporate finance and portfolio management. Previously, Mr. Zhang was the chief financial officer or director at various public companies listed in the US, Hong Kong and Tokyo. Mr. Zhang also had experiences in portfolio management and asset trading at Guangdong South Financial Services Corporation from 1993 to 1999. Mr. Zhang is a Certified Public Accountant of the State of Delaware, and a member of the American Institute of Certified Public Accountants. Mr. Zhang also has the Chartered Global Management Accountant designation. Mr. Zhang graduated with a bachelor's degree in economics from Fudan University, Shanghai in 1992 and received a master of business administration with concentrations in financial analysis and accounting from the State University of New York at Buffalo in 2003.

**RAO Yong (饒永)**, aged 57, is an independent non-executive Director of our Company. He was appointed as our independent non-executive Director on November 17, 2009. Mr. Rao is currently a director of Shenzhen Pengcheng Certified Public Accountants Co., Ltd. He is a member of the Chinese Institute of Certified Public Accountants (CICPA) and a certified public valuer in China. Mr. Rao has over 28 years of experience in accounting and auditing. Mr. Rao was a director of the Audit Bureau of Shenzhen City from 1991 to 1997 and a head of the Audit Bureau of Wuzhou City, Guangxi Province from 1987 to 1990. Mr. Rao has also been a director of The Chinese Institute of Certified Public Accountants since 1996, a director of the Shenzhen Institute of Certified Public Accountants since 1996 and its president since 2005, a forensic accounting expert of Shenzhen City since 2002 and the deputy secretary-general of the Asset Evaluation Association of Shenzhen City since 1997. Mr. Rao received a diploma in accounting from Guangxi College of Finance and Economics, China in July 1980.



**LIU Xuesheng (劉雪生)**, aged 53, has been an independent non-executive Director of our Company. He was appointed as our independent non-executive Director on February 28, 2017. Mr. Liu joined Shenzhen Institute of Certified Public Accountants (深圳市註冊會計師協會) (“SZICPA”) since February 1999 and is currently the deputy secretary general. Prior to joining the SZICPA, Mr. Liu was the accountant of OCT Group (深圳華僑城集團) from April 1992 to February 1999. Mr. Liu graduated from Jiangxi Institute of Finance and Economics (江西財經學院) (now known as the Jiangxi University of Finance and Economics (江西財經大學) with a bachelor degree in 1989 and graduated from Shanghai University of Finance and Economics (上海財經大學) majoring in accounting and obtained a master degree in economics in 1992. He was admitted as Certified Public Accountants in the PRC in 1995. Mr. Liu is currently an independent non-executive director of Telling Telecommunication Holdings Co., Ltd. (天音通信控股股份有限公司), Huafu Top Dyed Melange Yarn Co., Ltd. (華孚色紡股份有限公司) and EDAN Instruments, INC. (深圳市理邦精密儀器股份有限公司), which are companies listed on the Shenzhen Stock Exchange. From June 2008 to June 2011, Mr. Liu was the independent non-executive director of Dongjiang Environmental Company Limited (stock code: 895), a company listed in Hong Kong.

### Senior Management

Our senior management members are Kwok Ying Shing, Sun Yuenan, Zheng Yi, Yu Jianqing, Mai Fan, Habibullah Abdul Rahman, Xing Tao, Huang Qin, Luo Jun, Song Wei and Wong Kwok Kwan. Kwok Ying Shing, Sun Yuenan, Zheng Yi and Yu Jianqing are also our executive directors. See the paragraphs headed “Chairman and Executive Director” and “Executive Directors” above for the description of their experience. The table below sets forth certain information regarding our senior management members (excluding executive Directors):

Name	Age	Position
MAI Fan . . . . .	38	Co-president
HABIBULLAH Abdul Rahman . . . . .	53	Chief Financial Officer and Company Secretary
XING Tao . . . . .	52	Executive Vice President
HUANG Qin . . . . .	47	Senior Vice President
LUO Jun . . . . .	36	Vice President
SONG Wei . . . . .	32	Vice President
WONG Kwok Kwan . . . . .	42	Vice President

**MAI Fan (麥帆)**, aged 38, is a Co-president of our Group. Mr. Mai is primarily responsible for financing, medical treatment, shipping, culture, football club business. Mr. Mai also shares his vision in our strategy, fund, risk, human resources, administration, finance, tax, information, Internet+, brand and investor relations work. He joined us in August 2015, serving as the General Manager of the Group Office, the Deputy General Manager of the Group’s Risk Management and Assistant President of the Group. Prior to joining us, Mr. Mai worked in the Shenzhen Municipal Highway Bureau and the Government of Futian District, Shenzhen. Mr. Mai graduated from the Department of Law of the Sun Yat-sen University in 2001.

**HABIBULLAH Abdul Rahman (黃志強)**, aged 53, is Chief Financial Officer of our Group and the company secretary of our Company. He is primarily responsible for the corporate finance, tax and capital management. He has over 25 years’ experience in accounting and finance fields. He received his Master in Business Administration from Henley Business School UK and his Master in Social Science from the Chinese University of Hong Kong. He is a fellow member of both the Association of Chartered Certified Accountants and the Hong Kong Institute of Certified Public Accountants. Prior to joining us in June 2015, he worked as an audit manager in an international accounting firm in Hong Kong and the chief financial officer and financial controller in various listed companies in Hong Kong.

**XING Tao (邢濤)**, Mr. Xing, aged 52, is an Executive Vice President of our Company. Prior to joining us in April 2010, from September 2001 to May 2010, Mr. Xing was a vice president in Horoy Holdings Limited, a real estate company. From February 1992 to September 2001, Mr. Xing was a technical manager in Western Real Estate Company of Shenzhen Wabo Group. From July 1986 to February 1992, Mr. Xing was a construction supervisor in the Shenzhen branch of Design & Research Institute of Wuhan Iron & Steel Group. In 1986, Mr. Xing received a higher diploma in architecture from Jiangnan University.

**HUANG Qin (黃琴)**, aged 47, is a Senior Vice President of our Group. She is primarily responsible for our Group's administration, human resources, investor and public relations. Ms. Huang joined us again as an assistant president of the Commercial Group in October 2013. She joined us in November 2004 and has served as General Manager and President of Kaisa Real Estate (Shanghai), Assistant President of the Commercial Group, Group Director and Group Vice President among other positions. Prior to joining us, Ms. Huang pursued her professional career in human resources management in Head Office of Suning Group, Zhonghai Real Estate (Shenzhen), Head Office of Vanke and Shenzhen Langju Industrial Group Co., Ltd. Ms. Huang graduated from Beijing Wuzi University in 1991 with a bachelor's degree in management.

**LUO Jun (羅軍)**, aged 36, is a Vice President of our Group. Mr. Luo is primarily responsible for providing commerce, tourism, hotel and catering management. Prior to joining us in August 2007, Mr. Luo pursued his professional career in marketing plan in World Union Properties and Inland Real Estate Company (Shenzhen). Mr. Luo has received a bachelor's degree in accountancy from Nanjing University of Finance and Economics in 2003.

**SONG Wei (宋偉)**, aged 32, is a Vice President of our Group. Mr. Song is primarily responsible for urban renewal work. Prior to joining us in November 2015, Mr. Song has successively engaged in news planning in Hubei Daily Media Group and Evergrande Real Estate Group. Mr. Song has achieved a bachelor's degree in Journalism & Communication from Hubei University in 2007.

**WONG Kwok Kwan (黃國鈞)**, aged 42, is a Vice President of our Group, the Chairman of the Commercial Group and the President of Kaisa WeWa Space Ltd. He is primarily responsible for the management of commerce and office asset, co-working and co-hiring businesses. Mr. Wong joined us in January 2017. Prior to joining us, Mr. Wong was responsible for management and professional work for many initial public offering transactions, financial valuations and consultancy service in Chesterton Petty and Savills. Mr. Wong graduated from Tsinghua University and the Chinese University of Hong Kong in 2010 with a Postgraduate Diploma in Finance and Master of Business Administration in Finance respectively. Mr. Wong is a PRC certified real estate appraiser and a Member of Royal Institution of Chartered Surveyors.

#### **Company Secretary**

**HABIBULLAH Abdul Rahman (黃志强)**. See the paragraph headed "Senior Management" above for the description of Mr. Habibullah's experience.

#### **Board Committees**

##### ***Audit Committee***

The audit committee is responsible for the review and supervision of our financial reporting process, internal controls and review of our financial statements. Their written terms of reference are in line with the provisions under the Code of Corporate Governance Practices as set out in Appendix 14 to the Listing Rules (the "Code") and explains the role and the authority delegated to the audit committee by the Board. The audit committee consists of three members, all of whom are independent non-executive Directors. The audit committee comprises Mr. Rao Yong as chairman, Mr. Zhang Yizhao and Mr. Chen Shaohuan as members.

##### ***Remuneration Committee***

The remuneration committee is responsible for making recommendations to our Directors' remuneration and other benefits. The remuneration of all Directors is subject to regular monitoring by the remuneration committee to ensure that level of their remuneration and compensation are reasonable. Their written terms of reference are in line with the provisions of the Code. Pursuant to code provision B.1.4 of the Code, the remuneration committee would make available its terms of reference, explaining its role and the authority delegated to it by the Board.

Our remuneration policy for our Directors and senior management members is based on their experience, level of responsibility and general market conditions. Any discretionary bonus and other merit payments are linked to the profit performance of our Group and the individual performance of our Directors and senior management members. The remuneration committee comprises Mr. Zhang Yizhao as the chairman, Mr. Rao Yong and Mr. Kwok Ying Shing as members.

### ***Nomination Committee***

The nomination committee is primarily responsible for considering and recommending to our Board suitably qualified persons to become the member of our Board and is also responsible for reviewing the structure, size and composition of our Board on a regular basis and as required.

Its written terms of reference cover recommendations to our Board on the appointment of Directors, evaluation of our Board composition and the management of our Board succession with reference to certain guidelines as endorsed by the committee. These guidelines include appropriate professional knowledge and industry experience, personal ethics, integrity and personal skills, and time commitments of members. The nomination committee will select and recommend candidates for directorship after consideration of referrals and engagement of external recruitment professionals, when necessary. The nomination committee comprises Mr. Kwok Ying Shing as the chairman, Mr. Rao Yong and Mr. Zhang Yizhao as members.

### ***Management Committees***

Our Company has established a number of management committees, including but not limited to an investment management committee, a budget committee and a risk management committee to assist our senior management in overseeing our business operations in Hong Kong and the PRC.

### **Compensation of Directors**

The aggregate amount of salaries and other allowances and benefits in kind paid by us to our Directors during the years ended December 31, 2015 and 2016 were approximately RMB24.5 million and RMB24.3 million (US\$3.5 million), respectively, including approximately RMB2.0 million and RMB1.1 million (US\$0.2 million) as share option expenses in respect of such individuals in the years ended December 31, 2015 and 2016.

### **Share Option Scheme**

We adopted our share option scheme on November 22, 2009, in order to attract, retain and motivate our Directors, management members and employees. We have granted options to certain of our Directors, management members and employees under such scheme and as of December 31, 2016, options to subscribe for up to 107,468,000 shares of our Company are outstanding.

### **Directors' and Chief Executive's Interests in Securities**

As of December 31, 2016, the interests of our Directors and chief executive in our equity securities were as follows:

<u>Name of Director</u>	<u>Capacity</u>	<u>Number of the underlying shares</u>	<u>Approximate percentage of shareholding of the issued share capital<sup>(1)</sup></u>
KWOK Ying Shing . . . . .	Interest in a controlled corporation	843,065,378	16.42
SUN Yuenan . . . . .	Beneficial owner	20,020,000	0.39
YU Jianqing . . . . .	Beneficial owner	6,000,000	0.12
ZHANG Yizhao. . . . .	Beneficial owner	1,000,000	0.02
RAO Yong . . . . .	Beneficial owner	1,000,000	0.02
ZHENG Yi . . . . .	Beneficial owner	588,000	0.01

*Note:*

(1) The percentage was calculated based on 5,135,427,910 Shares in issue as of December 31, 2016, assuming all the options granted under the Share Option Scheme have been exercised.

## SUBSTANTIAL SHAREHOLDERS

As of December 31, 2016, so far as the Directors were aware, persons other than the Directors or chief executive of the Company, who had an interest or a short position in the Shares or underlying shares of the Company as recorded in the register required to be kept under section 336 of the SFO were as follows:

Name of substantial shareholder	Capacity	Number of shares <sup>(1)</sup>	Approximate percentage of the issued share capital of the Company <sup>(4)</sup> (%)
Da Chang . . . . .	Beneficial owner	843,065,378 (L) <sup>(2)(5)</sup>	16.42
Da Feng . . . . .	Beneficial owner	843,065,378 (L) <sup>(2)</sup>	16.42
Da Zheng . . . . .	Beneficial owner	843,065,377 (L) <sup>(2)</sup>	16.41
Funde Sino Life Insurance Co., Ltd. . . . .	Beneficial owner	649,700,957 (L)	29.94
	Interest in a controlled corporation	887,995,149 (L) <sup>(3)</sup>	
Fund Resources Investment Holding Group Company Limited . . . . .	Beneficial owner	887,995,149 (L)	17.29
Kwok Ying Chi . . . . .	Interest in a controlled corporation	843,065,377 (L)	16.41
Kwok Hiu Kwan . . . . .	Interest in a controlled corporation	843,065,378 (L) <sup>(5)</sup>	16.42

*Notes:*

- (1) The letter "L" denotes the person's long position in the Shares and the letter "S" denotes the person's short position in the Shares.
- (2) Each of Da Zheng, Da Feng and Da Chang is wholly owned by Mr. Kwok Ying Chi, Mr. Kwok Ying Shing and Mr. Kwok Hiu Kwan, respectively.
- (3) 887,995,149 Shares were held by Fund Resources Investment Holding Group Company Limited, which was wholly owned by Funde Sino Life Insurance Co., Ltd. as at December 31, 2016. By virtue of SFO, Funde Sino Life Insurance Co., Ltd. is deemed to be interested in Shares held by Fund Resources Investment Holding Group Company Limited. Reference is made to the form of the disclosure of interests filed by Funde Sino Life Insurance Co., Ltd. on December 3, 2014.
- (4) The percentages were calculated based on 5,135,427,910 Shares in issue as at December 31, 2016, assuming all the options granted under the Share Option Scheme have been exercised.
- (5) As of the date of this offering memorandum, the number of shares held by Da Chang and Mr. Kwok Hiu Kwan decreased to 625,673,378, representing approximately 12.19% of the issued share capital of the Company.
- (6) As of the date of this offering memorandum, Mr. Choi Chee Ming held 267,546,000 shares of the Company, representing approximately 5.21% of the issued share capital of the Company, and became one of the substantial shareholders of the Company. Mr. Choi ranked 11th among the 50 richest people in Hong Kong, according to Forbes 2017.

## RELATED PARTY TRANSACTIONS

During the years ended December 31, 2015 and 2016, the following related party transactions took place between our Group and certain related parties, details of which are set out as follows:

Name of the related parties	Relationship with our Group
Huizhou City Kaileju Company Limited . . . . .	Joint venture
Mr. Kwok Ying Shing . . . . .	Controlling shareholder
Mr. Kwok Chun Wai . . . . .	Former controlling shareholder
Shenzhen Fund Resources Investment Holding Limited . . . . .	Controlled by a substantial shareholder of our Company
Shenzhen Qianhai Gold – Earth Wealth Management Co., Ltd. . . . .	Associate
Shenzhen Longcheng Plaza Property Development Co., Ltd. . . . .	Associate
Shenzhen Shenxin Financial Holding Co., Ltd. . .	Associate

### Key management compensation

	For the year ended December 31,		
	2015	2016	2016
	(RMB in thousands)	(RMB in thousands)	(US\$ in thousands)
			(unaudited)
Salaries and other short-term employee benefits . .	53,402	44,386	6,393
Retirement scheme contributions . . . . .	272	254	37
Share option benefits . . . . .	4,171	1,892	273
	57,845	46,532	6,703

### Transactions

	For the year ended December 31,		
	2015	2016	2016
	(RMB in thousands)	(RMB in thousands)	(US\$ in thousands)
			(unaudited)
Interests paid to a related company <sup>(1)</sup> . . . . .	303,012	345,240	49,725
Rental expenses paid to controlling shareholders <sup>(2)</sup> . . . . .	1,911	1,943	280

*Notes:*

- (1) Interest expense was charged at interest rate of 12% per annum on loans from a related company.
- (2) This represents payment of rental expense for various office premises to a former controlling shareholder, Mr. Kwok Chun Wai and a controlling shareholder, Mr. Kwok Ying Shing, respectively. The rental expense paid during the year was determined at prevailing market rate of respective office premise.



## DESCRIPTION OF MATERIAL INDEBTEDNESS AND OTHER OBLIGATIONS

To fund our existing property projects and to finance our working capital requirements, we have borrowed money or incurred indebtedness from various financial institutions or trust companies and obtained financings through debt offerings. As of December 31, 2016, our total borrowings were RMB87,536.8 million (US\$12,607.9 million). We set forth below a summary of the material terms and conditions of these loans and other indebtedness.

### **Project Loan Agreements**

Certain of our PRC subsidiaries have entered into loan agreements with various PRC banks, primarily Bank of China, China Construction Bank, Agricultural Bank of China, Industrial and Commercial Bank of China, China Everbright Bank, Shanghai Pudong Development Bank, China Merchants Bank, China Citic Bank, Industrial Bank, Hua Xia Bank, China Zheshang Bank, Bank of Beijing, China Bohai Bank, Ping An Bank, Bank of Ningbo, Guangdong Huaxing Bank, Bank of Communications, Bank of Dalian, Nanyang Commercial Bank, China Minsheng Bank, Bank of East Asia and Bank of Jiangsu. These loans typically are project loans to finance the construction of our projects (the “project loans”) and with a term of one to ten years, which generally correspond to the construction periods of the particular projects.

### ***Interest***

The principal amounts outstanding under the project loans generally bear interest at floating rates calculated by reference to the relevant bank’s benchmark interest rate per annum. Floating interest rates generally are subject to review by the banks annually. Interest payments generally are payable either monthly or quarterly and must be made on each payment date as provided in the particular loan agreement. As of December 31, 2016, the effective interest rate on the aggregate outstanding amount of our project loans was 7.43% per annum.

### ***Covenants***

Under these project loans, some of our subsidiary borrowers have agreed, among other things, not to take the following actions without first notifying the lender and/or obtaining the lenders’ prior consent:

- create encumbrances on any part of their properties or assets or deal with their assets in a way that may adversely affect their ability to repay their loans;
- grant guarantees to any third parties that may adversely affect their ability to repay their loans;
- make any major changes to their corporate structures, such as entering into joint ventures, mergers and acquisitions and reorganizations or change the company’s status, such as liquidation and dissolution;
- alter the nature or scope of their business operations in any material respect;
- incur additional debts;
- reduce their registered capital;
- transfer part or all of the liabilities under the loans to a third party;
- prepay the loan; or
- repay shareholder loans.

### ***Dividend restriction***

Pursuant to these project loans, certain of our PRC subsidiaries also agreed not to distribute any dividends:

- if the borrower’s after-tax net profit is nil or negative;
- if the after-tax net profit is insufficient to cover losses in previous financial years;
- if the before-tax profit is not used to satisfy the relevant debt due during the same financial year;
- if the before-tax profit is insufficient to cover the principal, interest or other related expenses due in the next period;

- before the principal amount of and accrued interest on the relevant project loan have been timely or fully paid;
- before all the principal amount of and accrued interest with the relevant lending banks have been fully paid; or
- before obtaining written consent from the lender.

See “Risk Factors - Risks Relating to the Notes - Our subsidiaries are subject to restrictions on the payment of dividends and the repayment of intercompany loans or advances to us and our subsidiaries.”

### ***Guarantee and security***

Certain of our PRC subsidiaries and associates have entered into guarantee or security agreements with the PRC banks in connection with some of the project loans pursuant to which these subsidiaries and associates have guaranteed or pledged certain of their properties and land use rights, share equity, account receivables, or deposits to secure the obligations of these subsidiary borrowers under these project loans.

### **Customer Guarantees**

In line with industry practice, we provide guarantees to mortgagee banks in respect of mortgage loans taken out by purchasers of our properties. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Financial Guarantees.” As of December 31, 2016, the aggregate outstanding amount guaranteed was RMB21,843.2 million (US\$3,146.1 million).

### **Trust Financing Loans**

Certain of our PRC subsidiaries have entered into trust financing loan agreements with PRC trust companies (the “Trust Financing Loans”). These Trust Financing Loans typically have a term of two to three years. As of December 31, 2016, we had outstanding trust financing loans of an aggregate principal amount of RMB12,725.9 million (US\$1,832.9 million).

### ***Interest***

The principal amounts outstanding under the trust financing loan agreements bear interest rates ranging from 8% to 20%, respectively, per annum. Interest payments generally are payable quarterly and must be made on each payment date as provided in the particular loan agreement.

### ***Covenants***

Under the Trust Financing Loans, our PRC subsidiary borrowers has agreed, among other things, not to take the following actions without first notifying the lender or obtaining the lenders’ prior consent:

- change controlling shareholders;
- effect any consolidation, merger or spin-off;
- liquidate or dissolve such subsidiaries;
- grant guarantees to any third party that may adversely affect their ability to repay their loans;
- enter into any major asset acquisition or disposition;
- involve in any litigation or arbitration;
- alter the name of the company, scope of business operations, legal person or registered address;
- suffer any deterioration of business;
- take any other action which may adversely affect their ability to repay the loans; or
- repay shareholder loans.

### ***Dividend restriction***

Pursuant to these Trust Financing Loans, certain of our PRC subsidiaries also agreed not to distribute any dividends:

- if the borrower’s after-tax net profit is nil or negative;
- if the after-tax net profit is insufficient to cover losses in previous financial years;

- if the before-tax profit is not used to satisfy the relevant debt due during the same financial year;
- if the before-tax profit is insufficient to cover the principal, interest or other related expenses due in the next period;
- before the principal amount of and accrued interest on the relevant project loan have been timely or fully paid; or
- before obtaining written consent from the lender.

See “Risk Factors - Risks Relating to the Notes - Our subsidiaries are subject to restrictions on the payment of dividends and the repayment of intercompany loans or advances to us and our subsidiaries.”

### ***Guarantee and security***

Certain of our PRC subsidiaries have provided guarantees for, or pledged certain of their properties and land use rights, or pledged share equity to secure, the obligations of these subsidiary borrowers under these Trust Financing Loans.

### **Offshore Facility Agreements**

We have entered into facility agreements with offshore banks and financial institutions, including China Construction Bank (Asia), Sheng Rong (Hong Kong) Limited, Peng Ze (Hong Kong) Limited, China Cinda (HK) Asset Management Company Limited and Chong Hing Bank. Our offshore facility agreements have terms ranging from 3 months to 12 months. As of December 31, 2016, the aggregate outstanding amount of our offshore facilities was RMB696.3 million (US\$100.3 million).

### ***Guarantee and Security***

Our offshore facilities are guaranteed by standby letters issued by banks, letters of guarantee issued by banks or Kaisa Group Holdings Ltd..

### ***Interest***

Our offshore facilities generally bear interest at floating rates calculated with reference to the London Interbank Offered Rate/Hong Kong Interbank Offered Rate or at fixed rate ranging from 8% to 8.5% per annum.

### ***Covenants***

Our offshore facilities contain customary covenants and restrictions, including, among others, negative pledge on assets, financial covenants including consolidated net borrowings/loan-to value ratios.

### ***Events of Default***

These offshore facilities contain certain customary events of default, including nonpayment of principal or interest, cross default, insolvency and breaches of its terms. If an event of default occurs, all amounts outstanding including all interest accrued thereon may become immediately due and payable.

### **Debt Restructuring**

On July 21, 2016, we effected a debt restructuring (the “Debt Restructuring”) pursuant to a scheme of arrangement sanctioned by the Grand Court of the Cayman Islands and a scheme of arrangement sanctioned by the High Court of Hong Kong (collectively, the “Schemes or Arrangement”). Pursuant to the Debt Restructuring, our offshore debts, including our 2012 Notes, January 2013 Notes, March 2013 Notes, April 2013 Notes, 2014 Notes, Convertible Bonds and Original Offshore Facilities were exchanged for one of the following at the election of the holders:

- Existing Notes, at an exchange ratio of 1.00000x, and contingent value rights (the “CVRs”) with a notional value equal to 7.0% of the aggregate principal amount of the Existing Notes issued to such holders. The holders of the 2012 Notes, January 2013 Notes, March 2013 Notes, April 2013 Notes, 2014 Notes and/or the Original Offshore Facilities who failed to submit a value election were deemed to have elected this option. The Existing Notes were issued pursuant to the Series A Indenture, Series B

Indenture, Series C Indenture, Series D Indenture and Series E Indenture (collectively, the “Existing Indentures”) among our Company, the Subsidiary Guarantors and Wilmington Trust, National Association as the Existing Notes Trustee on July 21, 2016. Our Company and U.S. Bank National Association, as the CVR trustee, entered into a contingent value rights agreement (the “Contingent Value Rights Agreement”) on July 21, 2016;

- Existing Notes only, at an exchange ratio of 1.02598x; or
- Mandatorily Exchangeable Bonds, at an exchange ratio of 1.00000x, subject to a cut-back mechanism stipulated in the Schemes or Arrangement. Our Company, the Subsidiary Guarantors, U.S. Bank National Association, as the trustee of the Mandatorily Exchangeable Bonds and Citicorp International Limited, as the common security trustee, entered into a trust deed, pursuant to which we issued the Mandatorily Exchangeable Bonds on July 21, 2016. The holders of the Convertible Bonds who failed to submit a value election were deemed to have elected this option.

### *Existing Notes*

#### *Guarantee*

Our obligations under the Existing Notes are guaranteed by the Subsidiary Guarantors. Each of the Subsidiary Guarantors, jointly and severally, guarantees the due and punctual payment of the principal, any premium, and interest on, and all other amounts payable under, the Existing Notes.

#### *Collateral*

In order to secure the obligations under the Existing Notes, the Company and the Subsidiary Guarantors under the Indenture pledged the Collateral. The Collateral will be shared on a pari passu basis with the secured parties under to the Intercreditor Agreement. The Collateral may be released or reduced in the event of certain asset sales and certain other circumstances. In addition, the Company and each Subsidiary Guarantor Pledger under the Existing Indentures may, subject to certain conditions, incur additional indebtedness provided that such indebtedness would be on a pari passu basis with the Existing Notes and the related subsidiary guarantees, and other pari passu secured indebtedness permitted under the Existing Indentures.

#### *Interest*

The Existing Notes bear variable interests from (and including) July 21, 2016, payable semi-annually in arrears on June 30 and December 31 of each year, commencing December 31, 2016. The interest rates are set out as follows:

- during the period from (and including) the July 21, 2016 to (and excluding) January 1, 2017, 6.56% per annum, in the form of increasing the outstanding principal amount of the global notes or issuing additional certificated notes pursuant to the Existing Indentures (in each case, “PIK Notes”);
- during the one-year period from (and including) January 1, 2017 to (and excluding) January 1, 2018, (x) 7.56% per annum, comprising 1.00% in cash and 6.56% in the form of PIK Notes, or (y) 5.61% per annum, in cash only, if the Company elects to pay all interest in cash prior to the relevant interest payment date;
- during the six-month period from (and including) January 1, 2018 to (and excluding) July 1, 2018, (x) 6.66% (for the Series A Notes), 8.16% (for the Series B Notes), 9.16% (for the Series C Notes), 9.96% (for the Series D Notes) or 10.46% (for the Series E Notes) per annum, comprising 2.00% in cash and 4.66% (for the Series A Notes), 6.16% (for the Series B Notes), 7.16% (for the Series C Notes), 7.96% (for the Series D Notes) or 8.46% (for the Series E Notes) in the form of PIK Notes, or (y) 5.71% (for the Series A Notes), 7.21% (for the Series B Notes), 8.21% (for the Series C Notes), 9.01% (for the Series D Notes) or 9.51% (for the Series E Notes) per annum, in cash only, if the Company elects to pay all interest in cash prior to the relevant interest payment date;

- during the six-month period from (and including) July 1, 2018 to (and excluding) January 1, 2019, (x) 6.66% (for the Series A Notes), 8.16% (for the Series B Notes), 9.16% (for the Series C Notes), 9.96% (for the Series D Notes) or 10.46% (for the Series E Notes) per annum, comprising 4.10% (for the Series A Notes), 5.60% (for the Series B Notes), 6.60% (for the Series C Notes), 7.40% (for the Series D Notes) or 7.90% (for the Series E Notes) in cash and 2.56% in the form of PIK Notes, or (y) 6.71% (for the Series A Notes), 8.21% (for the Series B Notes), 9.21% (for the Series C Notes), 10.01% (for the Series D Notes) or 10.51% (for the Series E Notes) per annum, in cash only, if the Company elects to pay all interest in cash prior to the relevant interest payment date; and
- thereafter, 6.66% (for the Series A Notes), 8.16% (for the Series B Notes), 9.16% (for the Series C Notes), 9.96% (for the Series D Notes) or 10.46% (for the Series E Notes) per annum, comprising 6.10% (for the Series A Notes), 7.60% (for the Series B Notes), 8.60% (for the Series C Notes), 9.40% (for the Series D Notes) or 9.90% (for the Series E Notes) in cash and 0.56% in the form of PIK Notes.

#### *Covenant*

Subject to certain conditions and exceptions, the Existing Indentures contain certain covenants, restricting us and each of the related restricted subsidiaries from, among other things:

- incurring additional indebtedness and issuing preferred stock;
- making investments or other restricted payments;
- paying dividends or making other distributions;
- repurchasing or redeeming capital stock;
- guaranteeing indebtedness;
- entering into certain transactions with affiliates;
- creating liens;
- entering into sale and leaseback transactions;
- selling assets;
- entering into agreements that restrict restricted subsidiaries' ability to pay dividends;
- issue and sell capital stock of restricted Subsidiaries;
- effect a consolidation or merger; and
- engaging in different business activities.

#### *Event of Default*

The Existing Indentures contain certain customary events of default, including default in the payment of principal, or of any premium, on the Existing Notes, when such payments become due, default in payment of interest which continues for 30 days, breaches of covenants, insolvency and other events of default specified in the Existing Indentures. In addition, default in payment (in cash or our ordinary shares) by the Settlement Date following a CVR Triggering Event under the CVRs shall also constitute an event of default. See “ – CVRs” below. It shall also constitute an event of default if our ordinary shares cease to be listed or admitted for trading or are suspended for 30 or more consecutive trading days after the resumption of trading of our ordinary shares on the Hong Kong Stock Exchange, which took place on March 27, 2017.

If an event of default occurs and is continuing, the Existing Notes Trustee or the holders of at least 25% of the outstanding existing Notes may declare the principal of the Existing Notes plus any accrued and unpaid interest and premium (if any) to be immediately due and payable.

#### *Maturity and Redemption*

The Series A Notes, Series B Notes, Series C Notes, Series D Notes and Series E Notes will mature on December 31, 2019, June 30, 2020, December 31, 2020, June 30, 2021 and December 31, 2021, respectively, at a final redemption price equal to 102% of their respective principal amount.

Each series of the Existing Notes may be redeemed at any time before the date that is two years prior to the maturity date for such series of the Existing Notes, in whole or in part, at a redemption price equal to 100% of the principal amount of such series of Existing Notes, plus any accrued and unpaid interest to (but excluding) the redemption date.

At any time during the one year period from (and including) the date that is two years prior to the maturity date for each series of the Existing Notes to (and excluding) the date that is one year prior to such maturity date, the relevant series of the Existing Notes may be redeemed in whole or in part, at a redemption price equal to 101% of the principal amount of such series of Existing Notes, plus any accrued and unpaid interest to (but excluding) the redemption date.

At any time during the one year period from (and including) the date that is one year prior to the maturity date for each series of the Existing Notes to (and including) such maturity date, the relevant series of the Existing Notes may be redeemed in whole or in part, at a redemption price equal to 102% of the principal amount of such series of Existing Notes, plus any accrued and unpaid interest to (but excluding) the redemption date.

In addition, if we issue certain indebtedness *pari passu* with the Existing Notes and such issuance is permitted under the Existing Indentures, 100% of net proceeds from such issuance shall be applied pro rata to redeem, among others, the Existing Notes and the Mandatorily Exchangeable Bonds (or, among others, Exchange Convertible Bonds issued pursuant to the terms of Mandatorily Exchangeable Bonds).

### ***Mandatorily Exchangeable Bonds***

#### *Guarantee*

The obligations pursuant to the Mandatorily Exchangeable Bonds are guaranteed by our existing subsidiaries specified in the trust deed for the Mandatorily Exchangeable Bonds (the “Mandatorily Exchangeable Bonds Subsidiary Guarantors”). Each of the Mandatorily Exchangeable Bonds Subsidiary Guarantors, jointly and severally, guarantees the due and punctual payment of all sums payable under the Mandatorily Exchangeable Bonds.

#### *Collateral*

Our obligations under the Mandatorily Exchangeable Bonds are secured by the capital stock of the Mandatorily Exchangeable Bonds Subsidiary Guarantors. In addition, our Company and each subsidiary guarantor pledgor under the trust deed for the Mandatorily Exchangeable Bonds may, subject to certain conditions, incur additional indebtedness provided that such indebtedness would be on a *pari passu* basis with the Mandatorily Exchangeable Bonds and the related subsidiary guarantees, and other *pari passu* secured indebtedness permitted under the trust deed for the Mandatorily Exchangeable Bonds.

#### *Interest*

The Mandatorily Exchangeable Bonds bear variable interests from (and including) July 21, 2016, payable semi-annually in arrears on June 30 and December 31 of each year, commencing December 31, 2016. The interest rates are set out as follows:

- during the period from (and including) July 21, 2016 to (and excluding) January 1, 2017, 5.56% per annum, such interest to be capitalized and added to the then current outstanding principal amount of the Mandatorily Exchangeable Bonds (the “PIK Interest”);
- during the one-year period from (and including) January 1, 2017 to (and excluding) January 1, 2018, (x) 6.56% per annum, with 1.00% of such interest to be paid in cash and 5.56% of such interest to be PIK Interest, or (y) 4.61% per annum, such interest to be paid in cash only, if the we elect to pay all interest in cash;
- during the six-month period from (and including) January 1, 2018 to (and excluding) July 1, 2018, (x) 6.56% per annum, with 2.00% of such interest to be paid in cash and 4.56% of such interest to be PIK Interest, or (y) 5.61% per annum, such interest to be paid in cash only, if the we elect to pay all interest in cash;
- during the six-month period from (and including) July 1, 2018 to (and excluding) January 1, 2019, (x) 6.56% per annum, with 4.00% of such interest to be paid in cash and 2.56% of such interest to be PIK Interest, or (y) 6.61% per annum, such interest to be paid in cash only, if we elect to pay all interest in cash;



- thereafter to (and excluding) the December 31, 2019, 6.56% per annum, with 6.00% to be paid in cash and 0.56% to be PIK Interest; and
- from (and including) December 31, 2019 to (and excluding) December 31, 2020, 10% per annum, such interest to be paid in cash only, if the we elect to extend the original maturity date from December 31, 2019 to December 31, 2020 pursuant to the trust deed for the Mandatorily Exchangeable Bonds.

#### *Automatic Exchange Transaction*

We are required to (i) seek all necessary shareholder resolutions to issue exchange convertible bonds (“Exchange Convertible Bonds”) and to allot and issue new ordinary shares upon the exercise of the conversion rights attached to the Exchange Convertible Bonds and ordinary shares to be issued or may be issued as PIK Interest (the “Shareholder Resolutions”), and (ii) listing approvals from the Hong Kong Stock Exchange for the trading of the new ordinary shares to be issued upon the conversion of the Exchange Convertible Bonds (the “Listing Approvals,” and together with the Shareholder Resolutions, the “Mandatory Exchange Conditions”) as soon as reasonably practicable after the resumption of trading of our ordinary shares on the Hong Kong Stock Exchange. If the Mandatory Exchange Conditions are satisfied, all of then outstanding principal amount of Mandatorily Exchangeable Bonds will be automatically exchanged for Exchange Convertible Bonds (the “Automatic Exchange Transaction”).

The trading of our ordinary shares resumed on the Hong Kong Stock Exchange on March 27, 2017. We had not been able to achieve the Mandatory Exchange Conditions within 60 days from that date, but we aim to do so before such failure continues for a period of 30 consecutive days. However, there is no assurance that we will be able to achieve either or both of the Mandatory Exchange Conditions within this timeframe. See “Risk Factors — Risks Relating to the Notes — If we are unable to comply with the restrictions and covenants in our debt agreements or the Indentures, there could be a default under the terms of these agreements or the Indentures, which could cause repayment of our debt to be accelerated, or we could be required to redeem our debt.”

#### *Maturity and Redemption*

The Mandatorily Exchangeable Bonds will mature on December 31, 2019, which may be extended to December 31, 2020 at our option.

If we fail to obtain the Listing Approvals within 60 days of the resumption of trading of our ordinary shares on the Hong Kong Stock Exchange, and such failure continues for a period of 30 consecutive days, the holder of a Mandatorily Exchangeable Bond shall be entitled to require the redemption of its Mandatorily Exchangeable Bonds on the date which is 120 days from resumption of trading of our ordinary shares on the Hong Kong Stock Exchange at a certain premium.

In addition, if we issue certain indebtedness *pari passu* with the Mandatorily Exchangeable Bonds and such issuance is permitted under the Mandatorily Exchangeable Bonds, 100% of net proceeds from such issuance shall be applied pro rata to redeem, among others, the Existing Notes and the Mandatorily Exchangeable Bonds (or Exchange Convertible Bonds issued pursuant to the terms of the Mandatorily Exchangeable Bonds) subject to the right of holders to reject such redemption.

#### *Events of Default*

The events of default under the Mandatorily Exchangeable Bonds are substantially similar to those under the Existing Notes. In addition, if the Shareholder Resolutions fail to be passed within 60 days of the resumption of trading of our ordinary shares on the Hong Kong Stock Exchange and such failure continues for a period of 30 consecutive days, that shall also constitute an event of default.

#### *Additional Terms of Exchange Convertible Bonds*

Upon the Automatic Exchange Transaction, the Mandatorily Convertible Bonds will be automatically exchanged for Exchange Convertible Bonds under a trust deed on the same terms as the Mandatorily Exchangeable Bonds, other than the conversion terms and other customary covenants and events of default for convertible bonds.

The holders of Exchange Convertible Bonds may exercise the conversion right during the period up to the close of business on the tenth day prior to the maturity date of the Exchange Convertible Bonds, or, if the Exchange Convertible Bonds have been called for redemption by us before the maturity date, up to the close of business on a date no later than 10 days prior to the redemption date, at a conversion price of HK\$2.34 per share subject to adjustments as result of certain events under the trust deed governing the Exchange Convertible Bonds.

#### ***CVRs***

The holders of the CVRs are entitled to payment of US\$14 for each CVR they hold in cash, or at the election of our Company, in our ordinary shares in lieu of cash, upon each of the following triggering events (each, a “CVR Triggering Event”):

- when the implied market capitalization of our ordinary shares, as calculated pursuant to the Contingent Value Rights Agreement, exceeds HK\$10,075,000,000;
- when the implied market capitalization of our ordinary shares exceeds HK\$12,594,000,000;
- when the implied market capitalization of our ordinary shares exceeds HK\$15,742,000,000;
- when the implied market capitalization of our ordinary shares exceeds HK\$19,678,000,000; and
- when the implied market capitalization of our ordinary shares exceeds HK\$20,542,000,000.

Upon the occurrence of any CVR Triggering Event, the Company shall settle any payment triggered on the date that is the later of (i) six months after the occurrence of such CVR Triggering Event and (ii) July 21, 2019 (each such date, a “Settlement Date”).

The events of default under the CVRs are substantially the same as those under the Existing Notes.

The CVRs will remain outstanding until December 31, 2021.

#### ***Intercreditor Agreement***

On July 21, 2016, the Existing Notes Trustee and the trustee for the Mandatorily Exchangeable Bonds executed a supplement to the Intercreditor Agreement and became secured parties under the Intercreditor Agreement and to share the Collateral on a pari passu basis with other holders of permitted pari passu secured indebtedness or their agent or trustee who are parties to the Intercreditor Agreement.

## DESCRIPTION OF THE 2020 NOTES

For purposes of this “Description of the 2020 Notes,” the term “Company” refers only to Kaisa Group Holdings Ltd., a company incorporated with limited liability under the laws of the Cayman Islands, and any successor obligor on the Notes, and not to any of its Subsidiaries, and the term “Notes” refers only to the 2020 Notes issued by the Company. Each Subsidiary of the Company which 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 Company that in the future provides a JV Subsidiary Guarantee (as defined below) is referred to as a “JV Subsidiary Guarantor.”

The Notes are to be issued under an indenture (the “Indenture”), to be dated as of the Original Issue Date, among the Company, the initial Subsidiary Guarantors, as guarantors, and Citicorp International Limited, as trustee (the “Trustee”).

The following is a summary of certain provisions of the Indenture, the Notes, the Subsidiary Guarantees, the JV Subsidiary Guarantees (if any), the Security Documents and the Intercreditor Agreement. 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 Subsidiary Guarantees, the JV Subsidiary Guarantees (if any), the Security Documents and the Intercreditor Agreement. It does not restate those agreements 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. Copies of the Indenture will be available on or after the Original Issue Date during normal office hours at the corporate trust office of the Trustee at 39/F, Champion Tower, 3 Garden Road, Central, Hong Kong.

### Brief Description of the Notes

The Notes are:

- general obligations of the Company;
- senior in right of payment to any existing and future obligations of the Company expressly subordinated in right of payment to the Notes;
- at least *pari passu* in right of payment with all other unsecured, unsubordinated Indebtedness of the Company (subject to any priority rights of such unsubordinated Indebtedness pursuant to applicable law);
- guaranteed by the Subsidiary Guarantors and the JV Subsidiary Guarantors (if any) on a senior basis, subject to the limitations described below under the caption “— The Subsidiary Guarantees and JV Subsidiary Guarantees” and in “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral”;
- effectively subordinated to the secured obligations of the Company, the Subsidiary Guarantors and the JV Subsidiary Guarantors (if any), to the extent of the value of the collateral serving as security therefor (other than the Collateral); and
- effectively subordinated to all existing and future obligations of the Non-Guarantor Subsidiaries (defined below).

In addition, on the Original Issue Date, subject to the limitations described in “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral,” the Notes will be secured by a pledge of the Collateral as described below under the caption “— Security” and will:

- be entitled to a lien on the Collateral (subject to any Permitted Liens and the Intercreditor Agreement); and
- rank effectively senior in right of payment to unsecured obligations of the Company with respect to the value of the Collateral pledged by the Company securing the Notes (subject to any priority rights of such unsecured obligations pursuant to applicable law).

The Notes will mature on June 30, 2020, unless earlier redeemed pursuant to the terms thereof and the Indenture.

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 2020 Notes” include any Additional Notes that are actually issued. The Notes will bear interest at 7.25% 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 June 30 and December 30 of each year (each an “Interest Payment Date”), commencing December 30, 2017.

Interest on the Notes will be paid to Holders of record at the close of business on June 15 and December 15 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. In any case in which the date of the payment of principal of or premium (if any) or interest on the Notes is not a Business Day in the relevant place of payment, then payment of principal or premium (if any) 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. Interest on the Notes will be calculated on the basis of a 360 day year comprised of twelve 30-day months.

The Notes will be issued only in fully registered form, without coupons, in denominations of US\$200,000 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 Company 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 Company at the office or agency of the Company maintained for that purpose (which initially will be the specified office of the Paying Agent), and the Notes may be presented for registration of transfer or exchange at such office or agency; *provided* that, at the option of the Company, payment of interest may be made by check mailed to the address of the Holders as such address appears in the Note register. Interest payable on the Notes held through Euroclear and Clearstream will be available to Euroclear and Clearstream participants (as defined herein) on the Business Day following payment thereof.

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

As of the date of the Indenture, all of the Company’s Subsidiaries will be “Restricted Subsidiaries.” However, under the circumstances described below under the caption “— Certain Covenants — Designation of Restricted and Unrestricted Subsidiaries,” the Company will be permitted to designate certain of its Subsidiaries as “Unrestricted Subsidiaries.” The Company’s Unrestricted Subsidiaries will generally not be subject to the restrictive covenants in the Indenture and will not guarantee the Notes.

On the Original Issue Date, the initial Subsidiary Guarantors will consist of all of the Restricted Subsidiaries (other than the Restricted Subsidiaries organized under the laws of the PRC (the “PRC Non-Guarantor Subsidiaries”), Ace Start Enterprises Limited (佳始企業有限公司), Bowen Asset Management (Cayman) Limited (寶運資產管理(開曼)有限公司), Bowen Asset Management Limited (寶運資產管理有限公司), Brave Sigh Limited (勇志有限公司), Brave Sigh (Hong Kong) Limited (勇志(香港)有限公司), Central Sino Investments Limited (正漢投資有限公司), Central Sino Investments (Hong Kong) Limited (正漢投資(香港)有限公司), Crest Sum Limited (總冠有限公司), Crest Sum (Hong Kong) Limited (總冠(香港)有限公司), Glorious Model Limited (榮程有限公司), Glorious Model (Hong Kong) Limited (榮程(香港)有限公司), Goldenform Investments Limited (崇堅投資有限公司), Greater Sail Limited (順帆有限公司), Greater Sail (Hong Kong) Limited (順帆(香港)有限公司), Hao Xi Holdings Limited (豪熙控股有限公司), Hao Xi Holdings (Hong Kong) Limited (豪熙控股(香港)有限公司), Heroic Lead Limited (傑領有限公司), Heroic Lead (Hong Kong) Limited (傑領(香港)有限公司), Huang Da Limited (煌達有限公司), Huang Da (Hong Kong) Limited (煌達(香港)有限公司), Kaisa Logistic Group Limited (佳兆業物流集團有限公司), Kaisa Technology Limited (佳兆業科技有限公司), Kaisa Ventures Limited (佳兆業創投有限公司), Kaisa Ventures (Hong Kong) Limited (佳兆業創投(香港)有限公司), Luxuriant Year Limited (茂年有限公司), Luxuriant Year (Hong Kong) Limited (茂年(香港)有限公司), Onfair Asia Pacific Limited (安信亞太有限公司), Peiyu Limited (沛裕有限公司), Peiyu (Hong Kong) Investments Limited (沛裕(香港)投資有限公司), Pointer Star Limited (尖星有限公司), Portwood Global Limited (港活環球有限公司), Portwood Global (Hong Kong) Limited (港活環球(香港)有限公司), Richedge Limited (博鋒有限公司), Richedge (Hong Kong) Limited (博鋒(香港)有限公司), Right Year Developments

Limited (偉年發展有限公司), Right Year Developments (Hong Kong) Limited (偉年發展(香港)有限公司), Soarhigh Developments Limited (展升發展有限公司), Soarhigh Developments (Hong Kong) Limited (展升發展(香港)有限公司), Splendid Maple Limited (燁楓有限公司), Splendid Maple (Hong Kong) Limited (燁楓(香港)有限公司), Superb Mega Limited (超旭有限公司), Super Winful Limited (超全有限公司), Tong Sheng Investments Limited (通升投資有限公司), Tong Sheng Investments (Hong Kong) Limited (通升投資(香港)有限公司), Yuan Yuan Investment Company Limited (遠源投資有限公司), Action Enrich Limited, Action Enrich (Hong Kong) Investment Limited, Sunny Harvest Investments Limited, Sunny Harvest Investments (Hong Kong) Limited, Sunny Sino Investments Limited, Sunny Sino Investments (Hong Kong) Limited, Camilla Catering Group (HK) Company Limited (嘉美軒飲食集團(香港)有限公司), Kaisa Group (International) Holdings Company Limited (佳兆業集團控股(國際)有限公司), Kaisa Medical Group Company Limited (佳兆業醫療集團有限公司), Kaisa Tea Group (Hong Kong) Company Limited (佳兆業茶葉集團(香港)有限公司), Sinoluck Investments Holdings (HK) Limited and Sinoluck Investments Holdings Limited (華運投資控股有限公司) (collectively, the “Other Non-Guarantor Subsidiaries” and, together with the PRC Non-Guarantor Subsidiaries, the “Existing Non-Guarantor Subsidiaries”). The initial Subsidiary Guarantors do not have significant operations or assets.

None of the existing or future Restricted Subsidiaries organized under the laws of the PRC or any Exempted Subsidiaries will provide a Subsidiary Guarantee or a JV Subsidiary Guarantee on the Original Issue Date or at any time in the future. Although the Indenture contains limitations on the amount of additional Indebtedness that the Restricted Subsidiaries organized under the laws of the PRC 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, the Non-Guarantor Subsidiary will pay the holders of its debt and its trade creditors before it will be able to distribute any of its assets to the Company. See “Risk Factors — Risks Relating to the Notes — We are a holding company and payments with respect to the Notes are structurally subordinated to liabilities, contingent liabilities and obligations of our subsidiaries.”

As of December 31, 2016,

- the Company and its consolidated subsidiaries had approximately RMB87,537 million (US\$12,608 million) of consolidated indebtedness outstanding, of which approximately RMB75,493 million (US\$10,873 million) was secured;
- the Company and the Subsidiary Guarantors had approximately RMB370 million (US\$53 million) of secured indebtedness outstanding; and
- the Non-Guarantor Subsidiaries had approximately RMB87,167 million (US\$12,555 million) of consolidated indebtedness and other liabilities outstanding owed to third parties.

In addition, as of December 31, 2016, the Non-Guarantor Subsidiaries had approximately RMB27,186 million (US\$3,916 million) of capital commitments and RMB21,843 million (US\$3,146 million) of financial guarantees.

The Company will cause each of its future Subsidiaries (other than Subsidiaries organized under the laws of the PRC or Exempted Subsidiaries), as soon as practicable after such Subsidiary becomes a Restricted Subsidiary or ceases to be an Exempted 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 sentence, the Company may elect to have any future Restricted Subsidiary (and its Restricted Subsidiaries) organized outside the PRC not provide a Subsidiary Guarantee or a JV Subsidiary Guarantee at the time such entity becomes a Restricted Subsidiary or ceases to be an Exempted Subsidiary (the “New Non-Guarantor Subsidiary” and, together with the Existing Non-Guarantor Subsidiaries, the “Non-Guarantor Subsidiaries”); *provided* that, after giving effect to the Consolidated Assets of such Restricted Subsidiary, the Consolidated Assets of all Restricted Subsidiaries organized outside the PRC (other than Exempted Subsidiaries) that are not Subsidiary Guarantors or JV Subsidiary Guarantors do not account for more than 20% of Total Assets. Each Subsidiary of the Company that guarantees the Notes after the Original Issue Date other than through a JV Subsidiary Guarantee is referred to as a “Future Subsidiary Guarantor” and, upon execution of the applicable supplemental indenture to the Indenture, will be a “Subsidiary Guarantor.”



In the case of a Restricted Subsidiary that is, or is proposed by the Company or any Restricted Subsidiary to be, established after the Original Issue Date or any entity (1) that is incorporated in any jurisdiction other than the PRC and (2) in respect of which the Company or any Restricted Subsidiary (x) in the case of a Restricted Subsidiary, is proposing to sell, whether through the sale of existing shares or the issuance of new shares, no less than 20% of the Capital Stock of such Restricted Subsidiary or (y) in the case of any other entity, is proposing to purchase the Capital Stock of such entity such that it becomes a Subsidiary and designate such entity as a Restricted Subsidiary, the Company may, concurrently with or as soon as practicable after the consummation of such sale or purchase, provide a JV Subsidiary Guarantee instead of a Subsidiary Guarantee for (a) such Restricted Subsidiary and (b) the Restricted Subsidiaries of such Restricted Subsidiary that are organized in any jurisdiction other than the PRC (other than Exempted Subsidiaries), if the following conditions are satisfied:

- as of the date of execution of the JV Subsidiary Guarantee, no document exists that is binding on the Company or any such Restricted Subsidiary that would have the effect of (1) prohibiting the Company or any such Restricted Subsidiary from providing such JV Subsidiary Guarantee or (2) requiring the Company or any Restricted Subsidiary 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 made from, an Independent Third Party at a consideration that is not less than the Fair Market Value of such Capital Stock;
- concurrently with providing the JV Subsidiary Guarantee, the Company shall or shall cause such JV Subsidiary Guarantor to deliver to the Trustee and, if applicable, the Common Security Trustee (as defined below):
  - (i) (A) a duly executed JV Subsidiary Guarantee of such JV Subsidiary Guarantor (the “JV Subsidiary Guarantee”) and each Restricted Subsidiary of such JV Subsidiary Guarantor that is not organized under the laws of the PRC (other than Exempted Subsidiaries) and (B) a duly executed supplemental indenture to the Indenture pursuant to which such JV Subsidiary Guarantor 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) a duly executed Security Document that pledges in favor of the Common Security Trustee on behalf of the Trustee and the holders of the Notes the Capital Stock of such JV Subsidiary Guarantor held by the Company or any Subsidiary Guarantor, but not the Capital Stock of the direct or indirect Subsidiaries of such JV Subsidiary Guarantor;
  - (iii) an Officers’ Certificate certifying a copy of the Board Resolution to the effect that such JV Subsidiary Guarantee has been approved by a majority of the disinterested members of the Board of Directors; and
  - (iv) a legal opinion by a law firm of recognized international standing confirming that under New York law such JV Subsidiary Guarantee is valid, binding and enforceable against the JV Subsidiary Guarantor providing the JV Subsidiary Guarantee (subject to customary qualifications and assumptions).

The Subsidiary Guarantee of each Subsidiary Guarantor:

- is a general obligation of such Subsidiary Guarantor;
- is effectively subordinated to secured obligations of such Subsidiary Guarantor, to the extent of the value of the assets serving as security therefor;
- 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* with all other unsecured, unsubordinated Indebtedness of such Subsidiary Guarantor (subject to any priority rights of such unsubordinated Indebtedness pursuant to applicable law); and
- effectively subordinated to all existing and future obligations of the Non-Guarantor Subsidiaries.



The JV Subsidiary Guarantee of any JV Subsidiary Guarantor:

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

In addition, subject to the limitations described in “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral,” the Subsidiary Guarantee of each Subsidiary Guarantor Pledgor:

- will be entitled to a security interest in the Collateral (subject to any Permitted Liens and the Intercreditor Agreement) pledged by such Subsidiary Guarantor Pledgor, as described below under the caption “— Security”; and
- will rank effectively senior in right of payment to the unsecured obligations of such Subsidiary Guarantor Pledgor with respect to the value of the Collateral securing such Subsidiary Guarantee (subject to any priority rights of such unsecured obligations pursuant to applicable law).

The JV Subsidiary Guarantee of any JV Subsidiary Guarantor will not be secured.

Under the Indenture, and any supplemental indenture to the Indenture, as applicable, each of the Subsidiary Guarantors and JV Subsidiary Guarantors 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 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 Company prior to exercising its rights under the Subsidiary Guarantees and the 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 restored, the rights of the Holders under the Subsidiary Guarantees and the 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 the JV Subsidiary Guarantees, as the case may be, are required to be made in U.S. dollars.

Under the Indenture and any supplemental indenture to the Indenture, as applicable, each Subsidiary Guarantee 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 fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. Each JV Subsidiary Guarantee will be limited to an amount which is the lower of (i) the 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 fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. If a Subsidiary Guarantee or JV Subsidiary Guarantee were to be rendered 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 Guarantee and, depending on the amount of such indebtedness, a Subsidiary Guarantor’s liability on its Subsidiary Guarantee or a JV Subsidiary Guarantor’s liability on its JV Subsidiary Guarantee could be reduced to zero.

The obligations of each Subsidiary Guarantor under its Subsidiary Guarantee and the enforceability of the Collateral granted in respect of the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors 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. See “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral — The Subsidiary Guarantees or JV Subsidiary Guarantees may be challenged under applicable insolvency or fraudulent transfer laws, which could impair the enforceability of the Subsidiary Guarantees or JV Subsidiary Guarantees.”

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

A Subsidiary Guarantee given by a Subsidiary Guarantor and a JV Subsidiary Guarantee given by a JV Subsidiary Guarantor 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 Company of a Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be, as an Unrestricted Subsidiary in compliance with the terms of the Indenture;
- upon the sale, disposition or merger 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 described 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 JV Subsidiary Guarantor, as the case may be, no longer being a Restricted Subsidiary, so long as (1) such Subsidiary Guarantor or JV Subsidiary Guarantor, as the case may be, is simultaneously released from its obligations in respect of any of the Company’s other Indebtedness or any Indebtedness of any other Restricted Subsidiary and (2) the proceeds from such sale, disposition or merger 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
- in the case of a Subsidiary Guarantor that becomes a New Non-Guarantor Subsidiary, in compliance with the terms of the Indenture.

In the case of a Subsidiary Guarantor with respect to which the Company or any Restricted Subsidiary is proposing to sell, whether through the sale of existing shares or the issuance of new shares, no less than 20% of the Capital Stock of such Subsidiary Guarantor, the Company may concurrently with or as soon as practicable after the consummation of such sale or issuance of Capital Stock, (a) instruct the Trustee to release the Subsidiary Guarantees provided by such Subsidiary Guarantor and each of its Restricted Subsidiaries organized outside the PRC, and upon such release such Subsidiary Guarantor and its Restricted Subsidiaries organized outside the PRC will become “New Non-Guarantor Subsidiaries” (such that each New Non-Guarantor Subsidiary will no longer guarantee the Notes) and (b) instruct the Common Security Trustee to (i) discharge the pledge of the Capital Stock granted by each such New Non-Guarantor Subsidiary and (ii) discharge the pledge of Capital Stock made by the Company or any Subsidiary Guarantor over the shares it owns in such New Non-Guarantor Subsidiary (in each case, without any requirement to seek the consent or approval of the Holders of the Notes), *provided* that after the release of such Subsidiary Guarantees, the Consolidated Assets of all Restricted Subsidiaries organized outside the PRC (other than Exempted Subsidiaries) that are not Subsidiary Guarantors or JV Subsidiary Guarantors (including the New Non-Guarantor Subsidiaries) do not account for more than 20% of Total Assets. A Subsidiary Guarantee of a Subsidiary Guarantor may only be released pursuant to this paragraph if as of the date of such proposed release, no document exists that is binding on the Company or any Restricted Subsidiary that would have the effect of (a) prohibiting the Company or any Restricted Subsidiary from releasing such Subsidiary Guarantee or (b) requiring the Company or such Subsidiary Guarantor to deliver or keep in place a guarantee of other Indebtedness of the Company by such Subsidiary Guarantor.

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

A Subsidiary Guarantee given by a Subsidiary Guarantor may be released following the sale or issuance by the Company or any Restricted Subsidiary of Capital Stock in (x) such Subsidiary Guarantor or (y) any other Subsidiary Guarantor that, directly or indirectly, owns a majority of the Capital Stock of such Subsidiary Guarantor, in each case where such sale or issuance, whether through the sale of existing shares or the issuance of new shares, is for no less than 20% of the issued Capital Stock of the relevant Subsidiary Guarantor, *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 Company or any such Restricted Subsidiary that would have the effect of (1) prohibiting the Company or any such Restricted Subsidiary from releasing such Subsidiary Guarantee or (2) requiring the Company or any such Restricted Subsidiary 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;
- such sale or issuance of Capital Stock is made to an Independent Third Party at a consideration that is not less than the Fair Market Value of such Capital Stock;
- concurrently with the release of such Subsidiary Guarantee, the Company shall or shall cause such JV Subsidiary Guarantor to deliver to the Trustee and, if applicable, the Common Security Trustee:
  - (i) (A) a duly executed JV Subsidiary Guarantee of such JV Subsidiary Guarantor and each Restricted Subsidiary of such JV Subsidiary Guarantor that is not organized under the laws of the PRC and (B) a duly executed supplemental indenture to the Indenture pursuant to which such JV Subsidiary Guarantor 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) a duly executed Security Document that pledges in favor of the Trustee the Capital Stock of such JV Subsidiary Guarantor held by the Company or any Subsidiary Guarantor, but not the Capital Stock of the direct or indirect Subsidiaries of such JV Subsidiary Guarantor;
  - (iii) an Officers' Certificate certifying a copy of a Board Resolution to the effect that such JV Subsidiary Guarantees have been approved by a majority of the disinterested members of the Board of Directors; and
  - (iv) a legal opinion by a law firm of recognized international standing confirming that under New York law such JV Subsidiary Guarantee is valid, binding and enforceable against the JV Subsidiary Guarantor providing such JV Subsidiary Guarantee (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 the "Limitation on Asset Sales" and "Limitation on Restricted Payments" covenants.

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

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 Company has delivered to the Trustee an Officers' Certificate stating that all requirements relating to such release have been complied with and that such release is authorized and permitted by the terms of the Indenture.

## Security

Each of the Company and the initial Subsidiary Guarantor Pledgors has pledged the Capital Stock of the initial Subsidiary Guarantors (the “Collateral”) owned by it (subject to Permitted Liens and the Intercreditor Agreement) in order to secure the obligations of the Company and such Subsidiary Guarantor Pledgor under the Existing HY Notes and the Mandatorily Exchangeable Bonds (or the Exchange Convertible Bonds, as the case may be). On the Original Issue Date, each of the Trustee and the trustees with respect to any other senior notes that the Company may issue on the Original Issue Date (collectively with the Trustee, the “New Senior Notes Trustees”) will execute a supplement to and become a party to the Intercreditor Agreement, at which time each New Senior Notes Trustee will become a Secured Party (as defined below) under the Intercreditor Agreement, and the Holders and the holders of such other senior notes issued on the Original Issue Date will be entitled to share in the benefit of the pledge of such Capital Stock on a *pari passu* basis with the holders of the Existing HY Notes, the holders of the Mandatorily Exchangeable Bonds (or the Exchange Convertible Bonds, as the case may be) and the holders of any other Permitted *Pari Passu* Secured Indebtedness. See “— Intercreditor Agreement.”

The initial Subsidiary Guarantor Pledgors are Chang Ye Investment Company Limited (昌業投資有限公司), Da Hua Investment Company Limited (大華投資有限公司), Dong Chang Investment Company Limited (東昌投資有限公司), Dong Sheng Investment Company Limited (東升投資有限公司), Guang Feng Investment Company Limited (廣豐投資有限公司), Heng Chang Investment Company Limited (恒昌投資有限公司), Jie Feng Investment Company Limited (捷豐投資有限公司), Jin Chang Investment Company Limited (進昌投資有限公司), Rong Hui Investment Company Limited (榮輝投資有限公司), Rui Jing Investment Company Limited (瑞景投資有限公司), Tai An Da Investment Company Limited (泰安達投資有限公司), Tai Chang Jian Investment Company Limited (泰昌建投資有限公司), Tai Chong Fa Investment Company Limited (泰昌發投資有限公司), Tai Chong Li Investment Company Limited (泰昌利投資有限公司), Tai He Sheng Investment Company Limited (泰和盛投資有限公司), Tai He Xiang Investment Company Limited (泰和詳投資有限公司), Xie Mao Investment Company Limited (協茂投資有限公司), Ye Chang Investment Company Limited (葉昌投資有限公司), Zheng Zhong Tian Investment Company Limited (正中天投資有限公司), Bakai Investments Limited (八凱投資有限公司), Yifa Trading Limited (益發貿易有限公司), Kaisa Holdings Limited, Central Broad Limited (中博有限公司), Guo Cheng Investments Limited (國承投資有限公司), Ri Xiang Investments Limited (日翔投資有限公司), Yin Jia Investments Limited (銀佳投資有限公司), Jet Smart Global Development Limited (捷利環球發展有限公司), Apex Walk Limited (威行有限公司), Vast Wave Limited (廣濤有限公司), Fulbright Financial Group (Enterprise) Limited (富昌金融集團(企業)有限公司) and Fulbright Financial Group (Development) Limited (富昌金融集團(發展)有限公司).

None of the Capital Stock of the Non-Guarantor Subsidiaries will be pledged on the Original Issue Date or at any time in the future (unless they cease to be Non-Guarantor Subsidiaries). In addition, none of the Capital Stock of any future Restricted Subsidiary that may be organized under the laws of the PRC will be pledged at any time in the future. If any JV Subsidiary Guarantor is established, the Capital Stock of such JV Subsidiary Guarantor owned by the Company or any Subsidiary Guarantor will be pledged to secure the obligations of the Company under the Notes and the Indenture, and of such Subsidiary Guarantor under its Subsidiary Guarantee, as the case may be, in the manner described above. However, none of the JV Subsidiary Guarantors will provide a Security Document pledging the Capital Stock of its direct or indirect Restricted Subsidiaries as security in favor of the Common Security Trustee.

The Company has also agreed, for the benefit of the holders of the Notes, to pledge, or cause each Subsidiary Guarantor to pledge, the Capital Stock owned directly by the Company or such Subsidiary Guarantor of any Person that becomes a Subsidiary Guarantor or JV Subsidiary Guarantor after the Original Issue Date, as soon as practicable after such Person becomes a Subsidiary Guarantor or JV Subsidiary Guarantor, to secure (subject to Permitted Liens) the obligations of the Company under the Notes and the Indenture, and of such Subsidiary Guarantor under its Subsidiary Guarantee, in the manner described above.

Each Subsidiary Guarantor that pledges Capital Stock of a Restricted Subsidiary after the Original Issue Date is referred to as a “Future Subsidiary Guarantor Pledgor” and, upon giving such pledge, will be a “Subsidiary Guarantor Pledgor.”



The value of the Collateral securing the Notes and the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors is unlikely to be sufficient to satisfy the Company's and the Subsidiary Guarantor Pledgors' obligations under the Notes and the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors, and the Collateral securing the Notes and such Subsidiary Guarantees may be reduced or diluted under certain circumstances, including the issuance of Additional Notes and other Permitted *Pari Passu* Secured Indebtedness and the disposition of assets comprising the Collateral, subject to the terms of the Indenture and the Intercreditor Agreement. See "Security — Release of Security" and "Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral — The value of the Collateral is unlikely to be sufficient to satisfy our obligations under the Notes and other *pari passu* secured indebtedness."

No appraisals of the Collateral have been prepared in connection with this offering of the Notes. There can be no assurance that the proceeds of any sale of the Collateral, in whole or in part, pursuant to the Indenture, the Intercreditor Agreement and the Security Documents following an Event of Default, would be sufficient to satisfy amounts due on the Notes or the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors. By its nature, some or all of the Collateral will be illiquid and may have no readily ascertainable market value. Accordingly, there can be no assurance that the Collateral would be sold in a timely manner or at all.

So long as no Payment Default has occurred and is continuing, and subject to the terms of the Security Documents and the Indenture, the Company and the Subsidiary Guarantor Pledgors, as the case may be, will be entitled to exercise any and all voting rights and to receive, retain and use any and all cash dividends, stock dividends, liquidating dividends, non-cash dividends, shares or stock resulting from stock splits or reclassifications, rights issues, warrants, options and other distributions (whether similar or dissimilar to the foregoing) in respect of Capital Stock constituting Collateral.

#### ***Permitted *Pari Passu* Secured Indebtedness***

On or after the Original Issue Date, the Company and each Subsidiary Guarantor Pledgor may create Liens on the Collateral *pari passu* with the Lien for the benefit of the Holders to secure Indebtedness of the Company (including Additional Notes) or any Subsidiary Guarantor and any *Pari Passu* Guarantee with respect to such Indebtedness (such Indebtedness of the Company or any Subsidiary Guarantor and any such *Pari Passu* Guarantee, "Permitted *Pari Passu* Secured Indebtedness"); *provided* that (i) the Company or such Subsidiary Guarantor was permitted to Incur such Indebtedness under the covenant under the caption "Limitation on Indebtedness and Preferred Stock," (ii) the holders (or their representative) of such Indebtedness (other than Additional Notes) become party to the Intercreditor Agreement referred to below, (iii) the agreement in respect of such Indebtedness contains provisions with respect to releases of Collateral and such *Pari Passu* Guarantee substantially similar to and no more restrictive on the Company and such Subsidiary Guarantor than the provisions of the Indenture and the Security Documents, and (iv) the Company and such Subsidiary Guarantor Pledgor deliver to the Trustee and/or the Common Security Trustee (defined below) an Opinion of Counsel and an Officers' Certificate, each with respect to corporate and collateral matters in connection with the Security Documents, stating that either (x) all necessary actions have been taken with respect to the recording, registering and filing of the Security Documents or (y) no such action is necessary to make such Lien effective. The Trustee and/or the Common Security Trustee, as the case may be, will be permitted and authorized, without the consent of any Holder, to enter into any amendments to the Security Documents or the Indenture and take any other action necessary to permit the creation and registration of Liens on the Collateral to secure Permitted *Pari Passu* Secured Indebtedness in accordance with this paragraph (including, without limitation, the appointment of any collateral agent under the Intercreditor Agreement referred to below to hold the Collateral on behalf of the Holders and the holders of Permitted *Pari Passu* Secured Indebtedness).

Except for certain Permitted Liens and the Permitted *Pari Passu* Secured Indebtedness, the Company and its Restricted Subsidiaries will not be permitted to issue or Incur any other Indebtedness secured by all or any portion of the Collateral without the consent of each Holder of the Notes then outstanding.

### ***Intercreditor Agreement***

The Company, the Subsidiary Guarantor Pledgors, Wilmington Trust, National Association, as the trustee (the “Existing HY Notes Trustee”) with respect to the Existing HY Notes, U.S. Bank National Association, the trustee with respect to the Mandatorily Exchangeable Bonds (the “MEB Trustee”), and Citicorp International Limited, as the shared security agent (the “Common Security Trustee”), have entered into an amended and restated intercreditor agreement dated July 21, 2016 (such intercreditor agreement, as so supplemented and amended from time to time, the “Intercreditor Agreement”), to which the Trustee will accede on the Original Issue Date. Upon the issuance of the Exchange Convertible Bonds pursuant to the terms of the Mandatorily Exchangeable Bonds, the trustee with respect to the Exchange Convertible Bonds (the “CB Trustee”) will accede to the Intercreditor Agreement. Pursuant to the Intercreditor Agreement, the Existing HY Notes Trustee, the MEB Trustee (or the CB Trustee, as the case may be) and the Trustee agree to (1) share the Collateral on an equal and ratable basis, (2) the conditions that are applicable to the release of or granting of any Lien on such Collateral, and (3) the conditions under which their rights with respect to such Collateral and the Indebtedness secured thereby will be enforced.

In connection with any future Permitted Pari Passu Secured Indebtedness (other than Additional Notes), the holders of such Permitted Pari Passu Secured Indebtedness (or their representative) will accede to the Intercreditor Agreement and become parties to it. The Common Security Trustee, the Trustee, the Existing HY Notes Trustee, the MEB Trustee (or the CB Trustee, as the case may be) and the holders of future Permitted Pari Passu Secured Indebtedness (or their representative) are collectively referred to as the “Secured Parties.”

By accepting the Notes, each Holder shall be deemed to have consented to the execution of the Intercreditor Agreement, any supplements, amendments or modifications thereto, and any future intercreditor agreement required and permitted under the Indenture.

### ***Enforcement of Security***

The lien securing the Notes and the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors will be granted to the Common Security Trustee. The Common Security Trustee, subject to the Intercreditor Agreement, will hold such Liens and security interests in the Collateral granted pursuant to the Security Documents with sole authority as directed by the Trustee (acting in accordance with written instruction of the Holders) and subject to receiving indemnity and/or security to its satisfaction to exercise remedies under the Security Documents. The Common Security Trustee has agreed to act as secured party on behalf of the Holders and the Trustee under the applicable Security Documents, to follow the instructions provided to it under the Indenture, the Security Documents and the Intercreditor Agreement and to carry out certain other duties.

The Indenture and/or the Security Documents principally provide that, at any time while the Notes are outstanding, the Common Security Trustee has the right to manage, perform and enforce the terms of the Security Documents relating to the Collateral and to exercise and enforce all privileges, rights and remedies thereunder according to its direction, including to take or retake control or possession of such Collateral and to hold, prepare for sale, process, lease, dispose of or liquidate such Collateral, including, without limitation, following the occurrence of an Event of Default under the Indenture.

The Intercreditor Agreement will provide, among other things, that any Secured Party may instruct the Common Security Trustee to enforce the Collateral and to deliver a notice of enforcement to the Company and the applicable Subsidiary Guarantor Pledgor (such instructions, the “Enforcement Instructions”). Upon receipt of an Enforcement Instruction from any Secured Party, the Common Security Trustee will provide a copy of such Enforcement Instruction and notice of enforcement to the Company and the other Secured Parties. If (a) the Common Security Trustee identifies a conflict (i) between Secured Parties’ interests in connection with any Enforcement Instruction or (ii) in the event that each of the Secured Parties issues Enforcement Instructions, between those Enforcement Instructions, and (b) the Common Security Trustee believes in its sole discretion that the interests of the Secured Parties would be in conflict upon the exercise of those Enforcement Instructions, or that compliance with an Enforcement Instruction would cause the Common Security Trustee to contravene another Enforcement Instruction, the Common Security Trustee shall notify each Secured Party in writing not more than five Business Days after it becomes aware of such conflict. In such circumstances, the Common Security Trustee is not obligated to take any action if it identifies such conflict.



The Intercreditor Agreement provides that any proceeds from any sale, collection, liquidation or enforcement of the Collateral shall be distributed by the Common Security Trustee in accordance with the terms of the Intercreditor Agreement and subject to the conditions of the relevant Security Document. Such proceeds shall be applied as follows:

*first*, to the Common Security Trustee for any unpaid fees, costs and expenses (including any indemnity expenses) reasonably incurred thereunder;

*second*, pro rata to each of the Trustee, the Existing HY Notes Trustee, the MEB Trustee (or the CB Trustee, as the case may be) and any agent, trustee or representative as a secured party for any series of Permitted *Pari Passu* Secured Indebtedness for any unpaid fees, costs and expenses (including any indemnity expenses) reasonably incurred under the applicable secured party document;

*third*, pro rata to each of the Trustee for the benefit of the Holders, the Existing HY Notes Trustee for the benefit of holders of the Existing HY Notes, the MEB Trustee (or the CB Trustee, as the case may be) for the benefit of holders of the Mandatorily Exchangeable Bonds (or the Exchange Convertible Bonds, as the case may be) and, to the extent applicable, to holders of Permitted *Pari Passu* Secured Indebtedness (or their representative for the benefit of such holders) in accordance with the terms of the applicable secured party document; and

*fourth*, any surplus remaining after such payments will be paid to the Company, the Subsidiary Guarantor Pledgors or to whomever may be lawfully entitled thereto.

The Trustee and/or the Common Security Trustee may decline to foreclose on the Collateral or exercise remedies available if it does not receive indemnification and/or security to its satisfaction. In addition, the Common Security Trustee's ability to foreclose on the Collateral may be subject to lack of perfection, the consent of third parties, prior Liens and practical problems associated with the realization of the Trustee's Liens on the Collateral. Neither the Trustee, the Common Security Trustee nor any of their respective officers, directors, employees, attorneys or agents will be responsible or liable for the existence, genuineness, value or protection of any Collateral securing the Notes, for the legality, enforceability, effectiveness or sufficiency of the Security Documents or the Intercreditor Agreement, for the creation, perfection, priority, sufficiency or protection of any of the Liens, or for any defect or deficiency as to any such matters, or for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens or Security Documents or any delay in doing so.

The Security Documents provide that the Company and the Subsidiary Guarantor Pledgors will indemnify the Common Security Trustee for all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind imposed against the Common Security Trustee arising out of the Security Documents except to the extent that any of the foregoing are finally judicially determined to have resulted from the gross negligence or willful misconduct of the Common Security Trustee.

This section, "— Enforcement of Security," shall be subject to any amendments to the Security Documents or the Indenture to permit the creation of Liens on the Collateral to secure Permitted *Pari Passu* Secured Indebtedness in accordance with "— Permitted *Pari Passu* Secured Indebtedness" above.

### ***Release of Security***

Subject to the provisions of the Indenture, the Security Documents and Intercreditor Agreement, the security created in respect of the Collateral granted under the Security Documents may be released in relation to the Notes and the Subsidiary Guarantees in certain circumstances, including:

- upon repayment in full of the Notes;
- upon defeasance and discharge of the Notes as provided below under the caption "— Defeasance — Defeasance and Discharge";
- upon certain dispositions of the Collateral in compliance with the covenants under the captions "— Certain Covenants — Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries" or "— Certain Covenants — Limitation on Asset Sales" or in accordance with the provision under the caption "— Consolidation, Merger and Sale of Assets";

- with respect to security granted by a Subsidiary Guarantor Pledgor, upon the release of the Subsidiary Guarantee of such Subsidiary Guarantor Pledgor in accordance with the terms of the Indenture;
- in whole or in part, with the requisite consent of the Holders in accordance with the provisions described under “— Amendments and Waivers”;
- with respect to a Subsidiary Guarantor that becomes a New Non-Guarantor Subsidiary, the release of the pledge of Capital Stock made by the Company or any Subsidiary Guarantor over the shares it owns in such New Non-Guarantor Subsidiary;
- in connection with and upon execution of a JV Subsidiary Guarantee to replace a Subsidiary Guarantee with respect to all pledges of Capital Stock granted by such JV Subsidiary Guarantor or its Subsidiaries in its direct and indirect Subsidiaries, in accordance with the terms of the Indenture; and
- with respect to any pledge over any Capital Stock of any Subsidiary Guarantor or JV Subsidiary Guarantor, upon the designation by the Company of such Subsidiary Guarantor or JV Subsidiary Guarantor as an Unrestricted Subsidiary in accordance with the terms of the Indenture.

### **Further Issues**

Subject to the covenants described below, the Company may, from time to time, without notice to or the consent of the Holders, create and issue Additional Notes having the same terms and conditions as the Notes (including the benefit of the Subsidiary Guarantees and JV Subsidiary Guarantees) 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) (a “Further Issue”) so that such Additional Notes may be consolidated and form a single class with the previously outstanding Notes and vote together as one class on all matters with respect to the Notes; *provided* that the issuance of any such Additional Notes shall then be permitted under the “— Certain Covenants — Limitation on Indebtedness and Preferred Stock” covenant described below.

### **Optional Redemption**

At any time prior to June 30, 2020, the Company may at its option redeem the Notes, in whole but not in part, at a redemption price equal to 100% of the principal amount of the Notes plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, the redemption date. Neither the Trustee nor any of the Agents shall be responsible for verifying or calculating the Applicable Premium.

In addition, at any time prior to June 30, 2020, the Company may redeem up to 35% of the aggregate principal amount of the Notes with the Net Cash Proceeds of one or more sales of Common Stock of the Company in an Equity Offering at a redemption price of 107.25% of the principal amount of the Notes, plus accrued and unpaid interest, if any, to the redemption date; *provided* that at least 65% of the aggregate principal amount of the Notes 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.

The Company will give not less than 30 days' nor more than 60 days' notice of any redemption. If less than all of the Notes are to be redeemed, the Notes will be selected for redemption as follows:

- if the Notes are listed on any securities exchange and/or being held through the clearing systems, in compliance with the requirements of the principal securities exchange on which the Notes are then listed, or the requirements of the clearing systems, as applicable; or
- if the Notes are not listed on any securities exchange and/or held through the clearing systems, on a pro rata basis or by lot or such other method as the Trustee may determine in its sole and absolute discretion, unless otherwise required by law.

However, no Note of US\$200,000 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. With respect to any Certificated Note, 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 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 Company 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.

The Company 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 Company, it is important to note that if the Company is unable to repay (or cause to be repaid) all of the Indebtedness, if any, that would prohibit 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 failure by the Company 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 will also constitute an event of default under certain other debt instruments of the Company and its Subsidiaries. Future debt of the Company may also (i) prohibit the Company from purchasing Notes in the event of a Change of Control, (ii) provide that a Change of Control is a default or (iii) require repurchase of such debt upon a Change of Control. Moreover, the exercise by the Holders of their right to require the Company 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 Company. The ability of the Company to pay cash to the Holders following the occurrence of a Change of Control may be limited by the Company's 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 — We may not be able to repurchase or repay the Notes upon certain change of control events."

The definition of Change of Control includes a phrase "all or substantially all" as used with respect to the assets of the Company. No precise definition of the phrase has been established under applicable law, and the phrase will likely be interpreted under applicable law of the relevant jurisdictions based on particular facts and circumstances. Accordingly, there may be a degree of uncertainty as to the ability of a Holder of Notes to require the Company to repurchase such Holder's Notes as a result of a sale of less than all the assets of the Company to another person or group.

Notwithstanding the above, the Company 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, at the same times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

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

Neither the Trustee nor the Agents shall be required to monitor or to take any steps to ascertain whether a Change of Control, or any event which could lead to the occurrence of a Change of Control, has occurred or may occur.

### **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 Subsidiary Guarantees or the JV Subsidiary Guarantees 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 Company, a Surviving Person (as defined under the caption “— Consolidation, Merger and Sale of Assets”) or an applicable Subsidiary Guarantor or an applicable JV Subsidiary Guarantor is organized or resident for tax purposes or any jurisdiction from or through which payment is made (or any political subdivision or taxing authority thereof or therein) (each, as applicable, a “Relevant Jurisdiction”), unless such withholding or deduction is required by law or by regulation or governmental policy having the force of law. In the event that any such withholding or deduction is so required, the Company, a Surviving Person, the applicable Subsidiary Guarantor or the applicable JV Subsidiary Guarantor, as the case may be, 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:

- (a) for or on account of:
  - (i) any tax, duty, assessment or other governmental charge that would not have been imposed but for:
    - (A) the existence of any present or former connection between the Holder or beneficial owner of such Note, Subsidiary Guarantee or Security Document, as the case may be, and the Relevant Jurisdiction other than merely holding such Note or the receipt of payments thereunder or under a Subsidiary Guarantee or JV Subsidiary Guarantee, as the case may be, 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;
    - (B) 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;
    - (C) the failure of the Holder or beneficial owner to comply with a timely request of the Company, a Surviving Person or any Subsidiary Guarantor or JV Subsidiary Guarantor addressed to the Holder 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 would have reduced or eliminated any withholding or deduction as to which Additional Amounts would have otherwise been payable to such Holder or beneficial owner; or
    - (D) 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;
  - (ii) any estate, inheritance, gift, sale, transfer, personal property or similar tax, assessment or other governmental charge;

- (iii) any tax, assessment, withholding or deduction required by sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended (“FATCA”), any current or future Treasury Regulations or rulings promulgated thereunder, any law, regulation or other official guidance enacted in any jurisdiction implementing FATCA, any intergovernmental agreement between the United States and any other jurisdiction pursuant to the implementation of FATCA, or any other agreement pursuant to the implementation of FATCA; or
  - (iv) any combination of taxes, duties, assessments or other governmental charges referred to in the preceding clauses (i), (ii) and (iii); or
- (b) 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 for tax purposes in the income under the laws of a Relevant Jurisdiction 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.

As a result of these provisions, there are circumstances in which taxes could be withheld or deducted but Additional Amounts would not be payable to some or all beneficial owners of Notes.

Whenever there is mentioned in any context the payment of principal, premium or interest in respect of any Note, 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.

#### **Redemption for Tax Reasons**

The Notes may be redeemed, at the option of the Company or a Surviving Person (as defined under the caption “— Consolidation, Merger and Sale of Assets”), as a whole but not in part, upon giving not less than 30 days’ nor more than 60 days’ notice to the Holders (which notice shall be irrevocable), at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest (including any Additional Amounts), if any, to the date fixed by the Company 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 on or after (i) with respect to the Company or any initial Subsidiary Guarantor, the Original Issue Date or (ii) with respect to any Future Subsidiary Guarantor, JV Subsidiary Guarantor or Surviving Person, the date such Future Subsidiary Guarantor, JV Subsidiary Guarantor or Surviving Person becomes a Subsidiary Guarantor, JV Subsidiary Guarantor or Surviving Person, as the case may be, with respect to any payment due or to become due under the Notes or the Indenture, the Company, such Subsidiary Guarantor, JV Subsidiary Guarantor or such Surviving Person, 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 Company, such Subsidiary Guarantor, JV Subsidiary Guarantor or such Surviving Person, 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 Company, such Subsidiary Guarantor, such JV Subsidiary Guarantor or such Surviving Person, 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 giving of any notice of redemption of the Notes pursuant to the foregoing, the Company, a Subsidiary Guarantor, a JV Subsidiary Guarantor or a Surviving Person, as the case may be, will deliver to the Trustee at least 30 days but not more than 60 days before the Tax Redemption Date:

- (1) an Officers' Certificate stating that such change or amendment referred to in the prior paragraph has occurred, describing the facts related thereto and stating that such requirement cannot be avoided by the Company, such Surviving Person, such Subsidiary Guarantor or such JV Subsidiary Guarantor, as the case may be, by 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 or amendment referred to in the prior paragraph.

The Trustee shall be entitled to and shall accept such certificate and opinion as sufficient evidence of the satisfaction of the conditions precedent described above, in which event it shall be conclusive and binding on the Holders.

Any Notes that are redeemed will be cancelled.

### **Certain Covenants**

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

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

- (a) The Company will not, and will not permit any Restricted Subsidiary to, Incur any Indebtedness (including Acquired Indebtedness) and the Company will not permit any Restricted Subsidiary to issue any Preferred Stock; *provided* that the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor may Incur Indebtedness (including Acquired Indebtedness) and any Non-Guarantor 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 2.25 to 1.0. Notwithstanding the foregoing, the Company will not permit any Restricted Subsidiary to Incur any Disqualified Stock (other than Disqualified Stock held by the Company or a Subsidiary Guarantor, so long as it is so held).
- (b) Notwithstanding the foregoing, the Company and, to the extent provided below, any Restricted Subsidiary, may Incur each and all of the following ("Permitted Indebtedness"):
  - (1) Indebtedness under the Notes (excluding any Additional Notes), each Subsidiary Guarantee and each JV Subsidiary Guarantee and any Exchange Convertible Bonds issued pursuant to the terms of the Mandatorily Exchangeable Bonds;
  - (2) any Pari Passu Guarantees;
  - (3) Indebtedness of the Company or any Restricted Subsidiary outstanding on the Original Issue Date excluding Indebtedness permitted under clause (b)(4) of this covenant; *provided* that such Indebtedness of Non-Guarantor Subsidiaries shall be included in the calculation of Permitted Subsidiary Indebtedness;
  - (4) Indebtedness of the Company or any Restricted Subsidiary owed to the Company or any Restricted Subsidiary; *provided* that (x) any event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of such Indebtedness (other than to the Company or any Restricted Subsidiary) shall be deemed, in each case, to constitute an Incurrence of such Indebtedness not permitted by this clause (b)(4), and (y) if the Company is the obligor on such Indebtedness, such Indebtedness must be expressly subordinated in right of payment to the Notes, and if a Subsidiary Guarantor or a JV Subsidiary Guarantor is the obligor on such Indebtedness and the Company or any other Subsidiary Guarantor or JV Subsidiary Guarantor is not the obligee, such Indebtedness must be expressly subordinated in right of payment to the Subsidiary Guarantee of such Subsidiary Guarantor or the JV Subsidiary Guarantee of such JV Subsidiary Guarantor, as the case may be;

- (5) Indebtedness (“Permitted Refinancing Indebtedness”) issued in exchange for, or the net proceeds of which are used to refinance or refund, then outstanding Indebtedness Incurred under clause (a) or clause (b)(1), (b)(2), (b)(3), (b)(7), (b)(16), (b)(17), (b)(19), (b)(20), (b)(21), (b)(22), (b)(23), (b)(24) or (b)(25) of this covenant and any refinancings thereof in an amount not to exceed the amount so refinanced or refunded (plus premiums, accrued interest, fees and expenses); *provided* that (A) Indebtedness the proceeds of which are used to refinance or refund the Notes or Indebtedness that is *pari passu* with, or subordinated in right of payment to, the Notes, a Subsidiary Guarantee or a JV Subsidiary Guarantee shall only be permitted under this clause (b)(5) if (x) in case the Notes are refinanced in part or the Indebtedness to be refinanced is *pari passu* with the Notes, a Subsidiary Guarantee or a JV Subsidiary Guarantee, 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 subordinate in right of payment to, the remaining Notes, such Subsidiary Guarantee or such JV Subsidiary Guarantee or (y) in case the Indebtedness to be refinanced is subordinated in right of payment to the Notes, a Subsidiary Guarantee or a JV Subsidiary Guarantee, 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 subordinate in right of payment to the Notes, such Subsidiary Guarantee or such JV Subsidiary Guarantee at least to the extent that the Indebtedness to be refinanced is subordinated to the Notes, such Subsidiary Guarantee or such JV Subsidiary Guarantee, (B) 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 or refunded, and the Average Life of such new Indebtedness is at least equal to the remaining Average Life of the Indebtedness to be refinanced or refunded and (C) in no event may Indebtedness of the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor be refinanced pursuant to this clause (b)(5) by means of any Indebtedness of any Restricted Subsidiary that is not a Subsidiary Guarantor or a JV Subsidiary Guarantor;
- (6) Indebtedness Incurred by the Company or any Restricted Subsidiary pursuant to Hedging Obligations entered into in the ordinary course of business and designed solely to protect the Company or any Restricted Subsidiary from fluctuations in interest rates, currencies or the price of commodities and not for speculation;
- (7) Indebtedness Incurred by the Company or any Restricted Subsidiary for the purpose of financing (i) all or any part of the purchase price of real or personal property (including the lease purchase price of land use rights) or equipment to be used in the ordinary course of business by the Company or a Restricted Subsidiary in the Permitted Business, including any such purchase through the acquisition of Capital Stock of any Person that owns such real or personal property or equipment which will, upon such acquisition, become a Restricted Subsidiary (other than as provided for in the second proviso of this clause (b)(7)) or (ii) all or any part of the purchase price or the cost of development, construction or improvement of real or personal property (including the lease purchase price of land use rights) or equipment to be used in the ordinary course of business by the Company or such Restricted Subsidiary in the Permitted Business; *provided, however*, that in each case (A) the aggregate principal amount of such Indebtedness shall not exceed such purchase price or cost, (B) such Indebtedness shall be Incurred no later than 180 days after the acquisition of such property or completion of such development, construction or improvement, and (C) on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness permitted by this clause (b)(7) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(16), (b)(19), (b)(20), (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under this clause (b)(7) to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets; *provided further* that, without prejudice to the first proviso in this clause

- (b)(7), the Company and any Restricted Subsidiary may Incur Indebtedness for the purpose of financing all or any part of the purchase price of real or personal property (including the lease purchase price of land use rights) or equipment to be used in the ordinary course of business by the Company or a Restricted Subsidiary in the Permitted Business through the acquisition of Capital Stock of any Person which will not, upon such acquisition, become a Restricted Subsidiary if on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all Indebtedness Incurred in reliance on this second proviso of this clause (b)(7) (together with refinancings of all such Indebtedness) does not exceed an amount equal to 10.0% of Total Assets;
- (8) Indebtedness Incurred by the Company 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 other than for an obligation for borrowed money);
  - (9) Indebtedness Incurred by the Company 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 the 30 days following receipt by the Company or such Restricted Subsidiary, as applicable, of a demand for reimbursement;
  - (10) 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 Company 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 shall at no time exceed the gross proceeds actually received by the Company or any Restricted Subsidiary from the disposition of such business, assets or Restricted Subsidiary;
  - (11) 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, however*, that such Indebtedness is extinguished within five Business Days of Incurrence;
  - (12) (i) guarantees by the Company or any Subsidiary Guarantor of Indebtedness of the Company or any Restricted Subsidiary that was permitted to be Incurred by another provision of this covenant, (ii) guarantees by any Restricted Subsidiary of Indebtedness of another Restricted Subsidiary that was permitted to be Incurred under clause (b)(7) above or clauses (b)(14) and (b)(16) below; or (iii) guarantees by any JV Subsidiary Guarantor of Indebtedness of any other JV Subsidiary Guarantor that is a direct or indirect Subsidiary or parent of such JV Subsidiary Guarantor, which Indebtedness was permitted to be Incurred by another provision of this covenant;
  - (13) Pre-Registration Mortgage Guarantees by the Company or any Restricted Subsidiary;
  - (14) Indebtedness of the Company or any Restricted Subsidiary with a maturity of one year or less used by the Company or any Restricted Subsidiary for working capital; *provided* that the aggregate principal amount of Indebtedness permitted by this clause (b)(14) at any time outstanding does not exceed US\$35.0 million (or the Dollar Equivalent thereof);
  - (15) Indebtedness of the Company or any Restricted Subsidiary constituting an obligation to pay the deferred purchase price in the form of installment payments pursuant to a Staged Acquisition Agreement;

- (16) Preferred Stock or Disqualified Stock issued by a Restricted Subsidiary or Indebtedness Incurred by the Company or any Restricted Subsidiary constituting a guarantee by, or grant of a Lien on assets of, the Company or such Restricted Subsidiary in favor of any Insurance Company Investor in respect of the obligation of any Subsidiary of such Restricted Subsidiary to pay a guaranteed or preferred dividend or return on any shares of Capital Stock of such Subsidiary held by such Insurance Company Investor (including any shares of Preferred Stock or Disqualified Stock which may be issued by such Subsidiary pursuant to this clause (b)(16) to such Insurance Company Investor); *provided* that on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness permitted by this clause (b)(16) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clause (b)(7) above and clauses (b)(19), (b)(20), (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (17) Indebtedness of the Company or any Restricted Subsidiary in an aggregate principal amount outstanding at any time (together with refinancings thereof) not to exceed US\$25.0 million (or the Dollar Equivalent thereof);
- (18) Indebtedness constituting a Subordinated Shareholder Loan;
- (19) Indebtedness Incurred by any Restricted Subsidiary which is secured by Investment Properties, and guarantees thereof by the Company or any such Restricted Subsidiary; *provided* that on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness permitted by this clause (b)(19) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7) and (b)(16) above and clauses (b)(20), (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (20) Bank Deposit Secured Indebtedness Incurred by the Company or any Restricted Subsidiary, *provided* that on the date of Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of such Indebtedness permitted by this clause (b)(20) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16) and (b)(19) above and clauses (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (21) Indebtedness Incurred by the Company or any Restricted Subsidiary constituting a guarantee of Indebtedness of any Person (other than the Company or a Restricted Subsidiary) by the Company or such Restricted Subsidiary, if the aggregate of all Indebtedness Incurred under this clause (b)(21) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16), (b)(19) and (b)(20) above and clauses (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;

- (22) Acquired Indebtedness of any Restricted Subsidiary Incurred and outstanding on the date on which such Person becomes 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 such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness Incurred pursuant to this clause (b)(22) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16), (b)(19), (b)(20) and (b)(21) above and clause (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (23) Indebtedness represented by Existing HY Notes issued in respect the payment of Existing HY Notes PIK Interest in accordance with the Existing HY Notes Indentures by the Company and any related Subsidiary Guarantees and JV Subsidiary Guarantees;
- (24) Indebtedness represented by any Mandatorily Exchangeable Bond PIK Interest or Exchange Convertible Bond PIK Interest capitalized pursuant to the terms of the Mandatorily Exchangeable Bonds or the Exchange Convertible Bonds, as the case may be; and
- (25) Indebtedness Incurred by the Company or any Restricted Subsidiary under Credit Facilities; *provided* that on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness Incurred pursuant to this clause (b)(25) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16), (b)(19), (b)(20), (b)(21) and (b)(22) above and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets.
- (c) 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 sentence of clause (a) of this covenant, the Company, 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.
- (d) Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that may be Incurred or Preferred Stock that may be issued 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.



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

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

- (a) declare or pay any dividend or make any distribution on or with respect to the Company’s or any Restricted Subsidiary’s Capital Stock (other than dividends or distributions payable or paid in shares of the Company’s, or payable or paid solely in shares of any Restricted Subsidiary’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 Company or any Restricted Subsidiary;
- (b) 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 Company, any Restricted Subsidiary or any direct or indirect parent of the Company held by any Persons other than the Company or any Restricted Subsidiary (excluding (i) the purchase of any shares of Capital Stock of any Person pursuant to a Staged Acquisition Agreement and (ii) the purchase of any shares of Capital Stock of any Restricted Subsidiary held by any Insurance Company Investor);
- (c) 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, any Subsidiary Guarantee or any JV Subsidiary Guarantee (excluding any intercompany Indebtedness between or among the Company and any Restricted Subsidiary); or
- (d) 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 Company could not Incur at least US\$1.00 of Indebtedness under the proviso in the first sentence of clause (a) of the covenant described 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 Company and its Restricted Subsidiaries after the Measurement Date, shall exceed the sum (without duplication) of:
  - (i) 50% of the aggregate amount of the Consolidated Net Income of the Company (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 semi-annual fiscal period in which the Measurement Date occurred and ending on the last day of the Company’s most recently ended fiscal quarter period for which consolidated financial statements of the Company (which the Company 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 Company 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 Restricted Subsidiary of the Company, including any such Net Cash Proceeds received upon (x) the conversion of any Indebtedness (other than Subordinated Indebtedness) of the Company into Capital Stock (other than Disqualified Stock) of the Company, or (y) the exercise by a Person who is not a Restricted Subsidiary of the Company of any options, warrants or other rights to acquire Capital Stock of the Company (other than Disqualified Stock), in each case after deducting 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 Company; plus

- (iii) the amount by which Indebtedness of the Company or any Restricted Subsidiary is reduced on the Company's consolidated balance sheet upon the conversion or exchange (other than by a Restricted Subsidiary of the Company) subsequent to the Measurement Date of any Indebtedness of the Company or any Restricted Subsidiary convertible or exchangeable into Capital Stock (other than Disqualified Stock) of the Company (less the amount of any cash, or the Fair Market Value of any other property, distributed by the Company upon such conversion or exchange); 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 (w) payments of interest on Indebtedness, dividends or repayments of loans or advances by such Person, in each case, to the Company 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), (x) the unconditional release of a guarantee provided by the Company or any Restricted Subsidiary after the Measurement Date of an obligation of another Person, (y) the net cash proceeds from the sale of any such Investment (except to the extent such proceeds are included in the calculation of Consolidated Net Income) or (z) from redesignations of Unrestricted Subsidiaries as Restricted Subsidiaries, not to exceed, in each case, the amount of Investments made by the Company or a Restricted Subsidiary after the Measurement Date in any such Person; plus
- (v) US\$25.0 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 Company, any Subsidiary Guarantor or any 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 Company, any Subsidiary Guarantor or any 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 sale (other than to a Subsidiary of the Company) of, shares of Capital Stock (other than Disqualified Stock) of the Company, 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 Company, any Subsidiary Guarantor or any 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 Company) of, shares of Capital Stock (other than Disqualified Stock) of the Company, 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;
- (5) the payment of any dividends or distributions declared, paid or made by a Restricted Subsidiary that is not, directly or indirectly, Wholly Owned by the Company payable on a pro rata basis or on a basis more favorable to the Company to all holders of any class of Capital Stock of such Restricted Subsidiary;

- (6) the purchase by the Company or a Restricted Subsidiary of Capital Stock of any Restricted Subsidiary that is not Wholly Owned, directly or indirectly, by the Company from an Independent Third Party pursuant to an agreement entered into between/among the Company or any Restricted Subsidiary and such Independent Third Party solely for the purpose of acquiring real property or land use rights, *provided* that (x) such purchase occurs within 12 months after such Restricted Subsidiary acquires the real property or land use rights it was formed to acquire and (y) the Company 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;
- (7) (A) the repurchase, redemption or other acquisition or retirement for value of the Capital Stock of the Company or any Restricted Subsidiary (directly or indirectly, including through any trustee, agent or nominee) in connection with an employee benefit plan, and any corresponding Investment by the Company or any Restricted Subsidiary in any trust or similar arrangements to the extent of such repurchased, redeemed, acquired or retired Capital Stock, or (B) the repurchase, redemption or other acquisition or retirement for value of any Capital Stock of the Company or any Restricted Subsidiary held by an employee benefit plan of the Company or any Restricted Subsidiary, any current or former officer, director, consultant, or employee of the Company or any Restricted Subsidiary (or permitted transferees, estates or heirs of any of the foregoing); *provided* that the aggregate consideration paid for all such repurchased, redeemed, acquired or retired Capital Stock shall not exceed US\$25.0 million (or the Dollar Equivalent thereof using the Original Issue Date as the date of determination);
- (8) cash payments in lieu of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Company, *provided*, however, 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 Company);
- (9) repurchases of Capital Stock deemed to occur upon the surrender by the holder of a stock option of shares of Capital Stock otherwise issuable upon exercise of such stock options as payment of a portion of the exercise price thereof;
- (10) dividends paid to any Insurance Company Investor in respect of any Preferred Stock or Disqualified Stock issued by or any Indebtedness Incurred by any Restricted Subsidiary under paragraph (b)(16) of the “— Limitation on Indebtedness and Preferred Stock” covenant;
- (11) any payments made pursuant to the CVR Agreement;
- (12) the payment of any dividend or distribution payable or paid solely in Capital Stock (other than Disqualified Stock or Preferred Stock) of any Unrestricted Subsidiary or in options, warrants or other rights to acquire shares of such Capital Stock;
- (13) the declaration and payment of dividends on the Common Stock of the Company by the Company in an aggregate amount not to exceed 20.0% of profit for the year on the Company's consolidated financial statements in any fiscal year ending after the Original Issue Date; or
- (14) the distributions or payments of Securitization Fees in connection with Receivable Financings;

*provided* that, in the case of clause (2), (3), (4) or (13) above, 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 clauses (1) and (13) of the preceding paragraph made 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 and any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries as Unrestricted Subsidiaries (to the extent such Investment does not constitute a Permitted Investment pursuant to clause (18) of the definition thereof)) 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 Company 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\$10.0 million (or the Dollar Equivalent thereof).

Not later than the date of making any Restricted Payment (other than any Restricted Payment set forth in clauses (5) through (14) above and any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries as Unrestricted Subsidiaries (to the extent such Investment does not constitute a Permitted Investment pursuant to clause (18) of the definition thereof)) in excess of US\$10.0 million (or the Dollar Equivalent thereof), the Company 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.

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

- (a) Except as provided below, the Company 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:
- (1) pay dividends or make any other distributions on any Capital Stock of such Restricted Subsidiary owned by the Company or any other Restricted Subsidiary;
  - (2) pay any Indebtedness or other obligation owed to the Company or any other Restricted Subsidiary;
  - (3) make loans or advances to the Company or any other Restricted Subsidiary; or
  - (4) sell, lease or transfer any of its property or assets to the Company or any other Restricted Subsidiary;
- provided* that it being understood that (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 Company or any Restricted Subsidiary to other Indebtedness Incurred by the Company or any Restricted Subsidiary; and (iii) the provisions contained in documentation governing Indebtedness requiring transactions between or among the Company 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, in each case, shall not be deemed to constitute such an encumbrance or restriction.
- (b) The provisions of paragraph (a) do not apply to any encumbrances or restrictions:
- (1) existing in agreements as in effect on the Original Issue Date, or in the Exchange Convertible Bonds issued pursuant to the terms of the Mandatorily Exchangeable Bonds, the Notes, the Subsidiary Guarantees, the JV Subsidiary Guarantees, the Indenture, the Security Documents, or under any Permitted Pari Passu Secured Indebtedness of the Company or any Subsidiary Guarantor Pledgor or Pari Passu Guarantee, or in any extensions, refinancings, renewals or replacements of any of the foregoing agreements; *provided* that the encumbrances and restrictions in any such extension, refinancing, renewal or replacement, taken as a whole, are no more restrictive in any material respect than those encumbrances or restrictions that are then in effect and that are being extended, refinanced, renewed or replaced;
  - (2) existing under or by reason of applicable law, rule, regulation or order;
  - (3) with respect to any Person or the property or assets of such Person acquired by the Company or any Restricted Subsidiary, existing 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, or in any extensions, refinancings, renewals or replacements thereof; *provided* that the encumbrances and restrictions in any such extension, 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, refinanced, renewed or replaced;
- (4) that otherwise would be prohibited by the provision described in clause (a)(4) of this covenant if they arise, or are agreed to in the ordinary course of business, and that (x) restrict in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease or license, (y) exist by virtue of any Lien on, or agreement to transfer, option or similar right with respect to any property or assets of the Company or any Restricted Subsidiary not otherwise prohibited by the Indenture or (z) do not relate to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Company or any Restricted Subsidiary in any manner material to the Company or any Restricted Subsidiary;
  - (5) with respect to a Restricted Subsidiary and imposed pursuant to an agreement that has been entered into for the sale 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” and “— Limitation on Asset Sales” covenants;
  - (6) with respect to any Restricted Subsidiary and imposed pursuant to an agreement that has been entered into for the Incurrence of Indebtedness or issuance of Preferred Stock of the type described under clause (b)(7), (b)(14), (b)(16), (b)(19), (b)(20), (b)(21), (b)(22), (b)(23), (b)(24) and (b)(25) of the “— Limitation on Indebtedness and Preferred Stock” covenant if, as determined by the Board of Directors, such encumbrances or restrictions (x) are customary for such types of agreements and (y) would not, at the time agreed to, be expected to materially and adversely affect the ability of the Company to make any required payment on the Notes, or in any extensions, refinancings, renewals or replacements of any of the foregoing agreements; *provided* that the encumbrances and restrictions in any such extension, 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, refinanced, renewed or replaced;
  - (7) existing in customary provisions in 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 that is a party to such joint venture and if (as determined in good faith by the Board of Directors) (i) the encumbrances or restrictions are customary for a 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 Company to make the required payments on the Notes or (y) any Subsidiary Guarantor or JV Subsidiary Guarantor to make required payments under its Subsidiary Guarantee or JV Subsidiary Guarantee; or
  - (8) 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 Subsidiary or its subsidiaries or the property or assets of such Subsidiary or its subsidiaries, or in any extensions, refinancing, renewals or replacements thereof; *provided* that the encumbrances and restrictions in any such extension, 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, refinanced, renewed or replaced.



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

The Company 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 Company or a Restricted Subsidiary;
- (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 Company or a Restricted Subsidiary;
- (3) for the issuance or sale of the 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 if the Company complies with the "— Limitation on Asset Sales" covenant; *provided* that, paragraph (c) of clause (16) of the definition of "Permitted Investments" shall not apply if such Restricted Payment would otherwise have been permitted under clause (16) of such definition;
- (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 Company or such Restricted Subsidiary applies the Net Cash Proceeds of such issuance or sale in accordance with the "— Limitation on Asset Sales" covenant.

Notwithstanding the foregoing, a Restricted Subsidiary may issue Common Stock to its shareholders on a pro rata basis or on a basis more favorable to the Company and its Restricted Subsidiaries.

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

The Company will not permit any Restricted Subsidiary which is not a Subsidiary Guarantor or a JV Subsidiary Guarantor, directly or indirectly, to guarantee any Indebtedness ("Guaranteed Indebtedness") of the Company or any Subsidiary Guarantor or JV Subsidiary Guarantor, unless (a) (1) such Restricted Subsidiary simultaneously executes and delivers a supplemental indenture to the Indenture providing for an unsubordinated Subsidiary Guarantee (in the case of a Subsidiary Guarantor) or JV Subsidiary Guarantee (in the case of a JV Subsidiary Guarantor) of payment of the Notes by such Restricted Subsidiary and (2) 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 Company or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Subsidiary Guarantee or JV Subsidiary Guarantee until the Notes have been paid in full, or (b) such guarantee is permitted by clause (b)(3), (b)(4), (b)(12)(ii) (other than, in the case of clause (b)(12)(ii), (x) a guarantee by a PRC Restricted Subsidiary of the Indebtedness of a non-PRC Restricted Subsidiary that is not a Subsidiary of such PRC Subsidiary or (y) a guarantee by a non-PRC Restricted Subsidiary that is not a Subsidiary Guarantor or a JV Subsidiary Guarantor of Indebtedness of a Subsidiary Guarantor or a JV Subsidiary Guarantor) or (b)(20) (in the case of clause (b)(20), with respect to the guarantee provided by any Restricted Subsidiary which is not a Subsidiary Guarantor or JV Subsidiary Guarantor through the pledge of cash deposits, bank accounts or other assets to secure (or the use of any guarantee or letter of credit or similar instrument to guarantee) any Bank Deposit Secured Indebtedness), under the covenant described under the caption "— Limitation on Indebtedness and Preferred Stock."

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

The Company will not permit any JV Subsidiary Guarantor, directly or indirectly, to guarantee any Indebtedness of the Company or any other Restricted Subsidiary unless the aggregate claims of the creditor under such guarantee will be limited to the JV Entitlement Amount. If any JV Subsidiary Guarantor guarantees any Indebtedness of the Company or any other Restricted Subsidiary where the aggregate claims of the creditor under such guarantee exceed the JV Entitlement Amount, such JV Subsidiary Guarantee shall be replaced with a Subsidiary Guarantee given by a Subsidiary Guarantor.

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

The Company 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 (a) any holder (or any Affiliate of such holder) of 10% or more of any class of Capital Stock of the Company or (b) with any Affiliate of the Company (each an “Affiliate Transaction”), unless:

- (1) the Affiliate Transaction is on fair and reasonable terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable arm’s-length transaction by the Company or the relevant Restricted Subsidiary with a Person that is not such a holder or an Affiliate of the Company or such Restricted Subsidiary; and
- (2) the Company delivers to the Trustee:
  - (A) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of US\$5.0 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\$10.0 million (or the Dollar Equivalent thereof), in addition to the Board Resolution required in clause (2)(A) above, an opinion issued by an accounting, appraisal or investment banking firm of recognized international standing as to the fairness to the Company or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view.

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

- (1) the payment of reasonable and customary regular fees and other compensation to directors of the Company or any Restricted Subsidiary who are not employees of the Company or any Restricted Subsidiary;
- (2) transactions between or among the Company and any Subsidiary Guarantor or between or among Subsidiary Guarantors;
- (3) transactions between or among the Company and any Wholly Owned Restricted Subsidiary or between or among Wholly Owned Restricted Subsidiaries;
- (4) any Restricted Payment of the type described in clause (a), (b) or (c) of the first paragraph of the covenant described under the caption “— Limitation on Restricted Payments” if permitted by that covenant;
- (5) any sale of Capital Stock (other than Disqualified Stock) of the Company;
- (6) the payment of compensation to officers and directors of the Company or any Restricted Subsidiary pursuant to an employee stock or share option scheme, so long as such scheme is in compliance with the listing rules of The Stock Exchange of Hong Kong Limited, which as of the Original Issue Date require a majority shareholder approval of any such scheme;

- (7) any transaction between (A) the Company or any Restricted Subsidiary and (B) any entity in the Restructuring Group entered into in connection with the Restructuring, including, without limitation, transactions entered into for purposes of any reorganization in connection with the Restructuring and the entry into, and the performance thereof, of any underwriting agreement or other transaction documents in connection with the Restructuring; and
- (8) any transaction between (A) the Company or any Restricted Subsidiary and (B) any entity in the Restructuring Group entered into in the ordinary course of business, on fair and reasonable terms and disclosed in the offering document issued in connection with the Restructuring, or any amendment or modification or extension or replacement thereof, so long as such amendment, modification or replacement is not more disadvantageous to the Company and its Restricted Subsidiaries than the original transaction described in the offering document issued in connection with the Restructuring and in compliance with the rules of the relevant Qualified Exchange.

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 this offering memorandum, or any amendment or modification or replacement thereof, so long as such amendment, modification or replacement is not more disadvantageous to the Company and its Restricted Subsidiaries than the original agreement in effect on the Original Issue Date, (iii) any transaction between or among (A) any of the Company, any Wholly Owned Restricted Subsidiary and any Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary or (B) the Company or a Restricted Subsidiary on the one hand and a Minority Joint Venture or an Unrestricted Subsidiary on the other hand; *provided* that in the case of this clause (iii), (a) such transaction is entered into in the ordinary course of business and (b) none of the shareholders or partners (other than the Company or any Restricted Subsidiary) of or in such Minority Joint Venture, Unrestricted Subsidiary or Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary is a Person described in clause (a) or (b) of the first paragraph of this covenant (other than by reason of such shareholder or partner being an officer or director of such Restricted Subsidiary, Minority Joint Venture or Unrestricted Subsidiary, as the case may be) and (iv) any Investment by the Company or any Restricted Subsidiary in accordance with the requirements under clause (16) of the definition of “Permitted Investment” on a pro rata basis based on its percentage ownership at the time of such Investment.

#### ***Limitation on Liens***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, incur, assume or permit to exist any Lien on the Collateral (other than Permitted Liens).

The Company will not, and will not permit any Restricted Subsidiary 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 secured equally and ratably with (or, if the obligation or liability to be secured by such Lien is subordinated in right of payment to the Notes, prior to) the obligation or liability secured by such Lien, for so long as such obligation or liability is secured by such Lien.

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

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

- (a) the Company or any Restricted Subsidiary could have (1) incurred Indebtedness in an amount equal to the Attributable Indebtedness relating to such Sale and Leaseback Transaction under clause (a) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock” and (2) incurred a Lien to secure such Indebtedness pursuant to the covenant described under the caption “— Limitation on Liens,” in which case, the corresponding Indebtedness and Lien will be deemed incurred pursuant to those provisions;

- (b) 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
- (c) the transfer of assets in that Sale and Leaseback Transaction is permitted by, and the Company or any Restricted Subsidiary applies the proceeds of such transaction in compliance with, the covenant described under the caption “— Limitation on Asset Sales.”

***Limitation on Asset Sales***

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

- (a) no Default shall have occurred and be continuing or would occur as a result of such Asset Sale;
- (b) the consideration received by the Company 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;
- (c) 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 Company or such Restricted Subsidiary receives Replacement Assets involving aggregate consideration in excess of US\$35.0 million (or the Dollar Equivalent thereof), the Company shall deliver to the Trustee an opinion as to the fairness to the Company 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 Company’s most recent consolidated balance sheet, of the Company or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Notes, any Subsidiary Guarantee or any JV Subsidiary Guarantee) that are assumed by the transferee of any such assets pursuant to a customary assumption, assignment, novation or similar agreement that releases the Company or such Restricted Subsidiary from further liability; and
  - (B) any securities, notes or other obligations received by the Company or any Restricted Subsidiary from such transferee that are promptly, but in any event within 30 days of closing, converted by the Company 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 Company (or the applicable Restricted Subsidiary, as the case may be) may apply such Net Cash Proceeds to:

- (1) permanently repay Senior Indebtedness of the Company or any Restricted Subsidiary (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 Company or a Restricted Subsidiary; or
- (2) acquire properties and assets that replace the properties and assets that were the subject of such Asset Sale or in properties or assets that will be used in the Permitted Business (including any shares of Capital Stock in a Person holding such properties or assets that is primarily engaged in a Permitted Business) (“Replacement Assets”).

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\$10.0 million (or the Dollar Equivalent thereof) will be carried forward and accumulated. When accumulated Excess Proceeds equals to or exceeds US\$10.0 million (or the Dollar Equivalent thereof), within 10 days thereof, the Company must make an Offer to Purchase Notes having a principal amount equal to:

- (i) accumulated Excess Proceeds, multiplied by

- (ii) 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 plus accrued and unpaid interest to the date of purchase, and will be payable in cash.

If any Excess Proceeds remain after consummation of an Offer to Purchase, the Company may use such 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 into (or required to be prepaid or redeemed in connection with) such Offer to Purchase exceeds the amount of Excess Proceeds, the Notes and such other *pari passu* Indebtedness will be purchased on a pro rata basis based on the principal amount of Notes and such other *pari passu* Indebtedness tendered (or required to be prepaid or redeemed). Upon completion of each Offer to Purchase, the amount of Excess Proceeds will be reset at zero.

#### ***Limitation on the Company's Business Activities***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, engage in any business other than a Permitted Business; *provided, however*, that the Company 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 a Permitted Business as long as any Investment therein was not prohibited when made by the covenant under the caption “— Limitation on Restricted Payments.”

#### ***Use of Proceeds***

The Company will not, and 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 (a) in the approximate amounts and for the purposes specified under the caption “Use of Proceeds” in this offering memorandum and (b) pending the application of all of such net proceeds in such manner, to invest the portion of such net proceeds not yet so applied in Temporary Cash Investments.

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

The Board of Directors may designate any Restricted Subsidiary to be an Unrestricted Subsidiary; *provided* that (a) no Default shall have occurred and be continuing at the time of or after giving effect to such designation; (b) neither the Company nor any Restricted Subsidiary guarantees or provides credit support for the Indebtedness of such Restricted Subsidiary; (c) such Restricted Subsidiary has no outstanding Indebtedness that could trigger a cross-default to the Indebtedness of the Company or any other Restricted Subsidiary; (d) such Restricted Subsidiary does not own any Disqualified Stock of the Company or Disqualified or Preferred Stock of another Restricted Subsidiary or hold any Indebtedness, or any Lien on any property, of the Company or any Restricted Subsidiary, if such Disqualified or Preferred Stock or Indebtedness could not be Incurred under the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock” or such Lien would violate the covenant described under the caption “— Limitation on Liens”; (e) 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 as Unrestricted Subsidiaries in accordance with this paragraph; and (f) 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 the caption “Limitation on Restricted Payments” (other than any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Subsidiaries in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries, *provided* that (i) the Board of Directors of the Company has determined in good faith that the designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries is necessary to obtain approval from a Qualified Exchange for the Restructuring, (ii) at the time of such designation,



the members of the Restructuring Group remain Subsidiaries of the Company, and (iii) at the time of such designation, the members of the Restructuring Group remain primarily engaged in the Permitted Businesses).

The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that (a) no Default shall have occurred and be continuing at the time of or after giving effect to such designation; (b) 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 “— Limitation on Indebtedness and Preferred Stock”; (c) 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 “— Limitation on Liens”; (d) such Unrestricted Subsidiary is not a Subsidiary of another Unrestricted Subsidiary (that is not concurrently being designated as a Restricted Subsidiary); (e) if such Restricted 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 to the extent required under “— The Subsidiary Guarantees and JV Subsidiary Guarantees”; and (f) if such Restricted Subsidiary is not organized under the laws of the PRC, all Capital Stock of such Restricted Subsidiary owned by the Company or any other Restricted Subsidiary shall be pledged to the extent required under “— Security.”

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

The Company will, and will cause each Restricted Subsidiary to, (a) 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 Business, (b) 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 (c) 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 would not reasonably be expected to have a material adverse effect on (1) the business, results of operations or prospects of the Company and its Restricted Subsidiaries, taken as a whole, or (2) the ability of the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor to perform its obligations under the Notes, the relevant Subsidiary Guarantee or JV Subsidiary Guarantee or the Indenture.

#### ***Anti-Layering***

The Company will not, and will not permit 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 Company, such Subsidiary Guarantor or such JV Subsidiary Guarantor, as the case may be, unless such Indebtedness is also contractually subordinated in right of payment to the Notes, the applicable Subsidiary Guarantee or the applicable 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.

#### ***Suspension of Certain Covenants***

If, on any date following the date of the Indenture, the Notes have an Investment Grade Rating from any Rating Agency and no Default or Event of Default has occurred and is continuing (a “Suspension Event”), then, beginning on that day and continuing until such time, if any, at which the Notes cease to have an Investment Grade rating from either of the Rating Agencies, the provisions of the Indenture summarized under the following captions will be suspended:

- (1) “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
- (2) “— Certain Covenants — Limitation on Restricted Payments”;
- (3) “— Certain Covenants — Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries”;
- (4) “— Certain Covenants — Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries”;

- (5) “— Certain Covenants — Limitation on Issuances of Guarantees by Restricted Subsidiaries”;
- (6) “— Certain Covenants — Limitation on Sale and Leaseback Transactions”;
- (7) “— Certain Covenants — Limitation on Asset Sales”;
- (8) “— Certain Covenants — Limitation on the Company’s Business Activities”;
- (9) clauses (3) and (4) of the first and second paragraphs of “—Consolidation, Merger and Sale of Assets.”

During any period that the foregoing covenants have been suspended, the Board of Directors may not designate any Restricted Subsidiary as an Unrestricted Subsidiary pursuant to the covenant described under the caption “— Certain Covenants — Designation of Restricted and Unrestricted Subsidiaries” or the definition of “Unrestricted Subsidiary.”

Such covenants will be reinstated and apply according to their terms as of and from the first day on which a Suspension Event ceases to be in effect. Such covenants will not, however, be of any effect with regard to actions of the Company or any Restricted Subsidiary properly taken in compliance with the provisions of the Indenture during the continuance of the Suspension Event and, following reinstatement, the calculations under the covenant described under the caption “— Certain Covenants — Limitation on Restricted Payments” will be made as if such covenant had been in effect since the date of the Indenture except that no Default will be deemed to have occurred solely by reason of a Restricted Payment made while that covenant was suspended. There can be no assurance that the Notes will ever achieve an Investment Grade rating or that, if achieved, any such rating will be maintained.

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

- (a) So long as any of the Notes remain outstanding, the Company will file with the Trustee and furnish to the Holders upon request, as soon as they are available but in any event not more than 10 calendar days after they are filed with The Stock Exchange of Hong Kong Limited or any other securities exchange on which the Company’s ordinary shares are at any time listed for trading, true and correct copies of any financial or other report in the English language filed with such exchange; *provided* that, if at any time the ordinary shares of the Company cease to be listed for trading on a recognized securities exchange, the Company will file with the Trustee and furnish to the Holders:
  - (1) as soon as they are available, but in any event within 90 calendar days after the end of the fiscal year of the Company, copies of its financial statements (on a consolidated basis and in the English language) in respect of such financial year (including a statement of income, balance sheet and cash flow statement) audited by a member firm of an internationally recognized firm of independent accountants;
  - (2) as soon as they are available, but in any event within 45 calendar days after the end of the first semi-annual fiscal period of the Company, copies of its financial statements (on a consolidated basis and in the English language) in respect of such half-year period (including a statement of income, balance sheet and cash flow statement) reviewed by a member firm of an internationally recognized firm of independent accountants; and
  - (3) as soon as they are available, but in any event within 45 calendar days after the end of each of the first and third fiscal quarters of the Company, copies of its unaudited financial statements (on a consolidated basis and in the English language), including a statement of income, balance sheet and cash flow statement, prepared on a basis consistent with the audited financial statements of the Company together with a certificate signed by the person then authorized to sign financial statements on behalf of the Company to the effect that such financial statements are true in all material respects and present fairly the financial position of the Company as at the end of, and the results of its operations for, the relevant quarterly period.

- (b) In addition, so long as any of the Notes remain outstanding, the Company will provide to the Trustee (1) within 120 days after the close of each fiscal year ending after the Original Issue Date, an Officers' Certificate stating the Fixed Charge Coverage Ratio with respect to the four most recent fiscal quarter periods 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, together with a certificate from the Company's external auditors verifying the accuracy and correctness of the calculation and arithmetic computation, *provided* that the Company shall not be required to provide such auditor 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 (2) as soon as possible and in any event within 30 days after the Company becomes aware or should reasonably become aware of the occurrence of a Default, an Officers' Certificate setting forth the details of such Default, and the action which the Company proposes to take with respect thereto.

### **Events of Default**

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

- (a) 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;
- (b) default in the payment of interest on any Note when the same becomes due and payable, and such default continues for a period of 30 consecutive days;
- (c) default in the performance or breach of the provisions of the covenants described under the caption "— Consolidation, Merger and Sale of Assets," the failure by the Company to make or consummate an Offer to Purchase in the manner described under the captions "— Repurchase of Notes upon a Change of Control" or "— Certain Covenants — Limitation on Asset Sales," or the failure by the Company to create, or cause its Restricted Subsidiaries to create, a lien on the Collateral (subject to any Permitted Liens and the Intercreditor Agreement) in accordance with the covenant described under the caption "— Security";
- (d) the Company 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 (a), (b) or (c) 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 (with a copy to the Trustee if given by the Holders);
- (e) there occurs with respect to any Indebtedness of the Company or any Restricted Subsidiary (other than a Subordinated Shareholder Loan) having an outstanding principal amount of US\$20.0 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, (1) 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 (2) a failure to make a principal payment when due;
- (f) one or more final judgments or orders for the payment of money are rendered against the Company or any Restricted Subsidiary and are not paid or discharged, 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\$20.0 million (or the Dollar Equivalent thereof, in excess of amounts which the Company'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;
- (g) an involuntary case or other proceeding is commenced against the Company 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 Company or any Significant Restricted Subsidiary or for any substantial part of the property and assets of the Company 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 Company or any Significant Restricted Subsidiary under any applicable bankruptcy, insolvency or other similar law as now or hereafter in effect;

- (h) the Company or any Significant Restricted Subsidiary (1) 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, (2) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or any Significant Restricted Subsidiary, or for all or substantially all of the property and assets of the Company or any Significant Restricted Subsidiary, or (3) effects any general assignment for the benefit of creditors;
- (i) any Subsidiary Guarantor or any JV Subsidiary Guarantor denies or disaffirms its obligations under its Subsidiary Guarantee or JV Subsidiary Guarantee or, 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;
- (j) any default by the Company or any Subsidiary Guarantor Pledgor in the performance of any of its obligations under the Security Documents or the Indenture, which adversely affects the enforceability, validity, perfection or priority of the applicable Lien on the Collateral or which adversely affects the condition or value of the Collateral, taken as a whole, in any material respect; and
- (k) the Company or any Subsidiary Guarantor Pledgor denies or disaffirms its obligations under any Security Document or, other than in accordance with the Indenture and the Security Documents, any Security Document ceases to be or is not in full force and effect or the Common Security Trustee on behalf of the Trustee and the Holders ceases to have a security interest in the Collateral (subject to any Permitted Liens and the Intercreditor Agreement).

If an Event of Default (other than an Event of Default specified in clause (g) or (h) 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 Company (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 receiving indemnity and/or security to its satisfaction), declare the principal of, premium, if any, and 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 accrued and unpaid interest shall be immediately due and payable. If an Event of Default specified in clause (g) or (h) above occurs with respect to the Company or any Significant Restricted Subsidiary, the principal of, premium, if any, and 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 Holders of at least a majority in principal amount of the outstanding Notes by written notice to the Company and to the Trustee may on behalf of all Holders waive all past defaults and rescind and annul a declaration of acceleration and its consequences if:

- (x) all existing Events of Default, other than the non-payment 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
- (y) 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 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. In addition, 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 (subject to receiving indemnity and/or security to its satisfaction), instruct the Common Security Trustee to foreclose on the Collateral in accordance with the terms of the Security Documents and take such further action on behalf of the Holders of the Notes with respect to the Collateral as the Trustee deems appropriate or is directed by the Holders of at least 25% in aggregate principal amount of outstanding Notes. See “— Security.”

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. However, the Trustee may refuse to follow any direction that conflicts with law, the Indenture or the Security Documents that may involve the Trustee in personal liability, or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders not joining in the giving of such direction and may take any other action it deems proper that is not inconsistent with any such direction received from such Holders. A Holder may not pursue any remedy with respect to 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 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
- (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.

Two Officers of the Company must certify to the Trustee in writing, on or before a date not more than 120 days after the end of each fiscal year, that a review has been conducted of the activities of the Company and its Restricted Subsidiaries and the Company's and its Restricted Subsidiaries' performance under the Indenture and the Security Documents and that the Company and its Restricted Subsidiaries 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 Company 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 and the Security Documents. See “— Provision of Financial Statements and Reports.”

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

The Company 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), unless:

- (a) the Company 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 Cayman Islands, the British Virgin Islands, Hong Kong or the United States or any jurisdiction thereof and shall expressly assume, by a supplemental indenture to the Indenture, executed and delivered to the Trustee, all the obligations of the Company under the Indenture, the Notes and the Security Documents, 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 from or through which payment is made, and the Indenture, the Notes and the Security Documents, as the case may be, shall remain in full force and effect;

- (b) immediately after giving effect to such transaction, no Default shall have occurred and be continuing;
- (c) immediately after giving effect to such transaction on a pro forma basis, the Company 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 Company immediately prior to such transaction;
- (d) immediately after giving effect to such transaction on a pro forma basis, the Company or the Surviving Person, as the case may be, could Incur at least US\$1.00 of Indebtedness under the proviso in the first sentence of clause (a) of the covenant described under the caption “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
- (e) the Company delivers to the Trustee (1) an Officers’ Certificate (attaching the arithmetic computations to demonstrate compliance with clauses (c) and (d)) and (2) an Opinion of Counsel, in each case stating that such consolidation, merger or transfer and such 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
- (f) each Subsidiary Guarantor and JV Subsidiary Guarantor, unless such Subsidiary Guarantor or JV Subsidiary Guarantor is the Person with which the Company has entered into a transaction described under this covenant, shall execute and deliver a supplemental indenture to the Indenture confirming that its Subsidiary Guarantee or JV Subsidiary Guarantee shall apply to the obligations of the Company or the Surviving Person in accordance with the Notes and the Indenture.

No Subsidiary Guarantor or JV Subsidiary Guarantor will consolidate with or 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 Company or another Subsidiary Guarantor or, in the case of a JV Subsidiary Guarantor, other than to another JV Subsidiary Guarantor, the Company or a Subsidiary Guarantor), unless:

- (A) 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 Company, another Subsidiary Guarantor or shall become a Subsidiary Guarantor concurrently with the transaction by executing and delivering a supplemental indenture to the Indenture or, in the case of a JV Subsidiary Guarantor, another JV Subsidiary Guarantor, the Company or a Subsidiary Guarantor;
- (B) immediately after giving effect to such transaction, no Default shall have occurred and be continuing;
- (C) immediately after giving effect to such transaction on a pro forma basis, the Company shall have a Consolidated Net Worth equal to or greater than the Consolidated Net Worth of the Company immediately prior to such transaction;
- (D) immediately after giving effect to such transaction on a pro forma basis, the Company could Incur at least US\$1.00 of Indebtedness under the proviso in the first sentence of clause (a) of the covenant described under the caption “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”; and

- (E) the Company delivers to the Trustee (1) an Officers' Certificate (attaching the arithmetic computations to demonstrate compliance with clauses (C) and (D)) and (2) 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 (1) any sale or other disposition that complies with the "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 Subsidiary Guarantees and JV Subsidiary Guarantees" and (2) a consolidation or merger of any Subsidiary Guarantor or JV Subsidiary Guarantor with and into the Company or any other Subsidiary Guarantor or JV Subsidiary Guarantor, so long as the Company or such Subsidiary Guarantor or JV Subsidiary Guarantor survives such consolidation or merger.

For the avoidance of doubt, for purposes of this covenant, a sale of shares of Capital Stock of a Restricted Subsidiary which holds all or substantially all properties and assets of the Company or the relevant Subsidiary Guarantor or JV Subsidiary Guarantor to Independent Third Parties in an initial public offering and listing on a stock exchange of the shares of Capital Stock of such Restricted Subsidiary where such Restricted Subsidiary (i) remains a Restricted Subsidiary immediately after such sale and (ii) the Company or the relevant Subsidiary Guarantor or JV Subsidiary Guarantor, immediately after such sale, owns at least 30.0% of the Voting Stock of such Restricted Subsidiary shall not constitute a sale of substantially all properties and assets of the Company or the relevant Subsidiary Guarantor or JV Subsidiary 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, 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 provisions would not necessarily afford Holders protection in the event of highly leveraged or other transactions involving the Company that may adversely affect Holders.

#### **No Payments for Consents**

The Company 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.

Notwithstanding the foregoing, in any offer or payment of consideration for, or as an inducement to, any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes in connection with an exchange or tender offer, the Company and any Restricted Subsidiary may exclude (i) Holders or beneficial owners of the Notes that are not institutional "accredited investors" as defined in Rule 501 under the Securities Act, and (ii) Holders or beneficial owners of the Notes in any jurisdiction where the inclusion of such Holders or beneficial owners would require the Company or any Restricted Subsidiary to comply with the registration requirements or other similar requirements under any securities laws of such jurisdiction, or the solicitation of such consent, waiver or amendment from, or the granting of such consent or waiver, or the approval of such amendment by, Holders or beneficial owners in such jurisdiction would be unlawful, in each case as determined by the Company in its sole discretion.

## **Defeasance**

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

The Indenture will provide that the Company 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 and the Security Documents 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 hold monies for payment in trust and to pay compensation to the Trustee in accordance with the Indenture) if, among other things:

- (a) the Company has (1) deposited with the Trustee, in trust, money in U.S. dollars and/or U.S. Government Obligations that through the payment of interest and principal in respect thereof in accordance with their terms will provide money in U.S. dollars in an amount sufficient (without consideration of investment or reinvestment) 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 and (2) delivered 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 Company is sufficient to provide payment for the principal of, premium, if any, and accrued interest on, the Notes on the Stated Maturity of such payment in accordance with the terms of the Indenture;
- (b) the Company has delivered to the Trustee an Opinion of Counsel of recognized international standing to the effect that the creation of the defeasance trust does not violate the U.S. Investment Company Act of 1940, as amended, and after the passage of 123 days following the deposit, the trust fund 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
- (c) 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 Company or any Restricted Subsidiary is a party or by which the Company or any Restricted Subsidiary is bound.

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

The Indenture further will provide that the provisions of the Indenture will no longer be in effect with respect to clauses (c), (d) and (e)(1) under the first paragraph and clauses (C), (D) and (E)(1) 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,” clause (c) under “Events of Default” with respect to such clauses (c), (d) and (e)(1) under the first paragraph and clauses (C), (D) and (E)(1) under the second paragraph under “Consolidation, Merger and Sale of Assets” and with respect to the other events set forth in such clause, clause (d) under “Events of Default” with respect to such other covenants and clauses (e) and (f) under “Events of Default” shall be deemed not to be Events of Default upon, among other things, the deposit with the Trustee, in trust, of money in U.S. dollars, 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 U.S. dollars in an amount sufficient (without consideration of investment or reinvestment) 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 (b) of the preceding paragraph.

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

In the event the Company exercises its option to omit compliance with certain covenants and provisions of the Indenture with respect to the Notes 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 Company and the Subsidiary Guarantors will remain liable for such payments.

### **Amendments and Waiver**

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

The Indenture, the Notes, the Intercreditor Agreement or any Security Document may be amended, without the consent of any Holder, to:

- (a) cure any ambiguity, defect, omission or inconsistency in the Indenture, the Notes, the Intercreditor Agreement or any Security Document;
- (b) comply with the provisions described under “Consolidation, Merger and Sale of Assets”;
- (c) evidence and provide for the acceptance of appointment by a successor Trustee;
- (d) 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 provided or permitted by the terms of the Indenture;
- (e) provide for the issuance of Additional Notes in accordance with the limitations set forth in the Indenture;
- (f) add any Subsidiary Guarantor Pledgor or release any Subsidiary Guarantor Pledgor as provided or permitted by the terms of the Indenture;
- (g) add additional Collateral to secure the Notes or any Subsidiary Guarantee and create or register Liens on such additional Collateral;
- (h) 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;
- (i) effect any changes to the Indenture in a manner necessary to comply with the procedures of Euroclear and Clearstream;
- (j) permit Permitted Pari Passu Secured Indebtedness in accordance with the terms of the Indenture (including, without limitation, permitting the Trustee to enter into the Intercreditor Agreement or any amendments to the Security Documents or the Indenture, the appointment of any common security trustee or collateral agent under any Intercreditor Agreement to hold the Collateral on behalf of the Holders and the holders of Permitted Pari Passu Secured Indebtedness and taking any other action necessary to permit the creation and registration of Liens on the Collateral to secure Permitted Pari Passu Secured Indebtedness, in accordance with the Indenture);
- (k) make any other change that, in the good faith opinion of the Board of Directors, does not materially and adversely affect the rights of any Holder; or
- (l) conform the text of the Indenture, the Notes, the Subsidiary Guarantees or the JV Subsidiary Guarantees to any provision of this “Description of the 2020 Notes” to the extent that such provision in this “Description of the 2020 Notes” was intended to be a verbatim recitation of a provision of the Indenture, the Notes, the Subsidiary Guarantees or the JV Subsidiary Guarantees.

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

Amendments of the Indenture, the Notes, the Intercreditor Agreement or any Security Document may be made by the Company, the Subsidiary Guarantors, the Trustee and the Common Security Trustee 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 aggregate principal amount of the outstanding Notes may waive future compliance by the Company with any provision of the Indenture, the Notes, the Intercreditor Agreement or any Security Document; *provided, however*, that no such modification, amendment or waiver may, without the consent of each Holder affected thereby:

- (a) change the Stated Maturity of the principal of, or any installment of interest on, any Note;
- (b) reduce the principal amount of, or premium, if any, or interest on, any Note;
- (c) change the currency of payment of principal of, or premium, if any, or interest on, any Note;
- (d) 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;
- (e) reduce the above stated percentage of outstanding Notes the consent of whose Holders is necessary to modify or amend the Indenture;
- (f) waive a default in the payment of principal of, premium, if any, or interest on the Notes;
- (g) release any Subsidiary Guarantor or JV Subsidiary Guarantor from its Subsidiary Guarantee or its JV Subsidiary Guarantee, as the case may be, except as provided in the Indenture;
- (h) release any Collateral, except as provided in the Indenture, the Intercreditor Agreement and the Security Documents;
- (i) 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;
- (j) amend, change or modify any Subsidiary Guarantee or any JV Subsidiary Guarantee in a manner that adversely affects the Holders;
- (k) amend, change or modify any provision of any Security Document, the Intercreditor Agreement or any provision of the Indenture relating to the Collateral, in a manner that adversely affects the Holders, except in accordance with the other provisions of the Indenture, such Security Document or such Intercreditor Agreement;
- (l) 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 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 from any Asset Sale;
- (m) change the redemption date or the redemption price of the Notes from that stated under “— Optional Redemption” or “— Redemption for Tax Reasons”;
- (n) amend, change or modify the obligation of the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor to pay Additional Amounts; or
- (o) amend, change or modify any provision of the Indenture or the related definition affecting the ranking of the Notes, any Subsidiary Guarantee or any JV Subsidiary Guarantee in a manner which adversely affects the Holders.



## **Satisfaction and Discharge**

The Indenture will be discharged and will cease to be of further effect (except as to surviving rights of registration of transfer or exchange of the Notes, as expressly provided for in the Indenture) as to all outstanding Notes when:

- (1) either:
  - (a) all of the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust by the Company and thereafter repaid to the Company) have been delivered to the Paying Agent for cancellation; or
  - (b) all Notes not theretofore delivered to the Paying Agent for cancellation have become due and payable pursuant to an optional redemption notice or otherwise or will become due and payable within one year, and the Issuer has irrevocably deposited or caused to be deposited with the Paying Agent funds, in cash in U.S. dollars, non-callable U.S. Government Obligations or a combination thereof, in an amount sufficient to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Paying Agent for cancellation, for principal of, premium, if any, and interest on the Notes to the date of deposit together with irrevocable written instructions from the Issuer directing the Trustee or the Paying Agent to apply such funds to the payment thereof at maturity or redemption, as the case may be;
- (2) the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor has paid all other sums payable under this Indenture;
- (3) such deposit will not result in a breach or violation of, or constitute a default under, any instruments to which the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor is a party or by which the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor is bound (other than the Indenture, the Notes or any Security Document).

In addition, the Company must deliver to the Trustee an Officers' Certificate stating that all conditions precedent to satisfaction and discharge have been satisfied.

## **Unclaimed Money**

Claims against the Company for the payment of principal of, premium, if any, or interest, on the Notes 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, Members, 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 Company or any of the Subsidiary Guarantors or JV Subsidiary Guarantors in the Indenture, or in any of the Notes, the Subsidiary Guarantees or JV Subsidiary Guarantees or because of the creation of any Indebtedness represented thereby, shall be had against any incorporator, stockholder, member, officer, director, employee or controlling person of the Company or any of the Subsidiary Guarantors or 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 Subsidiary Guarantees and JV Subsidiary Guarantees. Such waiver may not be effective to waive liabilities under any applicable law.

## **Concerning the Trustee, the Common Security Trustee and the Paying Agents**

Citicorp International Limited is to be appointed as Trustee under the Indenture, Citigroup Global Markets Deutschland AG is to be appointed as registrar and Citibank, N.A., London Branch is to be appointed as paying and transfer agent (the “Paying Agent”) 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. 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 as a prudent person would exercise under the circumstances in the conduct of such person’s own affairs.

The Indenture contains limitations on the rights of the Trustee, should it become a creditor of the Company or any of the Subsidiary Guarantors, 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 is permitted to engage in other transactions with the Company and its Affiliates; *provided, however*, that if it acquires any conflicting interest, it must eliminate such conflict or resign.

Citicorp International Limited will initially act as the Common Security Trustee under the Security Documents in respect of the security over the Collateral. The Common Security Trustee, acting in its capacity as such, shall have such duties with respect to the Collateral pledged, assigned or granted pursuant to the Security Documents as are set forth in the Indenture and the Security Documents. Under certain circumstances, the Common Security Trustee may have obligations under the Security Documents or the Intercreditor Agreement that are in conflict with the interests of the Holders. The Common Security Trustee will be under no obligation to exercise any rights or powers conferred under the Indenture, the Intercreditor Agreement or any of the Security Documents for the benefit of the Holders, unless such Holders have offered to the Common Security Trustee indemnity and/or security satisfactory to the Common Security Trustee against any loss, liability or expense. Furthermore, each Holder, by accepting the Notes will agree, for the benefit of the Trustee and the Common Security Trustee that it is solely responsible for its own independent appraisal of and investigation into all risks arising under or in connection with the Security Documents and has not relied on and will not at any time rely on the Trustee and the Common Security Trustee in respect of such risks.

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

The Notes will be represented by one or more global notes in registered form without interest coupons attached (each a “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.

### **Global Note**

Ownership of beneficial interests in the Global Note (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 Global Note 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.

The Notes are not issuable in bearer form.

## **Payments on the Global Note**

Payments of any amounts owing in respect of the Global Note (including principal, premium, interest and additional amounts) will be made to the paying agent. The Paying Agent will, in turn, make such payments to the common depository for Euroclear and Clearstream, which will distribute such payments to participants in accordance with their procedures. The Company 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 Company, the Trustee and the Agents will treat the registered holder of the Global Note (i.e., the common depository or its nominee) as the owner thereof for the purpose of receiving payments and for all other purposes. Consequently, none of the Company, 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
- 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 Note**

In the event any Global Note, or any portion thereof, is redeemed, the common depository 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 depository, Euroclear or Clearstream, as applicable, in connection with the redemption of such Global Note (or any portion thereof). The Company 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\$200,000 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 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 Note 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 Note in accordance with the normal procedures of Euroclear and Clearstream and in accordance with the provisions of the Indenture.

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 settlement procedures applicable. Book-entry interests will be credited to the securities custody accounts of Euroclear and Clearstream holders 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 immediately available 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**

We understand 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 Company, 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 Company 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 Company has received a written request from a Holder, the Company 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 Company 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 registrar in sufficient quantities and authenticated by the Trustee for delivery to Holders. Persons exchanging interests in a Global Note for individual definitive notes will be required to provide the registrar, through the relevant clearing system, with written instruction and other information required by the Company and the 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 by being deposited, first-class postage prepaid, in the United States mails (if intended for the Company or any Subsidiary Guarantor) addressed to the Company or such Subsidiary Guarantor at the principal office of the Company; (if intended for the Trustee) addressed to 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.

While the Notes are in global form, 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 and Clearstream. Any such notice shall be deemed to have been delivered on the day such notice is delivered to Euroclear and Clearstream or if by mail, when so sent or deposited.

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

The Company and each of the Subsidiary Guarantors will irrevocably (i) 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, any Subsidiary Guarantee, the Indenture or any transaction contemplated thereby and (ii) designate and appoint Cogency Global Inc., currently at 10 E 40th Street 10th Floor, New York, New York 10016, for receipt of service of process in any such suit, action or proceeding.

### **Governing Law**

Each of the Notes, the Subsidiary Guarantees 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 2020 Notes" for which no definition is provided.

*"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.

*"Adjusted Treasury Rate"* means, with respect to any redemption date, (i) the yield, under the heading which represents the average for immediately preceding week, appearing in the most recently published statistical release designated "H.15(519)" or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption "Treasury Constant Maturities", for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three (3) months before or after June 30, 2020, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Adjusted Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month) or (ii) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per year equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date, in each case calculated on the third Business Day immediately preceding the redemption date.



“*Affiliate*” means, with respect to any Person, any other Person (i) directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person, (ii) who is a director or officer of such Person or any Subsidiary of such Person or of any Person referred to in clause (i) of this definition or (iii) 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 (i) or (ii). 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.

“*Applicable Premium*” means with respect to a Note at any redemption date, the greater of (i) 1.00% of the principal amount of such Note and (ii) the excess of (A) the present value at such redemption date of the principal amount of such Note, plus all required remaining scheduled interest payments due on such Note through June 30, 2020 (but excluding accrued and unpaid interest to the redemption date), computed using a discount rate equal to the Adjusted Treasury Rate plus 100 basis points, over (B) the principal amount of such Note.

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

“*Asset Disposition*” means the sale or other disposition by the Company or any Restricted Subsidiary (other than to the Company 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 Company or any Restricted Subsidiary which accounts for all or substantially all of the assets of such Restricted Subsidiary).

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

- (a) sales, transfers 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;
- (b) sales, transfers or other dispositions of assets constituting a Permitted Investment or Restricted Payment permitted to be made under the covenant described under the caption “— Certain Covenants — Limitation on Restricted Payments”;
- (c) sales, transfers or other dispositions of assets with a Fair Market Value not in excess of US\$1.0 million (or the Dollar Equivalent thereof) in any transaction or series of related transactions;
- (d) 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 Company or its Restricted Subsidiaries;
- (e) any transfer, assignment or other disposition deemed to occur in connection with creating or granting any Permitted Lien;
- (f) a transaction covered by the covenant under the caption “— Consolidation, Merger and Sale of Assets”; and
- (g) any sale, transfer or other disposition by the Company or any Restricted Subsidiary, including the sale or issuance by the Company or any Restricted Subsidiary of any Capital Stock of any Restricted Subsidiary to the Company 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 such Sale and Leaseback Transaction, of the total obligations of the lessee for rental payments during the remaining term of the lease in such 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 Company or any Restricted Subsidiary that is (i) secured by cash deposits, bank accounts or other assets of the Company or a Restricted Subsidiary and/or (ii) guaranteed by a guarantee or a letter of credit (or similar instruments) from or arranged by the Company or a Restricted Subsidiary and is used by the Company and its Restricted Subsidiaries to effect exchange of foreign currencies or remit money onshore or offshore.

“*Board of Directors*” means the board of directors elected or appointed by the stockholders of the Company to manage the business of the Company 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.

“*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 into such equity.

“*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.

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

- (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries, taken as a whole, to any “person” (within the meaning of Section 13(d) of the U.S. Securities Exchange Act of 1934, as amended (the “Exchange Act”)), other than one or more Permitted Holders;
- (2) the Company consolidates with, or merges with or into, any Person (other than one or more Permitted Holders), or any Person consolidates with, or merges with or into, the Company, in any such event pursuant to a transaction in which any of the outstanding Voting Stock of the Company or such other Person is converted into or exchanged for cash, securities or other property, other than any such transaction where the Voting Stock of the Company outstanding immediately prior to such transaction is converted into or exchanged for (or continues as) Voting Stock (other than Disqualified Stock) of the surviving or transferee Person constituting a majority of the outstanding shares of Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance) and in substantially the same proportion as before the transaction;
- (3) the Permitted Holders are the beneficial owners of less than 35.0% of the total voting power of the Voting Stock of the Company;

- (4) 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 the total voting power of the Voting Stock of the Company greater than such total voting power held beneficially by the Permitted Holders;
- (5) individuals who on the Original Issue Date constituted the Board of Directors (together with any new directors whose election was approved by a vote of at least a majority of the members of the Board of Directors then in office who were members of the Board of Directors on the Original Issue Date or whose election was previously so approved) cease for any reason to constitute a majority of the members of the Board of Directors then in office; or
- (6) the adoption of a plan relating to the liquidation or dissolution of the Company.

For the avoidance of doubt, for purposes of this “Change of Control” definition, a sale of shares of Capital Stock of a Restricted Subsidiary which holds all or substantially all properties and assets of the Company, and its Restricted Subsidiaries, taken as a whole, to Independent Third Parties in an initial public offering and listing on a stock exchange of the shares of Capital Stock of such Restricted Subsidiary where such Restricted Subsidiary (i) remains a Restricted Subsidiary immediately after such sale and (ii) the Company, a Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be, immediately after such sale, owns, directly or indirectly, at least 30.0% of the Voting Stock of such Restricted Subsidiary shall not constitute a sale of substantially all properties and assets of the Company and its Restricted Subsidiaries.

“*Clearstream*” means Clearstream Banking S.A., its affiliates, successors or assigns.

“*Collateral*” means all collateral securing, or purported to be securing, directly or indirectly, the Notes or any Subsidiary Guarantee pursuant to the Security Documents, and shall initially consist of the Capital Stock of the initial Subsidiary Guarantors.

“*Commodity Agreement*” means any spot, forward, swap 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 on the Original Issue Date, and include, without limitation, all series and classes of such common stock or ordinary shares.

“*Comparable Treasury Issue*” means the U.S. Treasury security having a maturity comparable to June 30, 2020 that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to June 30, 2020.

“*Comparable Treasury Price*” means, with respect to any redemption date, if clause (ii) of the Adjusted Treasury Rate is applicable, the average of three (or such lesser number as is received by the Trustee) Reference Treasury Dealer Quotations for such redemption date.

“*Consolidated Assets*” means, with respect to any Restricted Subsidiary at any date of determination, the Company 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 Company (which the Company shall use its reasonable best efforts to compile on a timely manner) are available (which may include 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 Company and its Restricted Subsidiaries in conformity with GAAP; *provided* that (i) 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 Company or any Restricted Subsidiary and (ii) 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 (i) Consolidated Interest Expense for such period and (ii) all cash and non-cash dividends paid, declared, accrued or accumulated during such period on any Disqualified Stock or Preferred Stock of the Company or any Restricted Subsidiary held by Persons other than the Company or any Wholly Owned Restricted Subsidiary, except for dividends payable in the Company’s Capital Stock (other than Disqualified Stock) or dividends paid to the Company or to a Wholly Owned Restricted Subsidiary.

“*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 Company 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 Company and its Restricted Subsidiaries, without duplication, (i) interest expense attributable to Capitalized Lease Obligations and imputed interest with respect to Attributable Indebtedness, (ii) amortization of debt issuance costs and original issue discount expense and non-cash interest payments in respect of any Indebtedness, (iii) the interest portion of any deferred payment obligation, (iv) 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, (v) the net costs associated with Hedging Obligations (including the amortization of fees), (vi) interest on Indebtedness of any other Person that is guaranteed by the Company or any Restricted Subsidiary (other than Pre-Registration Mortgage Guarantees), only to the extent such interest is actually paid by the Company or any Restricted Subsidiary and (vii) 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 to the extent of the amount of net income actually paid in cash to, or the amount of loss actually funded in cash by, the specified Person or a Restricted Subsidiary of the Person during such period;
- (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 Company or any Restricted Subsidiary or all or substantially all of the property and assets of such Person are acquired by the Company or any Restricted Subsidiary;

- (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 Company or any Restricted Subsidiary or (B) any Capital Stock of any Person (including any gains by the Company realized on sales of Capital Stock of the Company or any Restricted Subsidiary), in each case, which is not sold in the ordinary course of business of the Company or any Restricted Subsidiary;
- (6) any translation gains or losses due solely to fluctuations in currency values and related tax effects; and
- (7) any net after-tax extraordinary or non-recurring gains,

*provided* that any net after tax gains derived from direct or indirect sale by the Company or any Restricted Subsidiary of (i) Capital Stock of a Restricted Subsidiary primarily engaged in the holding of Investment Property or (ii) an interest in any Investment Property arising from the difference between the original cost basis and the cash sale price shall be added to Consolidated Net Income to the extent not already included in the net income for such period as determined in conformity with GAAP and Consolidated Net Income.

“*Consolidated Net Worth*” means, at any date of determination, stockholders’ equity as set forth on the most recently available fiscal quarter, semi-annual or annual consolidated balance sheet of the Company and its Restricted Subsidiaries, plus, to the extent not included, any Preferred Stock of the Company, 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 Company or any Restricted Subsidiary, each item to be determined in conformity with GAAP.

“*Contractor Guarantees*” means any guarantee by the Company or any Restricted Subsidiary of Indebtedness of any contractor, builder or other similar Person engaged by the Company or such Restricted Subsidiary in connection with the development, construction or improvement of real or personal property or equipment to be used in a Permitted Business by the Company or any Restricted Subsidiary in the ordinary course of business, which Indebtedness was Incurred by such contractor, builder or other similar Person to finance the cost of such development, construction or improvement.

“*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 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 (provided that such increase is permitted under the covenant described under “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”) or (4) otherwise altering the terms and conditions thereof.

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

“*CVR*” means the contingent value rights issued by the Company on July 21, 2016 pursuant to the CVR Agreement.

“*CVR Agreement*” means the Contingent Value Rights Agreement, dated as of July 21, 2016, between the Company and U.S. Bank National Association, as trustee.

“*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 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 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 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 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 “— 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 Company’s repurchase of the 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 Restricted Subsidiary from a bank that are secured by a pledge of deposits or bank accounts made by another 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 Company.

“*Equity Offering*” means any underwritten primary public offering or private placement of Common Stock of the Company after the Original Issue Date to any Person other than a Wholly Owned Restricted Subsidiary or any Permitted Holder; *provided* that the aggregate gross cash proceeds received by the Company from such transaction shall be no less than US\$20.0 million (or the Dollar Equivalent thereof).

“*Euroclear*” means Euroclear Bank SA/NV.

“*Exchange Convertible Bond PIK Interest*” means the interest that is capitalized and added to the then current outstanding principal amount of the Exchange Convertible Bonds pursuant to the terms of the Exchange Convertible Bonds.

“*Exchange Convertible Bonds*” means the U.S. dollar-denominated variable rate convertible bonds due 2019 issued by the Company pursuant to the terms of the Mandatorily Exchangeable Bonds and any Exchange Convertible Bond PIK Interest with respect thereto.

“*Exempted Subsidiary*” means any Restricted Subsidiary organized in any jurisdiction other than the PRC that is prohibited by applicable law or regulation to provide a Subsidiary Guarantee or a JV Subsidiary Guarantee or create any Lien over its Capital Stock to secure any of the secured obligations subject to the Intercreditor Agreement; *provided* that (x) the Company shall have failed, upon using commercially reasonable efforts, to obtain any required governmental or regulatory approval or registration with respect to such Subsidiary Guarantee, JV Subsidiary Guarantee or Lien over its Capital Stock, 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 Company having obtained such applicable approval or registration.

“*Existing HY Notes*” means the Series A Notes, the Series B Notes, the Series C Notes, the Series D Notes and the Series E Notes.

“*Existing HY Indentures*” means the indentures dated July 21, 2016 as amended and supplemented from time to time governing the Existing HY Notes.

“*Existing HY Notes PIK Interest*” means interest on the Existing HY Notes paid in the form of Existing HY Notes PIK Notes.

“*Existing HY Notes PIK Notes*” means Existing HY Notes issued under the relevant Existing HY Notes Indenture in the event the Company pays Existing HY Notes PIK Interest on the relevant series of Existing HY Notes pursuant to such Existing HY Notes Indenture.

“*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 Company.

“*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 Company (which the Company shall use its reasonable best efforts to compile in a timely manner) are available (which may include internal consolidated financial statements) (the “Four Fiscal-Quarter Period”) to (2) the aggregate Consolidated Fixed Charges during such Four Fiscal-Quarter Period. In making the foregoing calculation:

- (A) *pro forma* effect shall be given to any Indebtedness or Preferred Stock Incurred, repaid or redeemed during the period (the “Reference Period”) commencing on and including the first day of the Four Fiscal-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 Fiscal-Quarter Period), in each case as if such Indebtedness 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 Four Fiscal-Quarter Period shall not include any interest income actually earned by the Company or such Restricted Subsidiary during such Four Fiscal-Quarter Period in respect of the funds used to repay or redeem such Indebtedness 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 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;

- (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 have been made by any Person that has become a Restricted Subsidiary or has been merged with or into the Company 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; and
- (E) *pro forma* effect shall be given to the creation, designation or re-designation of Restricted Subsidiaries and Unrestricted Subsidiaries as if such creation, designation or re-designation had occurred on the first day of such Reference Period;

*provided* that to the extent that clause (C) or (D) of this paragraph 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 Hong Kong Financial Reporting Standards 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 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 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; and
- (9) all Disqualified Stock issued by such 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 (1) any capital commitments, deferred payment obligation, pre-sale receipts in advance from customers or similar obligations 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, (2) any Entrusted Loan; *provided* that such Indebtedness is not reflected as borrowings on the consolidated balance sheet of the Company (contingent obligations and commitments referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet) or (3) any obligations in respect of the CVRs.

The amount of Indebtedness of any Person at any time shall be the outstanding balance at such time 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:

- (A) 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;
- (B) 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;
- (C) that the amount of Indebtedness with respect to any Hedging Obligation shall be (i) zero if Incurred pursuant to paragraph (b)(6) under the “Limitation on Indebtedness and Preferred Stock” covenant or (ii) equal to the net amount payable by such Person if the Commodity Agreement, Currency Agreement or Interest Rate Agreement giving rise to such Hedging Obligation were terminated at that time due to default by such Person if not Incurred pursuant to such paragraph, and
- (D) that the contingent obligations arising from letters of credit, bankers’ acceptances or other similar instruments of a Restricted Subsidiary to secure Indebtedness of another Restricted Subsidiary shall not be deemed to be Indebtedness so long as such contingent obligations are used to secure the payment of Indebtedness of another Restricted Subsidiary permitted to be Incurred under the Indenture.

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

“*Insurance Company Investor*” means an Independent Third Party that is a financial institution or an insurance company or an Affiliate thereof that invests in any Capital Stock of a Restricted Subsidiary.

“*Intercreditor Agreement*” has the meaning set forth under “— Security.”

“*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:

- (i) any direct or indirect advance, loan or other extension of credit to another Person,
- (ii) 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),
- (iii) any purchase or acquisition of Capital Stock, Indebtedness, bonds, notes, debentures or other similar instruments or securities issued by another Person, or
- (iv) any guarantee of any obligation of another Person to the extent such obligation is outstanding and to the extent guaranteed by such Person.

For the purposes of the provisions of the “— Certain Covenants — Designation of Restricted and Unrestricted Subsidiaries” and “— Certain Covenants — Limitation on Restricted Payments” covenants: (i) the Company will be deemed to have made an Investment in an Unrestricted Subsidiary in an amount equal to the Fair Market Value of the Company’s proportionate interest in the assets (net of the Company’s proportionate interest in the liabilities owed to any Person other than the Company or a Restricted Subsidiary and that are not guaranteed by the Company or a Restricted Subsidiary) of a Restricted Subsidiary that is designated an Unrestricted Subsidiary at the time of such designation and (ii) 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.

“*Investment Property*” means any property that is owned and held by any Restricted Subsidiary for long-term rental yields or for capital appreciation or both, or any hotel owned by the Company or any Restricted Subsidiary from which the Company or any Restricted Subsidiary derives or expects to derive operating income.

“*Investment Grade*” means a rating of “AAA,” “AA,” “A” or “BBB,” as modified by a “+” or “-” indication, or an equivalent rating representing one of the four highest Rating Categories, by S&P or any of its successors or assigns or a rating of “Aaa,” “Aa,” “A” or “Baa,” as modified by a “1,” “2” or “3” indication, or an equivalent rating representing one of the four highest Rating Categories, by Moody’s or any of its successors or assigns or the equivalent ratings of any internationally recognized rating agency or agencies, as the case may be, which shall have been designated by the Company as having been substituted for S&P or Moody’s or both, as the case may be.

“*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 quarter end of the Company; and (ii) a percentage equal to the direct equity ownership percentage of the Company and/or its Restricted Subsidiaries in the Capital Stock of such JV Subsidiary Guarantor and its Subsidiaries.

“*JV Subsidiary Guarantee*” has the meaning set forth under the caption “— The Subsidiary Guarantees and 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).

“*Mandatorily Exchangeable Bond PIK Interest*” means the interest that is capitalized and added to the then current outstanding principal amount of the Mandatorily Exchangeable Bonds pursuant to the terms of the Mandatorily Exchangeable Bonds.

“*Mandatorily Exchangeable Bonds*” means the U.S. dollar-denominated variable rate mandatorily exchangeable bonds due 2019 issued by the Company and any Mandatorily Exchangeable Bond PIK Interest with respect thereto.

“*Measurement Date*” means April 28, 2010.

“*Minority Joint Venture*” means any corporation, association or other business entity that is accounted for by the equity method of accounting in accordance with GAAP by the Company or a Restricted Subsidiary and primarily engaged in the Permitted Businesses, and such Minority Joint Venture’s Subsidiaries.



“*Moody’s*” means Moody’s Investors Service, Inc., its affiliates, successors or assigns.

“*Net Cash Proceeds*” means:

- (a) with respect to any Asset Sale, the proceeds of such Asset Sale in the form of cash or Temporary Cash Investments, 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 Temporary Cash Investments and proceeds from the conversion of other property received when converted to cash or Temporary Cash Investments, net of
  - (1) brokerage commissions and other fees and expenses (including fees and expenses of counsel and investment banks) related to such Asset Sale;
  - (2) 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 Company and its Restricted Subsidiaries, taken as a whole;
  - (3) 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; and
  - (4) appropriate amounts to be provided by the Company 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
- (b) with respect to any issuance or sale of Capital Stock, the proceeds of such issuance or sale in the form of cash or Temporary Cash Investments, 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 Temporary Cash Investments and proceeds from the conversion of other property received when converted to cash or Temporary Cash Investments, 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 Subsidiary*” means any Restricted Subsidiary not providing a Subsidiary Guarantee or JV Subsidiary Guarantee.

“*Offer to Purchase*” means an offer to purchase the Notes by the Company from the Holders commenced by sending a notice to the Trustee, the Paying Agent and each Holder at its last address appearing in the Note register stating:

- (1) the provision of 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 sent) (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 Company 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 pursuant to the applicable procedures of Euroclear and Clearstream, together with the form entitled “Option of the Holder to Elect Purchase” on the reverse side of the Note completed, to the order of the Company’s agent appointed for the purpose of the Offer to Purchase (the “Tender Agent”) with a copy 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 Tender 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 the 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\$200,000 or integral multiples of US\$1,000.

One Business Day prior to the Offer to Purchase Payment Date, the Company will deposit with the Tender Agent money sufficient to pay the purchase price of all Notes or portions thereof to be accepted by the Company for payment on the Offer to Purchase Payment Date. On the Offer to Purchase Payment Date, the Company 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 Paying Agent all Notes or portions thereof so accepted together with an Officers' Certificate (with a copy to the Trustee) specifying the Notes or portions thereof accepted for payment by the Company. The Tender Agent shall promptly send to the Holders of Notes so accepted payment in an amount equal to the purchase price, and the Registrar shall promptly authenticate and deliver to such Holders a new Note equal in principal amount to any unpurchased portion of the Note surrendered; *provided* that each such Note purchased and each such new Note issued shall be in a principal amount of US\$200,000 or integral multiples of US\$1,000. The Company will publicly announce the results of an Offer to Purchase as soon as practicable after the Offer to Purchase Payment Date. The Company will comply with all applicable securities laws and regulations, in the event that the Company is required to repurchase the Notes pursuant to an Offer to Purchase.

The materials used in connection with an Offer to Purchase are required to contain or incorporate by reference information concerning the business of the Company and its Subsidiaries which the Company 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 Company 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.

“*Officer*” means one of the executive officers of the Company or, in the case of a Subsidiary Guarantor or a JV Subsidiary Guarantor, one of the directors or executive officers of 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 any Subsidiary Guarantor or JV Subsidiary Guarantor under the Indenture, Officers' Certificate means a certificate signed by one Officer if there is only one Officer in such Subsidiary Guarantor or JV Subsidiary Guarantor at the time such certificate is required to be delivered.

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

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

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

“*Payment Default*” means (i) any default in the payment of interest on any Note when the same becomes due and payable, (ii) any 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, (iii) the failure by the Company to make or consummate a Change of Control Offer in the manner described under the caption “— Repurchase of Notes upon a Change of Control,” or an Offer to Purchase in the manner described under the caption “— Certain Covenants — Limitation on Asset Sales” or (iv) any Event of Default specified in clause (e) of the definition of Events of Default.

“*Permitted Business*” means any business conducted by the Company and its Restricted Subsidiaries on the Original Issue Date and other businesses reasonably related, ancillary or complementary thereto, or any business in the financial services, internet, logistics, medical or agricultural industries or any business reasonably related, ancillary or complementary thereto.

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

- (1) Mr. Kwok Ying Shing, Mr. Kwok Chun Wai and Mr. Kwok Ying Chi;
- (2) any Affiliate (other than an Affiliate as defined in clause (ii) or (iii) of the definition of “Affiliate”) of any of the Persons specified in clause (1) of this definition; 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 80% owned by Persons specified in clauses (1) and (2) of this definition.

“*Permitted Investment*” means:

- (1) any Investment in the Company or a Restricted Subsidiary that is primarily engaged, directly or indirectly through one or more other Restricted Subsidiaries, in a Permitted Business or a Person which will, upon the making of such Investment, become a Restricted Subsidiary that is primarily engaged, directly or indirectly through one or more other Restricted Subsidiaries, in a Permitted Business or be merged or consolidated with or into or transfer or convey all or substantially all its assets to the Company or a Restricted Subsidiary that is primarily engaged in a Permitted Business.
- (2) Temporary Cash Investments;
- (3) payroll, travel and similar advances 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 designed solely to protect the Company or any Restricted Subsidiary against fluctuations in commodity prices, interest rates or foreign currency exchange rates and not for speculation;
- (7) receivables owing to the Company 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) any securities or other Investments received as consideration in, or retained in connection with, sales or other dispositions of property or assets, including Asset Dispositions made in compliance with the covenant described 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 the caption “— Certain Covenants — Limitation on Liens”;
- (10) any Investment pursuant to Pre-Registration Mortgage Guarantees or Contractor Guarantees by the Company or any Restricted Subsidiary otherwise permitted to be incurred under the Indenture;
- (11) Investments in securities of trade creditors or customers received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

- (12) advances to contractors and suppliers for the acquisition of assets or consumables or services in the ordinary course of a Permitted Business that are recorded as deposits or prepaid expenses on the Company's consolidated balance sheet;
- (13) deposits of pre-sale proceeds made in order to secure the completion and delivery of pre-sold properties and issuance of the related land use title in the ordinary course of a Permitted Business;
- (14) deposits made in order to comply with statutory or regulatory obligations to maintain deposits for workers, compensation claims and other purposes specified by statute or regulation from time to time in the ordinary course of a Permitted Business;
- (15) (i) deposits made in order to secure the performance of the Company or any Restricted Subsidiary, (ii) prepayments made in connection with the acquisition of real property or land use rights by the Company or any Restricted Subsidiary, in each case, in the ordinary course of a Permitted Business; and (iii) advances to government authorities or government affiliated entities in the PRC in connection with the financing of redevelopment of old urban areas or primary land development, in each case, in the ordinary course of business that are recorded as assets on the Company's consolidated balance sheet; and
- (16) any Investment (including any deemed Investment upon the redesignation of a Restricted Subsidiary as an Unrestricted Subsidiary or upon the sale of Capital Stock of a Restricted Subsidiary) by the Company or any Restricted Subsidiary in any Person; *provided* that:
  - (a) the Person into which such Investment is made is primarily engaged in the Permitted Businesses;
  - (b) none of the other shareholders of or partners in such Person is a Person described in clause (a) or (b) of the first paragraph of the covenant described under the caption "— Limitation on Transactions with Shareholders and Affiliates" (other than by reason of such shareholder or partner being an officer or director of the Company, a Restricted Subsidiary, a Minority Joint Venture or an Unrestricted Subsidiary or by reason of being a Restricted Subsidiary, a Minority Joint Venture or an Unrestricted Subsidiary);
  - (c) in the case of any Investment by the Company or any Restricted Subsidiary in a Person of which less than 50% of the voting power of the outstanding Voting Stock is owned, directly or indirectly, by the Company or its Restricted Subsidiaries, at the time of such Investment, the Company could Incur at least US\$1.00 of Indebtedness under the proviso in paragraph (a) of the covenant described under the caption "— Limitation on Indebtedness and Preferred Stock"; *provided* that this paragraph (c) shall not apply if such Investment would otherwise have been permitted under this clause (16) and such Investment, together with the aggregate amount of all other Investments made in reliance on this proviso since the Original Issue Date, shall not exceed in aggregate an amount equal to 15% of Total Assets (such aggregate amount of Investments shall be calculated after deducting an amount equal to the net reduction in all Investments made in reliance on this proviso since the Original Issue Date resulting from the events set forth in paragraphs (e)(i) through (e)(iii) below, where references in such paragraphs to "under this clause (16)" shall be substituted with "in reliance on the proviso in paragraph (c)");
  - (d) no Default has occurred and is continuing or would occur as a result of such Investment; and

- (e) such Investment, together with the aggregate of all other Investments made under this clause (16) since the Original Issue Date shall not exceed in aggregate an amount equal to 25% of Total Assets. 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:
- (i) payments of interest on Indebtedness, dividends or repayments of loans or advances made under this clause (16), in each case to the Company 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),
  - (ii) the unconditional release of a Guarantee provided by the Company or a Restricted Subsidiary after the Original Issue Date under this clause (16) of an obligation of any such Person, or
  - (iii) 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 Company or a Restricted Subsidiary after the Original Issue Date in any such Person under this clause (16);

*provided, further* that for the avoidance of doubt, the value of each Investment made pursuant to this clause (16) shall be valued at the time such Investment is made;

- (17) guarantees permitted under clause (b)(21) of the covenant entitled “— Limitation on Indebtedness and Preferred Stock”; and
- (18) any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Subsidiaries in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries, *provided* that (A) (i) the Board of Directors of the Company has determined in good faith that the designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries is necessary to obtain approval from a Qualified Exchange for the Restructuring, (ii) at the time of such designation, the members of the Restructuring Group remain Subsidiaries of the Company, and (iii) at the time of such designation, the members of the Restructuring Group remain primarily engaged in the Permitted Businesses; and (B) the aggregate of all Investments made under this clause (18) since the Original Issue Date shall not exceed an amount equal to 15% of Total Assets (for the avoidance of doubt, any portion of such Investments exceeding 15% of Total Assets shall not constitute a Permitted Investment pursuant to this clause (18) but may be made, characterized and accounted for in accordance with the other provisions of the Indenture; and
- (19) any Investment in a subordinated tranche of interests in a Receivable Financing Incurred pursuant to clause (ii) of the definition thereof with multiple tranches offered and sold to investors that, in the good faith determination of the Board of Directors, is necessary or advisable to effect such Receivable Financing.

“*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 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 Company 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 Company or its Restricted Subsidiaries relating to such property or assets;
- (6) any interest or title of a lessor in the property subject to any operating lease;
- (7) 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 Company 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;
- (8) Liens in favor of the Company or any Restricted Subsidiary;
- (9) Liens arising from attachment or the rendering of a final judgment or order against the Company or any Restricted Subsidiary that does not give rise to an Event of Default;
- (10) 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;
- (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 (b)(5) of the covenant described under the caption "*— Limitation on Indebtedness and Preferred Stock*"; *provided* that such Liens do not extend to or cover any property or assets of the Company or any Restricted Subsidiary other than the property or assets securing the Indebtedness being refinanced;
- (13) Liens (including extensions and renewals thereof) upon real or personal property; *provided* that (a) such Lien is created solely for the purpose of securing Indebtedness of the type described under clause (b)(7) of the covenant described under the caption "*— Limitation on Indebtedness and Preferred Stock*," (b) such Lien is created prior to, at the time of or within 180 days after the later of the acquisition or the completion of development, construction or improvement of such property, (c) the principal amount of Indebtedness secured by such Lien does not exceed 100% of the cost of such property, development, construction or improvement and (d) such Lien shall not extend to or cover any property or assets other than such item of property and any improvements on such item; *provided* that, such Lien may cover other property or assets (instead of or in addition to such item of property or improvements) and the principal amount of Indebtedness secured by such Lien may exceed 100% of such cost if (x) such Lien is Incurred in the ordinary course of business and (y) the aggregate book value of property or assets (as of the last day of the most recent fiscal quarter period for which consolidated financial statements of the Company (which the Company shall use its reasonable best efforts to compile in a timely manner) are available (which may be internal consolidated 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 (13) does not exceed 130% of the aggregate principal amount of Indebtedness secured by such Liens;
- (14) Liens under the Security Documents;

- (15) Liens securing any Permitted Pari Passu Secured Indebtedness that complies with each of the requirements set forth under “Security — Permitted Pari Passu Secured Indebtedness”;
- (16) Liens securing Indebtedness of the Company or any Restricted Subsidiary under any Pre-Registration Mortgage Guarantee which is permitted to be Incurred under clause (b)(13) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock”;
- (17) 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 Company or any Restricted Subsidiary;
- (18) 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 (b)(6) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock”;
- (19) Liens on deposits of pre-sale proceeds made in order to secure the completion and delivery of pre-sold properties and issuance of the related land use title made in the ordinary course of business and not securing Indebtedness of the Company or any Restricted Subsidiary;
- (20) Liens on deposits made in order to comply with statutory obligations to maintain deposits for workers’ compensation claims and other purposes specified by statute made in the ordinary course of business and not securing Indebtedness of the Company or any Restricted Subsidiary;
- (21) Liens on deposits made in order to secure the performance of the Company or any Restricted Subsidiary in connection with the acquisition of real property or land use rights or personal property (including, without limitation, Capital Stock) by the Company or any Restricted Subsidiary (including, without limitation, by way of acquisition of Capital Stock of a Person) in the ordinary course of business and not securing Indebtedness of the Company or any Restricted Subsidiary;
- (22) Liens granted by the Company or any Restricted Subsidiary in favor of any Insurance Company Investor to secure the obligations of a Subsidiary of such Restricted Subsidiary to pay a guaranteed or preferred dividend or return on Capital Stock of such Subsidiary held by such Insurance Company Investor permitted to be Incurred under clause (b)(16) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock;”
- (23) Liens on Investment Properties securing Indebtedness of the Company or any Restricted Subsidiary permitted to be Incurred under clause (b)(19) of the covenant described under “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
- (24) Liens Incurred on cash deposits, bank accounts or other assets of the Company or any Restricted Subsidiary to secure Bank Deposit Secured Indebtedness of the type described under clause (b)(20) of the covenant under “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
- (25) Liens on current assets securing Indebtedness permitted to be Incurred under clause (b)(14) of the “— Limitation on Indebtedness and Preferred Stock” covenant;
- (26) Liens to secure Entrusted Loans;
- (27) Liens securing Indebtedness permitted to be Incurred under clause (b)(17) of the covenant entitled “— Limitation on Indebtedness and Preferred Stock” covenant;
- (28) 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 (b)(15) of the “— Limitation on Indebtedness and Preferred Stock” covenant;

- (29) Liens securing Indebtedness Incurred under clause (b)(21) of the “— Limitation on Indebtedness and Preferred Stock” covenant;
- (30) Liens on assets of a Non-Guarantor Subsidiary securing any Permitted Subsidiary Indebtedness of any Non-Guarantor Subsidiary permitted to be Incurred under the proviso in paragraph (a) of the covenant described under “— Limitation on Indebtedness and Preferred Stock”; and
- (31) Liens securing Indebtedness Incurred under clause (b)(25) of the covenant described under “— Limitation on Indebtedness and Preferred Stock.”

“*Permitted Pari Passu Secured Indebtedness*” has the meaning set forth under “Security — Permitted Pari Passu Secured Indebtedness.”

“*Permitted Subsidiary Indebtedness*” means Indebtedness of, and all Preferred Stock issued by, the Non-Guarantor Subsidiaries, 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 (excluding Public Indebtedness and the amount of any Indebtedness of any Non-Guarantor Subsidiary permitted under clauses (b)(1), (b)(2), (b)(4), (b)(6) and (b)(13) of the covenant described under the caption “— 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 Hong Kong Special Administrative Region, Macau and Taiwan.

“*PRC CJV*” means any future 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 September 3, 2016) 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 February 19, 2014), as such laws may be amended.

“*PRC CJV Partner*” means with respect to a PRC CJV, the other party or parties to the joint venture agreement relating to such PRC CJV with the Company 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 any other class of Capital Stock of such Person.

“*Pre-Registration Mortgage Guarantees*” means any Indebtedness of the Company or any Restricted Subsidiary consisting of a guarantee in favor of any bank or other similar financial institutions in the ordinary course of business of secured loans of purchasers of individual units of properties from the Company or any Restricted Subsidiary; *provided* that any such guarantee shall be released in full on or before the perfection of a security interest in such properties under applicable law in favor of the relevant lender.

“*Public Indebtedness*” means any bonds, debentures, notes or similar debt securities issued in a public offering or a private placement (other than the Notes) to institutional investors.

“*Qualified Exchange*” means either (1) the New York Stock Exchange, the London Stock Exchange, The Stock Exchange of Hong Kong Limited, the Nasdaq Stock Market, Singapore Exchange Securities Trading Limited, The Shanghai Stock Exchange or The Shenzhen Stock Exchange or (2) 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).

“*Qualified IPO*” means an initial public offering, and a listing of, Capital Stock of a company on a Qualified Exchange, *provided* that in the case that such listing is on 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), such listing shall result in a public float of not less than the percentage required by the applicable listing rules.

“*Rating Agencies*” means (i) S&P, (ii) Moody’s and (iii) if S&P or Moody’s or both shall not make a rating of the Notes publicly available, one or more “nationally recognized statistical rating organizations,” as the case may be, within the meaning of Section 3(a)(62) of the Exchange Act, selected by the Company, which shall be substituted for S&P or Moody’s or both, as the case may be.

“*Rating Category*” means (i) with respect to S&P, any of the following categories: “BB,” “B,” “CCC,” “CC,” “C” and “D” (or equivalent successor categories); (ii) with respect to Moody’s, any of the following categories: “Ba,” “B,” “Caa,” “Ca,” “C” and “D” (or equivalent successor categories); and (iii) the equivalent of any such category of S&P or Moody’s used by another Rating Agency. In determining whether the rating of the Notes has decreased by one or more gradations, gradations within Rating Categories (“+” and “-” for S&P; “1,” “2” and “3” for Moody’s; or the equivalent gradations for another Rating Agency) shall be taken into account (e.g., with respect to S&P, a decline in a rating from “BB+” to “BB,” as well as from “BB-” to “B+,” will constitute a decrease of one gradation).

“*Receivable Financing*” means any financing transaction or series of financing transactions that have been or may be entered into by the Company or any Restricted Subsidiary pursuant to which the Company or any Restricted Subsidiary may sell, convey or otherwise transfer to another Person, or may grant a security interest in, any of its receivables, mortgages, royalty, other revenue streams or interests therein (including without limitation, all security interests in goods financed thereby (including equipment and property), the proceeds of such receivables, and other assets which are customarily sold or in respect of which security interests are customarily granted in connection with securitization or factoring transactions involving such assets) for credit or liquidity management purposes (including discounting, securitization or factoring transactions) either (i) in the ordinary course of business or (ii) by way of selling by such other Person securities that are, or are capable of being, listed on any stock exchange or in any securities market and are offered using an offering memorandum or similar offering document.

“*Receivable Financing Assets*” means assets that are underlying and are sold, conveyed or otherwise transferred or pledged in a Receivable Financing.

“*Reference Treasury Dealer*” means each of any three investment banks of recognized standing that is a primary U.S. Government securities dealer in The City of New York, selected by the Company in good faith.

“*Reference Treasury Dealer Quotations*” means, with respect to each Reference Treasury Dealer and any redemption date, the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing by such Reference Treasury Dealer at 5:00 p.m. on the fifth Business Day preceding such redemption date.

“*Renminbi*” or “*RMB*” means the lawful currency of the People’s Republic of China, excluding Hong Kong, Macau and Taiwan for the purposes of the Indenture.

“*Restricted Subsidiary*” means any Subsidiary of the Company other than an Unrestricted Subsidiary.

“*Restructuring*” means the restructuring and Qualified IPO of the common shares of a Subsidiary of the Company in the Restructuring Group.

“*Restructuring Group*” means the group of Subsidiaries of the Company which are engaged in the Permitted Business that the Company may spin off and separately listed on a Qualified Exchange as part of the Restructuring.

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

“*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 Company or any Restricted Subsidiary transfers such property to another Person and the Company or any Restricted Subsidiary leases it from such Person.

“*Securitization Fees*” means distributions or payments made directly or by means of discounts with respect to any Receivable Financing Asset or participation interest therein issued or sold in connection with and other fees paid to a Person that is not a Restricted Subsidiary in connection with any Receivable Financing.

“*Security Documents*” means, collectively, the pledge or charge agreements and any other agreements or instruments that may evidence or create any security interest in favor of the Common Security Trustee on behalf of the Trustee and/or any Holders in any or all of the Collateral.

“*Senior Indebtedness*” of the Company or any Restricted Subsidiary, as the case may be, means all Indebtedness of the Company or such 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 Company, the Notes, (b) in respect of any Restricted Subsidiary that is a Subsidiary Guarantor, its Subsidiary Guarantee; or (c) in respect of any Restricted Subsidiary that is a JV Subsidiary Guarantor, its JV Subsidiary Guarantee; *provided* that Senior Indebtedness does not include (i) any obligation to the Company or any Restricted Subsidiary, (ii) trade payables or (iii) Indebtedness Incurred in violation of the Indenture.

“*Series A Notes*” means the variable rate senior notes due December 31, 2019 issued by the Company.

“*Series B Notes*” means the variable rate senior notes due June 30, 2020 issued by the Company.

“*Series C Notes*” means the variable rate senior notes due December 31, 2020 issued by the Company.

“*Series D Notes*” means the variable rate senior notes due June 30, 2021 issued by the Company.

“*Series E Notes*” means the variable rate senior notes due December 31, 2021 issued by the Company.

“*Significant Restricted Subsidiary*” means a Restricted Subsidiary, or a 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 Company or any Restricted Subsidiary and an Independent Third Party pursuant to which the Company or such Restricted Subsidiary agrees to (x) acquire not less than a majority of the Capital Stock of a Person (which owns land use rights in respect of parcels of land suitable for Permitted Business) (the “Minimum Initial Purchase”) from such Independent Third Party and pay for the Minimum Initial Purchase in full or in installments at a purchase price that is not more than the Fair Market Value of such Capital Stock on the date of such agreement and/or (y) on or after the payment in full of the purchase price for the Minimum Initial Purchase and such Person becomes a Restricted Subsidiary, (i) acquire additional shares of Capital Stock of such Restricted Subsidiary from such Independent Third Party and pay for such additional shares in full or in installments after the date of such agreement at a purchase price that is not more than the Fair Market Value of such Capital Stock on the date of such agreement or (ii) acquire additional shares of Capital Stock of such Restricted Subsidiary from such Independent Third Party in accordance with a “right of first refusal” or “right of first offer” type of provision in such agreement at a purchase price that is not more than the Fair Market Value of such Capital Stock on or about the date of such purchase.



“*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 Shareholder Loan*” means any unsecured loan to the Company or any Restricted Subsidiary from Permitted Holders which (i) is expressly subordinated in right of payment to the Notes, (ii) by its terms (and by the terms of any security into which it is convertible or for which it is exchangeable) does not mature and is not required to be repaid, pursuant to a sinking fund obligation event of default or otherwise, in whole or in part, on or prior to the date that is one year after the Stated Maturity of the Notes and (iii) by its terms does not provide any cash payment of interest.

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

“*Subsidiary*” means, with respect to any Person, any corporation, association or other business entity (i) 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 (ii) of which 50% or less of the outstanding Voting Stock is owned, directly or indirectly, by such Person and which is “controlled” and consolidated by such Person in accordance with GAAP.

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

“*Subsidiary Guarantor*” means any initial Subsidiary Guarantor named herein and any other Restricted Subsidiary which guarantees the payment of the Notes pursuant to the Indenture and the Notes; *provided* that Subsidiary Guarantor will not include (a) any Person whose Subsidiary Guarantee has been released in accordance with the Indenture and the Notes or (b) any JV Subsidiary Guarantor.

“*Subsidiary Guarantor Pledgor*” means any initial Subsidiary Guarantor Pledgor named herein and any other Subsidiary Guarantor which pledges Collateral to secure the obligations of the Company under the Notes and the Indenture and of such Subsidiary Guarantor under its Subsidiary Guarantee; *provided* that a Subsidiary Guarantor Pledgor will not include any Person whose pledge under the Security Documents has been released in accordance with the Security Documents, the Indenture and the Notes.

“*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 United Kingdom, the People’s Republic of China and Hong Kong or any agency of the foregoing or obligations fully and unconditionally guaranteed by the United States of America, any state of the European Economic Area, the United Kingdom, the People’s Republic of China and Hong Kong or any agency of the foregoing, in each case maturing within one year;
- (2) time deposit accounts, certificates of deposit, demand notes 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 or any state thereof, any state of the European Economic Area, the United Kingdom or Hong Kong, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of US\$100.0 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 Section 3(a)(62) of the Exchange 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 within 180 days of the date of acquisition thereof, issued by a corporation (other than an Affiliate of the Company) 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) time deposit accounts, certificates of deposit, overnight or call deposits and money market deposits with any bank or financial institution organized under the laws of the PRC, Hong Kong or anywhere the Company or any Restricted Subsidiary conducts business operations; and
- (8) structured deposit products that are principal protected with any bank or financial institution organized under the laws of the PRC, Hong Kong or anywhere the Company or any Restricted Subsidiary conducts business operations 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 Company 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 Company (which the Company shall use its reasonable best efforts to compile on a timely manner) are available (which may include internal consolidated financial statements); *provided* that only with respect to clause (b)(7) 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, as measured by the purchase price or cost therefor or budgeted cost provided in good faith by the Company or any Restricted Subsidiary to the bank or other similar financial institutional lender providing such Indebtedness.

“*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.

“*Unrestricted Subsidiary*” means (1) any Subsidiary of the Company 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 holder 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 100% 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 are entitled to 95% or more of the economic benefits distributable by such Subsidiary.

## DESCRIPTION OF THE 2021 NOTES

For purposes of this “Description of the 2021 Notes,” the term “Company” refers only to Kaisa Group Holdings Ltd., a company incorporated with limited liability under the laws of the Cayman Islands, and any successor obligor on the Notes, and not to any of its Subsidiaries, and the term “Notes” refers only to the 2021 Notes issued by the Company. Each Subsidiary of the Company which 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 Company that in the future provides a JV Subsidiary Guarantee (as defined below) is referred to as a “JV Subsidiary Guarantor.”

The Notes are to be issued under an indenture (the “Indenture”), to be dated as of the Original Issue Date, among the Company, the initial Subsidiary Guarantors, as guarantors, and Citicorp International Limited, as trustee (the “Trustee”).

The following is a summary of certain provisions of the Indenture, the Notes, the Subsidiary Guarantees, the JV Subsidiary Guarantees (if any), the Security Documents and the Intercreditor Agreement. 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 Subsidiary Guarantees, the JV Subsidiary Guarantees (if any), the Security Documents and the Intercreditor Agreement. It does not restate those agreements 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. Copies of the Indenture will be available on or after the Original Issue Date during normal office hours at the corporate trust office of the Trustee at 39/F, Champion Tower, 3 Garden Road, Central, Hong Kong.

### Brief Description of the Notes

The Notes are:

- general obligations of the Company;
- senior in right of payment to any existing and future obligations of the Company expressly subordinated in right of payment to the Notes;
- at least *pari passu* in right of payment with all other unsecured, unsubordinated Indebtedness of the Company (subject to any priority rights of such unsubordinated Indebtedness pursuant to applicable law);
- guaranteed by the Subsidiary Guarantors and the JV Subsidiary Guarantors (if any) on a senior basis, subject to the limitations described below under the caption “— The Subsidiary Guarantees and JV Subsidiary Guarantees” and in “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral”;
- effectively subordinated to the secured obligations of the Company, the Subsidiary Guarantors and the JV Subsidiary Guarantors (if any), to the extent of the value of the collateral serving as security therefor (other than the Collateral); and
- effectively subordinated to all existing and future obligations of the Non-Guarantor Subsidiaries (defined below).

In addition, on the Original Issue Date, subject to the limitations described in “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral,” the Notes will be secured by a pledge of the Collateral as described below under the caption “— Security” and will:

- be entitled to a lien on the Collateral (subject to any Permitted Liens and the Intercreditor Agreement); and
- rank effectively senior in right of payment to unsecured obligations of the Company with respect to the value of the Collateral pledged by the Company securing the Notes (subject to any priority rights of such unsecured obligations pursuant to applicable law).

The Notes will mature on June 30, 2021, unless earlier redeemed pursuant to the terms thereof and the Indenture.

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 2021 Notes” include any Additional Notes that are actually issued. The Notes will bear interest at 7.875% 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 June 30 and December 30 of each year (each an “Interest Payment Date”), commencing December 30, 2017.

Interest on the Notes will be paid to Holders of record at the close of business on June 15 and December 15 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. In any case in which the date of the payment of principal of or premium (if any) or interest on the Notes is not a Business Day in the relevant place of payment, then payment of principal or premium (if any) 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. Interest on the Notes will be calculated on the basis of a 360 day year comprised of twelve 30-day months.

The Notes will be issued only in fully registered form, without coupons, in denominations of US\$200,000 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 Company 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 Company at the office or agency of the Company maintained for that purpose (which initially will be the specified office of the Paying Agent), and the Notes may be presented for registration of transfer or exchange at such office or agency; *provided* that, at the option of the Company, payment of interest may be made by check mailed to the address of the Holders as such address appears in the Note register. Interest payable on the Notes held through Euroclear and Clearstream will be available to Euroclear and Clearstream participants (as defined herein) on the Business Day following payment thereof.

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

As of the date of the Indenture, all of the Company’s Subsidiaries will be “Restricted Subsidiaries.” However, under the circumstances described below under the caption “— Certain Covenants — Designation of Restricted and Unrestricted Subsidiaries,” the Company will be permitted to designate certain of its Subsidiaries as “Unrestricted Subsidiaries.” The Company’s Unrestricted Subsidiaries will generally not be subject to the restrictive covenants in the Indenture and will not guarantee the Notes.

On the Original Issue Date, the initial Subsidiary Guarantors will consist of all of the Restricted Subsidiaries (other than the Restricted Subsidiaries organized under the laws of the PRC (the “PRC Non-Guarantor Subsidiaries”), Ace Start Enterprises Limited (佳始企業有限公司), Bowen Asset Management (Cayman) Limited (寶運資產管理(開曼)有限公司), Bowen Asset Management Limited (寶運資產管理有限公司), Brave Sigh Limited (勇志有限公司), Brave Sigh (Hong Kong) Limited (勇志(香港)有限公司), Central Sino Investments Limited (正漢投資有限公司), Central Sino Investments (Hong Kong) Limited (正漢投資(香港)有限公司), Crest Sum Limited (總冠有限公司), Crest Sum (Hong Kong) Limited (總冠(香港)有限公司), Glorious Model Limited (榮程有限公司), Glorious Model (Hong Kong) Limited (榮程(香港)有限公司), Goldenform Investments Limited (崇堅投資有限公司), Greater Sail Limited (順帆有限公司), Greater Sail (Hong Kong) Limited (順帆(香港)有限公司), Hao Xi Holdings Limited (豪熙控股有限公司), Hao Xi Holdings (Hong Kong) Limited (豪熙控股(香港)有限公司), Heroic Lead Limited (傑領有限公司), Heroic Lead (Hong Kong) Limited (傑領(香港)有限公司), Huang Da Limited (煌達有限公司), Huang Da (Hong Kong) Limited (煌達(香港)有限公司), Kaisa Logistic Group Limited (佳兆業物流集團有限公司), Kaisa Technology Limited (佳兆業科技有限公司), Kaisa Ventures Limited (佳兆業創投有限公司), Kaisa Ventures (Hong Kong) Limited (佳兆業創投(香港)有限公司), Luxuriant Year Limited (茂年有限公司), Luxuriant Year (Hong Kong) Limited (茂年(香港)有限公司), Onfair Asia Pacific Limited (安信亞太有限公司), Peiyu Limited (沛裕有限公司), Peiyu (Hong Kong) Investments Limited (沛裕(香港)投資有限



公司), Pointer Star Limited (尖星有限公司), Portwood Global Limited (港活環球有限公司), Portwood Global (Hong Kong) Limited (港活環球(香港)有限公司), Richedge Limited (博鋒有限公司), Richedge (Hong Kong) Limited (博鋒(香港)有限公司), Right Year Developments Limited (偉年發展有限公司), Right Year Developments (Hong Kong) Limited (偉年發展(香港)有限公司), Soarhigh Developments Limited (展升發展有限公司), Soarhigh Developments (Hong Kong) Limited (展升發展(香港)有限公司), Splendid Maple Limited (燁楓有限公司), Splendid Maple (Hong Kong) Limited (燁楓(香港)有限公司), Superb Mega Limited (超旭有限公司), Super Winful Limited (超全有限公司), Tong Sheng Investments Limited (通升投資有限公司), Tong Sheng Investments (Hong Kong) Limited (通升投資(香港)有限公司), Yuan Yuan Investment Company Limited (遠源投資有限公司), Action Enrich Limited, Action Enrich (Hong Kong) Investment Limited, Sunny Harvest Investments Limited, Sunny Harvest Investments (Hong Kong) Limited, Sunny Sino Investments Limited, Sunny Sino Investments (Hong Kong) Limited), Camilla Catering Group (HK) Company Limited (嘉美軒飲食集團(香港)有限公司), Kaisa Group (International) Holdings Company Limited (佳兆業集團控股(國際)有限公司), Kaisa Medical Group Company Limited (佳兆業醫療集團有限公司), Kaisa Tea Group (Hong Kong) Company Limited (佳兆業茶葉集團(香港)有限公司), Sinoluck Investments Holdings (HK) Limited and Sinoluck Investments Holdings Limited (華運投資控股有限公司) (collectively, the “Other Non-Guarantor Subsidiaries” and, together with the PRC Non-Guarantor Subsidiaries, the “Existing Non-Guarantor Subsidiaries”). The initial Subsidiary Guarantors do not have significant operations or assets.

None of the existing or future Restricted Subsidiaries organized under the laws of the PRC or any Exempted Subsidiaries will provide a Subsidiary Guarantee or a JV Subsidiary Guarantee on the Original Issue Date or at any time in the future. Although the Indenture contains limitations on the amount of additional Indebtedness that the Restricted Subsidiaries organized under the laws of the PRC 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, the Non-Guarantor Subsidiary will pay the holders of its debt and its trade creditors before it will be able to distribute any of its assets to the Company. See “Risk Factors — Risks Relating to the Notes — We are a holding company and payments with respect to the Notes are structurally subordinated to liabilities, contingent liabilities and obligations of our subsidiaries.”

As of December 31, 2016,

- the Company and its consolidated subsidiaries had approximately RMB87,537 million (US\$12,608 million) of consolidated indebtedness outstanding, of which approximately RMB75,493 million (US\$10,873 million) was secured;
- the Company and the Subsidiary Guarantors had approximately RMB370 million (US\$53 million) of secured indebtedness outstanding; and
- the Non-Guarantor Subsidiaries had approximately RMB87,167 million (US\$12,555 million) of consolidated indebtedness and other liabilities outstanding owed to third parties.

In addition, as of December 31, 2016, the Non-Guarantor Subsidiaries had approximately RMB27,186 million (US\$3,916 million) of capital commitments and RMB21,843 million (US\$3,146 million) of financial guarantees.

The Company will cause each of its future Subsidiaries (other than Subsidiaries organized under the laws of the PRC or Exempted Subsidiaries), as soon as practicable after such Subsidiary becomes a Restricted Subsidiary or ceases to be an Exempted 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 sentence, the Company may elect to have any future Restricted Subsidiary (and its Restricted Subsidiaries) organized outside the PRC not provide a Subsidiary Guarantee or a JV Subsidiary Guarantee at the time such entity becomes a Restricted Subsidiary or ceases to be an Exempted Subsidiary (the “New Non-Guarantor Subsidiary” and, together with the Existing Non-Guarantor Subsidiaries, the “Non-Guarantor Subsidiaries”); *provided* that, after giving effect to the Consolidated Assets of such Restricted Subsidiary, the Consolidated Assets of all Restricted Subsidiaries organized outside the PRC (other than Exempted Subsidiaries) that are not Subsidiary Guarantors or JV Subsidiary Guarantors do not account for more than 20% of Total Assets. Each Subsidiary of the Company that guarantees the Notes after the Original Issue Date other than through a JV Subsidiary Guarantee is referred to as a “Future Subsidiary Guarantor” and, upon execution of the applicable supplemental indenture to the Indenture, will be a “Subsidiary Guarantor.”

In the case of a Restricted Subsidiary that is, or is proposed by the Company or any Restricted Subsidiary to be, established after the Original Issue Date or any entity (1) that is incorporated in any jurisdiction other than the PRC and (2) in respect of which the Company or any Restricted Subsidiary (x) in the case of a Restricted Subsidiary, is proposing to sell, whether through the sale of existing shares or the issuance of new shares, no less than 20% of the Capital Stock of such Restricted Subsidiary or (y) in the case of any other entity, is proposing to purchase the Capital Stock of such entity such that it becomes a Subsidiary and designate such entity as a Restricted Subsidiary, the Company may, concurrently with or as soon as practicable after the consummation of such sale or purchase, provide a JV Subsidiary Guarantee instead of a Subsidiary Guarantee for (a) such Restricted Subsidiary and (b) the Restricted Subsidiaries of such Restricted Subsidiary that are organized in any jurisdiction other than the PRC (other than Exempted Subsidiaries), if the following conditions are satisfied:

- as of the date of execution of the JV Subsidiary Guarantee, no document exists that is binding on the Company or any such Restricted Subsidiary that would have the effect of (1) prohibiting the Company or any such Restricted Subsidiary from providing such JV Subsidiary Guarantee or (2) requiring the Company or any Restricted Subsidiary 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 made from, an Independent Third Party at a consideration that is not less than the Fair Market Value of such Capital Stock;
- concurrently with providing the JV Subsidiary Guarantee, the Company shall or shall cause such JV Subsidiary Guarantor to deliver to the Trustee and, if applicable, the Common Security Trustee (as defined below):
  - (i) (A) a duly executed JV Subsidiary Guarantee of such JV Subsidiary Guarantor (the “JV Subsidiary Guarantee”) and each Restricted Subsidiary of such JV Subsidiary Guarantor that is not organized under the laws of the PRC (other than Exempted Subsidiaries) and (B) a duly executed supplemental indenture to the Indenture pursuant to which such JV Subsidiary Guarantor 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) a duly executed Security Document that pledges in favor of the Common Security Trustee on behalf of the Trustee and the holders of the Notes the Capital Stock of such JV Subsidiary Guarantor held by the Company or any Subsidiary Guarantor, but not the Capital Stock of the direct or indirect Subsidiaries of such JV Subsidiary Guarantor;
  - (iii) an Officers’ Certificate certifying a copy of the Board Resolution to the effect that such JV Subsidiary Guarantee has been approved by a majority of the disinterested members of the Board of Directors; and
  - (iv) a legal opinion by a law firm of recognized international standing confirming that under New York law such JV Subsidiary Guarantee is valid, binding and enforceable against the JV Subsidiary Guarantor providing the JV Subsidiary Guarantee (subject to customary qualifications and assumptions).

The Subsidiary Guarantee of each Subsidiary Guarantor:

- is a general obligation of such Subsidiary Guarantor;
- is effectively subordinated to secured obligations of such Subsidiary Guarantor, to the extent of the value of the assets serving as security therefor;
- 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* with all other unsecured, unsubordinated Indebtedness of such Subsidiary Guarantor (subject to any priority rights of such unsubordinated Indebtedness pursuant to applicable law); and
- effectively subordinated to all existing and future obligations of the Non-Guarantor Subsidiaries.

The JV Subsidiary Guarantee of any JV Subsidiary Guarantor:

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

In addition, subject to the limitations described in “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral,” the Subsidiary Guarantee of each Subsidiary Guarantor Pledgor:

- will be entitled to a security interest in the Collateral (subject to any Permitted Liens and the Intercreditor Agreement) pledged by such Subsidiary Guarantor Pledgor, as described below under the caption “— Security”; and
- will rank effectively senior in right of payment to the unsecured obligations of such Subsidiary Guarantor Pledgor with respect to the value of the Collateral securing such Subsidiary Guarantee (subject to any priority rights of such unsecured obligations pursuant to applicable law).

The JV Subsidiary Guarantee of any JV Subsidiary Guarantor will not be secured.

Under the Indenture, and any supplemental indenture to the Indenture, as applicable, each of the Subsidiary Guarantors and JV Subsidiary Guarantors 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 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 Company prior to exercising its rights under the Subsidiary Guarantees and the 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 restored, the rights of the Holders under the Subsidiary Guarantees and the 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 the JV Subsidiary Guarantees, as the case may be, are required to be made in U.S. dollars.

Under the Indenture and any supplemental indenture to the Indenture, as applicable, each Subsidiary Guarantee 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 fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. Each JV Subsidiary Guarantee will be limited to an amount which is the lower of (i) the 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 fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. If a Subsidiary Guarantee or JV Subsidiary Guarantee were to be rendered 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 Guarantee and, depending on the amount of such indebtedness, a Subsidiary Guarantor’s liability on its Subsidiary Guarantee or a JV Subsidiary Guarantor’s liability on its JV Subsidiary Guarantee could be reduced to zero.

The obligations of each Subsidiary Guarantor under its Subsidiary Guarantee and the enforceability of the Collateral granted in respect of the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors 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. See “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral — The Subsidiary Guarantees or JV Subsidiary Guarantees may be challenged under applicable insolvency or fraudulent transfer laws, which could impair the enforceability of the Subsidiary Guarantees or JV Subsidiary Guarantees.”

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

A Subsidiary Guarantee given by a Subsidiary Guarantor and a JV Subsidiary Guarantee given by a JV Subsidiary Guarantor 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 Company of a Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be, as an Unrestricted Subsidiary in compliance with the terms of the Indenture;
- upon the sale, disposition or merger 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 described 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 JV Subsidiary Guarantor, as the case may be, no longer being a Restricted Subsidiary, so long as (1) such Subsidiary Guarantor or JV Subsidiary Guarantor, as the case may be, is simultaneously released from its obligations in respect of any of the Company’s other Indebtedness or any Indebtedness of any other Restricted Subsidiary and (2) the proceeds from such sale, disposition or merger 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
- in the case of a Subsidiary Guarantor that becomes a New Non-Guarantor Subsidiary, in compliance with the terms of the Indenture.

In the case of a Subsidiary Guarantor with respect to which the Company or any Restricted Subsidiary is proposing to sell, whether through the sale of existing shares or the issuance of new shares, no less than 20% of the Capital Stock of such Subsidiary Guarantor, the Company may concurrently with or as soon as practicable after the consummation of such sale or issuance of Capital Stock, (a) instruct the Trustee to release the Subsidiary Guarantees provided by such Subsidiary Guarantor and each of its Restricted Subsidiaries organized outside the PRC, and upon such release such Subsidiary Guarantor and its Restricted Subsidiaries organized outside the PRC will become “New Non-Guarantor Subsidiaries” (such that each New Non-Guarantor Subsidiary will no longer guarantee the Notes) and (b) instruct the Common Security Trustee to (i) discharge the pledge of the Capital Stock granted by each such New Non-Guarantor Subsidiary and (ii) discharge the pledge of Capital Stock made by the Company or any Subsidiary Guarantor over the shares it owns in such New Non-Guarantor Subsidiary (in each case, without any requirement to seek the consent or approval of the Holders of the Notes), *provided* that after the release of such Subsidiary Guarantees, the Consolidated Assets of all Restricted Subsidiaries organized outside the PRC (other than Exempted Subsidiaries) that are not Subsidiary Guarantors or JV Subsidiary Guarantors (including the New Non-Guarantor Subsidiaries) do not account for more than 20% of Total Assets. A Subsidiary Guarantee of a Subsidiary Guarantor may only be released pursuant to this paragraph if as of the date of such proposed release, no document exists that is binding on the Company or any Restricted Subsidiary that would have the effect of (a) prohibiting the Company or any Restricted Subsidiary from releasing such Subsidiary Guarantee or (b) requiring the Company or such Subsidiary Guarantor to deliver or keep in place a guarantee of other Indebtedness of the Company by such Subsidiary Guarantor.



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

A Subsidiary Guarantee given by a Subsidiary Guarantor may be released following the sale or issuance by the Company or any Restricted Subsidiary of Capital Stock in (x) such Subsidiary Guarantor or (y) any other Subsidiary Guarantor that, directly or indirectly, owns a majority of the Capital Stock of such Subsidiary Guarantor, in each case where such sale or issuance, whether through the sale of existing shares or the issuance of new shares, is for no less than 20% of the issued Capital Stock of the relevant Subsidiary Guarantor, *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 Company or any such Restricted Subsidiary that would have the effect of (1) prohibiting the Company or any such Restricted Subsidiary from releasing such Subsidiary Guarantee or (2) requiring the Company or any such Restricted Subsidiary 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;
- such sale or issuance of Capital Stock is made to an Independent Third Party at a consideration that is not less than the Fair Market Value of such Capital Stock;
- concurrently with the release of such Subsidiary Guarantee, the Company shall or shall cause such JV Subsidiary Guarantor to deliver to the Trustee and, if applicable, the Common Security Trustee:
  - (i) (A) a duly executed JV Subsidiary Guarantee of such JV Subsidiary Guarantor and each Restricted Subsidiary of such JV Subsidiary Guarantor that is not organized under the laws of the PRC and (B) a duly executed supplemental indenture to the Indenture pursuant to which such JV Subsidiary Guarantor 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) a duly executed Security Document that pledges in favor of the Trustee the Capital Stock of such JV Subsidiary Guarantor held by the Company or any Subsidiary Guarantor, but not the Capital Stock of the direct or indirect Subsidiaries of such JV Subsidiary Guarantor;
  - (iii) an Officers' Certificate certifying a copy of a Board Resolution to the effect that such JV Subsidiary Guarantees have been approved by a majority of the disinterested members of the Board of Directors; and
  - (iv) a legal opinion by a law firm of recognized international standing confirming that under New York law such JV Subsidiary Guarantee is valid, binding and enforceable against the JV Subsidiary Guarantor providing such JV Subsidiary Guarantee (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 the "Limitation on Asset Sales" and "Limitation on Restricted Payments" covenants.

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

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 Company has delivered to the Trustee an Officers' Certificate stating that all requirements relating to such release have been complied with and that such release is authorized and permitted by the terms of the Indenture.



## Security

Each of the Company and the initial Subsidiary Guarantor Pledgors has pledged the Capital Stock of the initial Subsidiary Guarantors (the “Collateral”) owned by it (subject to Permitted Liens and the Intercreditor Agreement) in order to secure the obligations of the Company and such Subsidiary Guarantor Pledgor under the Existing HY Notes and the Mandatorily Exchangeable Bonds (or the Exchange Convertible Bonds, as the case may be). On the Original Issue Date, each of the Trustee and the trustees with respect to any other senior notes that the Company may issue on the Original Issue Date (collectively with the Trustee, the “New Senior Notes Trustees”) will execute a supplement to and become a party to the Intercreditor Agreement, at which time each New Senior Notes Trustee will become a Secured Party (as defined below) under the Intercreditor Agreement, and the Holders and the holders of such other senior notes issued on the Original Issue Date will be entitled to share in the benefit of the pledge of such Capital Stock on a *pari passu* basis with the holders of the Existing HY Notes, the holders of the Mandatorily Exchangeable Bonds (or the Exchange Convertible Bonds, as the case may be) and the holders of any other Permitted *Pari Passu* Secured Indebtedness. See “— Intercreditor Agreement.”

The initial Subsidiary Guarantor Pledgors are Chang Ye Investment Company Limited (昌業投資有限公司), Da Hua Investment Company Limited (大華投資有限公司), Dong Chang Investment Company Limited (東昌投資有限公司), Dong Sheng Investment Company Limited (東升投資有限公司), Guang Feng Investment Company Limited (廣豐投資有限公司), Heng Chang Investment Company Limited (恒昌投資有限公司), Jie Feng Investment Company Limited (捷豐投資有限公司), Jin Chang Investment Company Limited (進昌投資有限公司), Rong Hui Investment Company Limited (榮輝投資有限公司), Rui Jing Investment Company Limited (瑞景投資有限公司), Tai An Da Investment Company Limited (泰安達投資有限公司), Tai Chang Jian Investment Company Limited (泰昌建投資有限公司), Tai Chong Fa Investment Company Limited (泰昌發投資有限公司), Tai Chong Li Investment Company Limited (泰昌利投資有限公司), Tai He Sheng Investment Company Limited (泰和盛投資有限公司), Tai He Xiang Investment Company Limited (泰和詳投資有限公司), Xie Mao Investment Company Limited (協茂投資有限公司), Ye Chang Investment Company Limited (葉昌投資有限公司), Zheng Zhong Tian Investment Company Limited (正中天投資有限公司), Bakai Investments Limited (八凱投資有限公司), Yifa Trading Limited (益發貿易有限公司), Kaisa Holdings Limited, Central Broad Limited (中博有限公司), Guo Cheng Investments Limited (國承投資有限公司), Ri Xiang Investments Limited (日翔投資有限公司), Yin Jia Investments Limited (銀佳投資有限公司), Jet Smart Global Development Limited (捷利環球發展有限公司), Apex Walk Limited (威行有限公司), Vast Wave Limited (廣濤有限公司), Fulbright Financial Group (Enterprise) Limited (富昌金融集團(企業)有限公司) and Fulbright Financial Group (Development) Limited (富昌金融集團(發展)有限公司).

None of the Capital Stock of the Non-Guarantor Subsidiaries will be pledged on the Original Issue Date or at any time in the future (unless they cease to be Non-Guarantor Subsidiaries). In addition, none of the Capital Stock of any future Restricted Subsidiary that may be organized under the laws of the PRC will be pledged at any time in the future. If any JV Subsidiary Guarantor is established, the Capital Stock of such JV Subsidiary Guarantor owned by the Company or any Subsidiary Guarantor will be pledged to secure the obligations of the Company under the Notes and the Indenture, and of such Subsidiary Guarantor under its Subsidiary Guarantee, as the case may be, in the manner described above. However, none of the JV Subsidiary Guarantors will provide a Security Document pledging the Capital Stock of its direct or indirect Restricted Subsidiaries as security in favor of the Common Security Trustee.

The Company has also agreed, for the benefit of the holders of the Notes, to pledge, or cause each Subsidiary Guarantor to pledge, the Capital Stock owned directly by the Company or such Subsidiary Guarantor of any Person that becomes a Subsidiary Guarantor or JV Subsidiary Guarantor after the Original Issue Date, as soon as practicable after such Person becomes a Subsidiary Guarantor or JV Subsidiary Guarantor, to secure (subject to Permitted Liens) the obligations of the Company under the Notes and the Indenture, and of such Subsidiary Guarantor under its Subsidiary Guarantee, in the manner described above.

Each Subsidiary Guarantor that pledges Capital Stock of a Restricted Subsidiary after the Original Issue Date is referred to as a “Future Subsidiary Guarantor Pledgor” and, upon giving such pledge, will be a “Subsidiary Guarantor Pledgor.”

The value of the Collateral securing the Notes and the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors is unlikely to be sufficient to satisfy the Company's and the Subsidiary Guarantor Pledgors' obligations under the Notes and the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors, and the Collateral securing the Notes and such Subsidiary Guarantees may be reduced or diluted under certain circumstances, including the issuance of Additional Notes and other Permitted *Pari Passu* Secured Indebtedness and the disposition of assets comprising the Collateral, subject to the terms of the Indenture and the Intercreditor Agreement. See "Security — Release of Security" and "Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral — The value of the Collateral is unlikely to be sufficient to satisfy our obligations under the Notes and other *pari passu* secured indebtedness."

No appraisals of the Collateral have been prepared in connection with this offering of the Notes. There can be no assurance that the proceeds of any sale of the Collateral, in whole or in part, pursuant to the Indenture, the Intercreditor Agreement and the Security Documents following an Event of Default, would be sufficient to satisfy amounts due on the Notes or the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors. By its nature, some or all of the Collateral will be illiquid and may have no readily ascertainable market value. Accordingly, there can be no assurance that the Collateral would be sold in a timely manner or at all.

So long as no Payment Default has occurred and is continuing, and subject to the terms of the Security Documents and the Indenture, the Company and the Subsidiary Guarantor Pledgors, as the case may be, will be entitled to exercise any and all voting rights and to receive, retain and use any and all cash dividends, stock dividends, liquidating dividends, non-cash dividends, shares or stock resulting from stock splits or reclassifications, rights issues, warrants, options and other distributions (whether similar or dissimilar to the foregoing) in respect of Capital Stock constituting Collateral.

#### ***Permitted *Pari Passu* Secured Indebtedness***

On or after the Original Issue Date, the Company and each Subsidiary Guarantor Pledgor may create Liens on the Collateral *pari passu* with the Lien for the benefit of the Holders to secure Indebtedness of the Company (including Additional Notes) or any Subsidiary Guarantor and any *Pari Passu* Guarantee with respect to such Indebtedness (such Indebtedness of the Company or any Subsidiary Guarantor and any such *Pari Passu* Guarantee, "Permitted *Pari Passu* Secured Indebtedness"); *provided* that (i) the Company or such Subsidiary Guarantor was permitted to Incur such Indebtedness under the covenant under the caption "Limitation on Indebtedness and Preferred Stock," (ii) the holders (or their representative) of such Indebtedness (other than Additional Notes) become party to the Intercreditor Agreement referred to below, (iii) the agreement in respect of such Indebtedness contains provisions with respect to releases of Collateral and such *Pari Passu* Guarantee substantially similar to and no more restrictive on the Company and such Subsidiary Guarantor than the provisions of the Indenture and the Security Documents, and (iv) the Company and such Subsidiary Guarantor Pledgor deliver to the Trustee and/or the Common Security Trustee (defined below) an Opinion of Counsel and an Officers' Certificate, each with respect to corporate and collateral matters in connection with the Security Documents, stating that either (x) all necessary actions have been taken with respect to the recording, registering and filing of the Security Documents or (y) no such action is necessary to make such Lien effective. The Trustee and/or the Common Security Trustee, as the case may be, will be permitted and authorized, without the consent of any Holder, to enter into any amendments to the Security Documents or the Indenture and take any other action necessary to permit the creation and registration of Liens on the Collateral to secure Permitted *Pari Passu* Secured Indebtedness in accordance with this paragraph (including, without limitation, the appointment of any collateral agent under the Intercreditor Agreement referred to below to hold the Collateral on behalf of the Holders and the holders of Permitted *Pari Passu* Secured Indebtedness).

Except for certain Permitted Liens and the Permitted *Pari Passu* Secured Indebtedness, the Company and its Restricted Subsidiaries will not be permitted to issue or Incur any other Indebtedness secured by all or any portion of the Collateral without the consent of each Holder of the Notes then outstanding.

### ***Intercreditor Agreement***

The Company, the Subsidiary Guarantor Pledgors, Wilmington Trust, National Association, as the trustee (the “Existing HY Notes Trustee”) with respect to the Existing HY Notes, U.S. Bank National Association, the trustee with respect to the Mandatorily Exchangeable Bonds (the “MEB Trustee”), and Citicorp International Limited, as the shared security agent (the “Common Security Trustee”), have entered into an amended and restated intercreditor agreement dated July 21, 2016 (such intercreditor agreement, as so supplemented and amended from time to time, the “Intercreditor Agreement”), to which the Trustee will accede on the Original Issue Date. Upon the issuance of the Exchange Convertible Bonds pursuant to the terms of the Mandatorily Exchangeable Bonds, the trustee with respect to the Exchange Convertible Bonds (the “CB Trustee”) will accede to the Intercreditor Agreement. Pursuant to the Intercreditor Agreement, the Existing HY Notes Trustee, the MEB Trustee (or the CB Trustee, as the case may be) and the Trustee agree to (1) share the Collateral on an equal and ratable basis, (2) the conditions that are applicable to the release of or granting of any Lien on such Collateral, and (3) the conditions under which their rights with respect to such Collateral and the Indebtedness secured thereby will be enforced.

In connection with any future Permitted Pari Passu Secured Indebtedness (other than Additional Notes), the holders of such Permitted Pari Passu Secured Indebtedness (or their representative) will accede to the Intercreditor Agreement and become parties to it. The Common Security Trustee, the Trustee, the Existing HY Notes Trustee, the MEB Trustee (or the CB Trustee, as the case may be) and the holders of future Permitted Pari Passu Secured Indebtedness (or their representative) are collectively referred to as the “Secured Parties.”

By accepting the Notes, each Holder shall be deemed to have consented to the execution of the Intercreditor Agreement, any supplements, amendments or modifications thereto, and any future intercreditor agreement required and permitted under the Indenture.

### ***Enforcement of Security***

The lien securing the Notes and the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors will be granted to the Common Security Trustee. The Common Security Trustee, subject to the Intercreditor Agreement, will hold such Liens and security interests in the Collateral granted pursuant to the Security Documents with sole authority as directed by the Trustee (acting in accordance with written instruction of the Holders) and subject to receiving indemnity and/or security to its satisfaction to exercise remedies under the Security Documents. The Common Security Trustee has agreed to act as secured party on behalf of the Holders and the Trustee under the applicable Security Documents, to follow the instructions provided to it under the Indenture, the Security Documents and the Intercreditor Agreement and to carry out certain other duties.

The Indenture and/or the Security Documents principally provide that, at any time while the Notes are outstanding, the Common Security Trustee has the right to manage, perform and enforce the terms of the Security Documents relating to the Collateral and to exercise and enforce all privileges, rights and remedies thereunder according to its direction, including to take or retake control or possession of such Collateral and to hold, prepare for sale, process, lease, dispose of or liquidate such Collateral, including, without limitation, following the occurrence of an Event of Default under the Indenture.

The Intercreditor Agreement will provide, among other things, that any Secured Party may instruct the Common Security Trustee to enforce the Collateral and to deliver a notice of enforcement to the Company and the applicable Subsidiary Guarantor Pledgor (such instructions, the “Enforcement Instructions”). Upon receipt of an Enforcement Instruction from any Secured Party, the Common Security Trustee will provide a copy of such Enforcement Instruction and notice of enforcement to the Company and the other Secured Parties. If (a) the Common Security Trustee identifies a conflict (i) between Secured Parties’ interests in connection with any Enforcement Instruction or (ii) in the event that each of the Secured Parties issues Enforcement Instructions, between those Enforcement Instructions, and (b) the Common Security Trustee believes in its sole discretion that the interests of the Secured Parties would be in conflict upon the exercise of those Enforcement Instructions, or that compliance with an Enforcement Instruction would cause the Common Security Trustee to contravene another Enforcement Instruction, the Common Security Trustee shall notify each Secured Party in writing not more than five Business Days after it becomes aware of such conflict. In such circumstances, the Common Security Trustee is not obligated to take any action if it identifies such conflict.

The Intercreditor Agreement provides that any proceeds from any sale, collection, liquidation or enforcement of the Collateral shall be distributed by the Common Security Trustee in accordance with the terms of the Intercreditor Agreement and subject to the conditions of the relevant Security Document. Such proceeds shall be applied as follows:

*first*, to the Common Security Trustee for any unpaid fees, costs and expenses (including any indemnity expenses) reasonably incurred thereunder;

*second*, pro rata to each of the Trustee, the Existing HY Notes Trustee, the MEB Trustee (or the CB Trustee, as the case may be) and any agent, trustee or representative as a secured party for any series of Permitted Pari Passu Secured Indebtedness for any unpaid fees, costs and expenses (including any indemnity expenses) reasonably incurred under the applicable secured party document;

*third*, pro rata to each of the Trustee for the benefit of the Holders, the Existing HY Notes Trustee for the benefit of holders of the Existing HY Notes, the MEB Trustee (or the CB Trustee, as the case may be) for the benefit of holders of the Mandatorily Exchangeable Bonds (or the Exchange Convertible Bonds, as the case may be) and, to the extent applicable, to holders of Permitted Pari Passu Secured Indebtedness (or their representative for the benefit of such holders) in accordance with the terms of the applicable secured party document; and

*fourth*, any surplus remaining after such payments will be paid to the Company, the Subsidiary Guarantor Pledgors or to whomever may be lawfully entitled thereto.

The Trustee and/or the Common Security Trustee may decline to foreclose on the Collateral or exercise remedies available if it does not receive indemnification and/or security to its satisfaction. In addition, the Common Security Trustee's ability to foreclose on the Collateral may be subject to lack of perfection, the consent of third parties, prior Liens and practical problems associated with the realization of the Trustee's Liens on the Collateral. Neither the Trustee, the Common Security Trustee nor any of their respective officers, directors, employees, attorneys or agents will be responsible or liable for the existence, genuineness, value or protection of any Collateral securing the Notes, for the legality, enforceability, effectiveness or sufficiency of the Security Documents or the Intercreditor Agreement, for the creation, perfection, priority, sufficiency or protection of any of the Liens, or for any defect or deficiency as to any such matters, or for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens or Security Documents or any delay in doing so.

The Security Documents provide that the Company and the Subsidiary Guarantor Pledgors will indemnify the Common Security Trustee for all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind imposed against the Common Security Trustee arising out of the Security Documents except to the extent that any of the foregoing are finally judicially determined to have resulted from the gross negligence or willful misconduct of the Common Security Trustee.

This section, “— Enforcement of Security,” shall be subject to any amendments to the Security Documents or the Indenture to permit the creation of Liens on the Collateral to secure Permitted Pari Passu Secured Indebtedness in accordance with “— Permitted *Pari Passu* Secured Indebtedness” above.

### ***Release of Security***

Subject to the provisions of the Indenture, the Security Documents and Intercreditor Agreement, the security created in respect of the Collateral granted under the Security Documents may be released in relation to the Notes and the Subsidiary Guarantees in certain circumstances, including:

- upon repayment in full of the Notes;
- upon defeasance and discharge of the Notes as provided below under the caption “— Defeasance — Defeasance and Discharge”;
- upon certain dispositions of the Collateral in compliance with the covenants under the captions “— Certain Covenants — Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries” or “— Certain Covenants — Limitation on Asset Sales” or in accordance with the provision under the caption “— Consolidation, Merger and Sale of Assets”;

- with respect to security granted by a Subsidiary Guarantor Pledgor, upon the release of the Subsidiary Guarantee of such Subsidiary Guarantor Pledgor in accordance with the terms of the Indenture;
- in whole or in part, with the requisite consent of the Holders in accordance with the provisions described under “— Amendments and Waivers”;
- with respect to a Subsidiary Guarantor that becomes a New Non-Guarantor Subsidiary, the release of the pledge of Capital Stock made by the Company or any Subsidiary Guarantor over the shares it owns in such New Non-Guarantor Subsidiary;
- in connection with and upon execution of a JV Subsidiary Guarantee to replace a Subsidiary Guarantee with respect to all pledges of Capital Stock granted by such JV Subsidiary Guarantor or its Subsidiaries in its direct and indirect Subsidiaries, in accordance with the terms of the Indenture; and
- with respect to any pledge over any Capital Stock of any Subsidiary Guarantor or JV Subsidiary Guarantor, upon the designation by the Company of such Subsidiary Guarantor or JV Subsidiary Guarantor as an Unrestricted Subsidiary in accordance with the terms of the Indenture.

### **Further Issues**

Subject to the covenants described below, the Company may, from time to time, without notice to or the consent of the Holders, create and issue Additional Notes having the same terms and conditions as the Notes (including the benefit of the Subsidiary Guarantees and JV Subsidiary Guarantees) 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) (a “Further Issue”) so that such Additional Notes may be consolidated and form a single class with the previously outstanding Notes and vote together as one class on all matters with respect to the Notes; *provided* that the issuance of any such Additional Notes shall then be permitted under the “— Certain Covenants — Limitation on Indebtedness and Preferred Stock” covenant described below.

### **Optional Redemption**

At any time prior to June 30, 2021, the Company may at its option redeem the Notes, in whole but not in part, at a redemption price equal to 100% of the principal amount of the Notes plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, the redemption date. Neither the Trustee nor any of the Agents shall be responsible for verifying or calculating the Applicable Premium.

In addition, at any time prior to June 30, 2021, the Company may redeem up to 35% of the aggregate principal amount of the Notes with the Net Cash Proceeds of one or more sales of Common Stock of the Company in an Equity Offering at a redemption price of 107.875% of the principal amount of the Notes, plus accrued and unpaid interest, if any, to the redemption date; *provided* that at least 65% of the aggregate principal amount of the Notes 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.



The Company will give not less than 30 days' nor more than 60 days' notice of any redemption. If less than all of the Notes are to be redeemed, the Notes will be selected for redemption as follows:

- if the Notes are listed on any securities exchange and/or being held through the clearing systems, in compliance with the requirements of the principal securities exchange on which the Notes are then listed, or the requirements of the clearing systems, as applicable; or
- if the Notes are not listed on any securities exchange and/or held through the clearing systems, on a pro rata basis or by lot or such other method as the Trustee may determine in its sole and absolute discretion, unless otherwise required by law.

However, no Note of US\$200,000 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. With respect to any Certificated Note, 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 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 Company 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.

The Company 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 Company, it is important to note that if the Company is unable to repay (or cause to be repaid) all of the Indebtedness, if any, that would prohibit 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 failure by the Company 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 will also constitute an event of default under certain other debt instruments of the Company and its Subsidiaries. Future debt of the Company may also (i) prohibit the Company from purchasing Notes in the event of a Change of Control, (ii) provide that a Change of Control is a default or (iii) require repurchase of such debt upon a Change of Control. Moreover, the exercise by the Holders of their right to require the Company 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 Company. The ability of the Company to pay cash to the Holders following the occurrence of a Change of Control may be limited by the Company's 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 — We may not be able to repurchase or repay the Notes upon certain change of control events."

The definition of Change of Control includes a phrase "all or substantially all" as used with respect to the assets of the Company. No precise definition of the phrase has been established under applicable law, and the phrase will likely be interpreted under applicable law of the relevant jurisdictions based on particular facts and circumstances. Accordingly, there may be a degree of uncertainty as to the ability of a Holder of Notes to require the Company to repurchase such Holder's Notes as a result of a sale of less than all the assets of the Company to another person or group.

Notwithstanding the above, the Company 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, at the same times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

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

Neither the Trustee nor the Agents shall be required to monitor or to take any steps to ascertain whether a Change of Control, or any event which could lead to the occurrence of a Change of Control, has occurred or may occur.

### **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 Subsidiary Guarantees or the JV Subsidiary Guarantees 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 Company, a Surviving Person (as defined under the caption “— Consolidation, Merger and Sale of Assets”) or an applicable Subsidiary Guarantor or an applicable JV Subsidiary Guarantor is organized or resident for tax purposes or any jurisdiction from or through which payment is made (or any political subdivision or taxing authority thereof or therein) (each, as applicable, a “Relevant Jurisdiction”), unless such withholding or deduction is required by law or by regulation or governmental policy having the force of law. In the event that any such withholding or deduction is so required, the Company, a Surviving Person, the applicable Subsidiary Guarantor or the applicable JV Subsidiary Guarantor, as the case may be, 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:

- (a) for or on account of:
  - (i) any tax, duty, assessment or other governmental charge that would not have been imposed but for:
    - (A) the existence of any present or former connection between the Holder or beneficial owner of such Note, Subsidiary Guarantee or Security Document, as the case may be, and the Relevant Jurisdiction other than merely holding such Note or the receipt of payments thereunder or under a Subsidiary Guarantee or JV Subsidiary Guarantee, as the case may be, 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;
    - (B) 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;
    - (C) the failure of the Holder or beneficial owner to comply with a timely request of the Company, a Surviving Person or any Subsidiary Guarantor or JV Subsidiary Guarantor addressed to the Holder 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 would have reduced or eliminated any withholding or deduction as to which Additional Amounts would have otherwise been payable to such Holder or beneficial owner; or
    - (D) 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;
  - (ii) any estate, inheritance, gift, sale, transfer, personal property or similar tax, assessment or other governmental charge;

- (iii) any tax, assessment, withholding or deduction required by sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended (“FATCA”), any current or future Treasury Regulations or rulings promulgated thereunder, any law, regulation or other official guidance enacted in any jurisdiction implementing FATCA, any intergovernmental agreement between the United States and any other jurisdiction pursuant to the implementation of FATCA, or any other agreement pursuant to the implementation of FATCA; or
  - (iv) any combination of taxes, duties, assessments or other governmental charges referred to in the preceding clauses (i), (ii) and (iii); or
- (b) 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 for tax purposes in the income under the laws of a Relevant Jurisdiction 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.

As a result of these provisions, there are circumstances in which taxes could be withheld or deducted but Additional Amounts would not be payable to some or all beneficial owners of Notes.

Whenever there is mentioned in any context the payment of principal, premium or interest in respect of any Note, 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.

### **Redemption for Tax Reasons**

The Notes may be redeemed, at the option of the Company or a Surviving Person (as defined under the caption “— Consolidation, Merger and Sale of Assets”), as a whole but not in part, upon giving not less than 30 days’ nor more than 60 days’ notice to the Holders (which notice shall be irrevocable), at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest (including any Additional Amounts), if any, to the date fixed by the Company 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 on or after (i) with respect to the Company or any initial Subsidiary Guarantor, the Original Issue Date or (ii) with respect to any Future Subsidiary Guarantor, JV Subsidiary Guarantor or Surviving Person, the date such Future Subsidiary Guarantor, JV Subsidiary Guarantor or Surviving Person becomes a Subsidiary Guarantor, JV Subsidiary Guarantor or Surviving Person, as the case may be, with respect to any payment due or to become due under the Notes or the Indenture, the Company, such Subsidiary Guarantor, JV Subsidiary Guarantor or such Surviving Person, 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 Company, such Subsidiary Guarantor, JV Subsidiary Guarantor or such Surviving Person, 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 Company, such Subsidiary Guarantor, such JV Subsidiary Guarantor or such Surviving Person, 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 giving of any notice of redemption of the Notes pursuant to the foregoing, the Company, a Subsidiary Guarantor, a JV Subsidiary Guarantor or a Surviving Person, as the case may be, will deliver to the Trustee at least 30 days but not more than 60 days before the Tax Redemption Date:

- (1) an Officers' Certificate stating that such change or amendment referred to in the prior paragraph has occurred, describing the facts related thereto and stating that such requirement cannot be avoided by the Company, such Surviving Person, such Subsidiary Guarantor or such JV Subsidiary Guarantor, as the case may be, by 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 or amendment referred to in the prior paragraph.

The Trustee shall be entitled to and shall accept such certificate and opinion as sufficient evidence of the satisfaction of the conditions precedent described above, in which event it shall be conclusive and binding on the Holders.

Any Notes that are redeemed will be cancelled.

### **Certain Covenants**

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

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

- (a) The Company will not, and will not permit any Restricted Subsidiary to, Incur any Indebtedness (including Acquired Indebtedness) and the Company will not permit any Restricted Subsidiary to issue any Preferred Stock; *provided* that the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor may Incur Indebtedness (including Acquired Indebtedness) and any Non-Guarantor 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 2.25 to 1.0. Notwithstanding the foregoing, the Company will not permit any Restricted Subsidiary to Incur any Disqualified Stock (other than Disqualified Stock held by the Company or a Subsidiary Guarantor, so long as it is so held).
- (b) Notwithstanding the foregoing, the Company and, to the extent provided below, any Restricted Subsidiary, may Incur each and all of the following ("Permitted Indebtedness"):
  - (1) Indebtedness under the Notes (excluding any Additional Notes), each Subsidiary Guarantee and each JV Subsidiary Guarantee and any Exchange Convertible Bonds issued pursuant to the terms of the Mandatorily Exchangeable Bonds;
  - (2) any Pari Passu Guarantees;
  - (3) Indebtedness of the Company or any Restricted Subsidiary outstanding on the Original Issue Date excluding Indebtedness permitted under clause (b)(4) of this covenant; *provided* that such Indebtedness of Non-Guarantor Subsidiaries shall be included in the calculation of Permitted Subsidiary Indebtedness;
  - (4) Indebtedness of the Company or any Restricted Subsidiary owed to the Company or any Restricted Subsidiary; *provided* that (x) any event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of such Indebtedness (other than to the Company or any Restricted Subsidiary) shall be deemed, in each case, to constitute an Incurrence of such Indebtedness not permitted by this clause (b)(4), and (y) if the Company is the obligor on such Indebtedness, such Indebtedness must be expressly subordinated in right of payment to the Notes, and if a Subsidiary Guarantor or a JV Subsidiary Guarantor is the obligor on such Indebtedness and the Company or any other Subsidiary Guarantor or JV Subsidiary Guarantor is not the obligee, such Indebtedness must be expressly subordinated in right of payment to the Subsidiary Guarantee of such Subsidiary Guarantor or the JV Subsidiary Guarantee of such JV Subsidiary Guarantor, as the case may be;

- (5) Indebtedness (“Permitted Refinancing Indebtedness”) issued in exchange for, or the net proceeds of which are used to refinance or refund, then outstanding Indebtedness Incurred under clause (a) or clause (b)(1), (b)(2), (b)(3), (b)(7), (b)(16), (b)(17), (b)(19), (b)(20), (b)(21), (b)(22), (b)(23), (b)(24) or (b)(25) of this covenant and any refinancings thereof in an amount not to exceed the amount so refinanced or refunded (plus premiums, accrued interest, fees and expenses); *provided* that (A) Indebtedness the proceeds of which are used to refinance or refund the Notes or Indebtedness that is *pari passu* with, or subordinated in right of payment to, the Notes, a Subsidiary Guarantee or a JV Subsidiary Guarantee shall only be permitted under this clause (b)(5) if (x) in case the Notes are refinanced in part or the Indebtedness to be refinanced is *pari passu* with the Notes, a Subsidiary Guarantee or a JV Subsidiary Guarantee, 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 subordinate in right of payment to, the remaining Notes, such Subsidiary Guarantee or such JV Subsidiary Guarantee or (y) in case the Indebtedness to be refinanced is subordinated in right of payment to the Notes, a Subsidiary Guarantee or a JV Subsidiary Guarantee, 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 subordinate in right of payment to the Notes, such Subsidiary Guarantee or such JV Subsidiary Guarantee at least to the extent that the Indebtedness to be refinanced is subordinated to the Notes, such Subsidiary Guarantee or such JV Subsidiary Guarantee, (B) 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 or refunded, and the Average Life of such new Indebtedness is at least equal to the remaining Average Life of the Indebtedness to be refinanced or refunded and (C) in no event may Indebtedness of the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor be refinanced pursuant to this clause (b)(5) by means of any Indebtedness of any Restricted Subsidiary that is not a Subsidiary Guarantor or a JV Subsidiary Guarantor;
- (6) Indebtedness Incurred by the Company or any Restricted Subsidiary pursuant to Hedging Obligations entered into in the ordinary course of business and designed solely to protect the Company or any Restricted Subsidiary from fluctuations in interest rates, currencies or the price of commodities and not for speculation;
- (7) Indebtedness Incurred by the Company or any Restricted Subsidiary for the purpose of financing (i) all or any part of the purchase price of real or personal property (including the lease purchase price of land use rights) or equipment to be used in the ordinary course of business by the Company or a Restricted Subsidiary in the Permitted Business, including any such purchase through the acquisition of Capital Stock of any Person that owns such real or personal property or equipment which will, upon such acquisition, become a Restricted Subsidiary (other than as provided for in the second proviso of this clause (b)(7)) or (ii) all or any part of the purchase price or the cost of development, construction or improvement of real or personal property (including the lease purchase price of land use rights) or equipment to be used in the ordinary course of business by the Company or such Restricted Subsidiary in the Permitted Business; *provided, however*, that in each case (A) the aggregate principal amount of such Indebtedness shall not exceed such purchase price or cost, (B) such Indebtedness shall be Incurred no later than 180 days after the acquisition of such property or completion of such development, construction or improvement, and (C) on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness permitted by this clause (b)(7) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(16), (b)(19), (b)(20), (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under this clause (b)(7) to the



extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets; *provided further* that, without prejudice to the first proviso in this clause (b)(7), the Company and any Restricted Subsidiary may Incur Indebtedness for the purpose of financing all or any part of the purchase price of real or personal property (including the lease purchase price of land use rights) or equipment to be used in the ordinary course of business by the Company or a Restricted Subsidiary in the Permitted Business through the acquisition of Capital Stock of any Person which will not, upon such acquisition, become a Restricted Subsidiary if on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all Indebtedness Incurred in reliance on this second proviso of this clause (b)(7) (together with refinancings of all such Indebtedness) does not exceed an amount equal to 10.0% of Total Assets;

- (8) Indebtedness Incurred by the Company 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 other than for an obligation for borrowed money);
- (9) Indebtedness Incurred by the Company 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 the 30 days following receipt by the Company or such Restricted Subsidiary, as applicable, of a demand for reimbursement;
- (10) 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 Company 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 shall at no time exceed the gross proceeds actually received by the Company or any Restricted Subsidiary from the disposition of such business, assets or Restricted Subsidiary;
- (11) 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, however*, that such Indebtedness is extinguished within five Business Days of Incurrence;
- (12) (i) guarantees by the Company or any Subsidiary Guarantor of Indebtedness of the Company or any Restricted Subsidiary that was permitted to be Incurred by another provision of this covenant, (ii) guarantees by any Restricted Subsidiary of Indebtedness of another Restricted Subsidiary that was permitted to be Incurred under clause (b)(7) above or clauses (b)(14) and (b)(16) below; or (iii) guarantees by any JV Subsidiary Guarantor of Indebtedness of any other JV Subsidiary Guarantor that is a direct or indirect Subsidiary or parent of such JV Subsidiary Guarantor, which Indebtedness was permitted to be Incurred by another provision of this covenant;
- (13) Pre-Registration Mortgage Guarantees by the Company or any Restricted Subsidiary;
- (14) Indebtedness of the Company or any Restricted Subsidiary with a maturity of one year or less used by the Company or any Restricted Subsidiary for working capital; *provided* that the aggregate principal amount of Indebtedness permitted by this clause (b)(14) at any time outstanding does not exceed US\$35.0 million (or the Dollar Equivalent thereof);
- (15) Indebtedness of the Company or any Restricted Subsidiary constituting an obligation to pay the deferred purchase price in the form of installment payments pursuant to a Staged Acquisition Agreement;

- (16) Preferred Stock or Disqualified Stock issued by a Restricted Subsidiary or Indebtedness Incurred by the Company or any Restricted Subsidiary constituting a guarantee by, or grant of a Lien on assets of, the Company or such Restricted Subsidiary in favor of any Insurance Company Investor in respect of the obligation of any Subsidiary of such Restricted Subsidiary to pay a guaranteed or preferred dividend or return on any shares of Capital Stock of such Subsidiary held by such Insurance Company Investor (including any shares of Preferred Stock or Disqualified Stock which may be issued by such Subsidiary pursuant to this clause (b)(16) to such Insurance Company Investor); *provided* that on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness permitted by this clause (b)(16) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clause (b)(7) above and clauses (b)(19), (b)(20), (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (17) Indebtedness of the Company or any Restricted Subsidiary in an aggregate principal amount outstanding at any time (together with refinancings thereof) not to exceed US\$25.0 million (or the Dollar Equivalent thereof);
- (18) Indebtedness constituting a Subordinated Shareholder Loan;
- (19) Indebtedness Incurred by any Restricted Subsidiary which is secured by Investment Properties, and guarantees thereof by the Company or any such Restricted Subsidiary; *provided* that on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness permitted by this clause (b)(19) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7) and (b)(16) above and clauses (b)(20), (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (20) Bank Deposit Secured Indebtedness Incurred by the Company or any Restricted Subsidiary, *provided* that on the date of Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of such Indebtedness permitted by this clause (b)(20) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16) and (b)(19) above and clauses (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (21) Indebtedness Incurred by the Company or any Restricted Subsidiary constituting a guarantee of Indebtedness of any Person (other than the Company or a Restricted Subsidiary) by the Company or such Restricted Subsidiary, if the aggregate of all Indebtedness Incurred under this clause (b)(21) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16), (b)(19) and (b)(20) above and clauses (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;

- (22) Acquired Indebtedness of any Restricted Subsidiary Incurred and outstanding on the date on which such Person becomes 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 such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness Incurred pursuant to this clause (b)(22) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16), (b)(19), (b)(20) and (b)(21) above and clause (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (23) Indebtedness represented by Existing HY Notes issued in respect the payment of Existing HY Notes PIK Interest in accordance with the Existing HY Notes Indentures by the Company and any related Subsidiary Guarantees and JV Subsidiary Guarantees;
- (24) Indebtedness represented by any Mandatorily Exchangeable Bond PIK Interest or Exchange Convertible Bond PIK Interest capitalized pursuant to the terms of the Mandatorily Exchangeable Bonds or the Exchange Convertible Bonds, as the case may be; and
- (25) Indebtedness Incurred by the Company or any Restricted Subsidiary under Credit Facilities; *provided* that on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness Incurred pursuant to this clause (b)(25) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16), (b)(19), (b)(20), (b)(21) and (b)(22) above and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets.
- (c) 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 sentence of clause (a) of this covenant, the Company, 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.
- (d) Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that may be Incurred or Preferred Stock that may be issued 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.

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

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

- (a) declare or pay any dividend or make any distribution on or with respect to the Company’s or any Restricted Subsidiary’s Capital Stock (other than dividends or distributions payable or paid in shares of the Company’s, or payable or paid solely in shares of any Restricted Subsidiary’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 Company or any Restricted Subsidiary;
- (b) 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 Company, any Restricted Subsidiary or any direct or indirect parent of the Company held by any Persons other than the Company or any Restricted Subsidiary (excluding (i) the purchase of any shares of Capital Stock of any Person pursuant to a Staged Acquisition Agreement and (ii) the purchase of any shares of Capital Stock of any Restricted Subsidiary held by any Insurance Company Investor);
- (c) 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, any Subsidiary Guarantee or any JV Subsidiary Guarantee (excluding any intercompany Indebtedness between or among the Company and any Restricted Subsidiary); or
- (d) 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 Company could not Incur at least US\$1.00 of Indebtedness under the proviso in the first sentence of clause (a) of the covenant described 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 Company and its Restricted Subsidiaries after the Measurement Date, shall exceed the sum (without duplication) of:
  - (i) 50% of the aggregate amount of the Consolidated Net Income of the Company (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 semi-annual fiscal period in which the Measurement Date occurred and ending on the last day of the Company’s most recently ended fiscal quarter period for which consolidated financial statements of the Company (which the Company 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 Company 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 Restricted Subsidiary of the Company, including any such Net Cash Proceeds received upon (x) the conversion of any Indebtedness (other than Subordinated Indebtedness) of the Company into Capital Stock (other than Disqualified Stock) of the Company, or (y) the exercise by a Person who is not a Restricted Subsidiary of the Company of any options, warrants or other rights to acquire Capital Stock of the Company (other than Disqualified Stock), in each case after deducting 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 Company; plus

- (iii) the amount by which Indebtedness of the Company or any Restricted Subsidiary is reduced on the Company's consolidated balance sheet upon the conversion or exchange (other than by a Restricted Subsidiary of the Company) subsequent to the Measurement Date of any Indebtedness of the Company or any Restricted Subsidiary convertible or exchangeable into Capital Stock (other than Disqualified Stock) of the Company (less the amount of any cash, or the Fair Market Value of any other property, distributed by the Company upon such conversion or exchange); 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 (w) payments of interest on Indebtedness, dividends or repayments of loans or advances by such Person, in each case, to the Company 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), (x) the unconditional release of a guarantee provided by the Company or any Restricted Subsidiary after the Measurement Date of an obligation of another Person, (y) the net cash proceeds from the sale of any such Investment (except to the extent such proceeds are included in the calculation of Consolidated Net Income) or (z) from redesignations of Unrestricted Subsidiaries as Restricted Subsidiaries, not to exceed, in each case, the amount of Investments made by the Company or a Restricted Subsidiary after the Measurement Date in any such Person; plus
- (v) US\$25.0 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 Company, any Subsidiary Guarantor or any 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 Company, any Subsidiary Guarantor or any 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 sale (other than to a Subsidiary of the Company) of, shares of Capital Stock (other than Disqualified Stock) of the Company, 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 Company, any Subsidiary Guarantor or any 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 Company) of, shares of Capital Stock (other than Disqualified Stock) of the Company, 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;
- (5) the payment of any dividends or distributions declared, paid or made by a Restricted Subsidiary that is not, directly or indirectly, Wholly Owned by the Company payable on a pro rata basis or on a basis more favorable to the Company to all holders of any class of Capital Stock of such Restricted Subsidiary;



- (6) the purchase by the Company or a Restricted Subsidiary of Capital Stock of any Restricted Subsidiary that is not Wholly Owned, directly or indirectly, by the Company from an Independent Third Party pursuant to an agreement entered into between/among the Company or any Restricted Subsidiary and such Independent Third Party solely for the purpose of acquiring real property or land use rights, *provided* that (x) such purchase occurs within 12 months after such Restricted Subsidiary acquires the real property or land use rights it was formed to acquire and (y) the Company 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;
- (7) (A) the repurchase, redemption or other acquisition or retirement for value of the Capital Stock of the Company or any Restricted Subsidiary (directly or indirectly, including through any trustee, agent or nominee) in connection with an employee benefit plan, and any corresponding Investment by the Company or any Restricted Subsidiary in any trust or similar arrangements to the extent of such repurchased, redeemed, acquired or retired Capital Stock, or (B) the repurchase, redemption or other acquisition or retirement for value of any Capital Stock of the Company or any Restricted Subsidiary held by an employee benefit plan of the Company or any Restricted Subsidiary, any current or former officer, director, consultant, or employee of the Company or any Restricted Subsidiary (or permitted transferees, estates or heirs of any of the foregoing); *provided* that the aggregate consideration paid for all such repurchased, redeemed, acquired or retired Capital Stock shall not exceed US\$25.0 million (or the Dollar Equivalent thereof using the Original Issue Date as the date of determination);
- (8) cash payments in lieu of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Company, *provided*, however, 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 Company);
- (9) repurchases of Capital Stock deemed to occur upon the surrender by the holder of a stock option of shares of Capital Stock otherwise issuable upon exercise of such stock options as payment of a portion of the exercise price thereof;
- (10) dividends paid to any Insurance Company Investor in respect of any Preferred Stock or Disqualified Stock issued by or any Indebtedness Incurred by any Restricted Subsidiary under paragraph (b)(16) of the “— Limitation on Indebtedness and Preferred Stock” covenant;
- (11) any payments made pursuant to the CVR Agreement;
- (12) the payment of any dividend or distribution payable or paid solely in Capital Stock (other than Disqualified Stock or Preferred Stock) of any Unrestricted Subsidiary or in options, warrants or other rights to acquire shares of such Capital Stock;
- (13) the declaration and payment of dividends on the Common Stock of the Company by the Company in an aggregate amount not to exceed 20.0% of profit for the year on the Company's consolidated financial statements in any fiscal year ending after the Original Issue Date; or
- (14) the distributions or payments of Securitization Fees in connection with Receivable Financings;

*provided* that, in the case of clause (2), (3), (4) or (13) above, 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 clauses (1) and (13) of the preceding paragraph made 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 and any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries as Unrestricted Subsidiaries (to the extent such Investment does not constitute a Permitted Investment pursuant to clause (18) of the definition thereof) 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 Company 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\$10.0 million (or the Dollar Equivalent thereof).

Not later than the date of making any Restricted Payment (other than any Restricted Payment set forth in clauses (5) through (14) above and any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries as Unrestricted Subsidiaries (to the extent such Investment does not constitute a Permitted Investment pursuant to clause (18) of the definition thereof)) in excess of US\$10.0 million (or the Dollar Equivalent thereof), the Company 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.

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

- (a) Except as provided below, the Company 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:
- (1) pay dividends or make any other distributions on any Capital Stock of such Restricted Subsidiary owned by the Company or any other Restricted Subsidiary;
  - (2) pay any Indebtedness or other obligation owed to the Company or any other Restricted Subsidiary;
  - (3) make loans or advances to the Company or any other Restricted Subsidiary; or
  - (4) sell, lease or transfer any of its property or assets to the Company or any other Restricted Subsidiary;

*provided* that it being understood that (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 Company or any Restricted Subsidiary to other Indebtedness Incurred by the Company or any Restricted Subsidiary; and (iii) the provisions contained in documentation governing Indebtedness requiring transactions between or among the Company 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, in each case, shall not be deemed to constitute such an encumbrance or restriction.

- (b) The provisions of paragraph (a) do not apply to any encumbrances or restrictions:
- (1) existing in agreements as in effect on the Original Issue Date, or in the Exchange Convertible Bonds issued pursuant to the terms of the Mandatorily Exchangeable Bonds, the Notes, the Subsidiary Guarantees, the JV Subsidiary Guarantees, the Indenture, the Security Documents, or under any Permitted Pari Passu Secured Indebtedness of the Company or any Subsidiary Guarantor Pledgor or Pari Passu Guarantee, or in any extensions, refinancings, renewals or replacements of any of the foregoing agreements; *provided* that the encumbrances and restrictions in any such extension, refinancing, renewal or replacement, taken as a whole, are no more restrictive in any material respect than those encumbrances or restrictions that are then in effect and that are being extended, refinanced, renewed or replaced;
  - (2) existing under or by reason of applicable law, rule, regulation or order;
  - (3) with respect to any Person or the property or assets of such Person acquired by the Company or any Restricted Subsidiary, existing 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, or in any extensions, refinancings, renewals or replacements thereof; *provided* that the encumbrances and restrictions in any such extension, 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, refinanced, renewed or replaced;
- (4) that otherwise would be prohibited by the provision described in clause (a)(4) of this covenant if they arise, or are agreed to in the ordinary course of business, and that (x) restrict in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease or license, (y) exist by virtue of any Lien on, or agreement to transfer, option or similar right with respect to any property or assets of the Company or any Restricted Subsidiary not otherwise prohibited by the Indenture or (z) do not relate to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Company or any Restricted Subsidiary in any manner material to the Company or any Restricted Subsidiary;
  - (5) with respect to a Restricted Subsidiary and imposed pursuant to an agreement that has been entered into for the sale 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” and “— Limitation on Asset Sales” covenants;
  - (6) with respect to any Restricted Subsidiary and imposed pursuant to an agreement that has been entered into for the Incurrence of Indebtedness or issuance of Preferred Stock of the type described under clause (b)(7), (b)(14), (b)(16), (b)(19), (b)(20), (b)(21), (b)(22), (b)(23), (b)(24) and (b)(25) of the “— Limitation on Indebtedness and Preferred Stock” covenant if, as determined by the Board of Directors, such encumbrances or restrictions (x) are customary for such types of agreements and (y) would not, at the time agreed to, be expected to materially and adversely affect the ability of the Company to make any required payment on the Notes, or in any extensions, refinancings, renewals or replacements of any of the foregoing agreements; *provided* that the encumbrances and restrictions in any such extension, 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, refinanced, renewed or replaced;
  - (7) existing in customary provisions in 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 that is a party to such joint venture and if (as determined in good faith by the Board of Directors) (i) the encumbrances or restrictions are customary for a 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 Company to make the required payments on the Notes or (y) any Subsidiary Guarantor or JV Subsidiary Guarantor to make required payments under its Subsidiary Guarantee or JV Subsidiary Guarantee; or
  - (8) 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 Subsidiary or its subsidiaries or the property or assets of such Subsidiary or its subsidiaries, or in any extensions, refinancing, renewals or replacements thereof; *provided* that the encumbrances and restrictions in any such extension, 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, refinanced, renewed or replaced.

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

The Company 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 Company or a Restricted Subsidiary;
- (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 Company or a Restricted Subsidiary;
- (3) for the issuance or sale of the 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 if the Company complies with the "— Limitation on Asset Sales" covenant; *provided* that, paragraph (c) of clause (16) of the definition of "Permitted Investments" shall not apply if such Restricted Payment would otherwise have been permitted under clause (16) of such definition;
- (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 Company or such Restricted Subsidiary applies the Net Cash Proceeds of such issuance or sale in accordance with the "— Limitation on Asset Sales" covenant.

Notwithstanding the foregoing, a Restricted Subsidiary may issue Common Stock to its shareholders on a pro rata basis or on a basis more favorable to the Company and its Restricted Subsidiaries.

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

The Company will not permit any Restricted Subsidiary which is not a Subsidiary Guarantor or a JV Subsidiary Guarantor, directly or indirectly, to guarantee any Indebtedness ("Guaranteed Indebtedness") of the Company or any Subsidiary Guarantor or JV Subsidiary Guarantor, unless (a) (1) such Restricted Subsidiary simultaneously executes and delivers a supplemental indenture to the Indenture providing for an unsubordinated Subsidiary Guarantee (in the case of a Subsidiary Guarantor) or JV Subsidiary Guarantee (in the case of a JV Subsidiary Guarantor) of payment of the Notes by such Restricted Subsidiary and (2) 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 Company or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Subsidiary Guarantee or JV Subsidiary Guarantee until the Notes have been paid in full, or (b) such guarantee is permitted by clause (b)(3), (b)(4), (b)(12)(ii) (other than, in the case of clause (b)(12)(ii), (x) a guarantee by a PRC Restricted Subsidiary of the Indebtedness of a non-PRC Restricted Subsidiary that is not a Subsidiary of such PRC Subsidiary or (y) a guarantee by a non-PRC Restricted Subsidiary that is not a Subsidiary Guarantor or a JV Subsidiary Guarantor of Indebtedness of a Subsidiary Guarantor or a JV Subsidiary Guarantor) or (b)(20) (in the case of clause (b)(20), with respect to the guarantee provided by any Restricted Subsidiary which is not a Subsidiary Guarantor or JV Subsidiary Guarantor through the pledge of cash deposits, bank accounts or other assets to secure (or the use of any guarantee or letter of credit or similar instrument to guarantee) any Bank Deposit Secured Indebtedness), under the covenant described under the caption "— Limitation on Indebtedness and Preferred Stock."

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

The Company will not permit any JV Subsidiary Guarantor, directly or indirectly, to guarantee any Indebtedness of the Company or any other Restricted Subsidiary unless the aggregate claims of the creditor under such guarantee will be limited to the JV Entitlement Amount. If any JV Subsidiary Guarantor guarantees any Indebtedness of the Company or any other Restricted Subsidiary where the aggregate claims of the creditor under such guarantee exceed the JV Entitlement Amount, such JV Subsidiary Guarantee shall be replaced with a Subsidiary Guarantee given by a Subsidiary Guarantor.

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

The Company 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 (a) any holder (or any Affiliate of such holder) of 10% or more of any class of Capital Stock of the Company or (b) with any Affiliate of the Company (each an “Affiliate Transaction”), unless:

- (1) the Affiliate Transaction is on fair and reasonable terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable arm’s-length transaction by the Company or the relevant Restricted Subsidiary with a Person that is not such a holder or an Affiliate of the Company or such Restricted Subsidiary; and
- (2) the Company delivers to the Trustee:
  - (A) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of US\$5.0 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\$10.0 million (or the Dollar Equivalent thereof), in addition to the Board Resolution required in clause (2)(A) above, an opinion issued by an accounting, appraisal or investment banking firm of recognized international standing as to the fairness to the Company or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view.

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

- (1) the payment of reasonable and customary regular fees and other compensation to directors of the Company or any Restricted Subsidiary who are not employees of the Company or any Restricted Subsidiary;
- (2) transactions between or among the Company and any Subsidiary Guarantor or between or among Subsidiary Guarantors;
- (3) transactions between or among the Company and any Wholly Owned Restricted Subsidiary or between or among Wholly Owned Restricted Subsidiaries;
- (4) any Restricted Payment of the type described in clause (a), (b) or (c) of the first paragraph of the covenant described under the caption “— Limitation on Restricted Payments” if permitted by that covenant;
- (5) any sale of Capital Stock (other than Disqualified Stock) of the Company;
- (6) the payment of compensation to officers and directors of the Company or any Restricted Subsidiary pursuant to an employee stock or share option scheme, so long as such scheme is in compliance with the listing rules of The Stock Exchange of Hong Kong Limited, which as of the Original Issue Date require a majority shareholder approval of any such scheme;



- (7) any transaction between (A) the Company or any Restricted Subsidiary and (B) any entity in the Restructuring Group entered into in connection with the Restructuring, including, without limitation, transactions entered into for purposes of any reorganization in connection with the Restructuring and the entry into, and the performance thereof, of any underwriting agreement or other transaction documents in connection with the Restructuring; and
- (8) any transaction between (A) the Company or any Restricted Subsidiary and (B) any entity in the Restructuring Group entered into in the ordinary course of business, on fair and reasonable terms and disclosed in the offering document issued in connection with the Restructuring, or any amendment or modification or extension or replacement thereof, so long as such amendment, modification or replacement is not more disadvantageous to the Company and its Restricted Subsidiaries than the original transaction described in the offering document issued in connection with the Restructuring and in compliance with the rules of the relevant Qualified Exchange.

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 this offering memorandum, or any amendment or modification or replacement thereof, so long as such amendment, modification or replacement is not more disadvantageous to the Company and its Restricted Subsidiaries than the original agreement in effect on the Original Issue Date, (iii) any transaction between or among (A) any of the Company, any Wholly Owned Restricted Subsidiary and any Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary or (B) the Company or a Restricted Subsidiary on the one hand and a Minority Joint Venture or an Unrestricted Subsidiary on the other hand; *provided* that in the case of this clause (iii), (a) such transaction is entered into in the ordinary course of business and (b) none of the shareholders or partners (other than the Company or any Restricted Subsidiary) of or in such Minority Joint Venture, Unrestricted Subsidiary or Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary is a Person described in clause (a) or (b) of the first paragraph of this covenant (other than by reason of such shareholder or partner being an officer or director of such Restricted Subsidiary, Minority Joint Venture or Unrestricted Subsidiary, as the case may be) and (iv) any Investment by the Company or any Restricted Subsidiary in accordance with the requirements under clause (16) of the definition of “Permitted Investment” on a pro rata basis based on its percentage ownership at the time of such Investment.

#### ***Limitation on Liens***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, incur, assume or permit to exist any Lien on the Collateral (other than Permitted Liens).

The Company will not, and will not permit any Restricted Subsidiary 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 secured equally and ratably with (or, if the obligation or liability to be secured by such Lien is subordinated in right of payment to the Notes, prior to) the obligation or liability secured by such Lien, for so long as such obligation or liability is secured by such Lien.

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

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

- (a) the Company or any Restricted Subsidiary could have (1) incurred Indebtedness in an amount equal to the Attributable Indebtedness relating to such Sale and Leaseback Transaction under clause (a) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock” and (2) incurred a Lien to secure such Indebtedness pursuant to the covenant described under the caption “— Limitation on Liens,” in which case, the corresponding Indebtedness and Lien will be deemed incurred pursuant to those provisions;

- (b) 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
- (c) the transfer of assets in that Sale and Leaseback Transaction is permitted by, and the Company or any Restricted Subsidiary applies the proceeds of such transaction in compliance with, the covenant described under the caption “— Limitation on Asset Sales.”

***Limitation on Asset Sales***

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

- (a) no Default shall have occurred and be continuing or would occur as a result of such Asset Sale;
- (b) the consideration received by the Company 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;
- (c) 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 Company or such Restricted Subsidiary receives Replacement Assets involving aggregate consideration in excess of US\$35.0 million (or the Dollar Equivalent thereof), the Company shall deliver to the Trustee an opinion as to the fairness to the Company 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 Company’s most recent consolidated balance sheet, of the Company or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Notes, any Subsidiary Guarantee or any JV Subsidiary Guarantee) that are assumed by the transferee of any such assets pursuant to a customary assumption, assignment, novation or similar agreement that releases the Company or such Restricted Subsidiary from further liability; and
  - (B) any securities, notes or other obligations received by the Company or any Restricted Subsidiary from such transferee that are promptly, but in any event within 30 days of closing, converted by the Company 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 Company (or the applicable Restricted Subsidiary, as the case may be) may apply such Net Cash Proceeds to:

- (1) permanently repay Senior Indebtedness of the Company or any Restricted Subsidiary (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 Company or a Restricted Subsidiary; or
- (2) acquire properties and assets that replace the properties and assets that were the subject of such Asset Sale or in properties or assets that will be used in the Permitted Business (including any shares of Capital Stock in a Person holding such properties or assets that is primarily engaged in a Permitted Business) (“Replacement Assets”).

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\$10.0 million (or the Dollar Equivalent thereof) will be carried forward and accumulated. When accumulated Excess Proceeds equals to or exceeds US\$10.0 million (or the Dollar Equivalent thereof), within 10 days thereof, the Company must make an Offer to Purchase Notes having a principal amount equal to:

- (i) accumulated Excess Proceeds, multiplied by

- (ii) 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 plus accrued and unpaid interest to the date of purchase, and will be payable in cash.

If any Excess Proceeds remain after consummation of an Offer to Purchase, the Company may use such 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 into (or required to be prepaid or redeemed in connection with) such Offer to Purchase exceeds the amount of Excess Proceeds, the Notes and such other *pari passu* Indebtedness will be purchased on a pro rata basis based on the principal amount of Notes and such other *pari passu* Indebtedness tendered (or required to be prepaid or redeemed). Upon completion of each Offer to Purchase, the amount of Excess Proceeds will be reset at zero.

#### ***Limitation on the Company's Business Activities***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, engage in any business other than a Permitted Business; *provided, however*, that the Company 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 a Permitted Business as long as any Investment therein was not prohibited when made by the covenant under the caption “— Limitation on Restricted Payments.”

#### ***Use of Proceeds***

The Company will not, and 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 (a) in the approximate amounts and for the purposes specified under the caption “Use of Proceeds” in this offering memorandum and (b) pending the application of all of such net proceeds in such manner, to invest the portion of such net proceeds not yet so applied in Temporary Cash Investments.

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

The Board of Directors may designate any Restricted Subsidiary to be an Unrestricted Subsidiary; *provided* that (a) no Default shall have occurred and be continuing at the time of or after giving effect to such designation; (b) neither the Company nor any Restricted Subsidiary guarantees or provides credit support for the Indebtedness of such Restricted Subsidiary; (c) such Restricted Subsidiary has no outstanding Indebtedness that could trigger a cross-default to the Indebtedness of the Company or any other Restricted Subsidiary; (d) such Restricted Subsidiary does not own any Disqualified Stock of the Company or Disqualified or Preferred Stock of another Restricted Subsidiary or hold any Indebtedness, or any Lien on any property, of the Company or any Restricted Subsidiary, if such Disqualified or Preferred Stock or Indebtedness could not be Incurred under the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock” or such Lien would violate the covenant described under the caption “— Limitation on Liens”; (e) 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 as Unrestricted Subsidiaries in accordance with this paragraph; and (f) 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 the caption “Limitation on Restricted Payments” (other than any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Subsidiaries in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries, *provided* that (i) the Board of Directors of the Company has determined in good faith that the designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries is necessary to obtain approval from a Qualified Exchange for the Restructuring, (ii) at the time of such designation,

the members of the Restructuring Group remain Subsidiaries of the Company, and (iii) at the time of such designation, the members of the Restructuring Group remain primarily engaged in the Permitted Businesses).

The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that (a) no Default shall have occurred and be continuing at the time of or after giving effect to such designation; (b) 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 “— Limitation on Indebtedness and Preferred Stock”; (c) 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 “— Limitation on Liens”; (d) such Unrestricted Subsidiary is not a Subsidiary of another Unrestricted Subsidiary (that is not concurrently being designated as a Restricted Subsidiary); (e) if such Restricted 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 to the extent required under “— The Subsidiary Guarantees and JV Subsidiary Guarantees”; and (f) if such Restricted Subsidiary is not organized under the laws of the PRC, all Capital Stock of such Restricted Subsidiary owned by the Company or any other Restricted Subsidiary shall be pledged to the extent required under “— Security.”

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

The Company will, and will cause each Restricted Subsidiary to, (a) 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 Business, (b) 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 (c) 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 would not reasonably be expected to have a material adverse effect on (1) the business, results of operations or prospects of the Company and its Restricted Subsidiaries, taken as a whole, or (2) the ability of the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor to perform its obligations under the Notes, the relevant Subsidiary Guarantee or JV Subsidiary Guarantee or the Indenture.

#### ***Anti-Layering***

The Company will not, and will not permit 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 Company, such Subsidiary Guarantor or such JV Subsidiary Guarantor, as the case may be, unless such Indebtedness is also contractually subordinated in right of payment to the Notes, the applicable Subsidiary Guarantee or the applicable 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.

#### ***Suspension of Certain Covenants***

If, on any date following the date of the Indenture, the Notes have an Investment Grade Rating from any Rating Agency and no Default or Event of Default has occurred and is continuing (a “Suspension Event”), then, beginning on that day and continuing until such time, if any, at which the Notes cease to have an Investment Grade rating from either of the Rating Agencies, the provisions of the Indenture summarized under the following captions will be suspended:

- (1) “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
- (2) “— Certain Covenants — Limitation on Restricted Payments”;
- (3) “— Certain Covenants — Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries”;
- (4) “— Certain Covenants — Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries”;

- (5) “— Certain Covenants — Limitation on Issuances of Guarantees by Restricted Subsidiaries”;
- (6) “— Certain Covenants — Limitation on Sale and Leaseback Transactions”;
- (7) “— Certain Covenants — Limitation on Asset Sales”;
- (8) “— Certain Covenants — Limitation on the Company’s Business Activities”;
- (9) clauses (3) and (4) of the first and second paragraphs of “—Consolidation, Merger and Sale of Assets.”

During any period that the foregoing covenants have been suspended, the Board of Directors may not designate any Restricted Subsidiary as an Unrestricted Subsidiary pursuant to the covenant described under the caption “— Certain Covenants — Designation of Restricted and Unrestricted Subsidiaries” or the definition of “Unrestricted Subsidiary.”

Such covenants will be reinstated and apply according to their terms as of and from the first day on which a Suspension Event ceases to be in effect. Such covenants will not, however, be of any effect with regard to actions of the Company or any Restricted Subsidiary properly taken in compliance with the provisions of the Indenture during the continuance of the Suspension Event and, following reinstatement, the calculations under the covenant described under the caption “— Certain Covenants — Limitation on Restricted Payments” will be made as if such covenant had been in effect since the date of the Indenture except that no Default will be deemed to have occurred solely by reason of a Restricted Payment made while that covenant was suspended. There can be no assurance that the Notes will ever achieve an Investment Grade rating or that, if achieved, any such rating will be maintained.

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

- (a) So long as any of the Notes remain outstanding, the Company will file with the Trustee and furnish to the Holders upon request, as soon as they are available but in any event not more than 10 calendar days after they are filed with The Stock Exchange of Hong Kong Limited or any other securities exchange on which the Company’s ordinary shares are at any time listed for trading, true and correct copies of any financial or other report in the English language filed with such exchange; *provided* that, if at any time the ordinary shares of the Company cease to be listed for trading on a recognized securities exchange, the Company will file with the Trustee and furnish to the Holders:
  - (1) as soon as they are available, but in any event within 90 calendar days after the end of the fiscal year of the Company, copies of its financial statements (on a consolidated basis and in the English language) in respect of such financial year (including a statement of income, balance sheet and cash flow statement) audited by a member firm of an internationally recognized firm of independent accountants;
  - (2) as soon as they are available, but in any event within 45 calendar days after the end of the first semi-annual fiscal period of the Company, copies of its financial statements (on a consolidated basis and in the English language) in respect of such half-year period (including a statement of income, balance sheet and cash flow statement) reviewed by a member firm of an internationally recognized firm of independent accountants; and
  - (3) as soon as they are available, but in any event within 45 calendar days after the end of each of the first and third fiscal quarters of the Company, copies of its unaudited financial statements (on a consolidated basis and in the English language), including a statement of income, balance sheet and cash flow statement, prepared on a basis consistent with the audited financial statements of the Company together with a certificate signed by the person then authorized to sign financial statements on behalf of the Company to the effect that such financial statements are true in all material respects and present fairly the financial position of the Company as at the end of, and the results of its operations for, the relevant quarterly period.



- (b) In addition, so long as any of the Notes remain outstanding, the Company will provide to the Trustee (1) within 120 days after the close of each fiscal year ending after the Original Issue Date, an Officers' Certificate stating the Fixed Charge Coverage Ratio with respect to the four most recent fiscal quarter periods 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, together with a certificate from the Company's external auditors verifying the accuracy and correctness of the calculation and arithmetic computation, *provided* that the Company shall not be required to provide such auditor 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 (2) as soon as possible and in any event within 30 days after the Company becomes aware or should reasonably become aware of the occurrence of a Default, an Officers' Certificate setting forth the details of such Default, and the action which the Company proposes to take with respect thereto.

### **Events of Default**

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

- (a) 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;
- (b) default in the payment of interest on any Note when the same becomes due and payable, and such default continues for a period of 30 consecutive days;
- (c) default in the performance or breach of the provisions of the covenants described under the caption "— Consolidation, Merger and Sale of Assets," the failure by the Company to make or consummate an Offer to Purchase in the manner described under the captions "— Repurchase of Notes upon a Change of Control" or "— Certain Covenants — Limitation on Asset Sales," or the failure by the Company to create, or cause its Restricted Subsidiaries to create, a lien on the Collateral (subject to any Permitted Liens and the Intercreditor Agreement) in accordance with the covenant described under the caption "— Security";
- (d) the Company 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 (a), (b) or (c) 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 (with a copy to the Trustee if given by the Holders);
- (e) there occurs with respect to any Indebtedness of the Company or any Restricted Subsidiary (other than a Subordinated Shareholder Loan) having an outstanding principal amount of US\$20.0 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, (1) 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 (2) a failure to make a principal payment when due;
- (f) one or more final judgments or orders for the payment of money are rendered against the Company or any Restricted Subsidiary and are not paid or discharged, 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\$20.0 million (or the Dollar Equivalent thereof, in excess of amounts which the Company'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;
- (g) an involuntary case or other proceeding is commenced against the Company 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 Company or any Significant Restricted Subsidiary or for any substantial part of the property and assets of the Company 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 Company or any Significant Restricted Subsidiary under any applicable bankruptcy, insolvency or other similar law as now or hereafter in effect;

- (h) the Company or any Significant Restricted Subsidiary (1) 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, (2) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or any Significant Restricted Subsidiary, or for all or substantially all of the property and assets of the Company or any Significant Restricted Subsidiary, or (3) effects any general assignment for the benefit of creditors;
- (i) any Subsidiary Guarantor or any JV Subsidiary Guarantor denies or disaffirms its obligations under its Subsidiary Guarantee or JV Subsidiary Guarantee or, 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;
- (j) any default by the Company or any Subsidiary Guarantor Pledgor in the performance of any of its obligations under the Security Documents or the Indenture, which adversely affects the enforceability, validity, perfection or priority of the applicable Lien on the Collateral or which adversely affects the condition or value of the Collateral, taken as a whole, in any material respect; and
- (k) the Company or any Subsidiary Guarantor Pledgor denies or disaffirms its obligations under any Security Document or, other than in accordance with the Indenture and the Security Documents, any Security Document ceases to be or is not in full force and effect or the Common Security Trustee on behalf of the Trustee and the Holders ceases to have a security interest in the Collateral (subject to any Permitted Liens and the Intercreditor Agreement).

If an Event of Default (other than an Event of Default specified in clause (g) or (h) 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 Company (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 receiving indemnity and/or security to its satisfaction), declare the principal of, premium, if any, and 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 accrued and unpaid interest shall be immediately due and payable. If an Event of Default specified in clause (g) or (h) above occurs with respect to the Company or any Significant Restricted Subsidiary, the principal of, premium, if any, and 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 Holders of at least a majority in principal amount of the outstanding Notes by written notice to the Company and to the Trustee may on behalf of all Holders waive all past defaults and rescind and annul a declaration of acceleration and its consequences if:

- (x) all existing Events of Default, other than the non-payment 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
- (y) 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 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. In addition, 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 (subject to receiving indemnity and/or security to its satisfaction), instruct the Common Security Trustee to foreclose on the Collateral in accordance with the terms of the Security Documents and take such further action on behalf of the Holders of the Notes with respect to the Collateral as the Trustee deems appropriate or is directed by the Holders of at least 25% in aggregate principal amount of outstanding Notes. See “— Security.”

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. However, the Trustee may refuse to follow any direction that conflicts with law, the Indenture or the Security Documents that may involve the Trustee in personal liability, or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders not joining in the giving of such direction and may take any other action it deems proper that is not inconsistent with any such direction received from such Holders. A Holder may not pursue any remedy with respect to 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 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
- (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.

Two Officers of the Company must certify to the Trustee in writing, on or before a date not more than 120 days after the end of each fiscal year, that a review has been conducted of the activities of the Company and its Restricted Subsidiaries and the Company's and its Restricted Subsidiaries' performance under the Indenture and the Security Documents and that the Company and its Restricted Subsidiaries 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 Company 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 and the Security Documents. See “— Provision of Financial Statements and Reports.”

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

The Company 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), unless:

- (a) the Company 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 Cayman Islands, the British Virgin Islands, Hong Kong or the United States or any jurisdiction thereof and shall expressly assume, by a supplemental indenture to the Indenture, executed and delivered to the Trustee, all the obligations of the Company under the Indenture, the Notes and the Security Documents, 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 from or through which payment is made, and the Indenture, the Notes and the Security Documents, as the case may be, shall remain in full force and effect;

- (b) immediately after giving effect to such transaction, no Default shall have occurred and be continuing;
- (c) immediately after giving effect to such transaction on a pro forma basis, the Company 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 Company immediately prior to such transaction;
- (d) immediately after giving effect to such transaction on a pro forma basis, the Company or the Surviving Person, as the case may be, could Incur at least US\$1.00 of Indebtedness under the proviso in the first sentence of clause (a) of the covenant described under the caption “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
- (e) the Company delivers to the Trustee (1) an Officers’ Certificate (attaching the arithmetic computations to demonstrate compliance with clauses (c) and (d)) and (2) an Opinion of Counsel, in each case stating that such consolidation, merger or transfer and such 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
- (f) each Subsidiary Guarantor and JV Subsidiary Guarantor, unless such Subsidiary Guarantor or JV Subsidiary Guarantor is the Person with which the Company has entered into a transaction described under this covenant, shall execute and deliver a supplemental indenture to the Indenture confirming that its Subsidiary Guarantee or JV Subsidiary Guarantee shall apply to the obligations of the Company or the Surviving Person in accordance with the Notes and the Indenture.

No Subsidiary Guarantor or JV Subsidiary Guarantor will consolidate with or 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 Company or another Subsidiary Guarantor or, in the case of a JV Subsidiary Guarantor, other than to another JV Subsidiary Guarantor, the Company or a Subsidiary Guarantor), unless:

- (A) 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 Company, another Subsidiary Guarantor or shall become a Subsidiary Guarantor concurrently with the transaction by executing and delivering a supplemental indenture to the Indenture or, in the case of a JV Subsidiary Guarantor, another JV Subsidiary Guarantor, the Company or a Subsidiary Guarantor;
- (B) immediately after giving effect to such transaction, no Default shall have occurred and be continuing;
- (C) immediately after giving effect to such transaction on a pro forma basis, the Company shall have a Consolidated Net Worth equal to or greater than the Consolidated Net Worth of the Company immediately prior to such transaction;
- (D) immediately after giving effect to such transaction on a pro forma basis, the Company could Incur at least US\$1.00 of Indebtedness under the proviso in the first sentence of clause (a) of the covenant described under the caption “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”; and

- (E) the Company delivers to the Trustee (1) an Officers' Certificate (attaching the arithmetic computations to demonstrate compliance with clauses (C) and (D)) and (2) 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 (1) any sale or other disposition that complies with the "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 Subsidiary Guarantees and JV Subsidiary Guarantees" and (2) a consolidation or merger of any Subsidiary Guarantor or JV Subsidiary Guarantor with and into the Company or any other Subsidiary Guarantor or JV Subsidiary Guarantor, so long as the Company or such Subsidiary Guarantor or JV Subsidiary Guarantor survives such consolidation or merger.

For the avoidance of doubt, for purposes of this covenant, a sale of shares of Capital Stock of a Restricted Subsidiary which holds all or substantially all properties and assets of the Company or the relevant Subsidiary Guarantor or JV Subsidiary Guarantor to Independent Third Parties in an initial public offering and listing on a stock exchange of the shares of Capital Stock of such Restricted Subsidiary where such Restricted Subsidiary (i) remains a Restricted Subsidiary immediately after such sale and (ii) the Company or the relevant Subsidiary Guarantor or JV Subsidiary Guarantor, immediately after such sale, owns at least 30.0% of the Voting Stock of such Restricted Subsidiary shall not constitute a sale of substantially all properties and assets of the Company or the relevant Subsidiary Guarantor or JV Subsidiary 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, 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 provisions would not necessarily afford Holders protection in the event of highly leveraged or other transactions involving the Company that may adversely affect Holders.

#### **No Payments for Consents**

The Company 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.

Notwithstanding the foregoing, in any offer or payment of consideration for, or as an inducement to, any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes in connection with an exchange or tender offer, the Company and any Restricted Subsidiary may exclude (i) Holders or beneficial owners of the Notes that are not institutional "accredited investors" as defined in Rule 501 under the Securities Act, and (ii) Holders or beneficial owners of the Notes in any jurisdiction where the inclusion of such Holders or beneficial owners would require the Company or any Restricted Subsidiary to comply with the registration requirements or other similar requirements under any securities laws of such jurisdiction, or the solicitation of such consent, waiver or amendment from, or the granting of such consent or waiver, or the approval of such amendment by, Holders or beneficial owners in such jurisdiction would be unlawful, in each case as determined by the Company in its sole discretion.



## **Defeasance**

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

The Indenture will provide that the Company 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 and the Security Documents 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 hold monies for payment in trust and to pay compensation to the Trustee in accordance with the Indenture) if, among other things:

- (a) the Company has (1) deposited with the Trustee, in trust, money in U.S. dollars and/or U.S. Government Obligations that through the payment of interest and principal in respect thereof in accordance with their terms will provide money in U.S. dollars in an amount sufficient (without consideration of investment or reinvestment) 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 and (2) delivered 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 Company is sufficient to provide payment for the principal of, premium, if any, and accrued interest on, the Notes on the Stated Maturity of such payment in accordance with the terms of the Indenture;
- (b) the Company has delivered to the Trustee an Opinion of Counsel of recognized international standing to the effect that the creation of the defeasance trust does not violate the U.S. Investment Company Act of 1940, as amended, and after the passage of 123 days following the deposit, the trust fund 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
- (c) 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 Company or any Restricted Subsidiary is a party or by which the Company or any Restricted Subsidiary is bound.

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

The Indenture further will provide that the provisions of the Indenture will no longer be in effect with respect to clauses (c), (d) and (e)(1) under the first paragraph and clauses (C), (D) and (E)(1) 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,” clause (c) under “Events of Default” with respect to such clauses (c), (d) and (e)(1) under the first paragraph and clauses (C), (D) and (E)(1) under the second paragraph under “Consolidation, Merger and Sale of Assets” and with respect to the other events set forth in such clause, clause (d) under “Events of Default” with respect to such other covenants and clauses (e) and (f) under “Events of Default” shall be deemed not to be Events of Default upon, among other things, the deposit with the Trustee, in trust, of money in U.S. dollars, 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 U.S. dollars in an amount sufficient (without consideration of investment or reinvestment) 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 (b) of the preceding paragraph.

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

In the event the Company exercises its option to omit compliance with certain covenants and provisions of the Indenture with respect to the Notes 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 Company and the Subsidiary Guarantors will remain liable for such payments.

### **Amendments and Waiver**

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

The Indenture, the Notes, the Intercreditor Agreement or any Security Document may be amended, without the consent of any Holder, to:

- (a) cure any ambiguity, defect, omission or inconsistency in the Indenture, the Notes, the Intercreditor Agreement or any Security Document;
- (b) comply with the provisions described under “Consolidation, Merger and Sale of Assets”;
- (c) evidence and provide for the acceptance of appointment by a successor Trustee;
- (d) 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 provided or permitted by the terms of the Indenture;
- (e) provide for the issuance of Additional Notes in accordance with the limitations set forth in the Indenture;
- (f) add any Subsidiary Guarantor Pledgor or release any Subsidiary Guarantor Pledgor as provided or permitted by the terms of the Indenture;
- (g) add additional Collateral to secure the Notes or any Subsidiary Guarantee and create or register Liens on such additional Collateral;
- (h) 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;
- (i) effect any changes to the Indenture in a manner necessary to comply with the procedures of Euroclear and Clearstream;
- (j) permit Permitted Pari Passu Secured Indebtedness in accordance with the terms of the Indenture (including, without limitation, permitting the Trustee to enter into the Intercreditor Agreement or any amendments to the Security Documents or the Indenture, the appointment of any common security trustee or collateral agent under any Intercreditor Agreement to hold the Collateral on behalf of the Holders and the holders of Permitted Pari Passu Secured Indebtedness and taking any other action necessary to permit the creation and registration of Liens on the Collateral to secure Permitted Pari Passu Secured Indebtedness, in accordance with the Indenture);
- (k) make any other change that, in the good faith opinion of the Board of Directors, does not materially and adversely affect the rights of any Holder; or
- (l) conform the text of the Indenture, the Notes, the Subsidiary Guarantees or the JV Subsidiary Guarantees to any provision of this “Description of the 2021 Notes” to the extent that such provision in this “Description of the 2021 Notes” was intended to be a verbatim recitation of a provision of the Indenture, the Notes, the Subsidiary Guarantees or the JV Subsidiary Guarantees.

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

Amendments of the Indenture, the Notes, the Intercreditor Agreement or any Security Document may be made by the Company, the Subsidiary Guarantors, the Trustee and the Common Security Trustee 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 aggregate principal amount of the outstanding Notes may waive future compliance by the Company with any provision of the Indenture, the Notes, the Intercreditor Agreement or any Security Document; *provided, however*, that no such modification, amendment or waiver may, without the consent of each Holder affected thereby:

- (a) change the Stated Maturity of the principal of, or any installment of interest on, any Note;
- (b) reduce the principal amount of, or premium, if any, or interest on, any Note;
- (c) change the currency of payment of principal of, or premium, if any, or interest on, any Note;
- (d) 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;
- (e) reduce the above stated percentage of outstanding Notes the consent of whose Holders is necessary to modify or amend the Indenture;
- (f) waive a default in the payment of principal of, premium, if any, or interest on the Notes;
- (g) release any Subsidiary Guarantor or JV Subsidiary Guarantor from its Subsidiary Guarantee or its JV Subsidiary Guarantee, as the case may be, except as provided in the Indenture;
- (h) release any Collateral, except as provided in the Indenture, the Intercreditor Agreement and the Security Documents;
- (i) 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;
- (j) amend, change or modify any Subsidiary Guarantee or any JV Subsidiary Guarantee in a manner that adversely affects the Holders;
- (k) amend, change or modify any provision of any Security Document, the Intercreditor Agreement or any provision of the Indenture relating to the Collateral, in a manner that adversely affects the Holders, except in accordance with the other provisions of the Indenture, such Security Document or such Intercreditor Agreement;
- (l) 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 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 from any Asset Sale;
- (m) change the redemption date or the redemption price of the Notes from that stated under “— Optional Redemption” or “— Redemption for Tax Reasons”;
- (n) amend, change or modify the obligation of the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor to pay Additional Amounts; or
- (o) amend, change or modify any provision of the Indenture or the related definition affecting the ranking of the Notes, any Subsidiary Guarantee or any JV Subsidiary Guarantee in a manner which adversely affects the Holders.

## **Satisfaction and Discharge**

The Indenture will be discharged and will cease to be of further effect (except as to surviving rights of registration of transfer or exchange of the Notes, as expressly provided for in the Indenture) as to all outstanding Notes when:

- (1) either:
  - (a) all of the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust by the Company and thereafter repaid to the Company) have been delivered to the Paying Agent for cancellation; or
  - (b) all Notes not theretofore delivered to the Paying Agent for cancellation have become due and payable pursuant to an optional redemption notice or otherwise or will become due and payable within one year, and the Issuer has irrevocably deposited or caused to be deposited with the Paying Agent funds, in cash in U.S. dollars, non-callable U.S. Government Obligations or a combination thereof, in an amount sufficient to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Paying Agent for cancellation, for principal of, premium, if any, and interest on the Notes to the date of deposit together with irrevocable written instructions from the Issuer directing the Trustee or the Paying Agent to apply such funds to the payment thereof at maturity or redemption, as the case may be;
- (2) the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor has paid all other sums payable under this Indenture;
- (3) such deposit will not result in a breach or violation of, or constitute a default under, any instruments to which the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor is a party or by which the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor is bound (other than the Indenture, the Notes or any Security Document).

In addition, the Company must deliver to the Trustee an Officers' Certificate stating that all conditions precedent to satisfaction and discharge have been satisfied.

## **Unclaimed Money**

Claims against the Company for the payment of principal of, premium, if any, or interest, on the Notes 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, Members, 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 Company or any of the Subsidiary Guarantors or JV Subsidiary Guarantors in the Indenture, or in any of the Notes, the Subsidiary Guarantees or JV Subsidiary Guarantees or because of the creation of any Indebtedness represented thereby, shall be had against any incorporator, stockholder, member, officer, director, employee or controlling person of the Company or any of the Subsidiary Guarantors or 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 Subsidiary Guarantees and JV Subsidiary Guarantees. Such waiver may not be effective to waive liabilities under any applicable law.

## **Concerning the Trustee, the Common Security Trustee and the Paying Agents**

Citicorp International Limited is to be appointed as Trustee under the Indenture, Citigroup Global Markets Deutschland AG is to be appointed as registrar and Citibank, N.A., London Branch is to be appointed as paying and transfer agent (the “Paying Agent”) 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. 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 as a prudent person would exercise under the circumstances in the conduct of such person’s own affairs.

The Indenture contains limitations on the rights of the Trustee, should it become a creditor of the Company or any of the Subsidiary Guarantors, 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 is permitted to engage in other transactions with the Company and its Affiliates; *provided, however*, that if it acquires any conflicting interest, it must eliminate such conflict or resign.

Citicorp International Limited will initially act as the Common Security Trustee under the Security Documents in respect of the security over the Collateral. The Common Security Trustee, acting in its capacity as such, shall have such duties with respect to the Collateral pledged, assigned or granted pursuant to the Security Documents as are set forth in the Indenture and the Security Documents. Under certain circumstances, the Common Security Trustee may have obligations under the Security Documents or the Intercreditor Agreement that are in conflict with the interests of the Holders. The Common Security Trustee will be under no obligation to exercise any rights or powers conferred under the Indenture, the Intercreditor Agreement or any of the Security Documents for the benefit of the Holders, unless such Holders have offered to the Common Security Trustee indemnity and/or security satisfactory to the Common Security Trustee against any loss, liability or expense. Furthermore, each Holder, by accepting the Notes will agree, for the benefit of the Trustee and the Common Security Trustee that it is solely responsible for its own independent appraisal of and investigation into all risks arising under or in connection with the Security Documents and has not relied on and will not at any time rely on the Trustee and the Common Security Trustee in respect of such risks.

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

The Notes will be represented by one or more global notes in registered form without interest coupons attached (each a “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.

### **Global Note**

Ownership of beneficial interests in the Global Note (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 Global Note 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.

The Notes are not issuable in bearer form.



## **Payments on the Global Note**

Payments of any amounts owing in respect of the Global Note (including principal, premium, interest and additional amounts) will be made to the paying agent. The Paying Agent will, in turn, make such payments to the common depository for Euroclear and Clearstream, which will distribute such payments to participants in accordance with their procedures. The Company 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 Company, the Trustee and the Agents will treat the registered holder of the Global Note (i.e., the common depository or its nominee) as the owner thereof for the purpose of receiving payments and for all other purposes. Consequently, none of the Company, 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
- 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 Note**

In the event any Global Note, or any portion thereof, is redeemed, the common depository 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 depository, Euroclear or Clearstream, as applicable, in connection with the redemption of such Global Note (or any portion thereof). The Company 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\$200,000 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 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 Note 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 Note in accordance with the normal procedures of Euroclear and Clearstream and in accordance with the provisions of the Indenture.

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 settlement procedures applicable. Book-entry interests will be credited to the securities custody accounts of Euroclear and Clearstream holders 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 immediately available 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**

We understand 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 Company, 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 Company 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 Company has received a written request from a Holder, the Company 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 Company 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 registrar in sufficient quantities and authenticated by the Trustee for delivery to Holders. Persons exchanging interests in a Global Note for individual definitive notes will be required to provide the registrar, through the relevant clearing system, with written instruction and other information required by the Company and the 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 by being deposited, first-class postage prepaid, in the United States mails (if intended for the Company or any Subsidiary Guarantor) addressed to the Company or such Subsidiary Guarantor at the principal office of the Company; (if intended for the Trustee) addressed to 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.

While the Notes are in global form, 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 and Clearstream. Any such notice shall be deemed to have been delivered on the day such notice is delivered to Euroclear and Clearstream or if by mail, when so sent or deposited.

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

The Company and each of the Subsidiary Guarantors will irrevocably (i) 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, any Subsidiary Guarantee, the Indenture or any transaction contemplated thereby and (ii) designate and appoint Cogency Global Inc., currently at 10 E 40th Street 10th Floor, New York, New York 10016, for receipt of service of process in any such suit, action or proceeding.

### **Governing Law**

Each of the Notes, the Subsidiary Guarantees 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 2021 Notes" for which no definition is provided.

*"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.

*"Adjusted Treasury Rate"* means, with respect to any redemption date, (i) the yield, under the heading which represents the average for immediately preceding week, appearing in the most recently published statistical release designated "H.15(519)" or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption "Treasury Constant Maturities", for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three (3) months before or after June 30, 2021, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Adjusted Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month) or (ii) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per year equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date, in each case calculated on the third Business Day immediately preceding the redemption date.

“*Affiliate*” means, with respect to any Person, any other Person (i) directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person, (ii) who is a director or officer of such Person or any Subsidiary of such Person or of any Person referred to in clause (i) of this definition or (iii) 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 (i) or (ii). 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.

“*Applicable Premium*” means with respect to a Note at any redemption date, the greater of (i) 1.00% of the principal amount of such Note and (ii) the excess of (A) the present value at such redemption date of the principal amount of such Note, plus all required remaining scheduled interest payments due on such Note through June 30, 2021 (but excluding accrued and unpaid interest to the redemption date), computed using a discount rate equal to the Adjusted Treasury Rate plus 100 basis points, over (B) the principal amount of such Note.

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

“*Asset Disposition*” means the sale or other disposition by the Company or any Restricted Subsidiary (other than to the Company 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 Company or any Restricted Subsidiary which accounts for all or substantially all of the assets of such Restricted Subsidiary).

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

- (a) sales, transfers 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;
- (b) sales, transfers or other dispositions of assets constituting a Permitted Investment or Restricted Payment permitted to be made under the covenant described under the caption “— Certain Covenants — Limitation on Restricted Payments”;
- (c) sales, transfers or other dispositions of assets with a Fair Market Value not in excess of US\$1.0 million (or the Dollar Equivalent thereof) in any transaction or series of related transactions;
- (d) 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 Company or its Restricted Subsidiaries;
- (e) any transfer, assignment or other disposition deemed to occur in connection with creating or granting any Permitted Lien;
- (f) a transaction covered by the covenant under the caption “— Consolidation, Merger and Sale of Assets”; and
- (g) any sale, transfer or other disposition by the Company or any Restricted Subsidiary, including the sale or issuance by the Company or any Restricted Subsidiary of any Capital Stock of any Restricted Subsidiary to the Company 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 such Sale and Leaseback Transaction, of the total obligations of the lessee for rental payments during the remaining term of the lease in such 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 Company or any Restricted Subsidiary that is (i) secured by cash deposits, bank accounts or other assets of the Company or a Restricted Subsidiary and/or (ii) guaranteed by a guarantee or a letter of credit (or similar instruments) from or arranged by the Company or a Restricted Subsidiary and is used by the Company and its Restricted Subsidiaries to effect exchange of foreign currencies or remit money onshore or offshore.

“*Board of Directors*” means the board of directors elected or appointed by the stockholders of the Company to manage the business of the Company 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.

“*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 into such equity.

“*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.

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

- (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries, taken as a whole, to any “person” (within the meaning of Section 13(d) of the U.S. Securities Exchange Act of 1934, as amended (the “Exchange Act”)), other than one or more Permitted Holders;
- (2) the Company consolidates with, or merges with or into, any Person (other than one or more Permitted Holders), or any Person consolidates with, or merges with or into, the Company, in any such event pursuant to a transaction in which any of the outstanding Voting Stock of the Company or such other Person is converted into or exchanged for cash, securities or other property, other than any such transaction where the Voting Stock of the Company outstanding immediately prior to such transaction is converted into or exchanged for (or continues as) Voting Stock (other than Disqualified Stock) of the surviving or transferee Person constituting a majority of the outstanding shares of Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance) and in substantially the same proportion as before the transaction;
- (3) the Permitted Holders are the beneficial owners of less than 35.0% of the total voting power of the Voting Stock of the Company;



- (4) 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 the total voting power of the Voting Stock of the Company greater than such total voting power held beneficially by the Permitted Holders;
- (5) individuals who on the Original Issue Date constituted the Board of Directors (together with any new directors whose election was approved by a vote of at least a majority of the members of the Board of Directors then in office who were members of the Board of Directors on the Original Issue Date or whose election was previously so approved) cease for any reason to constitute a majority of the members of the Board of Directors then in office; or
- (6) the adoption of a plan relating to the liquidation or dissolution of the Company.

For the avoidance of doubt, for purposes of this “Change of Control” definition, a sale of shares of Capital Stock of a Restricted Subsidiary which holds all or substantially all properties and assets of the Company, and its Restricted Subsidiaries, taken as a whole, to Independent Third Parties in an initial public offering and listing on a stock exchange of the shares of Capital Stock of such Restricted Subsidiary where such Restricted Subsidiary (i) remains a Restricted Subsidiary immediately after such sale and (ii) the Company, a Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be, immediately after such sale, owns, directly or indirectly, at least 30.0% of the Voting Stock of such Restricted Subsidiary shall not constitute a sale of substantially all properties and assets of the Company and its Restricted Subsidiaries.

“*Clearstream*” means Clearstream Banking S.A., its affiliates, successors or assigns.

“*Collateral*” means all collateral securing, or purported to be securing, directly or indirectly, the Notes or any Subsidiary Guarantee pursuant to the Security Documents, and shall initially consist of the Capital Stock of the initial Subsidiary Guarantors.

“*Commodity Agreement*” means any spot, forward, swap 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 on the Original Issue Date, and include, without limitation, all series and classes of such common stock or ordinary shares.

“*Comparable Treasury Issue*” means the U.S. Treasury security having a maturity comparable to June 30, 2021 that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to June 30, 2021.

“*Comparable Treasury Price*” means, with respect to any redemption date, if clause (ii) of the Adjusted Treasury Rate is applicable, the average of three (or such lesser number as is received by the Trustee) Reference Treasury Dealer Quotations for such redemption date.

“*Consolidated Assets*” means, with respect to any Restricted Subsidiary at any date of determination, the Company 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 Company (which the Company shall use its reasonable best efforts to compile on a timely manner) are available (which may include 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 Company and its Restricted Subsidiaries in conformity with GAAP; *provided* that (i) 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 Company or any Restricted Subsidiary and (ii) 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 (i) Consolidated Interest Expense for such period and (ii) all cash and non-cash dividends paid, declared, accrued or accumulated during such period on any Disqualified Stock or Preferred Stock of the Company or any Restricted Subsidiary held by Persons other than the Company or any Wholly Owned Restricted Subsidiary, except for dividends payable in the Company’s Capital Stock (other than Disqualified Stock) or dividends paid to the Company or to a Wholly Owned Restricted Subsidiary.

“*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 Company 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 Company and its Restricted Subsidiaries, without duplication, (i) interest expense attributable to Capitalized Lease Obligations and imputed interest with respect to Attributable Indebtedness, (ii) amortization of debt issuance costs and original issue discount expense and non-cash interest payments in respect of any Indebtedness, (iii) the interest portion of any deferred payment obligation, (iv) 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, (v) the net costs associated with Hedging Obligations (including the amortization of fees), (vi) interest on Indebtedness of any other Person that is guaranteed by the Company or any Restricted Subsidiary (other than Pre-Registration Mortgage Guarantees), only to the extent such interest is actually paid by the Company or any Restricted Subsidiary and (vii) 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 to the extent of the amount of net income actually paid in cash to, or the amount of loss actually funded in cash by, the specified Person or a Restricted Subsidiary of the Person during such period;
- (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 Company or any Restricted Subsidiary or all or substantially all of the property and assets of such Person are acquired by the Company or any Restricted Subsidiary;

- (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 Company or any Restricted Subsidiary or (B) any Capital Stock of any Person (including any gains by the Company realized on sales of Capital Stock of the Company or any Restricted Subsidiary), in each case, which is not sold in the ordinary course of business of the Company or any Restricted Subsidiary;
- (6) any translation gains or losses due solely to fluctuations in currency values and related tax effects; and
- (7) any net after-tax extraordinary or non-recurring gains.

*provided* that any net after tax gains derived from direct or indirect sale by the Company or any Restricted Subsidiary of (i) Capital Stock of a Restricted Subsidiary primarily engaged in the holding of Investment Property or (ii) an interest in any Investment Property arising from the difference between the original cost basis and the cash sale price shall be added to Consolidated Net Income to the extent not already included in the net income for such period as determined in conformity with GAAP and Consolidated Net Income.

“*Consolidated Net Worth*” means, at any date of determination, stockholders’ equity as set forth on the most recently available fiscal quarter, semi-annual or annual consolidated balance sheet of the Company and its Restricted Subsidiaries, plus, to the extent not included, any Preferred Stock of the Company, 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 Company or any Restricted Subsidiary, each item to be determined in conformity with GAAP.

“*Contractor Guarantees*” means any guarantee by the Company or any Restricted Subsidiary of Indebtedness of any contractor, builder or other similar Person engaged by the Company or such Restricted Subsidiary in connection with the development, construction or improvement of real or personal property or equipment to be used in a Permitted Business by the Company or any Restricted Subsidiary in the ordinary course of business, which Indebtedness was Incurred by such contractor, builder or other similar Person to finance the cost of such development, construction or improvement.

“*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 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 (provided that such increase is permitted under the covenant described under “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”) or (4) otherwise altering the terms and conditions thereof.

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

“*CVR*” means the contingent value rights issued by the Company on July 21, 2016 pursuant to the CVR Agreement.

“*CVR Agreement*” means the Contingent Value Rights Agreement, dated as of July 21, 2016, between the Company and U.S. Bank National Association, as trustee.

“*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 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 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 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 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 “— 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 Company’s repurchase of the 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 Restricted Subsidiary from a bank that are secured by a pledge of deposits or bank accounts made by another 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 Company.

“*Equity Offering*” means any underwritten primary public offering or private placement of Common Stock of the Company after the Original Issue Date to any Person other than a Wholly Owned Restricted Subsidiary or any Permitted Holder; *provided* that the aggregate gross cash proceeds received by the Company from such transaction shall be no less than US\$20.0 million (or the Dollar Equivalent thereof).

“*Euroclear*” means Euroclear Bank SA/NV.

“*Exchange Convertible Bond PIK Interest*” means the interest that is capitalized and added to the then current outstanding principal amount of the Exchange Convertible Bonds pursuant to the terms of the Exchange Convertible Bonds.

“*Exchange Convertible Bonds*” means the U.S. dollar-denominated variable rate convertible bonds due 2019 issued by the Company pursuant to the terms of the Mandatorily Exchangeable Bonds and any Exchange Convertible Bond PIK Interest with respect thereto.

“*Exempted Subsidiary*” means any Restricted Subsidiary organized in any jurisdiction other than the PRC that is prohibited by applicable law or regulation to provide a Subsidiary Guarantee or a JV Subsidiary Guarantee or create any Lien over its Capital Stock to secure any of the secured obligations subject to the Intercreditor Agreement; *provided* that (x) the Company shall have failed, upon using commercially reasonable efforts, to obtain any required governmental or regulatory approval or registration with respect to such Subsidiary Guarantee, JV Subsidiary Guarantee or Lien over its Capital Stock, 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 Company having obtained such applicable approval or registration.

“*Existing HY Notes*” means the Series A Notes, the Series B Notes, the Series C Notes, the Series D Notes and the Series E Notes.

“*Existing HY Indentures*” means the indentures dated July 21, 2016 as amended and supplemented from time to time governing the Existing HY Notes.

“*Existing HY Notes PIK Interest*” means interest on the Existing HY Notes paid in the form of Existing HY Notes PIK Notes.

“*Existing HY Notes PIK Notes*” means Existing HY Notes issued under the relevant Existing HY Notes Indenture in the event the Company pays Existing HY Notes PIK Interest on the relevant series of Existing HY Notes pursuant to such Existing HY Notes Indenture.

“*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 Company.

“*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 Company (which the Company shall use its reasonable best efforts to compile in a timely manner) are available (which may include internal consolidated financial statements) (the “Four Fiscal-Quarter Period”) to (2) the aggregate Consolidated Fixed Charges during such Four Fiscal-Quarter Period. In making the foregoing calculation:

- (A) *pro forma* effect shall be given to any Indebtedness or Preferred Stock Incurred, repaid or redeemed during the period (the “Reference Period”) commencing on and including the first day of the Four Fiscal-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 Fiscal-Quarter Period), in each case as if such Indebtedness 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 Four Fiscal-Quarter Period shall not include any interest income actually earned by the Company or such Restricted Subsidiary during such Four Fiscal-Quarter Period in respect of the funds used to repay or redeem such Indebtedness 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 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;



- (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 have been made by any Person that has become a Restricted Subsidiary or has been merged with or into the Company 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; and
- (E) *pro forma* effect shall be given to the creation, designation or re-designation of Restricted Subsidiaries and Unrestricted Subsidiaries as if such creation, designation or re-designation had occurred on the first day of such Reference Period;

*provided* that to the extent that clause (C) or (D) of this paragraph 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 Hong Kong Financial Reporting Standards 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 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 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; and
- (9) all Disqualified Stock issued by such 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 (1) any capital commitments, deferred payment obligation, pre-sale receipts in advance from customers or similar obligations 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, (2) any Entrusted Loan; *provided* that such Indebtedness is not reflected as borrowings on the consolidated balance sheet of the Company (contingent obligations and commitments referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet) or (3) any obligations in respect of the CVRs.

The amount of Indebtedness of any Person at any time shall be the outstanding balance at such time 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:

- (A) 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;
- (B) 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;
- (C) that the amount of Indebtedness with respect to any Hedging Obligation shall be (i) zero if Incurred pursuant to paragraph (b)(6) under the “Limitation on Indebtedness and Preferred Stock” covenant or (ii) equal to the net amount payable by such Person if the Commodity Agreement, Currency Agreement or Interest Rate Agreement giving rise to such Hedging Obligation were terminated at that time due to default by such Person if not Incurred pursuant to such paragraph, and
- (D) that the contingent obligations arising from letters of credit, bankers’ acceptances or other similar instruments of a Restricted Subsidiary to secure Indebtedness of another Restricted Subsidiary shall not be deemed to be Indebtedness so long as such contingent obligations are used to secure the payment of Indebtedness of another Restricted Subsidiary permitted to be Incurred under the Indenture.

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

“*Insurance Company Investor*” means an Independent Third Party that is a financial institution or an insurance company or an Affiliate thereof that invests in any Capital Stock of a Restricted Subsidiary.

“*Intercreditor Agreement*” has the meaning set forth under “— Security.”

“*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:

- (i) any direct or indirect advance, loan or other extension of credit to another Person,
- (ii) 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),
- (iii) any purchase or acquisition of Capital Stock, Indebtedness, bonds, notes, debentures or other similar instruments or securities issued by another Person, or
- (iv) any guarantee of any obligation of another Person to the extent such obligation is outstanding and to the extent guaranteed by such Person.

For the purposes of the provisions of the “— Certain Covenants — Designation of Restricted and Unrestricted Subsidiaries” and “— Certain Covenants — Limitation on Restricted Payments” covenants: (i) the Company will be deemed to have made an Investment in an Unrestricted Subsidiary in an amount equal to the Fair Market Value of the Company’s proportionate interest in the assets (net of the Company’s proportionate interest in the liabilities owed to any Person other than the Company or a Restricted Subsidiary and that are not guaranteed by the Company or a Restricted Subsidiary) of a Restricted Subsidiary that is designated an Unrestricted Subsidiary at the time of such designation and (ii) 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.

“*Investment Property*” means any property that is owned and held by any Restricted Subsidiary for long-term rental yields or for capital appreciation or both, or any hotel owned by the Company or any Restricted Subsidiary from which the Company or any Restricted Subsidiary derives or expects to derive operating income.

“*Investment Grade*” means a rating of “AAA,” “AA,” “A” or “BBB,” as modified by a “+” or “-” indication, or an equivalent rating representing one of the four highest Rating Categories, by S&P or any of its successors or assigns or a rating of “Aaa,” “Aa,” “A” or “Baa,” as modified by a “1,” “2” or “3” indication, or an equivalent rating representing one of the four highest Rating Categories, by Moody’s or any of its successors or assigns or the equivalent ratings of any internationally recognized rating agency or agencies, as the case may be, which shall have been designated by the Company as having been substituted for S&P or Moody’s or both, as the case may be.

“*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 quarter end of the Company; and (ii) a percentage equal to the direct equity ownership percentage of the Company and/or its Restricted Subsidiaries in the Capital Stock of such JV Subsidiary Guarantor and its Subsidiaries.

“*JV Subsidiary Guarantee*” has the meaning set forth under the caption “— The Subsidiary Guarantees and 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).

“*Mandatorily Exchangeable Bond PIK Interest*” means the interest that is capitalized and added to the then current outstanding principal amount of the Mandatorily Exchangeable Bonds pursuant to the terms of the Mandatorily Exchangeable Bonds.

“*Mandatorily Exchangeable Bonds*” means the U.S. dollar-denominated variable rate mandatorily exchangeable bonds due 2019 issued by the Company and any Mandatorily Exchangeable Bond PIK Interest with respect thereto.

“*Measurement Date*” means April 28, 2010.

“*Minority Joint Venture*” means any corporation, association or other business entity that is accounted for by the equity method of accounting in accordance with GAAP by the Company or a Restricted Subsidiary and primarily engaged in the Permitted Businesses, and such Minority Joint Venture’s Subsidiaries.

“*Moody’s*” means Moody’s Investors Service, Inc., its affiliates, successors or assigns.

“*Net Cash Proceeds*” means:

- (a) with respect to any Asset Sale, the proceeds of such Asset Sale in the form of cash or Temporary Cash Investments, 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 Temporary Cash Investments and proceeds from the conversion of other property received when converted to cash or Temporary Cash Investments, net of
  - (1) brokerage commissions and other fees and expenses (including fees and expenses of counsel and investment banks) related to such Asset Sale;
  - (2) 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 Company and its Restricted Subsidiaries, taken as a whole;
  - (3) 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; and
  - (4) appropriate amounts to be provided by the Company 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
- (b) with respect to any issuance or sale of Capital Stock, the proceeds of such issuance or sale in the form of cash or Temporary Cash Investments, 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 Temporary Cash Investments and proceeds from the conversion of other property received when converted to cash or Temporary Cash Investments, 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 Subsidiary*” means any Restricted Subsidiary not providing a Subsidiary Guarantee or JV Subsidiary Guarantee.

“*Offer to Purchase*” means an offer to purchase the Notes by the Company from the Holders commenced by sending a notice to the Trustee, the Paying Agent and each Holder at its last address appearing in the Note register stating:

- (1) the provision of 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 sent) (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 Company 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 pursuant to the applicable procedures of Euroclear and Clearstream, together with the form entitled “Option of the Holder to Elect Purchase” on the reverse side of the Note completed, to the order of the Company’s agent appointed for the purpose of the Offer to Purchase (the “Tender Agent”) with a copy 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 Tender 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 the 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\$200,000 or integral multiples of US\$1,000.

One Business Day prior to the Offer to Purchase Payment Date, the Company will deposit with the Tender Agent money sufficient to pay the purchase price of all Notes or portions thereof to be accepted by the Company for payment on the Offer to Purchase Payment Date. On the Offer to Purchase Payment Date, the Company 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 Paying Agent all Notes or portions thereof so accepted together with an Officers' Certificate (with a copy to the Trustee) specifying the Notes or portions thereof accepted for payment by the Company. The Tender Agent shall promptly send to the Holders of Notes so accepted payment in an amount equal to the purchase price, and the Registrar shall promptly authenticate and deliver to such Holders a new Note equal in principal amount to any unpurchased portion of the Note surrendered; *provided* that each such Note purchased and each such new Note issued shall be in a principal amount of US\$200,000 or integral multiples of US\$1,000. The Company will publicly announce the results of an Offer to Purchase as soon as practicable after the Offer to Purchase Payment Date. The Company will comply with all applicable securities laws and regulations, in the event that the Company is required to repurchase the Notes pursuant to an Offer to Purchase.

The materials used in connection with an Offer to Purchase are required to contain or incorporate by reference information concerning the business of the Company and its Subsidiaries which the Company 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 Company 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.

“*Officer*” means one of the executive officers of the Company or, in the case of a Subsidiary Guarantor or a JV Subsidiary Guarantor, one of the directors or executive officers of 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 any Subsidiary Guarantor or JV Subsidiary Guarantor under the Indenture, Officers' Certificate means a certificate signed by one Officer if there is only one Officer in such Subsidiary Guarantor or JV Subsidiary Guarantor at the time such certificate is required to be delivered.

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

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

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



“*Payment Default*” means (i) any default in the payment of interest on any Note when the same becomes due and payable, (ii) any 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, (iii) the failure by the Company to make or consummate a Change of Control Offer in the manner described under the caption “— Repurchase of Notes upon a Change of Control,” or an Offer to Purchase in the manner described under the caption “— Certain Covenants — Limitation on Asset Sales” or (iv) any Event of Default specified in clause (e) of the definition of Events of Default.

“*Permitted Business*” means any business conducted by the Company and its Restricted Subsidiaries on the Original Issue Date and other businesses reasonably related, ancillary or complementary thereto, or any business in the financial services, internet, logistics, medical or agricultural industries or any business reasonably related, ancillary or complementary thereto.

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

- (1) Mr. Kwok Ying Shing, Mr. Kwok Chun Wai and Mr. Kwok Ying Chi;
- (2) any Affiliate (other than an Affiliate as defined in clause (ii) or (iii) of the definition of “Affiliate”) of any of the Persons specified in clause (1) of this definition; 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 80% owned by Persons specified in clauses (1) and (2) of this definition.

“*Permitted Investment*” means:

- (1) any Investment in the Company or a Restricted Subsidiary that is primarily engaged, directly or indirectly through one or more other Restricted Subsidiaries, in a Permitted Business or a Person which will, upon the making of such Investment, become a Restricted Subsidiary that is primarily engaged, directly or indirectly through one or more other Restricted Subsidiaries, in a Permitted Business or be merged or consolidated with or into or transfer or convey all or substantially all its assets to the Company or a Restricted Subsidiary that is primarily engaged in a Permitted Business.
- (2) Temporary Cash Investments;
- (3) payroll, travel and similar advances 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 designed solely to protect the Company or any Restricted Subsidiary against fluctuations in commodity prices, interest rates or foreign currency exchange rates and not for speculation;
- (7) receivables owing to the Company 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) any securities or other Investments received as consideration in, or retained in connection with, sales or other dispositions of property or assets, including Asset Dispositions made in compliance with the covenant described 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 the caption “— Certain Covenants — Limitation on Liens”;
- (10) any Investment pursuant to Pre-Registration Mortgage Guarantees or Contractor Guarantees by the Company or any Restricted Subsidiary otherwise permitted to be incurred under the Indenture;
- (11) Investments in securities of trade creditors or customers received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

- (12) advances to contractors and suppliers for the acquisition of assets or consumables or services in the ordinary course of a Permitted Business that are recorded as deposits or prepaid expenses on the Company's consolidated balance sheet;
- (13) deposits of pre-sale proceeds made in order to secure the completion and delivery of pre-sold properties and issuance of the related land use title in the ordinary course of a Permitted Business;
- (14) deposits made in order to comply with statutory or regulatory obligations to maintain deposits for workers, compensation claims and other purposes specified by statute or regulation from time to time in the ordinary course of a Permitted Business;
- (15) (i) deposits made in order to secure the performance of the Company or any Restricted Subsidiary, (ii) prepayments made in connection with the acquisition of real property or land use rights by the Company or any Restricted Subsidiary, in each case, in the ordinary course of a Permitted Business; and (iii) advances to government authorities or government affiliated entities in the PRC in connection with the financing of redevelopment of old urban areas or primary land development, in each case, in the ordinary course of business that are recorded as assets on the Company's consolidated balance sheet; and
- (16) any Investment (including any deemed Investment upon the redesignation of a Restricted Subsidiary as an Unrestricted Subsidiary or upon the sale of Capital Stock of a Restricted Subsidiary) by the Company or any Restricted Subsidiary in any Person; *provided* that:
  - (a) the Person into which such Investment is made is primarily engaged in the Permitted Businesses;
  - (b) none of the other shareholders of or partners in such Person is a Person described in clause (a) or (b) of the first paragraph of the covenant described under the caption “— Limitation on Transactions with Shareholders and Affiliates” (other than by reason of such shareholder or partner being an officer or director of the Company, a Restricted Subsidiary, a Minority Joint Venture or an Unrestricted Subsidiary or by reason of being a Restricted Subsidiary, a Minority Joint Venture or an Unrestricted Subsidiary);
  - (c) in the case of any Investment by the Company or any Restricted Subsidiary in a Person of which less than 50% of the voting power of the outstanding Voting Stock is owned, directly or indirectly, by the Company or its Restricted Subsidiaries, at the time of such Investment, the Company could Incur at least US\$1.00 of Indebtedness under the proviso in paragraph (a) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock”; *provided* that this paragraph (c) shall not apply if such Investment would otherwise have been permitted under this clause (16) and such Investment, together with the aggregate amount of all other Investments made in reliance on this proviso since the Original Issue Date, shall not exceed in aggregate an amount equal to 15% of Total Assets (such aggregate amount of Investments shall be calculated after deducting an amount equal to the net reduction in all Investments made in reliance on this proviso since the Original Issue Date resulting from the events set forth in paragraphs (e)(i) through (e)(iii) below, where references in such paragraphs to “under this clause (16)” shall be substituted with “in reliance on the proviso in paragraph (c)”);
  - (d) no Default has occurred and is continuing or would occur as a result of such Investment; and

- (e) such Investment, together with the aggregate of all other Investments made under this clause (16) since the Original Issue Date shall not exceed in aggregate an amount equal to 25% of Total Assets. 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:
  - (i) payments of interest on Indebtedness, dividends or repayments of loans or advances made under this clause (16), in each case to the Company 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),
  - (ii) the unconditional release of a Guarantee provided by the Company or a Restricted Subsidiary after the Original Issue Date under this clause (16) of an obligation of any such Person, or
  - (iii) 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 Company or a Restricted Subsidiary after the Original Issue Date in any such Person under this clause (16);

*provided, further* that for the avoidance of doubt, the value of each Investment made pursuant to this clause (16) shall be valued at the time such Investment is made;

- (17) guarantees permitted under clause (b)(21) of the covenant entitled “— Limitation on Indebtedness and Preferred Stock”; and
- (18) any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Subsidiaries in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries, *provided* that (A) (i) the Board of Directors of the Company has determined in good faith that the designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries is necessary to obtain approval from a Qualified Exchange for the Restructuring, (ii) at the time of such designation, the members of the Restructuring Group remain Subsidiaries of the Company, and (iii) at the time of such designation, the members of the Restructuring Group remain primarily engaged in the Permitted Businesses; and (B) the aggregate of all Investments made under this clause (18) since the Original Issue Date shall not exceed an amount equal to 15% of Total Assets (for the avoidance of doubt, any portion of such Investments exceeding 15% of Total Assets shall not constitute a Permitted Investment pursuant to this clause (18) but may be made, characterized and accounted for in accordance with the other provisions of the Indenture; and
- (19) any Investment in a subordinated tranche of interests in a Receivable Financing Incurred pursuant to clause (ii) of the definition thereof with multiple tranches offered and sold to investors that, in the good faith determination of the Board of Directors, is necessary or advisable to effect such Receivable Financing.

“*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 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 Company 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 Company or its Restricted Subsidiaries relating to such property or assets;
- (6) any interest or title of a lessor in the property subject to any operating lease;
- (7) 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 Company 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;
- (8) Liens in favor of the Company or any Restricted Subsidiary;
- (9) Liens arising from attachment or the rendering of a final judgment or order against the Company or any Restricted Subsidiary that does not give rise to an Event of Default;
- (10) 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;
- (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 (b)(5) of the covenant described under the caption "*— Limitation on Indebtedness and Preferred Stock*"; *provided* that such Liens do not extend to or cover any property or assets of the Company or any Restricted Subsidiary other than the property or assets securing the Indebtedness being refinanced;
- (13) Liens (including extensions and renewals thereof) upon real or personal property; *provided* that (a) such Lien is created solely for the purpose of securing Indebtedness of the type described under clause (b)(7) of the covenant described under the caption "*— Limitation on Indebtedness and Preferred Stock*," (b) such Lien is created prior to, at the time of or within 180 days after the later of the acquisition or the completion of development, construction or improvement of such property, (c) the principal amount of Indebtedness secured by such Lien does not exceed 100% of the cost of such property, development, construction or improvement and (d) such Lien shall not extend to or cover any property or assets other than such item of property and any improvements on such item; *provided* that, such Lien may cover other property or assets (instead of or in addition to such item of property or improvements) and the principal amount of Indebtedness secured by such Lien may exceed 100% of such cost if (x) such Lien is Incurred in the ordinary course of business and (y) the aggregate book value of property or assets (as of the last day of the most recent fiscal quarter period for which consolidated financial statements of the Company (which the Company shall use its reasonable best efforts to compile in a timely manner) are available (which may be internal consolidated 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 (13) does not exceed 130% of the aggregate principal amount of Indebtedness secured by such Liens;
- (14) Liens under the Security Documents;

- (15) Liens securing any Permitted Pari Passu Secured Indebtedness that complies with each of the requirements set forth under “Security — Permitted Pari Passu Secured Indebtedness”;
- (16) Liens securing Indebtedness of the Company or any Restricted Subsidiary under any Pre-Registration Mortgage Guarantee which is permitted to be Incurred under clause (b)(13) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock”;
- (17) 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 Company or any Restricted Subsidiary;
- (18) 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 (b)(6) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock”;
- (19) Liens on deposits of pre-sale proceeds made in order to secure the completion and delivery of pre-sold properties and issuance of the related land use title made in the ordinary course of business and not securing Indebtedness of the Company or any Restricted Subsidiary;
- (20) Liens on deposits made in order to comply with statutory obligations to maintain deposits for workers’ compensation claims and other purposes specified by statute made in the ordinary course of business and not securing Indebtedness of the Company or any Restricted Subsidiary;
- (21) Liens on deposits made in order to secure the performance of the Company or any Restricted Subsidiary in connection with the acquisition of real property or land use rights or personal property (including, without limitation, Capital Stock) by the Company or any Restricted Subsidiary (including, without limitation, by way of acquisition of Capital Stock of a Person) in the ordinary course of business and not securing Indebtedness of the Company or any Restricted Subsidiary;
- (22) Liens granted by the Company or any Restricted Subsidiary in favor of any Insurance Company Investor to secure the obligations of a Subsidiary of such Restricted Subsidiary to pay a guaranteed or preferred dividend or return on Capital Stock of such Subsidiary held by such Insurance Company Investor permitted to be Incurred under clause (b)(16) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock;”
- (23) Liens on Investment Properties securing Indebtedness of the Company or any Restricted Subsidiary permitted to be Incurred under clause (b)(19) of the covenant described under “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
- (24) Liens Incurred on cash deposits, bank accounts or other assets of the Company or any Restricted Subsidiary to secure Bank Deposit Secured Indebtedness of the type described under clause (b)(20) of the covenant under “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
- (25) Liens on current assets securing Indebtedness permitted to be Incurred under clause (b)(14) of the “— Limitation on Indebtedness and Preferred Stock” covenant;
- (26) Liens to secure Entrusted Loans;
- (27) Liens securing Indebtedness permitted to be Incurred under clause (b)(17) of the covenant entitled “— Limitation on Indebtedness and Preferred Stock” covenant;
- (28) 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 (b)(15) of the “— Limitation on Indebtedness and Preferred Stock” covenant;



- (29) Liens securing Indebtedness Incurred under clause (b)(21) of the “— Limitation on Indebtedness and Preferred Stock” covenant;
- (30) Liens on assets of a Non-Guarantor Subsidiary securing any Permitted Subsidiary Indebtedness of any Non-Guarantor Subsidiary permitted to be Incurred under the proviso in paragraph (a) of the covenant described under “— Limitation on Indebtedness and Preferred Stock”; and
- (31) Liens securing Indebtedness Incurred under clause (b)(25) of the covenant described under “— Limitation on Indebtedness and Preferred Stock.”

“*Permitted Pari Passu Secured Indebtedness*” has the meaning set forth under “Security — Permitted Pari Passu Secured Indebtedness.”

“*Permitted Subsidiary Indebtedness*” means Indebtedness of, and all Preferred Stock issued by, the Non-Guarantor Subsidiaries, 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 (excluding Public Indebtedness and the amount of any Indebtedness of any Non-Guarantor Subsidiary permitted under clauses (b)(1), (b)(2), (b)(4), (b)(6) and (b)(13) of the covenant described under the caption “— 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 Hong Kong Special Administrative Region, Macau and Taiwan.

“*PRC CJV*” means any future 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 September 3, 2016) 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 February 19, 2014), as such laws may be amended.

“*PRC CJV Partner*” means with respect to a PRC CJV, the other party or parties to the joint venture agreement relating to such PRC CJV with the Company 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 any other class of Capital Stock of such Person.

“*Pre-Registration Mortgage Guarantees*” means any Indebtedness of the Company or any Restricted Subsidiary consisting of a guarantee in favor of any bank or other similar financial institutions in the ordinary course of business of secured loans of purchasers of individual units of properties from the Company or any Restricted Subsidiary; *provided* that any such guarantee shall be released in full on or before the perfection of a security interest in such properties under applicable law in favor of the relevant lender.

“*Public Indebtedness*” means any bonds, debentures, notes or similar debt securities issued in a public offering or a private placement (other than the Notes) to institutional investors.

“*Qualified Exchange*” means either (1) the New York Stock Exchange, the London Stock Exchange, The Stock Exchange of Hong Kong Limited, the Nasdaq Stock Market, Singapore Exchange Securities Trading Limited, The Shanghai Stock Exchange or The Shenzhen Stock Exchange or (2) 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).

“*Qualified IPO*” means an initial public offering, and a listing of, Capital Stock of a company on a Qualified Exchange, *provided* that in the case that such listing is on 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), such listing shall result in a public float of not less than the percentage required by the applicable listing rules.

“*Rating Agencies*” means (i) S&P, (ii) Moody’s and (iii) if S&P or Moody’s or both shall not make a rating of the Notes publicly available, one or more “nationally recognized statistical rating organizations,” as the case may be, within the meaning of Section 3(a)(62) of the Exchange Act, selected by the Company, which shall be substituted for S&P or Moody’s or both, as the case may be.

“*Rating Category*” means (i) with respect to S&P, any of the following categories: “BB,” “B,” “CCC,” “CC,” “C” and “D” (or equivalent successor categories); (ii) with respect to Moody’s, any of the following categories: “Ba,” “B,” “Caa,” “Ca,” “C” and “D” (or equivalent successor categories); and (iii) the equivalent of any such category of S&P or Moody’s used by another Rating Agency. In determining whether the rating of the Notes has decreased by one or more gradations, gradations within Rating Categories (“+” and “-” for S&P; “1,” “2” and “3” for Moody’s; or the equivalent gradations for another Rating Agency) shall be taken into account (e.g., with respect to S&P, a decline in a rating from “BB+” to “BB,” as well as from “BB-” to “B+,” will constitute a decrease of one gradation).

“*Receivable Financing*” means any financing transaction or series of financing transactions that have been or may be entered into by the Company or any Restricted Subsidiary pursuant to which the Company or any Restricted Subsidiary may sell, convey or otherwise transfer to another Person, or may grant a security interest in, any of its receivables, mortgages, royalty, other revenue streams or interests therein (including without limitation, all security interests in goods financed thereby (including equipment and property), the proceeds of such receivables, and other assets which are customarily sold or in respect of which security interests are customarily granted in connection with securitization or factoring transactions involving such assets) for credit or liquidity management purposes (including discounting, securitization or factoring transactions) either (i) in the ordinary course of business or (ii) by way of selling by such other Person securities that are, or are capable of being, listed on any stock exchange or in any securities market and are offered using an offering memorandum or similar offering document.

“*Receivable Financing Assets*” means assets that are underlying and are sold, conveyed or otherwise transferred or pledged in a Receivable Financing.

“*Reference Treasury Dealer*” means each of any three investment banks of recognized standing that is a primary U.S. Government securities dealer in The City of New York, selected by the Company in good faith.

“*Reference Treasury Dealer Quotations*” means, with respect to each Reference Treasury Dealer and any redemption date, the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing by such Reference Treasury Dealer at 5:00 p.m. on the fifth Business Day preceding such redemption date.

“*Renminbi*” or “*RMB*” means the lawful currency of the People’s Republic of China, excluding Hong Kong, Macau and Taiwan for the purposes of the Indenture.

“*Restricted Subsidiary*” means any Subsidiary of the Company other than an Unrestricted Subsidiary.

“*Restructuring*” means the restructuring and Qualified IPO of the common shares of a Subsidiary of the Company in the Restructuring Group.

“*Restructuring Group*” means the group of Subsidiaries of the Company which are engaged in the Permitted Business that the Company may spin off and separately listed on a Qualified Exchange as part of the Restructuring.

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

“*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 Company or any Restricted Subsidiary transfers such property to another Person and the Company or any Restricted Subsidiary leases it from such Person.

“*Securitization Fees*” means distributions or payments made directly or by means of discounts with respect to any Receivable Financing Asset or participation interest therein issued or sold in connection with and other fees paid to a Person that is not a Restricted Subsidiary in connection with any Receivable Financing.

“*Security Documents*” means, collectively, the pledge or charge agreements and any other agreements or instruments that may evidence or create any security interest in favor of the Common Security Trustee on behalf of the Trustee and/or any Holders in any or all of the Collateral.

“*Senior Indebtedness*” of the Company or any Restricted Subsidiary, as the case may be, means all Indebtedness of the Company or such 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 Company, the Notes, (b) in respect of any Restricted Subsidiary that is a Subsidiary Guarantor, its Subsidiary Guarantee; or (c) in respect of any Restricted Subsidiary that is a JV Subsidiary Guarantor, its JV Subsidiary Guarantee; *provided* that Senior Indebtedness does not include (i) any obligation to the Company or any Restricted Subsidiary, (ii) trade payables or (iii) Indebtedness Incurred in violation of the Indenture.

“*Series A Notes*” means the variable rate senior notes due December 31, 2019 issued by the Company.

“*Series B Notes*” means the variable rate senior notes due June 30, 2020 issued by the Company.

“*Series C Notes*” means the variable rate senior notes due December 31, 2020 issued by the Company.

“*Series D Notes*” means the variable rate senior notes due June 30, 2021 issued by the Company.

“*Series E Notes*” means the variable rate senior notes due December 31, 2021 issued by the Company.

“*Significant Restricted Subsidiary*” means a Restricted Subsidiary, or a 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 Company or any Restricted Subsidiary and an Independent Third Party pursuant to which the Company or such Restricted Subsidiary agrees to (x) acquire not less than a majority of the Capital Stock of a Person (which owns land use rights in respect of parcels of land suitable for Permitted Business) (the “Minimum Initial Purchase”) from such Independent Third Party and pay for the Minimum Initial Purchase in full or in installments at a purchase price that is not more than the Fair Market Value of such Capital Stock on the date of such agreement and/or (y) on or after the payment in full of the purchase price for the Minimum Initial Purchase and such Person becomes a Restricted Subsidiary, (i) acquire additional shares of Capital Stock of such Restricted Subsidiary from such Independent Third Party and pay for such additional shares in full or in installments after the date of such agreement at a purchase price that is not more than the Fair Market Value of such Capital Stock on the date of such agreement or (ii) acquire additional shares of Capital Stock of such Restricted Subsidiary from such Independent Third Party in accordance with a “right of first refusal” or “right of first offer” type of provision in such agreement at a purchase price that is not more than the Fair Market Value of such Capital Stock on or about the date of such purchase.

“*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 Shareholder Loan*” means any unsecured loan to the Company or any Restricted Subsidiary from Permitted Holders which (i) is expressly subordinated in right of payment to the Notes, (ii) by its terms (and by the terms of any security into which it is convertible or for which it is exchangeable) does not mature and is not required to be repaid, pursuant to a sinking fund obligation event of default or otherwise, in whole or in part, on or prior to the date that is one year after the Stated Maturity of the Notes and (iii) by its terms does not provide any cash payment of interest.

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

“*Subsidiary*” means, with respect to any Person, any corporation, association or other business entity (i) 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 (ii) of which 50% or less of the outstanding Voting Stock is owned, directly or indirectly, by such Person and which is “controlled” and consolidated by such Person in accordance with GAAP.

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

“*Subsidiary Guarantor*” means any initial Subsidiary Guarantor named herein and any other Restricted Subsidiary which guarantees the payment of the Notes pursuant to the Indenture and the Notes; *provided* that Subsidiary Guarantor will not include (a) any Person whose Subsidiary Guarantee has been released in accordance with the Indenture and the Notes or (b) any JV Subsidiary Guarantor.

“*Subsidiary Guarantor Pledgor*” means any initial Subsidiary Guarantor Pledgor named herein and any other Subsidiary Guarantor which pledges Collateral to secure the obligations of the Company under the Notes and the Indenture and of such Subsidiary Guarantor under its Subsidiary Guarantee; *provided* that a Subsidiary Guarantor Pledgor will not include any Person whose pledge under the Security Documents has been released in accordance with the Security Documents, the Indenture and the Notes.

“*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 United Kingdom, the People’s Republic of China and Hong Kong or any agency of the foregoing or obligations fully and unconditionally guaranteed by the United States of America, any state of the European Economic Area, the United Kingdom, the People’s Republic of China and Hong Kong or any agency of the foregoing, in each case maturing within one year;
- (2) time deposit accounts, certificates of deposit, demand notes 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 or any state thereof, any state of the European Economic Area, the United Kingdom or Hong Kong, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of US\$100.0 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 Section 3(a)(62) of the Exchange 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 within 180 days of the date of acquisition thereof, issued by a corporation (other than an Affiliate of the Company) 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) time deposit accounts, certificates of deposit, overnight or call deposits and money market deposits with any bank or financial institution organized under the laws of the PRC, Hong Kong or anywhere the Company or any Restricted Subsidiary conducts business operations; and
- (8) structured deposit products that are principal protected with any bank or financial institution organized under the laws of the PRC, Hong Kong or anywhere the Company or any Restricted Subsidiary conducts business operations 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 Company 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 Company (which the Company shall use its reasonable best efforts to compile on a timely manner) are available (which may include internal consolidated financial statements); *provided* that only with respect to clause (b)(7) 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, as measured by the purchase price or cost therefor or budgeted cost provided in good faith by the Company or any Restricted Subsidiary to the bank or other similar financial institutional lender providing such Indebtedness.

“*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.

“*Unrestricted Subsidiary*” means (1) any Subsidiary of the Company 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 holder 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 100% 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 are entitled to 95% or more of the economic benefits distributable by such Subsidiary.

## DESCRIPTION OF THE 2022 NOTES

For purposes of this “Description of the 2022 Notes,” the term “Company” refers only to Kaisa Group Holdings Ltd., a company incorporated with limited liability under the laws of the Cayman Islands, and any successor obligor on the Notes, and not to any of its Subsidiaries, and the term “Notes” refers only to the 2022 Notes issued by the Company. Each Subsidiary of the Company which 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 Company that in the future provides a JV Subsidiary Guarantee (as defined below) is referred to as a “JV Subsidiary Guarantor.”

The Notes are to be issued under an indenture (the “Indenture”), to be dated as of the Original Issue Date, among the Company, the initial Subsidiary Guarantors, as guarantors, and Citicorp International Limited, as trustee (the “Trustee”).

The following is a summary of certain provisions of the Indenture, the Notes, the Subsidiary Guarantees, the JV Subsidiary Guarantees (if any), the Security Documents and the Intercreditor Agreement. 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 Subsidiary Guarantees, the JV Subsidiary Guarantees (if any), the Security Documents and the Intercreditor Agreement. It does not restate those agreements 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. Copies of the Indenture will be available on or after the Original Issue Date during normal office hours at the corporate trust office of the Trustee at 39/F, Champion Tower, 3 Garden Road, Central, Hong Kong.

### Brief Description of the Notes

The Notes are:

- general obligations of the Company;
- senior in right of payment to any existing and future obligations of the Company expressly subordinated in right of payment to the Notes;
- at least *pari passu* in right of payment with all other unsecured, unsubordinated Indebtedness of the Company (subject to any priority rights of such unsubordinated Indebtedness pursuant to applicable law);
- guaranteed by the Subsidiary Guarantors and the JV Subsidiary Guarantors (if any) on a senior basis, subject to the limitations described below under the caption “— The Subsidiary Guarantees and JV Subsidiary Guarantees” and in “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral”;
- effectively subordinated to the secured obligations of the Company, the Subsidiary Guarantors and the JV Subsidiary Guarantors (if any), to the extent of the value of the collateral serving as security therefor (other than the Collateral); and
- effectively subordinated to all existing and future obligations of the Non-Guarantor Subsidiaries (defined below).

In addition, on the Original Issue Date, subject to the limitations described in “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral,” the Notes will be secured by a pledge of the Collateral as described below under the caption “— Security” and will:

- be entitled to a lien on the Collateral (subject to any Permitted Liens and the Intercreditor Agreement); and
- rank effectively senior in right of payment to unsecured obligations of the Company with respect to the value of the Collateral pledged by the Company securing the Notes (subject to any priority rights of such unsecured obligations pursuant to applicable law).

The Notes will mature on June 30, 2022, unless earlier redeemed pursuant to the terms thereof and the Indenture.

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 2022 Notes” include any Additional Notes that are actually issued. The Notes will bear interest at 8.50% 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 June 30 and December 30 of each year (each an “Interest Payment Date”), commencing December 30, 2017.

Interest on the Notes will be paid to Holders of record at the close of business on June 15 and December 15 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. In any case in which the date of the payment of principal of or premium (if any) or interest on the Notes is not a Business Day in the relevant place of payment, then payment of principal or premium (if any) 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. Interest on the Notes will be calculated on the basis of a 360 day year comprised of twelve 30-day months.

The Notes will be issued only in fully registered form, without coupons, in denominations of US\$200,000 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 Company 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 Company at the office or agency of the Company maintained for that purpose (which initially will be the specified office of the Paying Agent), and the Notes may be presented for registration of transfer or exchange at such office or agency; *provided* that, at the option of the Company, payment of interest may be made by check mailed to the address of the Holders as such address appears in the Note register. Interest payable on the Notes held through Euroclear and Clearstream will be available to Euroclear and Clearstream participants (as defined herein) on the Business Day following payment thereof.

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

As of the date of the Indenture, all of the Company’s Subsidiaries will be “Restricted Subsidiaries.” However, under the circumstances described below under the caption “— Certain Covenants — Designation of Restricted and Unrestricted Subsidiaries,” the Company will be permitted to designate certain of its Subsidiaries as “Unrestricted Subsidiaries.” The Company’s Unrestricted Subsidiaries will generally not be subject to the restrictive covenants in the Indenture and will not guarantee the Notes.

On the Original Issue Date, the initial Subsidiary Guarantors will consist of all of the Restricted Subsidiaries (other than the Restricted Subsidiaries organized under the laws of the PRC (the “PRC Non-Guarantor Subsidiaries”), Ace Start Enterprises Limited (佳始企業有限公司), Bowen Asset Management (Cayman) Limited (寶運資產管理(開曼)有限公司), Bowen Asset Management Limited (寶運資產管理有限公司), Brave Sigh Limited (勇志有限公司), Brave Sigh (Hong Kong) Limited (勇志(香港)有限公司), Central Sino Investments Limited (正漢投資有限公司), Central Sino Investments (Hong Kong) Limited (正漢投資(香港)有限公司), Crest Sum Limited (總冠有限公司), Crest Sum (Hong Kong) Limited (總冠(香港)有限公司), Glorious Model Limited (榮程有限公司), Glorious Model (Hong Kong) Limited (榮程(香港)有限公司), Goldenform Investments Limited (崇堅投資有限公司), Greater Sail Limited (順帆有限公司), Greater Sail (Hong Kong) Limited (順帆(香港)有限公司), Hao Xi Holdings Limited (豪熙控股有限公司), Hao Xi Holdings (Hong Kong) Limited (豪熙控股(香港)有限公司), Heroic Lead Limited (傑領有限公司), Heroic Lead (Hong Kong) Limited (傑領(香港)有限公司), Huang Da Limited (煌達有限公司), Huang Da (Hong Kong) Limited (煌達(香港)有限公司), Kaisa Logistic Group Limited (佳兆業物流集團有限公司), Kaisa Technology Limited (佳兆業科技有限公司), Kaisa Ventures Limited (佳兆業創投有限公司), Kaisa Ventures (Hong Kong) Limited (佳兆業創投(香港)有限公司), Luxuriant Year Limited (茂年有限公司), Luxuriant Year (Hong Kong) Limited (茂年(香港)有限公司), Onfair Asia Pacific Limited (安信亞太有限公司), Peiyu Limited (沛裕有限公司), Peiyu (Hong Kong) Investments Limited (沛裕(香港)投資有限

公司), Pointer Star Limited (尖星有限公司), Portwood Global Limited (港活環球有限公司), Portwood Global (Hong Kong) Limited (港活環球(香港)有限公司), Richedge Limited (博鋒有限公司), Richedge (Hong Kong) Limited (博鋒(香港)有限公司), Right Year Developments Limited (偉年發展有限公司), Right Year Developments (Hong Kong) Limited (偉年發展(香港)有限公司), Soarhigh Developments Limited (展升發展有限公司), Soarhigh Developments (Hong Kong) Limited (展升發展(香港)有限公司), Splendid Maple Limited (燁楓有限公司), Splendid Maple (Hong Kong) Limited (燁楓(香港)有限公司), Superb Mega Limited (超旭有限公司), Super Winful Limited (超全有限公司), Tong Sheng Investments Limited (通升投資有限公司), Tong Sheng Investments (Hong Kong) Limited (通升投資(香港)有限公司), Yuan Yuan Investment Company Limited (遠源投資有限公司), Action Enrich Limited, Action Enrich (Hong Kong) Investment Limited, Sunny Harvest Investments Limited, Sunny Harvest Investments (Hong Kong) Limited, Sunny Sino Investments Limited, Sunny Sino Investments (Hong Kong) Limited, Camilla Catering Group (HK) Company Limited (嘉美軒飲食集團(香港)有限公司), Kaisa Group (International) Holdings Company Limited (佳兆業集團控股(國際)有限公司), Kaisa Medical Group Company Limited (佳兆業醫療集團有限公司), Kaisa Tea Group (Hong Kong) Company Limited (佳兆業茶葉集團(香港)有限公司), Sinoluck Investments Holdings (HK) Limited and Sinoluck Investments Holdings Limited (華運投資控股有限公司) (collectively, the “Other Non-Guarantor Subsidiaries” and, together with the PRC Non-Guarantor Subsidiaries, the “Existing Non-Guarantor Subsidiaries”). The initial Subsidiary Guarantors do not have significant operations or assets.

None of the existing or future Restricted Subsidiaries organized under the laws of the PRC or any Exempted Subsidiaries will provide a Subsidiary Guarantee or a JV Subsidiary Guarantee on the Original Issue Date or at any time in the future. Although the Indenture contains limitations on the amount of additional Indebtedness that the Restricted Subsidiaries organized under the laws of the PRC 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, the Non-Guarantor Subsidiary will pay the holders of its debt and its trade creditors before it will be able to distribute any of its assets to the Company. See “Risk Factors — Risks Relating to the Notes — We are a holding company and payments with respect to the Notes are structurally subordinated to liabilities, contingent liabilities and obligations of our subsidiaries.”

As of December 31, 2016,

- the Company and its consolidated subsidiaries had approximately RMB87,537 million (US\$12,608 million) of consolidated indebtedness outstanding, of which approximately RMB75,493 million (US\$10,873 million) was secured;
- the Company and the Subsidiary Guarantors had approximately RMB370 million (US\$53 million) of secured indebtedness outstanding; and
- the Non-Guarantor Subsidiaries had approximately RMB87,167 million (US\$12,555 million) of consolidated indebtedness and other liabilities outstanding owed to third parties.

In addition, as of December 31, 2016, the Non-Guarantor Subsidiaries had approximately RMB27,186 million (US\$3,916 million) of capital commitments and RMB21,843 million (US\$3,146 million) of financial guarantees.

The Company will cause each of its future Subsidiaries (other than Subsidiaries organized under the laws of the PRC or Exempted Subsidiaries), as soon as practicable after such Subsidiary becomes a Restricted Subsidiary or ceases to be an Exempted 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 sentence, the Company may elect to have any future Restricted Subsidiary (and its Restricted Subsidiaries) organized outside the PRC not provide a Subsidiary Guarantee or a JV Subsidiary Guarantee at the time such entity becomes a Restricted Subsidiary or ceases to be an Exempted Subsidiary (the “New Non-Guarantor Subsidiary” and, together with the Existing Non-Guarantor Subsidiaries, the “Non-Guarantor Subsidiaries”); *provided* that, after giving effect to the Consolidated Assets of such Restricted Subsidiary, the Consolidated Assets of all Restricted Subsidiaries organized outside the PRC (other than Exempted Subsidiaries) that are not Subsidiary Guarantors or JV Subsidiary Guarantors do not account for more than 20% of

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

In the case of a Restricted Subsidiary that is, or is proposed by the Company or any Restricted Subsidiary to be, established after the Original Issue Date or any entity (1) that is incorporated in any jurisdiction other than the PRC and (2) in respect of which the Company or any Restricted Subsidiary (x) in the case of a Restricted Subsidiary, is proposing to sell, whether through the sale of existing shares or the issuance of new shares, no less than 20% of the Capital Stock of such Restricted Subsidiary or (y) in the case of any other entity, is proposing to purchase the Capital Stock of such entity such that it becomes a Subsidiary and designate such entity as a Restricted Subsidiary, the Company may, concurrently with or as soon as practicable after the consummation of such sale or purchase, provide a JV Subsidiary Guarantee instead of a Subsidiary Guarantee for (a) such Restricted Subsidiary and (b) the Restricted Subsidiaries of such Restricted Subsidiary that are organized in any jurisdiction other than the PRC (other than Exempted Subsidiaries), if the following conditions are satisfied:

- as of the date of execution of the JV Subsidiary Guarantee, no document exists that is binding on the Company or any such Restricted Subsidiary that would have the effect of (1) prohibiting the Company or any such Restricted Subsidiary from providing such JV Subsidiary Guarantee or (2) requiring the Company or any Restricted Subsidiary 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 made from, an Independent Third Party at a consideration that is not less than the Fair Market Value of such Capital Stock;
- concurrently with providing the JV Subsidiary Guarantee, the Company shall or shall cause such JV Subsidiary Guarantor to deliver to the Trustee and, if applicable, the Common Security Trustee (as defined below):
  - (i) (A) a duly executed JV Subsidiary Guarantee of such JV Subsidiary Guarantor (the “JV Subsidiary Guarantee”) and each Restricted Subsidiary of such JV Subsidiary Guarantor that is not organized under the laws of the PRC (other than Exempted Subsidiaries) and (B) a duly executed supplemental indenture to the Indenture pursuant to which such JV Subsidiary Guarantor 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) a duly executed Security Document that pledges in favor of the Common Security Trustee on behalf of the Trustee and the holders of the Notes the Capital Stock of such JV Subsidiary Guarantor held by the Company or any Subsidiary Guarantor, but not the Capital Stock of the direct or indirect Subsidiaries of such JV Subsidiary Guarantor;
  - (iii) an Officers’ Certificate certifying a copy of the Board Resolution to the effect that such JV Subsidiary Guarantee has been approved by a majority of the disinterested members of the Board of Directors; and
  - (iv) a legal opinion by a law firm of recognized international standing confirming that under New York law such JV Subsidiary Guarantee is valid, binding and enforceable against the JV Subsidiary Guarantor providing the JV Subsidiary Guarantee (subject to customary qualifications and assumptions).

The Subsidiary Guarantee of each Subsidiary Guarantor:

- is a general obligation of such Subsidiary Guarantor;
- is effectively subordinated to secured obligations of such Subsidiary Guarantor, to the extent of the value of the assets serving as security therefor;



- 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* with all other unsecured, unsubordinated Indebtedness of such Subsidiary Guarantor (subject to any priority rights of such unsubordinated Indebtedness pursuant to applicable law); and
- effectively subordinated to all existing and future obligations of the Non-Guarantor Subsidiaries.

The JV Subsidiary Guarantee of any JV Subsidiary Guarantor:

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

In addition, subject to the limitations described in “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral,” the Subsidiary Guarantee of each Subsidiary Guarantor Pledgor:

- will be entitled to a security interest in the Collateral (subject to any Permitted Liens and the Intercreditor Agreement) pledged by such Subsidiary Guarantor Pledgor, as described below under the caption “— Security”; and
- will rank effectively senior in right of payment to the unsecured obligations of such Subsidiary Guarantor Pledgor with respect to the value of the Collateral securing such Subsidiary Guarantee (subject to any priority rights of such unsecured obligations pursuant to applicable law).

The JV Subsidiary Guarantee of any JV Subsidiary Guarantor will not be secured.

Under the Indenture, and any supplemental indenture to the Indenture, as applicable, each of the Subsidiary Guarantors and JV Subsidiary Guarantors 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 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 Company prior to exercising its rights under the Subsidiary Guarantees and the 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 restored, the rights of the Holders under the Subsidiary Guarantees and the 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 the JV Subsidiary Guarantees, as the case may be, are required to be made in U.S. dollars.

Under the Indenture and any supplemental indenture to the Indenture, as applicable, each Subsidiary Guarantee 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 fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors

generally. Each JV Subsidiary Guarantee will be limited to an amount which is the lower of (i) the 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 fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. If a Subsidiary Guarantee or JV Subsidiary Guarantee were to be rendered 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 and, depending on the amount of such indebtedness, a Subsidiary Guarantor's liability on its Subsidiary Guarantee or a JV Subsidiary Guarantor's liability on its JV Subsidiary Guarantee could be reduced to zero.

The obligations of each Subsidiary Guarantor under its Subsidiary Guarantee and the enforceability of the Collateral granted in respect of the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors 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. See "Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral — The Subsidiary Guarantees or JV Subsidiary Guarantees may be challenged under applicable insolvency or fraudulent transfer laws, which could impair the enforceability of the Subsidiary Guarantees or JV Subsidiary Guarantees."

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

A Subsidiary Guarantee given by a Subsidiary Guarantor and a JV Subsidiary Guarantee given by a JV Subsidiary Guarantor 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 Company of a Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be, as an Unrestricted Subsidiary in compliance with the terms of the Indenture;
- upon the sale, disposition or merger 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 described 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 JV Subsidiary Guarantor, as the case may be, no longer being a Restricted Subsidiary, so long as (1) such Subsidiary Guarantor or JV Subsidiary Guarantor, as the case may be, is simultaneously released from its obligations in respect of any of the Company's other Indebtedness or any Indebtedness of any other Restricted Subsidiary and (2) the proceeds from such sale, disposition or merger 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
- in the case of a Subsidiary Guarantor that becomes a New Non-Guarantor Subsidiary, in compliance with the terms of the Indenture.

In the case of a Subsidiary Guarantor with respect to which the Company or any Restricted Subsidiary is proposing to sell, whether through the sale of existing shares or the issuance of new shares, no less than 20% of the Capital Stock of such Subsidiary Guarantor, the Company may concurrently with or as soon as practicable after the consummation of such sale or issuance of Capital Stock, (a) instruct the Trustee to release the Subsidiary Guarantees provided by such Subsidiary Guarantor and each of its Restricted Subsidiaries organized outside the PRC, and upon such release such Subsidiary Guarantor and its Restricted Subsidiaries organized outside the PRC will become "New Non-Guarantor Subsidiaries" (such that each New Non-Guarantor Subsidiary will no longer guarantee the Notes) and (b) instruct the Common Security Trustee to (i) discharge the pledge of the Capital Stock granted by each such New Non-Guarantor Subsidiary and (ii) discharge the pledge of Capital Stock made by

the Company or any Subsidiary Guarantor over the shares it owns in such New Non-Guarantor Subsidiary (in each case, without any requirement to seek the consent or approval of the Holders of the Notes), *provided* that after the release of such Subsidiary Guarantees, the Consolidated Assets of all Restricted Subsidiaries organized outside the PRC (other than Exempted Subsidiaries) that are not Subsidiary Guarantors or JV Subsidiary Guarantors (including the New Non-Guarantor Subsidiaries) do not account for more than 20% of Total Assets. A Subsidiary Guarantee of a Subsidiary Guarantor may only be released pursuant to this paragraph if as of the date of such proposed release, no document exists that is binding on the Company or any Restricted Subsidiary that would have the effect of (a) prohibiting the Company or any Restricted Subsidiary from releasing such Subsidiary Guarantee or (b) requiring the Company or such Subsidiary Guarantor to deliver or keep in place a guarantee of other Indebtedness of the Company by such Subsidiary Guarantor.

***Replacement of Subsidiary Guarantees with JV Subsidiary Guarantees***

A Subsidiary Guarantee given by a Subsidiary Guarantor may be released following the sale or issuance by the Company or any Restricted Subsidiary of Capital Stock in (x) such Subsidiary Guarantor or (y) any other Subsidiary Guarantor that, directly or indirectly, owns a majority of the Capital Stock of such Subsidiary Guarantor, in each case where such sale or issuance, whether through the sale of existing shares or the issuance of new shares, is for no less than 20% of the issued Capital Stock of the relevant Subsidiary Guarantor, *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 Company or any such Restricted Subsidiary that would have the effect of (1) prohibiting the Company or any such Restricted Subsidiary from releasing such Subsidiary Guarantee or (2) requiring the Company or any such Restricted Subsidiary 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;
- such sale or issuance of Capital Stock is made to an Independent Third Party at a consideration that is not less than the Fair Market Value of such Capital Stock;
- concurrently with the release of such Subsidiary Guarantee, the Company shall or shall cause such JV Subsidiary Guarantor to deliver to the Trustee and, if applicable, the Common Security Trustee:
  - (i) (A) a duly executed JV Subsidiary Guarantee of such JV Subsidiary Guarantor and each Restricted Subsidiary of such JV Subsidiary Guarantor that is not organized under the laws of the PRC and (B) a duly executed supplemental indenture to the Indenture pursuant to which such JV Subsidiary Guarantor 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) a duly executed Security Document that pledges in favor of the Trustee the Capital Stock of such JV Subsidiary Guarantor held by the Company or any Subsidiary Guarantor, but not the Capital Stock of the direct or indirect Subsidiaries of such JV Subsidiary Guarantor;
  - (iii) an Officers' Certificate certifying a copy of a Board Resolution to the effect that such JV Subsidiary Guarantees have been approved by a majority of the disinterested members of the Board of Directors; and
  - (iv) a legal opinion by a law firm of recognized international standing confirming that under New York law such JV Subsidiary Guarantee is valid, binding and enforceable against the JV Subsidiary Guarantor providing such JV Subsidiary Guarantee (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 the "Limitation on Asset Sales" and "Limitation on Restricted Payments" covenants.

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

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 Company has delivered to the Trustee an Officers’ Certificate stating that all requirements relating to such release have been complied with and that such release is authorized and permitted by the terms of the Indenture.

## Security

Each of the Company and the initial Subsidiary Guarantor Pledgors has pledged the Capital Stock of the initial Subsidiary Guarantors (the “Collateral”) owned by it (subject to Permitted Liens and the Intercreditor Agreement) in order to secure the obligations of the Company and such Subsidiary Guarantor Pledgor under the Existing HY Notes and the Mandatorily Exchangeable Bonds (or the Exchange Convertible Bonds, as the case may be). On the Original Issue Date, each of the Trustee and the trustees with respect to any other senior notes that the Company may issue on the Original Issue Date (collectively with the Trustee, the “New Senior Notes Trustees”) will execute a supplement to and become a party to the Intercreditor Agreement, at which time each New Senior Notes Trustee will become a Secured Party (as defined below) under the Intercreditor Agreement, and the Holders and the holders of such other senior notes issued on the Original Issue Date will be entitled to share in the benefit of the pledge of such Capital Stock on a *pari passu* basis with the holders of the Existing HY Notes, the holders of the Mandatorily Exchangeable Bonds (or the Exchange Convertible Bonds, as the case may be) and the holders of any other Permitted *Pari Passu* Secured Indebtedness. See “— Intercreditor Agreement.”

The initial Subsidiary Guarantor Pledgors are Chang Ye Investment Company Limited (昌業投資有限公司), Da Hua Investment Company Limited (大華投資有限公司), Dong Chang Investment Company Limited (東昌投資有限公司), Dong Sheng Investment Company Limited (東升投資有限公司), Guang Feng Investment Company Limited (廣豐投資有限公司), Heng Chang Investment Company Limited (恒昌投資有限公司), Jie Feng Investment Company Limited (捷豐投資有限公司), Jin Chang Investment Company Limited (進昌投資有限公司), Rong Hui Investment Company Limited (榮輝投資有限公司), Rui Jing Investment Company Limited (瑞景投資有限公司), Tai An Da Investment Company Limited (泰安達投資有限公司), Tai Chang Jian Investment Company Limited (泰昌建投資有限公司), Tai Chong Fa Investment Company Limited (泰昌發投資有限公司), Tai Chong Li Investment Company Limited (泰昌利投資有限公司), Tai He Sheng Investment Company Limited (泰和盛投資有限公司), Tai He Xiang Investment Company Limited (泰和詳投資有限公司), Xie Mao Investment Company Limited (協茂投資有限公司), Ye Chang Investment Company Limited (葉昌投資有限公司), Zheng Zhong Tian Investment Company Limited (正中天投資有限公司), Bakai Investments Limited (八凱投資有限公司), Yifa Trading Limited (益發貿易有限公司), Kaisa Holdings Limited, Central Broad Limited (中博有限公司), Guo Cheng Investments Limited (國承投資有限公司), Ri Xiang Investments Limited (日翔投資有限公司), Yin Jia Investments Limited (銀佳投資有限公司), Jet Smart Global Development Limited (捷利環球發展有限公司), Apex Walk Limited (歲行有限公司), Vast Wave Limited (廣濤有限公司), Fulbright Financial Group (Enterprise) Limited (富昌金融集團(企業)有限公司) and Fulbright Financial Group (Development) Limited (富昌金融集團(發展)有限公司).

None of the Capital Stock of the Non-Guarantor Subsidiaries will be pledged on the Original Issue Date or at any time in the future (unless they cease to be Non-Guarantor Subsidiaries). In addition, none of the Capital Stock of any future Restricted Subsidiary that may be organized under the laws of the PRC will be pledged at any time in the future. If any JV Subsidiary Guarantor is established, the Capital Stock of such JV Subsidiary Guarantor owned by the Company or any Subsidiary Guarantor will be pledged to secure the obligations of the Company under the Notes and the Indenture, and of such Subsidiary Guarantor under its Subsidiary Guarantee, as the case may be, in the manner described above. However, none of the JV Subsidiary Guarantors will provide a Security Document pledging the Capital Stock of its direct or indirect Restricted Subsidiaries as security in favor of the Common Security Trustee.

The Company has also agreed, for the benefit of the holders of the Notes, to pledge, or cause each Subsidiary Guarantor to pledge, the Capital Stock owned directly by the Company

or such Subsidiary Guarantor of any Person that becomes a Subsidiary Guarantor or JV Subsidiary Guarantor after the Original Issue Date, as soon as practicable after such Person becomes a Subsidiary Guarantor or JV Subsidiary Guarantor, to secure (subject to Permitted Liens) the obligations of the Company under the Notes and the Indenture, and of such Subsidiary Guarantor under its Subsidiary Guarantee, in the manner described above.

Each Subsidiary Guarantor that pledges Capital Stock of a Restricted Subsidiary after the Original Issue Date is referred to as a “Future Subsidiary Guarantor Pledgor” and, upon giving such pledge, will be a “Subsidiary Guarantor Pledgor.”

The value of the Collateral securing the Notes and the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors is unlikely to be sufficient to satisfy the Company’s and the Subsidiary Guarantor Pledgors’ obligations under the Notes and the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors, and the Collateral securing the Notes and such Subsidiary Guarantees may be reduced or diluted under certain circumstances, including the issuance of Additional Notes and other Permitted *Pari Passu* Secured Indebtedness and the disposition of assets comprising the Collateral, subject to the terms of the Indenture and the Intercreditor Agreement. See “Security — Release of Security” and “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral — The value of the Collateral is unlikely to be sufficient to satisfy our obligations under the Notes and other *pari passu* secured indebtedness.”

No appraisals of the Collateral have been prepared in connection with this offering of the Notes. There can be no assurance that the proceeds of any sale of the Collateral, in whole or in part, pursuant to the Indenture, the Intercreditor Agreement and the Security Documents following an Event of Default, would be sufficient to satisfy amounts due on the Notes or the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors. By its nature, some or all of the Collateral will be illiquid and may have no readily ascertainable market value. Accordingly, there can be no assurance that the Collateral would be sold in a timely manner or at all.

So long as no Payment Default has occurred and is continuing, and subject to the terms of the Security Documents and the Indenture, the Company and the Subsidiary Guarantor Pledgors, as the case may be, will be entitled to exercise any and all voting rights and to receive, retain and use any and all cash dividends, stock dividends, liquidating dividends, non-cash dividends, shares or stock resulting from stock splits or reclassifications, rights issues, warrants, options and other distributions (whether similar or dissimilar to the foregoing) in respect of Capital Stock constituting Collateral.

#### ***Permitted Pari Passu Secured Indebtedness***

On or after the Original Issue Date, the Company and each Subsidiary Guarantor Pledgor may create Liens on the Collateral *pari passu* with the Lien for the benefit of the Holders to secure Indebtedness of the Company (including Additional Notes) or any Subsidiary Guarantor and any *Pari Passu* Guarantee with respect to such Indebtedness (such Indebtedness of the Company or any Subsidiary Guarantor and any such *Pari Passu* Guarantee, “Permitted *Pari Passu* Secured Indebtedness”); *provided* that (i) the Company or such Subsidiary Guarantor was permitted to incur such Indebtedness under the covenant under the caption “Limitation on Indebtedness and Preferred Stock,” (ii) the holders (or their representative) of such Indebtedness (other than Additional Notes) become party to the Intercreditor Agreement referred to below, (iii) the agreement in respect of such Indebtedness contains provisions with respect to releases of Collateral and such *Pari Passu* Guarantee substantially similar to and no more restrictive on the Company and such Subsidiary Guarantor than the provisions of the Indenture and the Security Documents, and (iv) the Company and such Subsidiary Guarantor Pledgor deliver to the Trustee and/or the Common Security Trustee (defined below) an Opinion of Counsel and an Officers’ Certificate, each with respect to corporate and collateral matters in connection with the Security Documents, stating that either (x) all necessary actions have been taken with respect to the recording, registering and filing of the Security Documents or (y) no such action is necessary to make such Lien effective. The Trustee and/or the Common Security Trustee, as the case may be, will be permitted and authorized, without the consent of any Holder, to enter into any amendments to the Security Documents or the Indenture and take any other action necessary to permit the creation and registration of Liens on the Collateral to secure Permitted *Pari Passu* Secured Indebtedness in accordance with this paragraph (including, without limitation, the appointment of any collateral agent under the Intercreditor Agreement referred to below to hold the Collateral on behalf of the Holders and the holders of Permitted *Pari Passu* Secured Indebtedness).



Except for certain Permitted Liens and the Permitted Pari Passu Secured Indebtedness, the Company and its Restricted Subsidiaries will not be permitted to issue or Incur any other Indebtedness secured by all or any portion of the Collateral without the consent of each Holder of the Notes then outstanding.

### ***Intercreditor Agreement***

The Company, the Subsidiary Guarantor Pledgors, Wilmington Trust, National Association, as the trustee (the “Existing HY Notes Trustee”) with respect to the Existing HY Notes, U.S. Bank National Association, the trustee with respect to the Mandatorily Exchangeable Bonds (the “MEB Trustee”), and Citicorp International Limited, as the shared security agent (the “Common Security Trustee”), have entered into an amended and restated intercreditor agreement dated July 21, 2016 (such intercreditor agreement, as so supplemented and amended from time to time, the “Intercreditor Agreement”), to which the Trustee will accede on the Original Issue Date. Upon the issuance of the Exchange Convertible Bonds pursuant to the terms of the Mandatorily Exchangeable Bonds, the trustee with respect to the Exchange Convertible Bonds (the “CB Trustee”) will accede to the Intercreditor Agreement. Pursuant to the Intercreditor Agreement, the Existing HY Notes Trustee, the MEB Trustee (or the CB Trustee, as the case may be) and the Trustee agree to (1) share the Collateral on an equal and ratable basis, (2) the conditions that are applicable to the release of or granting of any Lien on such Collateral, and (3) the conditions under which their rights with respect to such Collateral and the Indebtedness secured thereby will be enforced.

In connection with any future Permitted Pari Passu Secured Indebtedness (other than Additional Notes), the holders of such Permitted Pari Passu Secured Indebtedness (or their representative) will accede to the Intercreditor Agreement and become parties to it. The Common Security Trustee, the Trustee, the Existing HY Notes Trustee, the MEB Trustee (or the CB Trustee, as the case may be) and the holders of future Permitted Pari Passu Secured Indebtedness (or their representative) are collectively referred to as the “Secured Parties.”

By accepting the Notes, each Holder shall be deemed to have consented to the execution of the Intercreditor Agreement, any supplements, amendments or modifications thereto, and any future intercreditor agreement required and permitted under the Indenture.

### ***Enforcement of Security***

The lien securing the Notes and the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors will be granted to the Common Security Trustee. The Common Security Trustee, subject to the Intercreditor Agreement, will hold such Liens and security interests in the Collateral granted pursuant to the Security Documents with sole authority as directed by the Trustee (acting in accordance with written instruction of the Holders) and subject to receiving indemnity and/or security to its satisfaction to exercise remedies under the Security Documents. The Common Security Trustee has agreed to act as secured party on behalf of the Holders and the Trustee under the applicable Security Documents, to follow the instructions provided to it under the Indenture, the Security Documents and the Intercreditor Agreement and to carry out certain other duties.

The Indenture and/or the Security Documents principally provide that, at any time while the Notes are outstanding, the Common Security Trustee has the right to manage, perform and enforce the terms of the Security Documents relating to the Collateral and to exercise and enforce all privileges, rights and remedies thereunder according to its direction, including to take or retake control or possession of such Collateral and to hold, prepare for sale, process, lease, dispose of or liquidate such Collateral, including, without limitation, following the occurrence of an Event of Default under the Indenture.

The Intercreditor Agreement will provide, among other things, that any Secured Party may instruct the Common Security Trustee to enforce the Collateral and to deliver a notice of enforcement to the Company and the applicable Subsidiary Guarantor Pledgor (such instructions, the “Enforcement Instructions”). Upon receipt of an Enforcement Instruction from any Secured Party, the Common Security Trustee will provide a copy of such Enforcement Instruction and notice of enforcement to the Company and the other Secured Parties. If (a) the Common Security Trustee identifies a conflict (i) between Secured Parties’ interests in connection with any Enforcement Instruction or (ii) in the event that each of the Secured Parties issues Enforcement Instructions, between those Enforcement Instructions, and (b) the Common Security Trustee believes in its sole discretion that the interests of the

Secured Parties would be in conflict upon the exercise of those Enforcement Instructions, or that compliance with an Enforcement Instruction would cause the Common Security Trustee to contravene another Enforcement Instruction, the Common Security Trustee shall notify each Secured Party in writing not more than five Business Days after it becomes aware of such conflict. In such circumstances, the Common Security Trustee is not obligated to take any action if it identifies such conflict.

The Intercreditor Agreement provides that any proceeds from any sale, collection, liquidation or enforcement of the Collateral shall be distributed by the Common Security Trustee in accordance with the terms of the Intercreditor Agreement and subject to the conditions of the relevant Security Document. Such proceeds shall be applied as follows:

*first*, to the Common Security Trustee for any unpaid fees, costs and expenses (including any indemnity expenses) reasonably incurred thereunder;

*second*, pro rata to each of the Trustee, the Existing HY Notes Trustee, the MEB Trustee (or the CB Trustee, as the case may be) and any agent, trustee or representative as a secured party for any series of Permitted Pari Passu Secured Indebtedness for any unpaid fees, costs and expenses (including any indemnity expenses) reasonably incurred under the applicable secured party document;

*third*, pro rata to each of the Trustee for the benefit of the Holders, the Existing HY Notes Trustee for the benefit of holders of the Existing HY Notes, the MEB Trustee (or the CB Trustee, as the case may be) for the benefit of holders of the Mandatorily Exchangeable Bonds (or the Exchange Convertible Bonds, as the case may be) and, to the extent applicable, to holders of Permitted Pari Passu Secured Indebtedness (or their representative for the benefit of such holders) in accordance with the terms of the applicable secured party document; and

*fourth*, any surplus remaining after such payments will be paid to the Company, the Subsidiary Guarantor Pledgors or to whomever may be lawfully entitled thereto.

The Trustee and/or the Common Security Trustee may decline to foreclose on the Collateral or exercise remedies available if it does not receive indemnification and/or security to its satisfaction. In addition, the Common Security Trustee's ability to foreclose on the Collateral may be subject to lack of perfection, the consent of third parties, prior Liens and practical problems associated with the realization of the Trustee's Liens on the Collateral. Neither the Trustee, the Common Security Trustee nor any of their respective officers, directors, employees, attorneys or agents will be responsible or liable for the existence, genuineness, value or protection of any Collateral securing the Notes, for the legality, enforceability, effectiveness or sufficiency of the Security Documents or the Intercreditor Agreement, for the creation, perfection, priority, sufficiency or protection of any of the Liens, or for any defect or deficiency as to any such matters, or for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens or Security Documents or any delay in doing so.

The Security Documents provide that the Company and the Subsidiary Guarantor Pledgors will indemnify the Common Security Trustee for all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind imposed against the Common Security Trustee arising out of the Security Documents except to the extent that any of the foregoing are finally judicially determined to have resulted from the gross negligence or willful misconduct of the Common Security Trustee.

This section, “— Enforcement of Security,” shall be subject to any amendments to the Security Documents or the Indenture to permit the creation of Liens on the Collateral to secure Permitted Pari Passu Secured Indebtedness in accordance with “— Permitted *Pari Passu* Secured Indebtedness” above.

#### ***Release of Security***

Subject to the provisions of the Indenture, the Security Documents and Intercreditor Agreement, the security created in respect of the Collateral granted under the Security Documents may be released in relation to the Notes and the Subsidiary Guarantees in certain circumstances, including:

- upon repayment in full of the Notes;

- upon defeasance and discharge of the Notes as provided below under the caption “— Defeasance — Defeasance and Discharge”;
- upon certain dispositions of the Collateral in compliance with the covenants under the captions “— Certain Covenants — Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries” or “— Certain Covenants — Limitation on Asset Sales” or in accordance with the provision under the caption “— Consolidation, Merger and Sale of Assets”;
- with respect to security granted by a Subsidiary Guarantor Pledgor, upon the release of the Subsidiary Guarantee of such Subsidiary Guarantor Pledgor in accordance with the terms of the Indenture;
- in whole or in part, with the requisite consent of the Holders in accordance with the provisions described under “— Amendments and Waivers”;
- with respect to a Subsidiary Guarantor that becomes a New Non-Guarantor Subsidiary, the release of the pledge of Capital Stock made by the Company or any Subsidiary Guarantor over the shares it owns in such New Non-Guarantor Subsidiary;
- in connection with and upon execution of a JV Subsidiary Guarantee to replace a Subsidiary Guarantee with respect to all pledges of Capital Stock granted by such JV Subsidiary Guarantor or its Subsidiaries in its direct and indirect Subsidiaries, in accordance with the terms of the Indenture; and
- with respect to any pledge over any Capital Stock of any Subsidiary Guarantor or JV Subsidiary Guarantor, upon the designation by the Company of such Subsidiary Guarantor or JV Subsidiary Guarantor as an Unrestricted Subsidiary in accordance with the terms of the Indenture.

#### Further Issues

Subject to the covenants described below, the Company may, from time to time, without notice to or the consent of the Holders, create and issue Additional Notes having the same terms and conditions as the Notes (including the benefit of the Subsidiary Guarantees and JV Subsidiary Guarantees) 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) (a “Further Issue”) so that such Additional Notes may be consolidated and form a single class with the previously outstanding Notes and vote together as one class on all matters with respect to the Notes; *provided* that the issuance of any such Additional Notes shall then be permitted under the “— Certain Covenants — Limitation on Indebtedness and Preferred Stock” covenant described below.

#### Optional Redemption

At any time on or after June 30, 2020, the Company may redeem the Notes, in whole or in part, at a redemption price equal to the percentage of principal amount set forth below, plus accrued and unpaid interest, if any, to the redemption date, if redeemed during the 12-month period commencing on June 30 of any year set forth below:

Period	Redemption Price
2020 .....	104.250%
2021 .....	102.125%

At any time prior to June 30, 2020, the Company may at its option redeem the Notes, in whole but not in part, at a redemption price equal to 100% of the principal amount of the Notes plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, the redemption date. Neither the Trustee nor any of the Agents shall be responsible for verifying or calculating the Applicable Premium.

In addition, at any time prior to June 30, 2020, the Company may redeem up to 35% of the aggregate principal amount of the Notes with the Net Cash Proceeds of one or more sales of Common Stock of the Company in an Equity Offering at a redemption price of 108.50% of

the principal amount of the Notes, plus accrued and unpaid interest, if any, to the redemption date; *provided* that at least 65% of the aggregate principal amount of the Notes 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.

The Company will give not less than 30 days' nor more than 60 days' notice of any redemption. If less than all of the Notes are to be redeemed, the Notes will be selected for redemption as follows:

- if the Notes are listed on any securities exchange and/or being held through the clearing systems, in compliance with the requirements of the principal securities exchange on which the Notes are then listed, or the requirements of the clearing systems, as applicable; or
- if the Notes are not listed on any securities exchange and/or held through the clearing systems, on a pro rata basis or by lot or such other method as the Trustee may determine in its sole and absolute discretion, unless otherwise required by law.

However, no Note of US\$200,000 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. With respect to any Certificated Note, 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 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 Company 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.

The Company 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 Company, it is important to note that if the Company is unable to repay (or cause to be repaid) all of the Indebtedness, if any, that would prohibit 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 failure by the Company 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 will also constitute an event of default under certain other debt instruments of the Company and its Subsidiaries. Future debt of the Company may also (i) prohibit the Company from purchasing Notes in the event of a Change of Control, (ii) provide that a Change of Control is a default or (iii) require repurchase of such debt upon a Change of Control. Moreover, the exercise by the Holders of their right to require the Company 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 Company. The ability of the Company to pay cash to the Holders following the occurrence of a Change of Control may be limited by the Company's 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 — We may not be able to repurchase or repay the Notes upon certain change of control events."

The definition of Change of Control includes a phrase "all or substantially all" as used with respect to the assets of the Company. No precise definition of the phrase has been established under applicable law, and the phrase will likely be interpreted under applicable law of the relevant jurisdictions based on particular facts and circumstances. Accordingly, there may be a degree of uncertainty as to the ability of a Holder of Notes to require the Company to repurchase such Holder's Notes as a result of a sale of less than all the assets of the Company to another person or group.

Notwithstanding the above, the Company 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, at the same times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

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

Neither the Trustee nor the Agents shall be required to monitor or to take any steps to ascertain whether a Change of Control, or any event which could lead to the occurrence of a Change of Control, has occurred or may occur.

#### **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 Subsidiary Guarantees or the JV Subsidiary Guarantees 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 Company, a Surviving Person (as defined under the caption “— Consolidation, Merger and Sale of Assets”) or an applicable Subsidiary Guarantor or an applicable JV Subsidiary Guarantor is organized or resident for tax purposes or any jurisdiction from or through which payment is made (or any political subdivision or taxing authority thereof or therein) (each, as applicable, a “Relevant Jurisdiction”), unless such withholding or deduction is required by law or by regulation or governmental policy having the force of law. In the event that any such withholding or deduction is so required, the Company, a Surviving Person, the applicable Subsidiary Guarantor or the applicable JV Subsidiary Guarantor, as the case may be, 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:

- (a) for or on account of:
  - (i) any tax, duty, assessment or other governmental charge that would not have been imposed but for:
    - (A) the existence of any present or former connection between the Holder or beneficial owner of such Note, Subsidiary Guarantee or Security Document, as the case may be, and the Relevant Jurisdiction other than merely holding such Note or the receipt of payments thereunder or under a Subsidiary Guarantee or JV Subsidiary Guarantee, as the case may be, 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;
    - (B) 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;
    - (C) the failure of the Holder or beneficial owner to comply with a timely request of the Company, a Surviving Person or any Subsidiary Guarantor or JV Subsidiary Guarantor addressed to the Holder 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 would have



reduced or eliminated any withholding or deduction as to which Additional Amounts would have otherwise been payable to such Holder or beneficial owner; or

- (D) 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;
- (ii) any estate, inheritance, gift, sale, transfer, personal property or similar tax, assessment or other governmental charge;
- (iii) any tax, assessment, withholding or deduction required by sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended (“FATCA”), any current or future Treasury Regulations or rulings promulgated thereunder, any law, regulation or other official guidance enacted in any jurisdiction implementing FATCA, any intergovernmental agreement between the United States and any other jurisdiction pursuant to the implementation of FATCA, or any other agreement pursuant to the implementation of FATCA; or
- (iv) any combination of taxes, duties, assessments or other governmental charges referred to in the preceding clauses (i), (ii) and (iii); or
- (b) 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 for tax purposes in the income under the laws of a Relevant Jurisdiction 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.

As a result of these provisions, there are circumstances in which taxes could be withheld or deducted but Additional Amounts would not be payable to some or all beneficial owners of Notes.

Whenever there is mentioned in any context the payment of principal, premium or interest in respect of any Note, 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.

#### **Redemption for Tax Reasons**

The Notes may be redeemed, at the option of the Company or a Surviving Person (as defined under the caption “— Consolidation, Merger and Sale of Assets”), as a whole but not in part, upon giving not less than 30 days’ nor more than 60 days’ notice to the Holders (which notice shall be irrevocable), at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest (including any Additional Amounts), if any, to the date fixed by the Company 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 on or after (i) with respect to the Company or any initial Subsidiary Guarantor, the Original Issue Date or (ii) with respect to any Future Subsidiary Guarantor, JV Subsidiary Guarantor or Surviving Person, the date such Future Subsidiary Guarantor, JV Subsidiary Guarantor or Surviving Person becomes a Subsidiary Guarantor, JV Subsidiary Guarantor or Surviving Person, as the case may be, with respect to any payment due or to become due under the Notes or the Indenture, the Company, such Subsidiary Guarantor, JV Subsidiary Guarantor or such Surviving Person, 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 Company, such Subsidiary Guarantor, JV Subsidiary Guarantor or such Surviving Person, 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 Company, such Subsidiary Guarantor, such JV Subsidiary Guarantor or such Surviving Person, 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 giving of any notice of redemption of the Notes pursuant to the foregoing, the Company, a Subsidiary Guarantor, a JV Subsidiary Guarantor or a Surviving Person, as the case may be, will deliver to the Trustee at least 30 days but not more than 60 days before the Tax Redemption Date:

- (1) an Officers' Certificate stating that such change or amendment referred to in the prior paragraph has occurred, describing the facts related thereto and stating that such requirement cannot be avoided by the Company, such Surviving Person, such Subsidiary Guarantor or such JV Subsidiary Guarantor, as the case may be, by 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 or amendment referred to in the prior paragraph.

The Trustee shall be entitled to and shall accept such certificate and opinion as sufficient evidence of the satisfaction of the conditions precedent described above, in which event it shall be conclusive and binding on the Holders.

Any Notes that are redeemed will be cancelled.

#### **Certain Covenants**

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

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

- (a) The Company will not, and will not permit any Restricted Subsidiary to, Incur any Indebtedness (including Acquired Indebtedness) and the Company will not permit any Restricted Subsidiary to issue any Preferred Stock; *provided* that the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor may Incur Indebtedness (including Acquired Indebtedness) and any Non-Guarantor 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 2.25 to 1.0. Notwithstanding the foregoing, the Company will not permit any Restricted Subsidiary to Incur any Disqualified Stock (other than Disqualified Stock held by the Company or a Subsidiary Guarantor, so long as it is so held).
- (b) Notwithstanding the foregoing, the Company and, to the extent provided below, any Restricted Subsidiary, may Incur each and all of the following ("Permitted Indebtedness"):
  - (1) Indebtedness under the Notes (excluding any Additional Notes), each Subsidiary Guarantee and each JV Subsidiary Guarantee and any Exchange Convertible Bonds issued pursuant to the terms of the Mandatorily Exchangeable Bonds;
  - (2) any Pari Passu Guarantees;
  - (3) Indebtedness of the Company or any Restricted Subsidiary outstanding on the Original Issue Date excluding Indebtedness permitted under clause (b)(4) of this covenant; *provided* that such Indebtedness of Non-Guarantor Subsidiaries shall be included in the calculation of Permitted Subsidiary Indebtedness;
  - (4) Indebtedness of the Company or any Restricted Subsidiary owed to the Company or any Restricted Subsidiary; *provided* that (x) any event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of such Indebtedness (other than to the Company or any Restricted Subsidiary) shall be deemed, in each case, to constitute an Incurrence of such Indebtedness not permitted by this clause (b)(4), and (y) if the Company is the obligor on such Indebtedness, such Indebtedness must be

expressly subordinated in right of payment to the Notes, and if a Subsidiary Guarantor or a JV Subsidiary Guarantor is the obligor on such Indebtedness and the Company or any other Subsidiary Guarantor or JV Subsidiary Guarantor is not the obligee, such Indebtedness must be expressly subordinated in right of payment to the Subsidiary Guarantee of such Subsidiary Guarantor or the JV Subsidiary Guarantee of such JV Subsidiary Guarantor, as the case may be;

- (5) Indebtedness (“Permitted Refinancing Indebtedness”) issued in exchange for, or the net proceeds of which are used to refinance or refund, then outstanding Indebtedness Incurred under clause (a) or clause (b)(1), (b)(2), (b)(3), (b)(7), (b)(16), (b)(17), (b)(19), (b)(20), (b)(21), (b)(22), (b)(23), (b)(24) or (b)(25) of this covenant and any refinancings thereof in an amount not to exceed the amount so refinanced or refunded (plus premiums, accrued interest, fees and expenses); *provided* that (A) Indebtedness the proceeds of which are used to refinance or refund the Notes or Indebtedness that is *pari passu* with, or subordinated in right of payment to, the Notes, a Subsidiary Guarantee or a JV Subsidiary Guarantee shall only be permitted under this clause (b)(5) if (x) in case the Notes are refinanced in part or the Indebtedness to be refinanced is *pari passu* with the Notes, a Subsidiary Guarantee or a JV Subsidiary Guarantee, 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 subordinate in right of payment to, the remaining Notes, such Subsidiary Guarantee or such JV Subsidiary Guarantee or (y) in case the Indebtedness to be refinanced is subordinated in right of payment to the Notes, a Subsidiary Guarantee or a JV Subsidiary Guarantee, 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 subordinate in right of payment to the Notes, such Subsidiary Guarantee or such JV Subsidiary Guarantee at least to the extent that the Indebtedness to be refinanced is subordinated to the Notes, such Subsidiary Guarantee or such JV Subsidiary Guarantee, (B) 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 or refunded, and the Average Life of such new Indebtedness is at least equal to the remaining Average Life of the Indebtedness to be refinanced or refunded and (C) in no event may Indebtedness of the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor be refinanced pursuant to this clause (b)(5) by means of any Indebtedness of any Restricted Subsidiary that is not a Subsidiary Guarantor or a JV Subsidiary Guarantor;
- (6) Indebtedness Incurred by the Company or any Restricted Subsidiary pursuant to Hedging Obligations entered into in the ordinary course of business and designed solely to protect the Company or any Restricted Subsidiary from fluctuations in interest rates, currencies or the price of commodities and not for speculation;
- (7) Indebtedness Incurred by the Company or any Restricted Subsidiary for the purpose of financing (i) all or any part of the purchase price of real or personal property (including the lease purchase price of land use rights) or equipment to be used in the ordinary course of business by the Company or a Restricted Subsidiary in the Permitted Business, including any such purchase through the acquisition of Capital Stock of any Person that owns such real or personal property or equipment which will, upon such acquisition, become a Restricted Subsidiary (other than as provided for in the second proviso of this clause (b)(7)) or (ii) all or any part of the purchase price or the cost of development, construction or improvement of real or personal property (including the lease purchase price of land use rights) or equipment to be used in the ordinary course of business by the Company or such Restricted Subsidiary in the Permitted Business; *provided, however*, that in each case (A) the aggregate principal amount of such Indebtedness shall not exceed such

purchase price or cost, (B) such Indebtedness shall be Incurred no later than 180 days after the acquisition of such property or completion of such development, construction or improvement, and (C) on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness permitted by this clause (b)(7) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(16), (b)(19), (b)(20), (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under this clause (b)(7) to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets; *provided further* that, without prejudice to the first proviso in this clause (b)(7), the Company and any Restricted Subsidiary may Incur Indebtedness for the purpose of financing all or any part of the purchase price of real or personal property (including the lease purchase price of land use rights) or equipment to be used in the ordinary course of business by the Company or a Restricted Subsidiary in the Permitted Business through the acquisition of Capital Stock of any Person which will not, upon such acquisition, become a Restricted Subsidiary if on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all Indebtedness Incurred in reliance on this second proviso of this clause (b)(7) (together with refinancings of all such Indebtedness) does not exceed an amount equal to 10.0% of Total Assets;

- (8) Indebtedness Incurred by the Company 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 other than for an obligation for borrowed money);
- (9) Indebtedness Incurred by the Company 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 the 30 days following receipt by the Company or such Restricted Subsidiary, as applicable, of a demand for reimbursement;
- (10) 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 Company 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 shall at no time exceed the gross proceeds actually received by the Company or any Restricted Subsidiary from the disposition of such business, assets or Restricted Subsidiary;
- (11) 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, however*, that such Indebtedness is extinguished within five Business Days of Incurrence;
- (12) (i) guarantees by the Company or any Subsidiary Guarantor of Indebtedness of the Company or any Restricted Subsidiary that was permitted to be Incurred by another provision of this covenant, (ii) guarantees by any Restricted Subsidiary of Indebtedness of another Restricted Subsidiary that was permitted to be Incurred under clause (b)(7) above or clauses (b)(14) and (b)(16) below; or (iii) guarantees by any JV Subsidiary Guarantor of Indebtedness of any other JV Subsidiary Guarantor that is a direct or indirect Subsidiary or parent of such JV Subsidiary Guarantor, which Indebtedness was permitted to be Incurred by another provision of this covenant;

- (13) Pre-Registration Mortgage Guarantees by the Company or any Restricted Subsidiary;
- (14) Indebtedness of the Company or any Restricted Subsidiary with a maturity of one year or less used by the Company or any Restricted Subsidiary for working capital; *provided* that the aggregate principal amount of Indebtedness permitted by this clause (b)(14) at any time outstanding does not exceed US\$35.0 million (or the Dollar Equivalent thereof);
- (15) Indebtedness of the Company or any Restricted Subsidiary constituting an obligation to pay the deferred purchase price in the form of installment payments pursuant to a Staged Acquisition Agreement;
- (16) Preferred Stock or Disqualified Stock issued by a Restricted Subsidiary or Indebtedness Incurred by the Company or any Restricted Subsidiary constituting a guarantee by, or grant of a Lien on assets of, the Company or such Restricted Subsidiary in favor of any Insurance Company Investor in respect of the obligation of any Subsidiary of such Restricted Subsidiary to pay a guaranteed or preferred dividend or return on any shares of Capital Stock of such Subsidiary held by such Insurance Company Investor (including any shares of Preferred Stock or Disqualified Stock which may be issued by such Subsidiary pursuant to this clause (b)(16) to such Insurance Company Investor); *provided* that on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness permitted by this clause (b)(16) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clause (b)(7) above and clauses (b)(19), (b)(20), (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (17) Indebtedness of the Company or any Restricted Subsidiary in an aggregate principal amount outstanding at any time (together with refinancings thereof) not to exceed US\$25.0 million (or the Dollar Equivalent thereof);
- (18) Indebtedness constituting a Subordinated Shareholder Loan;
- (19) Indebtedness Incurred by any Restricted Subsidiary which is secured by Investment Properties, and guarantees thereof by the Company or any such Restricted Subsidiary; *provided* that on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness permitted by this clause (b)(19) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7) and (b)(16) above and clauses (b)(20), (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (20) Bank Deposit Secured Indebtedness Incurred by the Company or any Restricted Subsidiary, *provided* that on the date of Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of such Indebtedness permitted by this clause (b)(20) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16) and (b)(19) above and clauses (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;



- (21) Indebtedness Incurred by the Company or any Restricted Subsidiary constituting a guarantee of Indebtedness of any Person (other than the Company or a Restricted Subsidiary) by the Company or such Restricted Subsidiary, if the aggregate of all Indebtedness Incurred under this clause (b)(21) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16), (b)(19) and (b)(20) above and clauses (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (22) Acquired Indebtedness of any Restricted Subsidiary Incurred and outstanding on the date on which such Person becomes 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 such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness Incurred pursuant to this clause (b)(22) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16), (b)(19), (b)(20) and (b)(21) above and clause (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (23) Indebtedness represented by Existing HY Notes issued in respect the payment of Existing HY Notes PIK Interest in accordance with the Existing HY Notes Indentures by the Company and any related Subsidiary Guarantees and JV Subsidiary Guarantees;
- (24) Indebtedness represented by any Mandatorily Exchangeable Bond PIK Interest or Exchange Convertible Bond PIK Interest capitalized pursuant to the terms of the Mandatorily Exchangeable Bonds or the Exchange Convertible Bonds, as the case may be; and
- (25) Indebtedness Incurred by the Company or any Restricted Subsidiary under Credit Facilities; *provided* that on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness Incurred pursuant to this clause (b)(25) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16), (b)(19), (b)(20), (b)(21) and (b)(22) above and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets.
- (c) 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 sentence of clause (a) of this covenant, the Company, 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.
- (d) Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that may be Incurred or Preferred Stock that may be issued 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.

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

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

- (a) declare or pay any dividend or make any distribution on or with respect to the Company’s or any Restricted Subsidiary’s Capital Stock (other than dividends or distributions payable or paid in shares of the Company’s, or payable or paid solely in shares of any Restricted Subsidiary’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 Company or any Restricted Subsidiary;
- (b) 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 Company, any Restricted Subsidiary or any direct or indirect parent of the Company held by any Persons other than the Company or any Restricted Subsidiary (excluding (i) the purchase of any shares of Capital Stock of any Person pursuant to a Staged Acquisition Agreement and (ii) the purchase of any shares of Capital Stock of any Restricted Subsidiary held by any Insurance Company Investor);
- (c) 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, any Subsidiary Guarantee or any JV Subsidiary Guarantee (excluding any intercompany Indebtedness between or among the Company and any Restricted Subsidiary); or
- (d) 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 Company could not Incur at least US\$1.00 of Indebtedness under the proviso in the first sentence of clause (a) of the covenant described 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 Company and its Restricted Subsidiaries after the Measurement Date, shall exceed the sum (without duplication) of:
  - (i) 50% of the aggregate amount of the Consolidated Net Income of the Company (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 semi-annual fiscal period in which the Measurement Date occurred and ending on the last day of the Company’s most recently ended fiscal quarter period for which consolidated financial statements of the Company (which the Company 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 Company 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 Restricted Subsidiary of the Company, including any such Net Cash Proceeds received upon (x) the conversion of any Indebtedness (other than Subordinated Indebtedness) of the Company into Capital Stock (other than Disqualified Stock) of the Company, or (y) the exercise by a Person who is not a Restricted Subsidiary of the Company of any options, warrants or other rights to acquire Capital Stock of the Company (other than

Disqualified Stock), in each case after deducting 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 Company; plus

- (iii) the amount by which Indebtedness of the Company or any Restricted Subsidiary is reduced on the Company's consolidated balance sheet upon the conversion or exchange (other than by a Restricted Subsidiary of the Company) subsequent to the Measurement Date of any Indebtedness of the Company or any Restricted Subsidiary convertible or exchangeable into Capital Stock (other than Disqualified Stock) of the Company (less the amount of any cash, or the Fair Market Value of any other property, distributed by the Company upon such conversion or exchange); 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 (w) payments of interest on Indebtedness, dividends or repayments of loans or advances by such Person, in each case, to the Company 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), (x) the unconditional release of a guarantee provided by the Company or any Restricted Subsidiary after the Measurement Date of an obligation of another Person, (y) the net cash proceeds from the sale of any such Investment (except to the extent such proceeds are included in the calculation of Consolidated Net Income) or (z) from redesignations of Unrestricted Subsidiaries as Restricted Subsidiaries, not to exceed, in each case, the amount of Investments made by the Company or a Restricted Subsidiary after the Measurement Date in any such Person; plus
- (v) US\$25.0 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 Company, any Subsidiary Guarantor or any 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 Company, any Subsidiary Guarantor or any 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 sale (other than to a Subsidiary of the Company) of, shares of Capital Stock (other than Disqualified Stock) of the Company, 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 Company, any Subsidiary Guarantor or any 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 Company) of, shares of Capital Stock (other than Disqualified Stock) of the Company, 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;
- (5) the payment of any dividends or distributions declared, paid or made by a Restricted Subsidiary that is not, directly or indirectly, Wholly Owned by the

Company payable on a pro rata basis or on a basis more favorable to the Company to all holders of any class of Capital Stock of such Restricted Subsidiary;

- (6) the purchase by the Company or a Restricted Subsidiary of Capital Stock of any Restricted Subsidiary that is not Wholly Owned, directly or indirectly, by the Company from an Independent Third Party pursuant to an agreement entered into between/among the Company or any Restricted Subsidiary and such Independent Third Party solely for the purpose of acquiring real property or land use rights, *provided* that (x) such purchase occurs within 12 months after such Restricted Subsidiary acquires the real property or land use rights it was formed to acquire and (y) the Company 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;
- (7) (A) the repurchase, redemption or other acquisition or retirement for value of the Capital Stock of the Company or any Restricted Subsidiary (directly or indirectly, including through any trustee, agent or nominee) in connection with an employee benefit plan, and any corresponding Investment by the Company or any Restricted Subsidiary in any trust or similar arrangements to the extent of such repurchased, redeemed, acquired or retired Capital Stock, or (B) the repurchase, redemption or other acquisition or retirement for value of any Capital Stock of the Company or any Restricted Subsidiary held by an employee benefit plan of the Company or any Restricted Subsidiary, any current or former officer, director, consultant, or employee of the Company or any Restricted Subsidiary (or permitted transferees, estates or heirs of any of the foregoing); *provided* that the aggregate consideration paid for all such repurchased, redeemed, acquired or retired Capital Stock shall not exceed US\$25.0 million (or the Dollar Equivalent thereof using the Original Issue Date as the date of determination);
- (8) cash payments in lieu of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Company, *provided*, however, 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 Company);
- (9) repurchases of Capital Stock deemed to occur upon the surrender by the holder of a stock option of shares of Capital Stock otherwise issuable upon exercise of such stock options as payment of a portion of the exercise price thereof;
- (10) dividends paid to any Insurance Company Investor in respect of any Preferred Stock or Disqualified Stock issued by or any Indebtedness Incurred by any Restricted Subsidiary under paragraph (b)(16) of the "– Limitation on Indebtedness and Preferred Stock" covenant;
- (11) any payments made pursuant to the CVR Agreement;
- (12) the payment of any dividend or distribution payable or paid solely in Capital Stock (other than Disqualified Stock or Preferred Stock) of any Unrestricted Subsidiary or in options, warrants or other rights to acquire shares of such Capital Stock;
- (13) the declaration and payment of dividends on the Common Stock of the Company by the Company in an aggregate amount not to exceed 20.0% of profit for the year on the Company's consolidated financial statements in any fiscal year ending after the Original Issue Date; or
- (14) the distributions or payments of Securitization Fees in connection with Receivable Financings;

*provided* that, in the case of clause (2), (3), (4) or (13) above, 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 clauses (1) and (13) of the preceding paragraph made 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 and any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries as Unrestricted Subsidiaries (to the extent such Investment does not constitute a Permitted Investment pursuant to clause (18) of the definition thereof) 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 Company 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\$10.0 million (or the Dollar Equivalent thereof).

Not later than the date of making any Restricted Payment (other than any Restricted Payment set forth in clauses (5) through (14) above and any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries as Unrestricted Subsidiaries (to the extent such Investment does not constitute a Permitted Investment pursuant to clause (18) of the definition thereof)) in excess of US\$10.0 million (or the Dollar Equivalent thereof), the Company 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.

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

- (a) Except as provided below, the Company 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:
  - (1) pay dividends or make any other distributions on any Capital Stock of such Restricted Subsidiary owned by the Company or any other Restricted Subsidiary;
  - (2) pay any Indebtedness or other obligation owed to the Company or any other Restricted Subsidiary;
  - (3) make loans or advances to the Company or any other Restricted Subsidiary; or
  - (4) sell, lease or transfer any of its property or assets to the Company or any other Restricted Subsidiary;

*provided* that it being understood that (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 Company or any Restricted Subsidiary to other Indebtedness Incurred by the Company or any Restricted Subsidiary; and (iii) the provisions contained in documentation governing Indebtedness requiring transactions between or among the Company 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, in each case, shall not be deemed to constitute such an encumbrance or restriction.

- (b) The provisions of paragraph (a) do not apply to any encumbrances or restrictions:
  - (1) existing in agreements as in effect on the Original Issue Date, or in the Exchange Convertible Bonds issued pursuant to the terms of the Mandatorily Exchangeable Bonds, the Notes, the Subsidiary Guarantees, the JV Subsidiary Guarantees, the Indenture, the Security Documents, or under any Permitted Pari Passu Secured Indebtedness of the Company or any Subsidiary Guarantor Pledgor or Pari Passu Guarantee, or in any extensions, refinancings, renewals or replacements of any of the foregoing agreements; *provided* that the encumbrances and restrictions in any such extension, refinancing, renewal or



replacement, taken as a whole, are no more restrictive in any material respect than those encumbrances or restrictions that are then in effect and that are being extended, refinanced, renewed or replaced;

- (2) existing under or by reason of applicable law, rule, regulation or order;
- (3) with respect to any Person or the property or assets of such Person acquired by the Company or any Restricted Subsidiary, existing 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, or in any extensions, refinancings, renewals or replacements thereof; *provided* that the encumbrances and restrictions in any such extension, 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, refinanced, renewed or replaced;
- (4) that otherwise would be prohibited by the provision described in clause (a)(4) of this covenant if they arise, or are agreed to in the ordinary course of business, and that (x) restrict in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease or license, (y) exist by virtue of any Lien on, or agreement to transfer, option or similar right with respect to any property or assets of the Company or any Restricted Subsidiary not otherwise prohibited by the Indenture or (z) do not relate to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Company or any Restricted Subsidiary in any manner material to the Company or any Restricted Subsidiary;
- (5) with respect to a Restricted Subsidiary and imposed pursuant to an agreement that has been entered into for the sale 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” and “— Limitation on Asset Sales” covenants;
- (6) with respect to any Restricted Subsidiary and imposed pursuant to an agreement that has been entered into for the Incurrence of Indebtedness or issuance of Preferred Stock of the type described under clause (b)(7), (b)(14), (b)(16), (b)(19), (b)(20), (b)(21), (b)(22), (b)(23), (b)(24) and (b)(25) of the “— Limitation on Indebtedness and Preferred Stock” covenant if, as determined by the Board of Directors, such encumbrances or restrictions (x) are customary for such types of agreements and (y) would not, at the time agreed to, be expected to materially and adversely affect the ability of the Company to make any required payment on the Notes, or in any extensions, refinancings, renewals or replacements of any of the foregoing agreements; *provided* that the encumbrances and restrictions in any such extension, 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, refinanced, renewed or replaced;
- (7) existing in customary provisions in 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 that is a party to such joint venture and if (as determined in good faith by the Board of Directors) (i) the encumbrances or restrictions are customary for a 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 Company to make the required payments on the Notes or (y) any Subsidiary Guarantor or JV Subsidiary Guarantor to make required payments under its Subsidiary Guarantee or JV Subsidiary Guarantee; or
- (8) 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 Subsidiary or its subsidiaries or the property or assets of such Subsidiary or its subsidiaries, or in any extensions, refinancing, renewals or replacements thereof; *provided* that the encumbrances and restrictions in any such extension, 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, refinanced, renewed or replaced.

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

The Company 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 Company or a Restricted Subsidiary;
- (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 Company or a Restricted Subsidiary;
- (3) for the issuance or sale of the 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 if the Company complies with the "— Limitation on Asset Sales" covenant; *provided* that, paragraph (c) of clause (16) of the definition of "Permitted Investments" shall not apply if such Restricted Payment would otherwise have been permitted under clause (16) of such definition;
- (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 Company or such Restricted Subsidiary applies the Net Cash Proceeds of such issuance or sale in accordance with the "— Limitation on Asset Sales" covenant.

Notwithstanding the foregoing, a Restricted Subsidiary may issue Common Stock to its shareholders on a pro rata basis or on a basis more favorable to the Company and its Restricted Subsidiaries.

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

The Company will not permit any Restricted Subsidiary which is not a Subsidiary Guarantor or a JV Subsidiary Guarantor, directly or indirectly, to guarantee any Indebtedness ("Guaranteed Indebtedness") of the Company or any Subsidiary Guarantor or JV Subsidiary Guarantor, unless (a) (1) such Restricted Subsidiary simultaneously executes and delivers a supplemental indenture to the Indenture providing for an unsubordinated Subsidiary Guarantee (in the case of a Subsidiary Guarantor) or JV Subsidiary Guarantee (in the case of a JV Subsidiary Guarantor) of payment of the Notes by such Restricted Subsidiary and (2) 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 Company or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Subsidiary Guarantee or JV Subsidiary Guarantee until the Notes have been paid in full, or (b) such guarantee is permitted by clause (b)(3), (b)(4), (b)(12)(ii) (other than, in the case of clause (b)(12)(ii), (x) a guarantee by a PRC Restricted Subsidiary of the Indebtedness of a non-PRC Restricted Subsidiary that is not a Subsidiary of such PRC Subsidiary or (y) a guarantee by a non-PRC Restricted Subsidiary that is not a Subsidiary Guarantor or a JV Subsidiary Guarantor of Indebtedness of a Subsidiary Guarantor or a JV Subsidiary Guarantor) or (b)(20) (in the case of clause (b)(20), with respect to the guarantee provided by any Restricted Subsidiary which is not a Subsidiary Guarantor or JV Subsidiary Guarantor through the pledge of cash deposits, bank accounts or other assets to secure (or the use of any guarantee or letter of credit or similar instrument to guarantee) any Bank Deposit Secured Indebtedness), under the covenant described under the caption "— Limitation on Indebtedness and Preferred Stock."

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

The Company will not permit any JV Subsidiary Guarantor, directly or indirectly, to guarantee any Indebtedness of the Company or any other Restricted Subsidiary unless the aggregate claims of the creditor under such guarantee will be limited to the JV Entitlement Amount. If any JV Subsidiary Guarantor guarantees any Indebtedness of the Company or any other Restricted Subsidiary where the aggregate claims of the creditor under such guarantee exceed the JV Entitlement Amount, such JV Subsidiary Guarantee shall be replaced with a Subsidiary Guarantee given by a Subsidiary Guarantor.

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

The Company 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 (a) any holder (or any Affiliate of such holder) of 10% or more of any class of Capital Stock of the Company or (b) with any Affiliate of the Company (each an "Affiliate Transaction"), unless:

- (1) the Affiliate Transaction is on fair and reasonable terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable arm's-length transaction by the Company or the relevant Restricted Subsidiary with a Person that is not such a holder or an Affiliate of the Company or such Restricted Subsidiary; and
- (2) the Company delivers to the Trustee:
  - (A) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of US\$5.0 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\$10.0 million (or the Dollar Equivalent thereof), in addition to the Board Resolution required in clause (2)(A) above, an opinion issued by an accounting, appraisal or investment banking firm of recognized international standing as to the fairness to the Company or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view.

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

- (1) the payment of reasonable and customary regular fees and other compensation to directors of the Company or any Restricted Subsidiary who are not employees of the Company or any Restricted Subsidiary;
- (2) transactions between or among the Company and any Subsidiary Guarantor or between or among Subsidiary Guarantors;
- (3) transactions between or among the Company and any Wholly Owned Restricted Subsidiary or between or among Wholly Owned Restricted Subsidiaries;
- (4) any Restricted Payment of the type described in clause (a), (b) or (c) of the first paragraph of the covenant described under the caption "— Limitation on Restricted Payments" if permitted by that covenant;
- (5) any sale of Capital Stock (other than Disqualified Stock) of the Company;

- (6) the payment of compensation to officers and directors of the Company or any Restricted Subsidiary pursuant to an employee stock or share option scheme, so long as such scheme is in compliance with the listing rules of The Stock Exchange of Hong Kong Limited, which as of the Original Issue Date require a majority shareholder approval of any such scheme;
- (7) any transaction between (A) the Company or any Restricted Subsidiary and (B) any entity in the Restructuring Group entered into in connection with the Restructuring, including, without limitation, transactions entered into for purposes of any reorganization in connection with the Restructuring and the entry into, and the performance thereof, of any underwriting agreement or other transaction documents in connection with the Restructuring; and
- (8) any transaction between (A) the Company or any Restricted Subsidiary and (B) any entity in the Restructuring Group entered into in the ordinary course of business, on fair and reasonable terms and disclosed in the offering document issued in connection with the Restructuring, or any amendment or modification or extension or replacement thereof, so long as such amendment, modification or replacement is not more disadvantageous to the Company and its Restricted Subsidiaries than the original transaction described in the offering document issued in connection with the Restructuring and in compliance with the rules of the relevant Qualified Exchange.

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 this offering memorandum, or any amendment or modification or replacement thereof, so long as such amendment, modification or replacement is not more disadvantageous to the Company and its Restricted Subsidiaries than the original agreement in effect on the Original Issue Date, (iii) any transaction between or among (A) any of the Company, any Wholly Owned Restricted Subsidiary and any Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary or (B) the Company or a Restricted Subsidiary on the one hand and a Minority Joint Venture or an Unrestricted Subsidiary on the other hand; *provided* that in the case of this clause (iii), (a) such transaction is entered into in the ordinary course of business and (b) none of the shareholders or partners (other than the Company or any Restricted Subsidiary) of or in such Minority Joint Venture, Unrestricted Subsidiary or Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary is a Person described in clause (a) or (b) of the first paragraph of this covenant (other than by reason of such shareholder or partner being an officer or director of such Restricted Subsidiary, Minority Joint Venture or Unrestricted Subsidiary, as the case may be) and (iv) any Investment by the Company or any Restricted Subsidiary in accordance with the requirements under clause (16) of the definition of “Permitted Investment” on a pro rata basis based on its percentage ownership at the time of such Investment.

#### ***Limitation on Liens***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, incur, assume or permit to exist any Lien on the Collateral (other than Permitted Liens).

The Company will not, and will not permit any Restricted Subsidiary 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 secured equally and ratably with (or, if the obligation or liability to be secured by such Lien is subordinated in right of payment to the Notes, prior to) the obligation or liability secured by such Lien, for so long as such obligation or liability is secured by such Lien.

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

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

- (a) the Company or any Restricted Subsidiary could have (1) incurred Indebtedness in an amount equal to the Attributable Indebtedness relating to such Sale and Leaseback Transaction under clause (a) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock” and (2) incurred a Lien to secure such Indebtedness pursuant to the covenant described under the caption “— Limitation on Liens,” in which case, the corresponding Indebtedness and Lien will be deemed incurred pursuant to those provisions;
- (b) 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
- (c) the transfer of assets in that Sale and Leaseback Transaction is permitted by, and the Company or any Restricted Subsidiary applies the proceeds of such transaction in compliance with, the covenant described under the caption “— Limitation on Asset Sales.”

### ***Limitation on Asset Sales***

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

- (a) no Default shall have occurred and be continuing or would occur as a result of such Asset Sale;
- (b) the consideration received by the Company 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;
- (c) 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 Company or such Restricted Subsidiary receives Replacement Assets involving aggregate consideration in excess of US\$35.0 million (or the Dollar Equivalent thereof), the Company shall deliver to the Trustee an opinion as to the fairness to the Company 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 Company’s most recent consolidated balance sheet, of the Company or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Notes, any Subsidiary Guarantee or any JV Subsidiary Guarantee) that are assumed by the transferee of any such assets pursuant to a customary assumption, assignment, novation or similar agreement that releases the Company or such Restricted Subsidiary from further liability; and
  - (B) any securities, notes or other obligations received by the Company or any Restricted Subsidiary from such transferee that are promptly, but in any event within 30 days of closing, converted by the Company 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 Company (or the applicable Restricted Subsidiary, as the case may be) may apply such Net Cash Proceeds to:

- (1) permanently repay Senior Indebtedness of the Company or any Restricted Subsidiary (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 Company or a Restricted Subsidiary; or



- (2) acquire properties and assets that replace the properties and assets that were the subject of such Asset Sale or in properties or assets that will be used in the Permitted Business (including any shares of Capital Stock in a Person holding such properties or assets that is primarily engaged in a Permitted Business) (“Replacement Assets”).

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\$10.0 million (or the Dollar Equivalent thereof) will be carried forward and accumulated. When accumulated Excess Proceeds equals to or exceeds US\$10.0 million (or the Dollar Equivalent thereof), within 10 days thereof, the Company must make an Offer to Purchase Notes having a principal amount equal to:

- (i) accumulated Excess Proceeds, multiplied by
- (ii) 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 plus accrued and unpaid interest to the date of purchase, and will be payable in cash.

If any Excess Proceeds remain after consummation of an Offer to Purchase, the Company may use such 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 into (or required to be prepaid or redeemed in connection with) such Offer to Purchase exceeds the amount of Excess Proceeds, the Notes and such other *pari passu* Indebtedness will be purchased on a pro rata basis based on the principal amount of Notes and such other *pari passu* Indebtedness tendered (or required to be prepaid or redeemed). Upon completion of each Offer to Purchase, the amount of Excess Proceeds will be reset at zero.

#### ***Limitation on the Company’s Business Activities***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, engage in any business other than a Permitted Business; *provided, however*, that the Company 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 a Permitted Business as long as any Investment therein was not prohibited when made by the covenant under the caption “— Limitation on Restricted Payments.”

#### ***Use of Proceeds***

The Company will not, and 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 (a) in the approximate amounts and for the purposes specified under the caption “Use of Proceeds” in this offering memorandum and (b) pending the application of all of such net proceeds in such manner, to invest the portion of such net proceeds not yet so applied in Temporary Cash Investments.

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

The Board of Directors may designate any Restricted Subsidiary to be an Unrestricted Subsidiary; *provided* that (a) no Default shall have occurred and be continuing at the time of or after giving effect to such designation; (b) neither the Company nor any Restricted Subsidiary guarantees or provides credit support for the Indebtedness of such Restricted Subsidiary; (c) such Restricted Subsidiary has no outstanding Indebtedness that could trigger a cross-default to the Indebtedness of the Company or any other Restricted Subsidiary; (d) such Restricted Subsidiary does not own any Disqualified Stock of the Company or Disqualified or Preferred Stock of another Restricted Subsidiary or hold any Indebtedness, or any Lien on any property, of the Company or any Restricted Subsidiary, if such Disqualified or Preferred Stock or Indebtedness could not be Incurred under the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock” or such Lien would violate the covenant described under the caption “— Limitation on Liens”; (e) 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 as Unrestricted Subsidiaries in accordance with this paragraph; and (f) 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 the caption “Limitation on Restricted Payments” (other than any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Subsidiaries in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries, *provided* that (i) the Board of Directors of the Company has determined in good faith that the designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries is necessary to obtain approval from a Qualified Exchange for the Restructuring, (ii) at the time of such designation, the members of the Restructuring Group remain Subsidiaries of the Company, and (iii) at the time of such designation, the members of the Restructuring Group remain primarily engaged in the Permitted Businesses).

The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that (a) no Default shall have occurred and be continuing at the time of or after giving effect to such designation; (b) 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 “— Limitation on Indebtedness and Preferred Stock”; (c) 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 “— Limitation on Liens”; (d) such Unrestricted Subsidiary is not a Subsidiary of another Unrestricted Subsidiary (that is not concurrently being designated as a Restricted Subsidiary); (e) if such Restricted 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 to the extent required under “— The Subsidiary Guarantees and JV Subsidiary Guarantees”; and (f) if such Restricted Subsidiary is not organized under the laws of the PRC, all Capital Stock of such Restricted Subsidiary owned by the Company or any other Restricted Subsidiary shall be pledged to the extent required under “— Security.”

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

The Company will, and will cause each Restricted Subsidiary to, (a) 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 Business, (b) 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 (c) 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 would not reasonably be expected to have a material adverse effect on (1) the business, results of operations or prospects of the Company and its Restricted Subsidiaries, taken as a whole, or (2) the ability of the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor to perform its obligations under the Notes, the relevant Subsidiary Guarantee or JV Subsidiary Guarantee or the Indenture.

#### ***Anti-Layering***

The Company will not, and will not permit 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 Company, such Subsidiary Guarantor or such JV Subsidiary Guarantor, as the case may be, unless such Indebtedness is also contractually subordinated in right of payment to the Notes, the applicable Subsidiary Guarantee or the applicable 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.

### ***Suspension of Certain Covenants***

If, on any date following the date of the Indenture, the Notes have an Investment Grade Rating from any Rating Agency and no Default or Event of Default has occurred and is continuing (a “Suspension Event”), then, beginning on that day and continuing until such time, if any, at which the Notes cease to have an Investment Grade rating from either of the Rating Agencies, the provisions of the Indenture summarized under the following captions will be suspended:

- (1) “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
- (2) “— Certain Covenants — Limitation on Restricted Payments”;
- (3) “— Certain Covenants — Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries”;
- (4) “— Certain Covenants — Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries”;
- (5) “— Certain Covenants — Limitation on Issuances of Guarantees by Restricted Subsidiaries”;
- (6) “— Certain Covenants — Limitation on Sale and Leaseback Transactions”;
- (7) “— Certain Covenants — Limitation on Asset Sales”;
- (8) “— Certain Covenants — Limitation on the Company’s Business Activities”; and
- (9) clauses (3) and (4) of the first and second paragraphs of “—Consolidation, Merger and Sale of Assets.”

During any period that the foregoing covenants have been suspended, the Board of Directors may not designate any Restricted Subsidiary as an Unrestricted Subsidiary pursuant to the covenant described under the caption “— Certain Covenants — Designation of Restricted and Unrestricted Subsidiaries” or the definition of “Unrestricted Subsidiary.”

Such covenants will be reinstated and apply according to their terms as of and from the first day on which a Suspension Event ceases to be in effect. Such covenants will not, however, be of any effect with regard to actions of the Company or any Restricted Subsidiary properly taken in compliance with the provisions of the Indenture during the continuance of the Suspension Event and, following reinstatement, the calculations under the covenant described under the caption “— Certain Covenants — Limitation on Restricted Payments” will be made as if such covenant had been in effect since the date of the Indenture except that no Default will be deemed to have occurred solely by reason of a Restricted Payment made while that covenant was suspended. There can be no assurance that the Notes will ever achieve an Investment Grade rating or that, if achieved, any such rating will be maintained.

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

- (a) So long as any of the Notes remain outstanding, the Company will file with the Trustee and furnish to the Holders upon request, as soon as they are available but in any event not more than 10 calendar days after they are filed with The Stock Exchange of Hong Kong Limited or any other securities exchange on which the Company’s ordinary shares are at any time listed for trading, true and correct copies of any financial or other report in the English language filed with such exchange; *provided* that, if at any time the ordinary shares of the Company cease to be listed for trading on a recognized securities exchange, the Company will file with the Trustee and furnish to the Holders:
  - (1) as soon as they are available, but in any event within 90 calendar days after the end of the fiscal year of the Company, copies of its financial statements (on a consolidated basis and in the English language) in respect of such financial year (including a statement of income, balance sheet and cash flow statement) audited by a member firm of an internationally recognized firm of independent accountants;
  - (2) as soon as they are available, but in any event within 45 calendar days after the end of the first semi-annual fiscal period of the Company, copies of its financial statements (on a consolidated basis and in the English language) in

respect of such half-year period (including a statement of income, balance sheet and cash flow statement) reviewed by a member firm of an internationally recognized firm of independent accountants; and

- (3) as soon as they are available, but in any event within 45 calendar days after the end of each of the first and third fiscal quarters of the Company, copies of its unaudited financial statements (on a consolidated basis and in the English language), including a statement of income, balance sheet and cash flow statement, prepared on a basis consistent with the audited financial statements of the Company together with a certificate signed by the person then authorized to sign financial statements on behalf of the Company to the effect that such financial statements are true in all material respects and present fairly the financial position of the Company as at the end of, and the results of its operations for, the relevant quarterly period.
- (b) In addition, so long as any of the Notes remain outstanding, the Company will provide to the Trustee (1) within 120 days after the close of each fiscal year ending after the Original Issue Date, an Officers' Certificate stating the Fixed Charge Coverage Ratio with respect to the four most recent fiscal quarter periods 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, together with a certificate from the Company's external auditors verifying the accuracy and correctness of the calculation and arithmetic computation, *provided* that the Company shall not be required to provide such auditor 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 (2) as soon as possible and in any event within 30 days after the Company becomes aware or should reasonably become aware of the occurrence of a Default, an Officers' Certificate setting forth the details of such Default, and the action which the Company proposes to take with respect thereto.

#### **Events of Default**

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

- (a) 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;
- (b) default in the payment of interest on any Note when the same becomes due and payable, and such default continues for a period of 30 consecutive days;
- (c) default in the performance or breach of the provisions of the covenants described under the caption "— Consolidation, Merger and Sale of Assets," the failure by the Company to make or consummate an Offer to Purchase in the manner described under the captions "— Repurchase of Notes upon a Change of Control" or "— Certain Covenants — Limitation on Asset Sales," or the failure by the Company to create, or cause its Restricted Subsidiaries to create, a lien on the Collateral (subject to any Permitted Liens and the Intercreditor Agreement) in accordance with the covenant described under the caption "— Security";
- (d) the Company 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 (a), (b) or (c) 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 (with a copy to the Trustee if given by the Holders);
- (e) there occurs with respect to any Indebtedness of the Company or any Restricted Subsidiary (other than a Subordinated Shareholder Loan) having an outstanding principal amount of US\$20.0 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, (1) 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 (2) a failure to make a principal payment when due;

- (f) one or more final judgments or orders for the payment of money are rendered against the Company or any Restricted Subsidiary and are not paid or discharged, 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\$20.0 million (or the Dollar Equivalent thereof, in excess of amounts which the Company'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;
- (g) an involuntary case or other proceeding is commenced against the Company 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 Company or any Significant Restricted Subsidiary or for any substantial part of the property and assets of the Company 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 Company or any Significant Restricted Subsidiary under any applicable bankruptcy, insolvency or other similar law as now or hereafter in effect;
- (h) the Company or any Significant Restricted Subsidiary (1) 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, (2) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or any Significant Restricted Subsidiary, or for all or substantially all of the property and assets of the Company or any Significant Restricted Subsidiary, or (3) effects any general assignment for the benefit of creditors;
- (i) any Subsidiary Guarantor or any JV Subsidiary Guarantor denies or disaffirms its obligations under its Subsidiary Guarantee or JV Subsidiary Guarantee or, 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;
- (j) any default by the Company or any Subsidiary Guarantor Pledgor in the performance of any of its obligations under the Security Documents or the Indenture, which adversely affects the enforceability, validity, perfection or priority of the applicable Lien on the Collateral or which adversely affects the condition or value of the Collateral, taken as a whole, in any material respect; and
- (k) the Company or any Subsidiary Guarantor Pledgor denies or disaffirms its obligations under any Security Document or, other than in accordance with the Indenture and the Security Documents, any Security Document ceases to be or is not in full force and effect or the Common Security Trustee on behalf of the Trustee and the Holders ceases to have a security interest in the Collateral (subject to any Permitted Liens and the Intercreditor Agreement).

If an Event of Default (other than an Event of Default specified in clause (g) or (h) 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 Company (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 receiving indemnity and/or security to its satisfaction), declare the principal of, premium, if any, and 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 accrued and unpaid interest shall be immediately due and payable. If an Event of Default specified in clause (g) or (h) above occurs with respect to the Company or any Significant Restricted Subsidiary, the principal of, premium, if any, and 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 Holders of at least a majority in principal amount of the outstanding Notes by written notice to the Company and to the Trustee may on behalf of all Holders waive all past defaults and rescind and annul a declaration of acceleration and its consequences if:

- (x) all existing Events of Default, other than the non-payment 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
- (y) 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 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. In addition, 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 (subject to receiving indemnity and/or security to its satisfaction), instruct the Common Security Trustee to foreclose on the Collateral in accordance with the terms of the Security Documents and take such further action on behalf of the Holders of the Notes with respect to the Collateral as the Trustee deems appropriate or is directed by the Holders of at least 25% in aggregate principal amount of outstanding Notes. See “— Security.”

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. However, the Trustee may refuse to follow any direction that conflicts with law, the Indenture or the Security Documents that may involve the Trustee in personal liability, or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders not joining in the giving of such direction and may take any other action it deems proper that is not inconsistent with any such direction received from such Holders. A Holder may not pursue any remedy with respect to 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 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
- (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.

Two Officers of the Company must certify to the Trustee in writing, on or before a date not more than 120 days after the end of each fiscal year, that a review has been conducted of the activities of the Company and its Restricted Subsidiaries and the Company's and its Restricted Subsidiaries' performance under the Indenture and the Security Documents and that the Company and its Restricted Subsidiaries 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 Company 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 and the Security Documents. See “— Provision of Financial Statements and Reports.”

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

The Company 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), unless:

- (a) the Company 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 Cayman Islands, the British Virgin Islands, Hong Kong or the United States or any jurisdiction thereof and shall expressly assume, by a supplemental indenture to the Indenture, executed and delivered to the Trustee, all the obligations of the Company under the Indenture, the Notes and the Security Documents, 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 from or through which payment is made, and the Indenture, the Notes and the Security Documents, as the case may be, shall remain in full force and effect;
- (b) immediately after giving effect to such transaction, no Default shall have occurred and be continuing;
- (c) immediately after giving effect to such transaction on a pro forma basis, the Company 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 Company immediately prior to such transaction;
- (d) immediately after giving effect to such transaction on a pro forma basis, the Company or the Surviving Person, as the case may be, could Incur at least US\$1.00 of Indebtedness under the proviso in the first sentence of clause (a) of the covenant described under the caption “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
- (e) the Company delivers to the Trustee (1) an Officers' Certificate (attaching the arithmetic computations to demonstrate compliance with clauses (c) and (d)) and (2) an Opinion of Counsel, in each case stating that such consolidation, merger or transfer and such 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
- (f) each Subsidiary Guarantor and JV Subsidiary Guarantor, unless such Subsidiary Guarantor or JV Subsidiary Guarantor is the Person with which the Company has entered into a transaction described under this covenant, shall execute and deliver a supplemental indenture to the Indenture confirming that its Subsidiary Guarantee or JV Subsidiary Guarantee shall apply to the obligations of the Company or the Surviving Person in accordance with the Notes and the Indenture.

No Subsidiary Guarantor or JV Subsidiary Guarantor will consolidate with or 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 Company or another Subsidiary Guarantor or, in the case of a JV Subsidiary Guarantor, other than to another JV Subsidiary Guarantor, the Company or a Subsidiary Guarantor), unless:

- (A) 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 Company, another Subsidiary Guarantor or shall become a Subsidiary Guarantor concurrently with the transaction by executing and delivering a supplemental indenture to the Indenture or, in the case of a JV Subsidiary Guarantor, another JV Subsidiary Guarantor, the Company or a Subsidiary Guarantor;

- (B) immediately after giving effect to such transaction, no Default shall have occurred and be continuing;
- (C) immediately after giving effect to such transaction on a pro forma basis, the Company shall have a Consolidated Net Worth equal to or greater than the Consolidated Net Worth of the Company immediately prior to such transaction;
- (D) immediately after giving effect to such transaction on a pro forma basis, the Company could Incur at least US\$1.00 of Indebtedness under the proviso in the first sentence of clause (a) of the covenant described under the caption “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”; and
- (E) the Company delivers to the Trustee (1) an Officers’ Certificate (attaching the arithmetic computations to demonstrate compliance with clauses (C) and (D)) and (2) 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 (1) any sale or other disposition that complies with the “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 Subsidiary Guarantees and JV Subsidiary Guarantees” and (2) a consolidation or merger of any Subsidiary Guarantor or JV Subsidiary Guarantor with and into the Company or any other Subsidiary Guarantor or JV Subsidiary Guarantor, so long as the Company or such Subsidiary Guarantor or JV Subsidiary Guarantor survives such consolidation or merger.

For the avoidance of doubt, for purposes of this covenant, a sale of shares of Capital Stock of a Restricted Subsidiary which holds all or substantially all properties and assets of the Company or the relevant Subsidiary Guarantor or JV Subsidiary Guarantor to Independent Third Parties in an initial public offering and listing on a stock exchange of the shares of Capital Stock of such Restricted Subsidiary where such Restricted Subsidiary (i) remains a Restricted Subsidiary immediately after such sale and (ii) the Company or the relevant Subsidiary Guarantor or JV Subsidiary Guarantor, immediately after such sale, owns at least 30.0% of the Voting Stock of such Restricted Subsidiary shall not constitute a sale of substantially all properties and assets of the Company or the relevant Subsidiary Guarantor or JV Subsidiary 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, 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 provisions would not necessarily afford Holders protection in the event of highly leveraged or other transactions involving the Company that may adversely affect Holders.

#### **No Payments for Consents**

The Company 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.

Notwithstanding the foregoing, in any offer or payment of consideration for, or as an inducement to, any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes in connection with an exchange or tender offer, the Company and any Restricted Subsidiary may exclude (i) Holders or beneficial owners of the Notes that are not institutional “accredited investors” as defined in Rule 501 under the Securities Act, and (ii) Holders or beneficial owners of the Notes in any jurisdiction where the inclusion of such

Holders or beneficial owners would require the Company or any Restricted Subsidiary to comply with the registration requirements or other similar requirements under any securities laws of such jurisdiction, or the solicitation of such consent, waiver or amendment from, or the granting of such consent or waiver, or the approval of such amendment by, Holders or beneficial owners in such jurisdiction would be unlawful, in each case as determined by the Company in its sole discretion.

## **Defeasance**

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

The Indenture will provide that the Company 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 and the Security Documents 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 hold monies for payment in trust and to pay compensation to the Trustee in accordance with the Indenture) if, among other things:

- (a) the Company has (1) deposited with the Trustee, in trust, money in U.S. dollars and/or U.S. Government Obligations that through the payment of interest and principal in respect thereof in accordance with their terms will provide money in U.S. dollars in an amount sufficient (without consideration of investment or reinvestment) 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 and (2) delivered 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 Company is sufficient to provide payment for the principal of, premium, if any, and accrued interest on, the Notes on the Stated Maturity of such payment in accordance with the terms of the Indenture;
- (b) the Company has delivered to the Trustee an Opinion of Counsel of recognized international standing to the effect that the creation of the defeasance trust does not violate the U.S. Investment Company Act of 1940, as amended, and after the passage of 123 days following the deposit, the trust fund 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
- (c) 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 Company or any Restricted Subsidiary is a party or by which the Company or any Restricted Subsidiary is bound.

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

The Indenture further will provide that the provisions of the Indenture will no longer be in effect with respect to clauses (c), (d) and (e)(1) under the first paragraph and clauses (C), (D) and (E)(1) 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,” clause (c) under “Events of Default” with respect to such clauses (c), (d) and (e)(1) under the first paragraph and clauses (C), (D) and (E)(1) under the second paragraph under “Consolidation, Merger and Sale of Assets” and with respect to the other events set forth in such clause, clause (d) under “Events of Default” with respect to such other covenants and clauses (e) and (f) under “Events of Default” shall be deemed not to be Events of Default upon, among other things, the deposit with the Trustee, in trust, of money in U.S. dollars, 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 U.S. dollars in an amount sufficient (without consideration of investment or reinvestment) 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 (b) of the preceding paragraph.

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

In the event the Company exercises its option to omit compliance with certain covenants and provisions of the Indenture with respect to the Notes 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 Company and the Subsidiary Guarantors will remain liable for such payments.

### **Amendments and Waiver**

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

The Indenture, the Notes, the Intercreditor Agreement or any Security Document may be amended, without the consent of any Holder, to:

- (a) cure any ambiguity, defect, omission or inconsistency in the Indenture, the Notes, the Intercreditor Agreement or any Security Document;
- (b) comply with the provisions described under “Consolidation, Merger and Sale of Assets”;
- (c) evidence and provide for the acceptance of appointment by a successor Trustee;
- (d) 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 provided or permitted by the terms of the Indenture;
- (e) provide for the issuance of Additional Notes in accordance with the limitations set forth in the Indenture;
- (f) add any Subsidiary Guarantor Pledgor or release any Subsidiary Guarantor Pledgor as provided or permitted by the terms of the Indenture;
- (g) add additional Collateral to secure the Notes or any Subsidiary Guarantee and create or register Liens on such additional Collateral;
- (h) 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;
- (i) effect any changes to the Indenture in a manner necessary to comply with the procedures of Euroclear and Clearstream;
- (j) permit Permitted Pari Passu Secured Indebtedness in accordance with the terms of the Indenture (including, without limitation, permitting the Trustee to enter into the Intercreditor Agreement or any amendments to the Security Documents or the Indenture, the appointment of any common security trustee or collateral agent under any Intercreditor Agreement to hold the Collateral on behalf of the Holders and the holders of Permitted Pari Passu Secured Indebtedness and taking any other action necessary to permit the creation and registration of Liens on the Collateral to secure Permitted Pari Passu Secured Indebtedness, in accordance with the Indenture);
- (k) make any other change that, in the good faith opinion of the Board of Directors, does not materially and adversely affect the rights of any Holder; or
- (l) conform the text of the Indenture, the Notes, the Subsidiary Guarantees or the JV Subsidiary Guarantees to any provision of this “Description of the 2022 Notes” to the extent that such provision in this “Description of the 2022 Notes” was intended to be a verbatim recitation of a provision of the Indenture, the Notes, the Subsidiary Guarantees or the JV Subsidiary Guarantees.



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

Amendments of the Indenture, the Notes, the Intercreditor Agreement or any Security Document may be made by the Company, the Subsidiary Guarantors, the Trustee and the Common Security Trustee 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 aggregate principal amount of the outstanding Notes may waive future compliance by the Company with any provision of the Indenture, the Notes, the Intercreditor Agreement or any Security Document; *provided, however*, that no such modification, amendment or waiver may, without the consent of each Holder affected thereby:

- (a) change the Stated Maturity of the principal of, or any installment of interest on, any Note;
- (b) reduce the principal amount of, or premium, if any, or interest on, any Note;
- (c) change the currency of payment of principal of, or premium, if any, or interest on, any Note;
- (d) 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;
- (e) reduce the above stated percentage of outstanding Notes the consent of whose Holders is necessary to modify or amend the Indenture;
- (f) waive a default in the payment of principal of, premium, if any, or interest on the Notes;
- (g) release any Subsidiary Guarantor or JV Subsidiary Guarantor from its Subsidiary Guarantee or its JV Subsidiary Guarantee, as the case may be, except as provided in the Indenture;
- (h) release any Collateral, except as provided in the Indenture, the Intercreditor Agreement and the Security Documents;
- (i) 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;
- (j) amend, change or modify any Subsidiary Guarantee or any JV Subsidiary Guarantee in a manner that adversely affects the Holders;
- (k) amend, change or modify any provision of any Security Document, the Intercreditor Agreement or any provision of the Indenture relating to the Collateral, in a manner that adversely affects the Holders, except in accordance with the other provisions of the Indenture, such Security Document or such Intercreditor Agreement;
- (l) 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 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 from any Asset Sale;
- (m) change the redemption date or the redemption price of the Notes from that stated under “— Optional Redemption” or “— Redemption for Tax Reasons”;
- (n) amend, change or modify the obligation of the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor to pay Additional Amounts; or
- (o) amend, change or modify any provision of the Indenture or the related definition affecting the ranking of the Notes, any Subsidiary Guarantee or any JV Subsidiary Guarantee in a manner which adversely affects the Holders.

## **Satisfaction and Discharge**

The Indenture will be discharged and will cease to be of further effect (except as to surviving rights of registration of transfer or exchange of the Notes, as expressly provided for in the Indenture) as to all outstanding Notes when:

- (1) either:
  - (a) all of the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust by the Company and thereafter repaid to the Company) have been delivered to the Paying Agent for cancellation; or
  - (b) all Notes not theretofore delivered to the Paying Agent for cancellation have become due and payable pursuant to an optional redemption notice or otherwise or will become due and payable within one year, and the Issuer has irrevocably deposited or caused to be deposited with the Paying Agent funds, in cash in U.S. dollars, non-callable U.S. Government Obligations or a combination thereof, in an amount sufficient to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Paying Agent for cancellation, for principal of, premium, if any, and interest on the Notes to the date of deposit together with irrevocable written instructions from the Issuer directing the Trustee or the Paying Agent to apply such funds to the payment thereof at maturity or redemption, as the case may be;
- (2) the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor has paid all other sums payable under this Indenture;
- (3) such deposit will not result in a breach or violation of, or constitute a default under, any instruments to which the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor is a party or by which the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor is bound (other than the Indenture, the Notes or any Security Document).

In addition, the Company must deliver to the Trustee an Officers' Certificate stating that all conditions precedent to satisfaction and discharge have been satisfied.

## **Unclaimed Money**

Claims against the Company for the payment of principal of, premium, if any, or interest, on the Notes 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, Members, 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 Company or any of the Subsidiary Guarantors or JV Subsidiary Guarantors in the Indenture, or in any of the Notes, the Subsidiary Guarantees or JV Subsidiary Guarantees or because of the creation of any Indebtedness represented thereby, shall be had against any incorporator, stockholder, member, officer, director, employee or controlling person of the Company or any of the Subsidiary Guarantors or 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 Subsidiary Guarantees and JV Subsidiary Guarantees. Such waiver may not be effective to waive liabilities under any applicable law.

## **Concerning the Trustee, the Common Security Trustee and the Paying Agents**

Citicorp International Limited is to be appointed as Trustee under the Indenture, Citigroup Global Markets Deutschland AG is to be appointed as registrar and Citibank, N.A., London Branch is to be appointed as paying and transfer agent (the “Paying Agent”) 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. 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 as a prudent person would exercise under the circumstances in the conduct of such person’s own affairs.

The Indenture contains limitations on the rights of the Trustee, should it become a creditor of the Company or any of the Subsidiary Guarantors, 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 is permitted to engage in other transactions with the Company and its Affiliates; *provided, however*, that if it acquires any conflicting interest, it must eliminate such conflict or resign.

Citicorp International Limited will initially act as the Common Security Trustee under the Security Documents in respect of the security over the Collateral. The Common Security Trustee, acting in its capacity as such, shall have such duties with respect to the Collateral pledged, assigned or granted pursuant to the Security Documents as are set forth in the Indenture and the Security Documents. Under certain circumstances, the Common Security Trustee may have obligations under the Security Documents or the Intercreditor Agreement that are in conflict with the interests of the Holders. The Common Security Trustee will be under no obligation to exercise any rights or powers conferred under the Indenture, the Intercreditor Agreement or any of the Security Documents for the benefit of the Holders, unless such Holders have offered to the Common Security Trustee indemnity and/or security satisfactory to the Common Security Trustee against any loss, liability or expense. Furthermore, each Holder, by accepting the Notes will agree, for the benefit of the Trustee and the Common Security Trustee that it is solely responsible for its own independent appraisal of and investigation into all risks arising under or in connection with the Security Documents and has not relied on and will not at any time rely on the Trustee and the Common Security Trustee in respect of such risks.

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

The Notes will be represented by one or more global notes in registered form without interest coupons attached (each a “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.

### **Global Note**

Ownership of beneficial interests in the Global Note (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 Global Note 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.

The Notes are not issuable in bearer form.

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

Payments of any amounts owing in respect of the Global Note (including principal, premium, interest and additional amounts) will be made to the paying agent. 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. The Company 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 Company, the Trustee and the Agents will treat the registered holder of the Global Note (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 Company, 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
- 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 Note**

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 Company 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\$200,000 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 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 Note 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 Note in accordance with the normal procedures of Euroclear and Clearstream and in accordance with the provisions of the Indenture.

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 settlement procedures applicable. Book-entry interests will be credited to the securities custody accounts of Euroclear and Clearstream holders 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 immediately available 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**

We understand 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 Company, 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 Company 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 Company has received a written request from a Holder, the Company 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 Company 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 registrar in sufficient quantities and authenticated by the Trustee for delivery to Holders. Persons exchanging interests in a Global Note for individual definitive notes will be required to provide the registrar, through the relevant clearing system, with written instruction and other information required by the Company and the 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 by being deposited, first-class postage prepaid, in the United States mails (if intended for the Company or any Subsidiary Guarantor) addressed to the Company or such Subsidiary Guarantor at the principal office of the Company; (if intended for the Trustee) addressed to 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.

While the Notes are in global form, 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 and Clearstream. Any such notice shall be deemed to have been delivered on the day such notice is delivered to Euroclear and Clearstream or if by mail, when so sent or deposited.

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

The Company and each of the Subsidiary Guarantors will irrevocably (i) 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, any Subsidiary Guarantee, the Indenture or any transaction contemplated thereby and (ii) designate and appoint Cogency Global Inc., currently at 10 E 40th Street 10th Floor, New York, New York 10016, for receipt of service of process in any such suit, action or proceeding.

### **Governing Law**

Each of the Notes, the Subsidiary Guarantees 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 2022 Notes" for which no definition is provided.

*"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.

*"Adjusted Treasury Rate"* means, with respect to any redemption date, (i) the yield, under the heading which represents the average for immediately preceding week, appearing in the most recently published statistical release designated "H.15(519)" or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption "Treasury Constant Maturities", for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three (3) months before or after June 30, 2020, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Adjusted Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month) or (ii) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per year equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date, in each case calculated on the third Business Day immediately preceding the redemption date.

“*Affiliate*” means, with respect to any Person, any other Person (i) directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person, (ii) who is a director or officer of such Person or any Subsidiary of such Person or of any Person referred to in clause (i) of this definition or (iii) 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 (i) or (ii). 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.

“*Applicable Premium*” means with respect to a Note at any redemption date, the greater of (i) 1.00% of the principal amount of such Note and (ii) the excess of (A) the present value at such redemption date of the redemption price of such Note on June 30, 2020 (such redemption price being described in the first paragraph in the “— Optional Redemption” section exclusive of any accrued interest), plus all required remaining scheduled interest payments due on such Note through June 30, 2020 (but excluding accrued and unpaid interest to the redemption date), computed using a discount rate equal to the Adjusted Treasury Rate plus 100 basis points, over (B) the principal amount of such Note.

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

“*Asset Disposition*” means the sale or other disposition by the Company or any Restricted Subsidiary (other than to the Company 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 Company or any Restricted Subsidiary which accounts for all or substantially all of the assets of such Restricted Subsidiary).

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

- (a) sales, transfers 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;
- (b) sales, transfers or other dispositions of assets constituting a Permitted Investment or Restricted Payment permitted to be made under the covenant described under the caption “— Certain Covenants — Limitation on Restricted Payments”;
- (c) sales, transfers or other dispositions of assets with a Fair Market Value not in excess of US\$1.0 million (or the Dollar Equivalent thereof) in any transaction or series of related transactions;
- (d) 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 Company or its Restricted Subsidiaries;
- (e) any transfer, assignment or other disposition deemed to occur in connection with creating or granting any Permitted Lien;
- (f) a transaction covered by the covenant under the caption “— Consolidation, Merger and Sale of Assets”; and
- (g) any sale, transfer or other disposition by the Company or any Restricted Subsidiary, including the sale or issuance by the Company or any Restricted Subsidiary of any Capital Stock of any Restricted Subsidiary to the Company 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 such Sale and Leaseback Transaction, of the total obligations of the lessee for rental payments during the remaining term of the lease in such 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 Company or any Restricted Subsidiary that is (i) secured by cash deposits, bank accounts or other assets of the Company or a Restricted Subsidiary and/or (ii) guaranteed by a guarantee or a letter of credit (or similar instruments) from or arranged by the Company or a Restricted Subsidiary and is used by the Company and its Restricted Subsidiaries to effect exchange of foreign currencies or remit money onshore or offshore.

“*Board of Directors*” means the board of directors elected or appointed by the stockholders of the Company to manage the business of the Company 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.

“*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 into such equity.

“*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.

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

- (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries, taken as a whole, to any “person” (within the meaning of Section 13(d) of the U.S. Securities Exchange Act of 1934, as amended (the “Exchange Act”)), other than one or more Permitted Holders;
- (2) the Company consolidates with, or merges with or into, any Person (other than one or more Permitted Holders), or any Person consolidates with, or merges with or into, the Company, in any such event pursuant to a transaction in which any of the outstanding Voting Stock of the Company or such other Person is converted into or exchanged for cash, securities or other property, other than any such transaction where the Voting Stock of the Company outstanding immediately prior to such transaction is converted into or exchanged for (or continues as) Voting Stock (other than Disqualified Stock) of the surviving or transferee Person constituting a majority of the outstanding shares of Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance) and in substantially the same proportion as before the transaction;

- (3) the Permitted Holders are the beneficial owners of less than 35.0% of the total voting power of the Voting Stock of the Company;
- (4) 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 the total voting power of the Voting Stock of the Company greater than such total voting power held beneficially by the Permitted Holders;
- (5) individuals who on the Original Issue Date constituted the Board of Directors (together with any new directors whose election was approved by a vote of at least a majority of the members of the Board of Directors then in office who were members of the Board of Directors on the Original Issue Date or whose election was previously so approved) cease for any reason to constitute a majority of the members of the Board of Directors then in office; or
- (6) the adoption of a plan relating to the liquidation or dissolution of the Company.

For the avoidance of doubt, for purposes of this “Change of Control” definition, a sale of shares of Capital Stock of a Restricted Subsidiary which holds all or substantially all properties and assets of the Company, and its Restricted Subsidiaries, taken as a whole, to Independent Third Parties in an initial public offering and listing on a stock exchange of the shares of Capital Stock of such Restricted Subsidiary where such Restricted Subsidiary (i) remains a Restricted Subsidiary immediately after such sale and (ii) the Company, a Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be, immediately after such sale, owns, directly or indirectly, at least 30.0% of the Voting Stock of such Restricted Subsidiary shall not constitute a sale of substantially all properties and assets of the Company and its Restricted Subsidiaries.

“*Clearstream*” means Clearstream Banking S.A., its affiliates, successors or assigns.

“*Collateral*” means all collateral securing, or purported to be securing, directly or indirectly, the Notes or any Subsidiary Guarantee pursuant to the Security Documents, and shall initially consist of the Capital Stock of the initial Subsidiary Guarantors.

“*Commodity Agreement*” means any spot, forward, swap 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 on the Original Issue Date, and include, without limitation, all series and classes of such common stock or ordinary shares.

“*Comparable Treasury Issue*” means the U.S. Treasury security having a maturity comparable to the remaining term of the Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to June 30, 2020.

“*Comparable Treasury Price*” means, with respect to any redemption date, if clause (ii) of the Adjusted Treasury Rate is applicable, the average of three (or such lesser number as is received by the Trustee) Reference Treasury Dealer Quotations for such redemption date.

“*Consolidated Assets*” means, with respect to any Restricted Subsidiary at any date of determination, the Company 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 Company (which the Company shall use its reasonable best efforts to compile on a timely manner) are available (which may include 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 Company and its Restricted Subsidiaries in conformity with GAAP; *provided* that (i) 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 Company or any Restricted Subsidiary and (ii) 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 (i) Consolidated Interest Expense for such period and (ii) all cash and non-cash dividends paid, declared, accrued or accumulated during such period on any Disqualified Stock or Preferred Stock of the Company or any Restricted Subsidiary held by Persons other than the Company or any Wholly Owned Restricted Subsidiary, except for dividends payable in the Company’s Capital Stock (other than Disqualified Stock) or dividends paid to the Company or to a Wholly Owned Restricted Subsidiary.

“*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 Company 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 Company and its Restricted Subsidiaries, without duplication, (i) interest expense attributable to Capitalized Lease Obligations and imputed interest with respect to Attributable Indebtedness, (ii) amortization of debt issuance costs and original issue discount expense and non-cash interest payments in respect of any Indebtedness, (iii) the interest portion of any deferred payment obligation, (iv) 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, (v) the net costs associated with Hedging Obligations (including the amortization of fees), (vi) interest on Indebtedness of any other Person that is guaranteed by the Company or any Restricted Subsidiary (other than Pre-Registration Mortgage Guarantees), only to the extent such interest is actually paid by the Company or any Restricted Subsidiary and (vii) 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 to the extent of the amount of net income actually paid in cash to, or the amount of loss actually funded in cash by, the specified Person or a Restricted Subsidiary of the Person during such period;
- (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 Company or any



Restricted Subsidiary or all or substantially all of the property and assets of such Person are acquired by the Company or any Restricted Subsidiary;

- (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 Company or any Restricted Subsidiary or (B) any Capital Stock of any Person (including any gains by the Company realized on sales of Capital Stock of the Company or any Restricted Subsidiary), in each case, which is not sold in the ordinary course of business of the Company or any Restricted Subsidiary;
- (6) any translation gains or losses due solely to fluctuations in currency values and related tax effects; and
- (7) any net after-tax extraordinary or non-recurring gains.

*provided* that any net after tax gains derived from direct or indirect sale by the Company or any Restricted Subsidiary of (i) Capital Stock of a Restricted Subsidiary primarily engaged in the holding of Investment Property or (ii) an interest in any Investment Property arising from the difference between the original cost basis and the cash sale price shall be added to Consolidated Net Income to the extent not already included in the net income for such period as determined in conformity with GAAP and Consolidated Net Income.

“*Consolidated Net Worth*” means, at any date of determination, stockholders’ equity as set forth on the most recently available fiscal quarter, semi-annual or annual consolidated balance sheet of the Company and its Restricted Subsidiaries, plus, to the extent not included, any Preferred Stock of the Company, 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 Company or any Restricted Subsidiary, each item to be determined in conformity with GAAP.

“*Contractor Guarantees*” means any guarantee by the Company or any Restricted Subsidiary of Indebtedness of any contractor, builder or other similar Person engaged by the Company or such Restricted Subsidiary in connection with the development, construction or improvement of real or personal property or equipment to be used in a Permitted Business by the Company or any Restricted Subsidiary in the ordinary course of business, which Indebtedness was Incurred by such contractor, builder or other similar Person to finance the cost of such development, construction or improvement.

“*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 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 (provided that such increase is permitted under the covenant described under “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”) or (4) otherwise altering the terms and conditions thereof.

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

“*CVR*” means the contingent value rights issued by the Company on July 21, 2016 pursuant to the CVR Agreement.

“*CVR Agreement*” means the Contingent Value Rights Agreement, dated as of July 21, 2016, between the Company and U.S. Bank National Association, as trustee.

“*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 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 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 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 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 “— 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 Company’s repurchase of the 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 Restricted Subsidiary from a bank that are secured by a pledge of deposits or bank accounts made by another 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 Company.

“*Equity Offering*” means any underwritten primary public offering or private placement of Common Stock of the Company after the Original Issue Date to any Person other than a Wholly Owned Restricted Subsidiary or any Permitted Holder; *provided* that the aggregate gross cash proceeds received by the Company from such transaction shall be no less than US\$20.0 million (or the Dollar Equivalent thereof).

“*Euroclear*” means Euroclear Bank SA/NV.

“*Exchange Convertible Bond PIK Interest*” means the interest that is capitalized and added to the then current outstanding principal amount of the Exchange Convertible Bonds pursuant to the terms of the Exchange Convertible Bonds.

“*Exchange Convertible Bonds*” means the U.S. dollar-denominated variable rate convertible bonds due 2019 issued by the Company pursuant to the terms of the Mandatorily Exchangeable Bonds and any Exchange Convertible Bond PIK Interest with respect thereto.

“*Exempted Subsidiary*” means any Restricted Subsidiary organized in any jurisdiction other than the PRC that is prohibited by applicable law or regulation to provide a Subsidiary Guarantee or a JV Subsidiary Guarantee or create any Lien over its Capital Stock to secure any of the secured obligations subject to the Intercreditor Agreement; *provided* that (x) the Company shall have failed, upon using commercially reasonable efforts, to obtain any required governmental or regulatory approval or registration with respect to such Subsidiary Guarantee, JV Subsidiary Guarantee or Lien over its Capital Stock, 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 Company having obtained such applicable approval or registration.

“*Existing HY Notes*” means the Series A Notes, the Series B Notes, the Series C Notes, the Series D Notes and the Series E Notes.

“*Existing HY Indentures*” means the indentures dated July 21, 2016 as amended and supplemented from time to time governing the Existing HY Notes.

“*Existing HY Notes PIK Interest*” means interest on the Existing HY Notes paid in the form of Existing HY Notes PIK Notes.

“*Existing HY Notes PIK Notes*” means Existing HY Notes issued under the relevant Existing HY Notes Indenture in the event the Company pays Existing HY Notes PIK Interest on the relevant series of Existing HY Notes pursuant to such Existing HY Notes Indenture.

“*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 Company.

“*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 Company (which the Company shall use its reasonable best efforts to compile in a timely manner) are available (which may include internal consolidated financial statements) (the “Four Fiscal-Quarter Period”) to (2) the aggregate Consolidated Fixed Charges during such Four Fiscal-Quarter Period. In making the foregoing calculation:

- (A) *pro forma* effect shall be given to any Indebtedness or Preferred Stock Incurred, repaid or redeemed during the period (the “Reference Period”) commencing on and including the first day of the Four Fiscal-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 Fiscal-Quarter Period), in each case as if such Indebtedness 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 Four Fiscal-Quarter Period shall not include any interest income actually earned by the Company or such Restricted Subsidiary during such Four Fiscal-Quarter Period in respect of the funds used to repay or redeem such Indebtedness 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 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;

- (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 have been made by any Person that has become a Restricted Subsidiary or has been merged with or into the Company 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; and
- (E) *pro forma* effect shall be given to the creation, designation or re-designation of Restricted Subsidiaries and Unrestricted Subsidiaries as if such creation, designation or re-designation had occurred on the first day of such Reference Period;

*provided* that to the extent that clause (C) or (D) of this paragraph 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 Hong Kong Financial Reporting Standards 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 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 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; and
- (9) all Disqualified Stock issued by such 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 (1) any capital commitments, deferred payment obligation, pre-sale receipts in advance from customers or similar obligations 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, (2) any Entrusted Loan; *provided* that such Indebtedness is not reflected as borrowings on the consolidated balance sheet of the Company (contingent obligations and commitments referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet) or (3) any obligations in respect of the CVRs.

The amount of Indebtedness of any Person at any time shall be the outstanding balance at such time 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:

- (A) 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;
- (B) 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;
- (C) that the amount of Indebtedness with respect to any Hedging Obligation shall be (i) zero if Incurred pursuant to paragraph (b)(6) under the “Limitation on Indebtedness and Preferred Stock” covenant or (ii) equal to the net amount payable by such Person if the Commodity Agreement, Currency Agreement or Interest Rate Agreement giving rise to such Hedging Obligation were terminated at that time due to default by such Person if not Incurred pursuant to such paragraph, and
- (D) that the contingent obligations arising from letters of credit, bankers’ acceptances or other similar instruments of a Restricted Subsidiary to secure Indebtedness of another Restricted Subsidiary shall not be deemed to be Indebtedness so long as such contingent obligations are used to secure the payment of Indebtedness of another Restricted Subsidiary permitted to be Incurred under the Indenture.

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

“*Insurance Company Investor*” means an Independent Third Party that is a financial institution or an insurance company or an Affiliate thereof that invests in any Capital Stock of a Restricted Subsidiary.

“*Intercreditor Agreement*” has the meaning set forth under “– Security.”

“*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:

- (i) any direct or indirect advance, loan or other extension of credit to another Person,
- (ii) 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),
- (iii) any purchase or acquisition of Capital Stock, Indebtedness, bonds, notes, debentures or other similar instruments or securities issued by another Person, or
- (iv) any guarantee of any obligation of another Person to the extent such obligation is outstanding and to the extent guaranteed by such Person.

For the purposes of the provisions of the “— Certain Covenants — Designation of Restricted and Unrestricted Subsidiaries” and “— Certain Covenants — Limitation on Restricted Payments” covenants: (i) the Company will be deemed to have made an Investment in an Unrestricted Subsidiary in an amount equal to the Fair Market Value of the Company’s proportionate interest in the assets (net of the Company’s proportionate interest in the liabilities owed to any Person other than the Company or a Restricted Subsidiary and that are not guaranteed by the Company or a Restricted Subsidiary) of a Restricted Subsidiary that is designated an Unrestricted Subsidiary at the time of such designation and (ii) 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.

“*Investment Property*” means any property that is owned and held by any Restricted Subsidiary for long-term rental yields or for capital appreciation or both, or any hotel owned by the Company or any Restricted Subsidiary from which the Company or any Restricted Subsidiary derives or expects to derive operating income.

“*Investment Grade*” means a rating of “AAA,” “AA,” “A” or “BBB,” as modified by a “+” or “-” indication, or an equivalent rating representing one of the four highest Rating Categories, by S&P or any of its successors or assigns or a rating of “Aaa,” or “Aa,” “A” or “Baa,” as modified by a “1,” “2” or “3” indication, or an equivalent rating representing one of the four highest Rating Categories, by Moody’s or any of its successors or assigns or the equivalent ratings of any internationally recognized rating agency or agencies, as the case may be, which shall have been designated by the Company as having been substituted for S&P or Moody’s or both, as the case may be.

“*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 quarter end of the Company; and (ii) a percentage equal to the direct equity ownership percentage of the Company and/or its Restricted Subsidiaries in the Capital Stock of such JV Subsidiary Guarantor and its Subsidiaries.

“*JV Subsidiary Guarantee*” has the meaning set forth under the caption “— The Subsidiary Guarantees and 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).

“*Mandatorily Exchangeable Bond PIK Interest*” means the interest that is capitalized and added to the then current outstanding principal amount of the Mandatorily Exchangeable Bonds pursuant to the terms of the Mandatorily Exchangeable Bonds.

“*Mandatorily Exchangeable Bonds*” means the U.S. dollar-denominated variable rate mandatorily exchangeable bonds due 2019 issued by the Company and any Mandatorily Exchangeable Bond PIK Interest with respect thereto.

“*Measurement Date*” means April 28, 2010.

“*Minority Joint Venture*” means any corporation, association or other business entity that is accounted for by the equity method of accounting in accordance with GAAP by the Company or a Restricted Subsidiary and primarily engaged in the Permitted Businesses, and such Minority Joint Venture’s Subsidiaries.

“*Moody’s*” means Moody’s Investors Service, Inc., its affiliates, successors or assigns.

“*Net Cash Proceeds*” means:

- (a) with respect to any Asset Sale, the proceeds of such Asset Sale in the form of cash or Temporary Cash Investments, 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 Temporary Cash Investments and proceeds from the conversion of other property received when converted to cash or Temporary Cash Investments, net of
  - (1) brokerage commissions and other fees and expenses (including fees and expenses of counsel and investment banks) related to such Asset Sale;
  - (2) 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 Company and its Restricted Subsidiaries, taken as a whole;
  - (3) 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; and
  - (4) appropriate amounts to be provided by the Company 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
- (b) with respect to any issuance or sale of Capital Stock, the proceeds of such issuance or sale in the form of cash or Temporary Cash Investments, 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 Temporary Cash Investments and proceeds from the conversion of other property received when converted to cash or Temporary Cash Investments, 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 Subsidiary*” means any Restricted Subsidiary not providing a Subsidiary Guarantee or JV Subsidiary Guarantee.

“*Offer to Purchase*” means an offer to purchase the Notes by the Company from the Holders commenced by sending a notice to the Trustee, the Paying Agent and each Holder at its last address appearing in the Note register stating:

- (1) the provision of 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 sent) (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 Company 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 pursuant to the applicable procedures of Euroclear and Clearstream, together with the form entitled “Option of the Holder to

Elect Purchase” on the reverse side of the Note completed, to the order of the Company’s agent appointed for the purpose of the Offer to Purchase (the “Tender Agent”) with a copy 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 Tender 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 the 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\$200,000 or integral multiples of US\$1,000.

One Business Day prior to the Offer to Purchase Payment Date, the Company will deposit with the Tender Agent money sufficient to pay the purchase price of all Notes or portions thereof to be accepted by the Company for payment on the Offer to Purchase Payment Date. On the Offer to Purchase Payment Date, the Company 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 Paying Agent all Notes or portions thereof so accepted together with an Officers’ Certificate (with a copy to the Trustee) specifying the Notes or portions thereof accepted for payment by the Company. The Tender Agent shall promptly send to the Holders of Notes so accepted payment in an amount equal to the purchase price, and the Registrar shall promptly authenticate and deliver to such Holders a new Note equal in principal amount to any unpurchased portion of the Note surrendered; *provided* that each such Note purchased and each such new Note issued shall be in a principal amount of US\$200,000 or integral multiples of US\$1,000. The Company will publicly announce the results of an Offer to Purchase as soon as practicable after the Offer to Purchase Payment Date. The Company will comply with all applicable securities laws and regulations, in the event that the Company is required to repurchase the Notes pursuant to an Offer to Purchase.

The materials used in connection with an Offer to Purchase are required to contain or incorporate by reference information concerning the business of the Company and its Subsidiaries which the Company 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 Company 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.

“*Officer*” means one of the executive officers of the Company or, in the case of a Subsidiary Guarantor or a JV Subsidiary Guarantor, one of the directors or executive officers of 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 any Subsidiary Guarantor or JV Subsidiary Guarantor under the Indenture, Officers’ Certificate means a certificate signed by one Officer if there is only one Officer in such Subsidiary Guarantor or JV Subsidiary Guarantor at the time such certificate is required to be delivered.

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

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

“*Pari Passu Guarantee*” means a guarantee by the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor of Indebtedness of the Company (including Additional Notes), any Subsidiary Guarantor or any JV Subsidiary Guarantor; *provided* that (i) the Company, such Subsidiary Guarantor or such JV Subsidiary Guarantor is permitted to Incur such

Indebtedness under the covenant described under the caption “— Certain Covenants — Limitation on Indebtedness and Preferred Stock” and (ii) such guarantee ranks *pari passu* with the Subsidiary Guarantee of such Subsidiary Guarantor or with any outstanding JV Subsidiary Guarantee of such JV Subsidiary Guarantor, as the case may be.

“*Payment Default*” means (i) any default in the payment of interest on any Note when the same becomes due and payable, (ii) any 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, (iii) the failure by the Company to make or consummate a Change of Control Offer in the manner described under the caption “— Repurchase of Notes upon a Change of Control,” or an Offer to Purchase in the manner described under the caption “— Certain Covenants — Limitation on Asset Sales” or (iv) any Event of Default specified in clause (e) of the definition of Events of Default.

“*Permitted Business*” means any business conducted by the Company and its Restricted Subsidiaries on the Original Issue Date and other businesses reasonably related, ancillary or complementary thereto, or any business in the financial services, internet, logistics, medical or agricultural industries or any business reasonably related, ancillary or complementary thereto.

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

- (1) Mr. Kwok Ying Shing, Mr. Kwok Chun Wai and Mr. Kwok Ying Chi;
- (2) any Affiliate (other than an Affiliate as defined in clause (ii) or (iii) of the definition of “Affiliate”) of any of the Persons specified in clause (1) of this definition; 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 80% owned by Persons specified in clauses (1) and (2) of this definition.

“*Permitted Investment*” means:

- (1) any Investment in the Company or a Restricted Subsidiary that is primarily engaged, directly or indirectly through one or more other Restricted Subsidiaries, in a Permitted Business or a Person which will, upon the making of such Investment, become a Restricted Subsidiary that is primarily engaged, directly or indirectly through one or more other Restricted Subsidiaries, in a Permitted Business or be merged or consolidated with or into or transfer or convey all or substantially all its assets to the Company or a Restricted Subsidiary that is primarily engaged in a Permitted Business.
- (2) Temporary Cash Investments;
- (3) payroll, travel and similar advances 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 designed solely to protect the Company or any Restricted Subsidiary against fluctuations in commodity prices, interest rates or foreign currency exchange rates and not for speculation;
- (7) receivables owing to the Company 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) any securities or other Investments received as consideration in, or retained in connection with, sales or other dispositions of property or assets, including Asset Dispositions made in compliance with the covenant described 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 the caption “— Certain Covenants — Limitation on Liens”;
- (10) any Investment pursuant to Pre-Registration Mortgage Guarantees or Contractor Guarantees by the Company or any Restricted Subsidiary otherwise permitted to be incurred under the Indenture;

- (11) Investments in securities of trade creditors or customers received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;
- (12) advances to contractors and suppliers for the acquisition of assets or consumables or services in the ordinary course of a Permitted Business that are recorded as deposits or prepaid expenses on the Company's consolidated balance sheet;
- (13) deposits of pre-sale proceeds made in order to secure the completion and delivery of pre-sold properties and issuance of the related land use title in the ordinary course of a Permitted Business;
- (14) deposits made in order to comply with statutory or regulatory obligations to maintain deposits for workers, compensation claims and other purposes specified by statute or regulation from time to time in the ordinary course of a Permitted Business;
- (15) (i) deposits made in order to secure the performance of the Company or any Restricted Subsidiary, (ii) prepayments made in connection with the acquisition of real property or land use rights by the Company or any Restricted Subsidiary, in each case, in the ordinary course of a Permitted Business; and (iii) advances to government authorities or government affiliated entities in the PRC in connection with the financing of redevelopment of old urban areas or primary land development, in each case, in the ordinary course of business that are recorded as assets on the Company's consolidated balance sheet; and
- (16) any Investment (including any deemed Investment upon the redesignation of a Restricted Subsidiary as an Unrestricted Subsidiary or upon the sale of Capital Stock of a Restricted Subsidiary) by the Company or any Restricted Subsidiary in any Person; *provided* that:
  - (a) the Person into which such Investment is made is primarily engaged in the Permitted Businesses;
  - (b) none of the other shareholders of or partners in such Person is a Person described in clause (a) or (b) of the first paragraph of the covenant described under the caption “— Limitation on Transactions with Shareholders and Affiliates” (other than by reason of such shareholder or partner being an officer or director of the Company, a Restricted Subsidiary, a Minority Joint Venture or an Unrestricted Subsidiary or by reason of being a Restricted Subsidiary, a Minority Joint Venture or an Unrestricted Subsidiary);
  - (c) in the case of any Investment by the Company or any Restricted Subsidiary in a Person of which less than 50% of the voting power of the outstanding Voting Stock is owned, directly or indirectly, by the Company or its Restricted Subsidiaries, at the time of such Investment, the Company could Incur at least US\$1.00 of Indebtedness under the proviso in paragraph (a) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock”; *provided* that this paragraph (c) shall not apply if such Investment would otherwise have been permitted under this clause (16) and such Investment, together with the aggregate amount of all other Investments made in reliance on this proviso since the Original Issue Date, shall not exceed in aggregate an amount equal to 15% of Total Assets (such aggregate amount of Investments shall be calculated after deducting an amount equal to the net reduction in all Investments made in reliance on this proviso since the Original Issue Date resulting from the events set forth in paragraphs (e)(i) through (e)(iii) below, where references in such paragraphs to “under this clause (16)” shall be substituted with “in reliance on the proviso in paragraph (c)”);
  - (d) no Default has occurred and is continuing or would occur as a result of such Investment; and



- (e) such Investment, together with the aggregate of all other Investments made under this clause (16) since the Original Issue Date shall not exceed in aggregate an amount equal to 25% of Total Assets. 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:
  - (i) payments of interest on Indebtedness, dividends or repayments of loans or advances made under this clause (16), in each case to the Company 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),
  - (ii) the unconditional release of a Guarantee provided by the Company or a Restricted Subsidiary after the Original Issue Date under this clause (16) of an obligation of any such Person, or
  - (iii) 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 Company or a Restricted Subsidiary after the Original Issue Date in any such Person under this clause (16);

*provided, further* that for the avoidance of doubt, the value of each Investment made pursuant to this clause (16) shall be valued at the time such Investment is made;

- (17) guarantees permitted under clause (b)(21) of the covenant entitled “— Limitation on Indebtedness and Preferred Stock”; and
- (18) any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Subsidiaries in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries, *provided* that (A) (i) the Board of Directors of the Company has determined in good faith that the designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries is necessary to obtain approval from a Qualified Exchange for the Restructuring, (ii) at the time of such designation, the members of the Restructuring Group remain Subsidiaries of the Company, and (iii) at the time of such designation, the members of the Restructuring Group remain primarily engaged in the Permitted Businesses; and (B) the aggregate of all Investments made under this clause (18) since the Original Issue Date shall not exceed an amount equal to 15% of Total Assets (for the avoidance of doubt, any portion of such Investments exceeding 15% of Total Assets shall not constitute a Permitted Investment pursuant to this clause (18) but may be made, characterized and accounted for in accordance with the other provisions of the Indenture; and
- (19) any Investment in a subordinated tranche of interests in a Receivable Financing Incurred pursuant to clause (ii) of the definition thereof with multiple tranches offered and sold to investors that, in the good faith determination of the Board of Directors, is necessary or advisable to effect such Receivable Financing.

“*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 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 Company 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 Company or its Restricted Subsidiaries relating to such property or assets;
  - (6) any interest or title of a lessor in the property subject to any operating lease;
  - (7) 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 Company 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;
  - (8) Liens in favor of the Company or any Restricted Subsidiary;
  - (9) Liens arising from attachment or the rendering of a final judgment or order against the Company or any Restricted Subsidiary that does not give rise to an Event of Default;
  - (10) 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;
  - (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 (b)(5) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock”; *provided* that such Liens do not extend to or cover any property or assets of the Company or any Restricted Subsidiary other than the property or assets securing the Indebtedness being refinanced;
  - (13) Liens (including extensions and renewals thereof) upon real or personal property; *provided* that (a) such Lien is created solely for the purpose of securing Indebtedness of the type described under clause (b)(7) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock,” (b) such Lien is created prior to, at the time of or within 180 days after the later of the acquisition or the completion of development, construction or improvement of such property, (c) the principal amount of Indebtedness secured by such Lien does not exceed 100% of the cost of such property, development, construction or improvement and (d) such Lien shall not extend to or cover any property or assets other than such item of property and any improvements on such item; *provided* that, such Lien may cover other property or assets (instead of or in addition to such item of property or improvements) and the principal amount of Indebtedness secured by such Lien may exceed 100% of such cost if (x) such Lien is Incurred in the ordinary course of business and (y) the aggregate book value of property or assets (as of the last day of the most recent fiscal quarter period for which consolidated financial statements of the Company (which the Company shall use its reasonable best efforts to compile in a timely manner) are available (which may be internal consolidated 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 (13) does not exceed 130% of the aggregate principal amount of Indebtedness secured by such Liens;
- (14) Liens under the Security Documents;
  - (15) Liens securing any Permitted Pari Passu Secured Indebtedness that complies with each of the requirements set forth under “Security — Permitted Pari Passu Secured Indebtedness”;
  - (16) Liens securing Indebtedness of the Company or any Restricted Subsidiary under any Pre-Registration Mortgage Guarantee which is permitted to be Incurred under clause (b)(13) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock”;
  - (17) 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 Company or any Restricted Subsidiary;
  - (18) 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 (b)(6) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock”;
  - (19) Liens on deposits of pre-sale proceeds made in order to secure the completion and delivery of pre-sold properties and issuance of the related land use title made in the ordinary course of business and not securing Indebtedness of the Company or any Restricted Subsidiary;
  - (20) Liens on deposits made in order to comply with statutory obligations to maintain deposits for workers’ compensation claims and other purposes specified by statute made in the ordinary course of business and not securing Indebtedness of the Company or any Restricted Subsidiary;
  - (21) Liens on deposits made in order to secure the performance of the Company or any Restricted Subsidiary in connection with the acquisition of real property or land use rights or personal property (including, without limitation, Capital Stock) by the Company or any Restricted Subsidiary (including, without limitation, by way of acquisition of Capital Stock of a Person) in the ordinary course of business and not securing Indebtedness of the Company or any Restricted Subsidiary;
  - (22) Liens granted by the Company or any Restricted Subsidiary in favor of any Insurance Company Investor to secure the obligations of a Subsidiary of such Restricted Subsidiary to pay a guaranteed or preferred dividend or return on Capital Stock of such Subsidiary held by such Insurance Company Investor permitted to be Incurred under clause (b)(16) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock;”
  - (23) Liens on Investment Properties securing Indebtedness of the Company or any Restricted Subsidiary permitted to be Incurred under clause (b)(19) of the covenant described under “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
  - (24) Liens Incurred on cash deposits, bank accounts or other assets of the Company or any Restricted Subsidiary to secure Bank Deposit Secured Indebtedness of the type described under clause (b)(20) of the covenant under “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
  - (25) Liens on current assets securing Indebtedness permitted to be Incurred under clause (b)(14) of the “— Limitation on Indebtedness and Preferred Stock” covenant;
  - (26) Liens to secure Entrusted Loans;
  - (27) Liens securing Indebtedness permitted to be Incurred under clause (b)(17) of the covenant entitled “— Limitation on Indebtedness and Preferred Stock” covenant;
  - (28) 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 (b)(15) of the “— Limitation on Indebtedness and Preferred Stock” covenant;

- (29) Liens securing Indebtedness Incurred under clause (b)(21) of the “— Limitation on Indebtedness and Preferred Stock” covenant;
- (30) Liens on assets of a Non-Guarantor Subsidiary securing any Permitted Subsidiary Indebtedness of any Non-Guarantor Subsidiary permitted to be Incurred under the proviso in paragraph (a) of the covenant described under “— Limitation on Indebtedness and Preferred Stock”; and
- (31) Liens securing Indebtedness Incurred under clause (b)(25) of the covenant described under “— Limitation on Indebtedness and Preferred Stock.”

“*Permitted Pari Passu Secured Indebtedness*” has the meaning set forth under “Security — Permitted Pari Passu Secured Indebtedness.”

“*Permitted Subsidiary Indebtedness*” means Indebtedness of, and all Preferred Stock issued by, the Non-Guarantor Subsidiaries, 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 (excluding Public Indebtedness and the amount of any Indebtedness of any Non-Guarantor Subsidiary permitted under clauses (b)(1), (b)(2), (b)(4), (b)(6) and (b)(13) of the covenant described under the caption “— 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 Hong Kong Special Administrative Region, Macau and Taiwan.

“*PRC CJV*” means any future 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 September 3, 2016) 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 February 19, 2014), as such laws may be amended.

“*PRC CJV Partner*” means with respect to a PRC CJV, the other party or parties to the joint venture agreement relating to such PRC CJV with the Company 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 any other class of Capital Stock of such Person.

“*Pre-Registration Mortgage Guarantees*” means any Indebtedness of the Company or any Restricted Subsidiary consisting of a guarantee in favor of any bank or other similar financial institutions in the ordinary course of business of secured loans of purchasers of individual units of properties from the Company or any Restricted Subsidiary; *provided* that any such guarantee shall be released in full on or before the perfection of a security interest in such properties under applicable law in favor of the relevant lender.

“*Public Indebtedness*” means any bonds, debentures, notes or similar debt securities issued in a public offering or a private placement (other than the Notes) to institutional investors.

“*Qualified Exchange*” means either (1) the New York Stock Exchange, the London Stock Exchange, The Stock Exchange of Hong Kong Limited, the Nasdaq Stock Market, Singapore Exchange Securities Trading Limited, The Shanghai Stock Exchange or The Shenzhen Stock Exchange or (2) 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).

“*Qualified IPO*” means an initial public offering, and a listing of, Capital Stock of a company on a Qualified Exchange, *provided* that in the case that such listing is on 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), such listing shall result in a public float of not less than the percentage required by the applicable listing rules.

“*Rating Agencies*” means (i) S&P, (ii) Moody’s and (iii) if S&P or Moody’s or both shall not make a rating of the Notes publicly available, one or more “nationally recognized statistical rating organizations,” as the case may be, within the meaning of Section 3(a)(62) of the Exchange Act, selected by the Company, which shall be substituted for S&P or Moody’s or both, as the case may be.

“*Rating Category*” means (i) with respect to S&P, any of the following categories: “BB,” “B,” “CCC,” “CC,” “C” and “D” (or equivalent successor categories); (ii) with respect to Moody’s, any of the following categories: “Ba,” “B,” “Caa,” “Ca,” “C” and “D” (or equivalent successor categories); and (iii) the equivalent of any such category of S&P or Moody’s used by another Rating Agency. In determining whether the rating of the Notes has decreased by one or more gradations, gradations within Rating Categories (“+” and “-” for S&P; “1,” “2” and “3” for Moody’s; or the equivalent gradations for another Rating Agency) shall be taken into account (e.g., with respect to S&P, a decline in a rating from “BB+” to “BB,” as well as from “BB-” to “B+,” will constitute a decrease of one gradation).

“*Receivable Financing*” means any financing transaction or series of financing transactions that have been or may be entered into by the Company or any Restricted Subsidiary pursuant to which the Company or any Restricted Subsidiary may sell, convey or otherwise transfer to another Person, or may grant a security interest in, any of its receivables, mortgages, royalty, other revenue streams or interests therein (including without limitation, all security interests in goods financed thereby (including equipment and property), the proceeds of such receivables, and other assets which are customarily sold or in respect of which security interests are customarily granted in connection with securitization or factoring transactions involving such assets) for credit or liquidity management purposes (including discounting, securitization or factoring transactions) either (i) in the ordinary course of business or (ii) by way of selling by such other Person securities that are, or are capable of being, listed on any stock exchange or in any securities market and are offered using an offering memorandum or similar offering document.

“*Receivable Financing Assets*” means assets that are underlying and are sold, conveyed or otherwise transferred or pledged in a Receivable Financing.

“*Reference Treasury Dealer*” means each of any three investment banks of recognized standing that is a primary U.S. Government securities dealer in The City of New York, selected by the Company in good faith.

“*Reference Treasury Dealer Quotations*” means, with respect to each Reference Treasury Dealer and any redemption date, the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing by such Reference Treasury Dealer at 5:00 p.m. on the fifth Business Day preceding such redemption date.

“*Renminbi*” or “*RMB*” means the lawful currency of the People’s Republic of China, excluding Hong Kong, Macau and Taiwan for the purposes of the Indenture.

“*Restricted Subsidiary*” means any Subsidiary of the Company other than an Unrestricted Subsidiary.

“*Restructuring*” means the restructuring and Qualified IPO of the common shares of a Subsidiary of the Company in the Restructuring Group.

“*Restructuring Group*” means the group of Subsidiaries of the Company which are engaged in the Permitted Business that the Company may spin off and separately listed on a Qualified Exchange as part of the Restructuring.

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



“*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 Company or any Restricted Subsidiary transfers such property to another Person and the Company or any Restricted Subsidiary leases it from such Person.

“*Securitization Fees*” means distributions or payments made directly or by means of discounts with respect to any Receivable Financing Asset or participation interest therein issued or sold in connection with and other fees paid to a Person that is not a Restricted Subsidiary in connection with any Receivable Financing.

“*Security Documents*” means, collectively, the pledge or charge agreements and any other agreements or instruments that may evidence or create any security interest in favor of the Common Security Trustee on behalf of the Trustee and/or any Holders in any or all of the Collateral.

“*Senior Indebtedness*” of the Company or any Restricted Subsidiary, as the case may be, means all Indebtedness of the Company or such 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 Company, the Notes, (b) in respect of any Restricted Subsidiary that is a Subsidiary Guarantor, its Subsidiary Guarantee; or (c) in respect of any Restricted Subsidiary that is a JV Subsidiary Guarantor, its JV Subsidiary Guarantee; *provided* that Senior Indebtedness does not include (i) any obligation to the Company or any Restricted Subsidiary, (ii) trade payables or (iii) Indebtedness Incurred in violation of the Indenture.

“*Series A Notes*” means the variable rate senior notes due December 31, 2019 issued by the Company.

“*Series B Notes*” means the variable rate senior notes due June 30, 2020 issued by the Company.

“*Series C Notes*” means the variable rate senior notes due December 31, 2020 issued by the Company.

“*Series D Notes*” means the variable rate senior notes due June 30, 2021 issued by the Company.

“*Series E Notes*” means the variable rate senior notes due December 31, 2021 issued by the Company.

“*Significant Restricted Subsidiary*” means a Restricted Subsidiary, or a 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 Company or any Restricted Subsidiary and an Independent Third Party pursuant to which the Company or such Restricted Subsidiary agrees to (x) acquire not less than a majority of the Capital Stock of a Person (which owns land use rights in respect of parcels of land suitable for Permitted Business) (the “Minimum Initial Purchase”) from such Independent Third Party and pay for the Minimum Initial Purchase in full or in installments at a purchase price that is not more than the Fair Market Value of such Capital Stock on the date of such agreement and/or (y) on or after the payment in full of the purchase price for the Minimum Initial Purchase and such Person becomes a Restricted Subsidiary, (i) acquire additional shares of Capital Stock of such Restricted Subsidiary from such Independent Third Party and pay for such additional shares in full or in installments after the date of such agreement at a purchase price that is not more than the Fair Market Value of such Capital Stock on the date of such agreement or (ii) acquire additional shares of Capital Stock of such Restricted Subsidiary from such Independent Third Party in accordance with a “right of first refusal” or “right of first offer” type of provision in such agreement at a purchase price that is not more than the Fair Market Value of such Capital Stock on or about the date of such purchase.

“*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 Shareholder Loan*” means any unsecured loan to the Company or any Restricted Subsidiary from Permitted Holders which (i) is expressly subordinated in right of payment to the Notes, (ii) by its terms (and by the terms of any security into which it is convertible or for which it is exchangeable) does not mature and is not required to be repaid, pursuant to a sinking fund obligation event of default or otherwise, in whole or in part, on or prior to the date that is one year after the Stated Maturity of the Notes and (iii) by its terms does not provide any cash payment of interest.

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

“*Subsidiary*” means, with respect to any Person, any corporation, association or other business entity (i) 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 (ii) of which 50% or less of the outstanding Voting Stock is owned, directly or indirectly, by such Person and which is “controlled” and consolidated by such Person in accordance with GAAP.

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

“*Subsidiary Guarantor*” means any initial Subsidiary Guarantor named herein and any other Restricted Subsidiary which guarantees the payment of the Notes pursuant to the Indenture and the Notes; *provided* that Subsidiary Guarantor will not include (a) any Person whose Subsidiary Guarantee has been released in accordance with the Indenture and the Notes or (b) any JV Subsidiary Guarantor.

“*Subsidiary Guarantor Pledgor*” means any initial Subsidiary Guarantor Pledgor named herein and any other Subsidiary Guarantor which pledges Collateral to secure the obligations of the Company under the Notes and the Indenture and of such Subsidiary Guarantor under its Subsidiary Guarantee; *provided* that a Subsidiary Guarantor Pledgor will not include any Person whose pledge under the Security Documents has been released in accordance with the Security Documents, the Indenture and the Notes.

“*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 United Kingdom, the People’s Republic of China and Hong Kong or any agency of the foregoing or obligations fully and unconditionally guaranteed by the United States of America, any state of the European Economic Area, the United Kingdom, the People’s Republic of China and Hong Kong or any agency of the foregoing, in each case maturing within one year;
- (2) time deposit accounts, certificates of deposit, demand notes 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 or any state thereof, any state of the European Economic Area, the United Kingdom or Hong Kong, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of US\$100.0 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 Section 3(a)(62) of the Exchange 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 within 180 days of the date of acquisition thereof, issued by a corporation (other than an Affiliate of the Company) 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) time deposit accounts, certificates of deposit, overnight or call deposits and money market deposits with any bank or financial institution organized under the laws of the PRC, Hong Kong or anywhere the Company or any Restricted Subsidiary conducts business operations; and
- (8) structured deposit products that are principal protected with any bank or financial institution organized under the laws of the PRC, Hong Kong or anywhere the Company or any Restricted Subsidiary conducts business operations 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 Company 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 Company (which the Company shall use its reasonable best efforts to compile on a timely manner) are available (which may include internal consolidated financial statements); *provided* that only with respect to clause (b)(7) 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, as measured by the purchase price or cost therefor or budgeted cost provided in good faith by the Company or any Restricted Subsidiary to the bank or other similar financial institutional lender providing such Indebtedness.

“*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.

“*Unrestricted Subsidiary*” means (1) any Subsidiary of the Company 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 holder 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 100% 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 are entitled to 95% or more of the economic benefits distributable by such Subsidiary.

## DESCRIPTION OF THE 2024 NOTES

For purposes of this “Description of the 2024 Notes,” the term “Company” refers only to Kaisa Group Holdings Ltd., a company incorporated with limited liability under the laws of the Cayman Islands, and any successor obligor on the Notes, and not to any of its Subsidiaries, and the term “Notes” refers only to the 2024 Notes issued by the Company. Each Subsidiary of the Company which 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 Company that in the future provides a JV Subsidiary Guarantee (as defined below) is referred to as a “JV Subsidiary Guarantor.”

The Notes are to be issued under an indenture (the “Indenture”), to be dated as of the Original Issue Date, among the Company, the initial Subsidiary Guarantors, as guarantors, and Citicorp International Limited, as trustee (the “Trustee”).

The following is a summary of certain provisions of the Indenture, the Notes, the Subsidiary Guarantees, the JV Subsidiary Guarantees (if any), the Security Documents and the Intercreditor Agreement. 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 Subsidiary Guarantees, the JV Subsidiary Guarantees (if any), the Security Documents and the Intercreditor Agreement. It does not restate those agreements 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. Copies of the Indenture will be available on or after the Original Issue Date during normal office hours at the corporate trust office of the Trustee at 39/F, Champion Tower, 3 Garden Road, Central, Hong Kong.

### Brief Description of the Notes

The Notes are:

- general obligations of the Company;
- senior in right of payment to any existing and future obligations of the Company expressly subordinated in right of payment to the Notes;
- at least *pari passu* in right of payment with all other unsecured, unsubordinated Indebtedness of the Company (subject to any priority rights of such unsubordinated Indebtedness pursuant to applicable law);
- guaranteed by the Subsidiary Guarantors and the JV Subsidiary Guarantors (if any) on a senior basis, subject to the limitations described below under the caption “— The Subsidiary Guarantees and JV Subsidiary Guarantees” and in “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral”;
- effectively subordinated to the secured obligations of the Company, the Subsidiary Guarantors and the JV Subsidiary Guarantors (if any), to the extent of the value of the collateral serving as security therefor (other than the Collateral); and
- effectively subordinated to all existing and future obligations of the Non-Guarantor Subsidiaries (defined below).

In addition, on the Original Issue Date, subject to the limitations described in “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral,” the Notes will be secured by a pledge of the Collateral as described below under the caption “— Security” and will:

- be entitled to a lien on the Collateral (subject to any Permitted Liens and the Intercreditor Agreement); and
- rank effectively senior in right of payment to unsecured obligations of the Company with respect to the value of the Collateral pledged by the Company securing the Notes (subject to any priority rights of such unsecured obligations pursuant to applicable law).

The Notes will mature on June 30, 2024, unless earlier redeemed pursuant to the terms thereof and the Indenture.



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 2024 Notes” include any Additional Notes that are actually issued. The Notes will bear interest at 9.375% 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 June 30 and December 30 of each year (each an “Interest Payment Date”), commencing December 30, 2017.

Interest on the Notes will be paid to Holders of record at the close of business on June 15 and December 15 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. In any case in which the date of the payment of principal of or premium (if any) or interest on the Notes is not a Business Day in the relevant place of payment, then payment of principal or premium (if any) 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. Interest on the Notes will be calculated on the basis of a 360 day year comprised of twelve 30-day months.

The Notes will be issued only in fully registered form, without coupons, in denominations of US\$200,000 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 Company 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 Company at the office or agency of the Company maintained for that purpose (which initially will be the specified office of the Paying Agent), and the Notes may be presented for registration of transfer or exchange at such office or agency; *provided* that, at the option of the Company, payment of interest may be made by check mailed to the address of the Holders as such address appears in the Note register. Interest payable on the Notes held through Euroclear and Clearstream will be available to Euroclear and Clearstream participants (as defined herein) on the Business Day following payment thereof.

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

As of the date of the Indenture, all of the Company’s Subsidiaries will be “Restricted Subsidiaries.” However, under the circumstances described below under the caption “— Certain Covenants — Designation of Restricted and Unrestricted Subsidiaries,” the Company will be permitted to designate certain of its Subsidiaries as “Unrestricted Subsidiaries.” The Company’s Unrestricted Subsidiaries will generally not be subject to the restrictive covenants in the Indenture and will not guarantee the Notes.

On the Original Issue Date, the initial Subsidiary Guarantors will consist of all of the Restricted Subsidiaries (other than the Restricted Subsidiaries organized under the laws of the PRC (the “PRC Non-Guarantor Subsidiaries”), Ace Start Enterprises Limited (佳始企業有限公司), Bowen Asset Management (Cayman) Limited (寶運資產管理(開曼)有限公司), Bowen Asset Management Limited (寶運資產管理有限公司), Brave Sigh Limited (勇志有限公司), Brave Sigh (Hong Kong) Limited (勇志(香港)有限公司), Central Sino Investments Limited (正漢投資有限公司), Central Sino Investments (Hong Kong) Limited (正漢投資(香港)有限公司), Crest Sum Limited (總冠有限公司), Crest Sum (Hong Kong) Limited (總冠(香港)有限公司), Glorious Model Limited (榮程有限公司), Glorious Model (Hong Kong) Limited (榮程(香港)有限公司), Goldenform Investments Limited (崇堅投資有限公司), Greater Sail Limited (順帆有限公司), Greater Sail (Hong Kong) Limited (順帆(香港)有限公司), Hao Xi Holdings Limited (豪熙控股有限公司), Hao Xi Holdings (Hong Kong) Limited (豪熙控股(香港)有限公司), Heroic Lead Limited (傑領有限公司), Heroic Lead (Hong Kong) Limited (傑領(香港)有限公司), Huang Da Limited (煌達有限公司), Huang Da (Hong Kong) Limited (煌達(香港)有限公司), Kaisa Logistic Group Limited (佳兆業物流集團有限公司), Kaisa Technology Limited (佳兆業科技有限公司), Kaisa Ventures Limited (佳兆業創投有限公司), Kaisa Ventures (Hong Kong) Limited (佳兆業創投(香港)有限公司), Luxuriant Year Limited (茂年有限公司), Luxuriant Year (Hong Kong) Limited (茂年(香港)有限公司), Onfair Asia Pacific Limited (安信亞太有限公司), Peiyu Limited (沛裕有限公司), Peiyu (Hong Kong) Investments Limited (沛裕(香港)投資有限公司), Pointer Star Limited (尖星有限公司), Portwood Global Limited (港活環球有限公司),

Portwood Global (Hong Kong) Limited (港活環球(香港)有限公司), Richedge Limited (博鋒有限公司), Richedge (Hong Kong) Limited (博鋒(香港)有限公司), Right Year Developments Limited (偉年發展有限公司), Right Year Developments (Hong Kong) Limited (偉年發展(香港)有限公司), Soarhigh Developments Limited (展升發展有限公司), Soarhigh Developments (Hong Kong) Limited (展升發展(香港)有限公司), Splendid Maple Limited (燁楓有限公司), Splendid Maple (Hong Kong) Limited (燁楓(香港)有限公司), Superb Mega Limited (超旭有限公司), Super Winful Limited (超全有限公司), Tong Sheng Investments Limited (通升投資有限公司), Tong Sheng Investments (Hong Kong) Limited (通升投資(香港)有限公司), Yuan Yuan Investment Company Limited (遠源投資有限公司), Action Enrich Limited, Action Enrich (Hong Kong) Investment Limited, Sunny Harvest Investments Limited, Sunny Harvest Investments (Hong Kong) Limited, Sunny Sino Investments Limited, Sunny Sino Investments (Hong Kong) Limited, Camilla Catering Group (HK) Company Limited (嘉美軒飲食集團(香港)有限公司), Kaisa Group (International) Holdings Company Limited (佳兆業集團控股(國際)有限公司), Kaisa Medical Group Company Limited (佳兆業醫療集團有限公司), Kaisa Tea Group (Hong Kong) Company Limited (佳兆業茶業集團(香港)有限公司), Sinoluck Investments Holdings (HK) Limited and Sinoluck Investments Holdings Limited (華運投資控股有限公司) (collectively, the “Other Non-Guarantor Subsidiaries” and, together with the PRC Non-Guarantor Subsidiaries, the “Existing Non-Guarantor Subsidiaries”). The initial Subsidiary Guarantors do not have significant operations or assets.

None of the existing or future Restricted Subsidiaries organized under the laws of the PRC or any Exempted Subsidiaries will provide a Subsidiary Guarantee or a JV Subsidiary Guarantee on the Original Issue Date or at any time in the future. Although the Indenture contains limitations on the amount of additional Indebtedness that the Restricted Subsidiaries organized under the laws of the PRC 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, the Non-Guarantor Subsidiary will pay the holders of its debt and its trade creditors before it will be able to distribute any of its assets to the Company. See “Risk Factors — Risks Relating to the Notes — We are a holding company and payments with respect to the Notes are structurally subordinated to liabilities, contingent liabilities and obligations of our subsidiaries.”

As of December 31, 2016,

- the Company and its consolidated subsidiaries had approximately RMB87,537 million (US\$12,608 million) of consolidated indebtedness outstanding, of which approximately RMB75,493 million (US\$10,873 million) was secured;
- the Company and the Subsidiary Guarantors had approximately RMB370 million (US\$53 million) of secured indebtedness outstanding; and
- the Non-Guarantor Subsidiaries had approximately RMB87,167 million (US\$12,555 million) of consolidated indebtedness and other liabilities outstanding owed to third parties.

In addition, as of December 31, 2016, the Non-Guarantor Subsidiaries had approximately RMB27,186 million (US\$3,916 million) of capital commitments and RMB21,843 million (US\$3,146 million) of financial guarantees.

The Company will cause each of its future Subsidiaries (other than Subsidiaries organized under the laws of the PRC or Exempted Subsidiaries), as soon as practicable after such Subsidiary becomes a Restricted Subsidiary or ceases to be an Exempted 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 sentence, the Company may elect to have any future Restricted Subsidiary (and its Restricted Subsidiaries) organized outside the PRC not provide a Subsidiary Guarantee or a JV Subsidiary Guarantee at the time such entity becomes a Restricted Subsidiary or ceases to be an Exempted Subsidiary (the “New Non-Guarantor Subsidiary” and, together with the Existing Non-Guarantor Subsidiaries, the “Non-Guarantor Subsidiaries”); *provided* that, after giving effect to the Consolidated Assets of such Restricted Subsidiary, the Consolidated Assets of all Restricted Subsidiaries organized outside the PRC (other than Exempted Subsidiaries) that are not Subsidiary Guarantors or JV Subsidiary Guarantors do not account for more than 20% of Total Assets. Each Subsidiary of the Company that guarantees the Notes after the Original Issue Date other than through a JV Subsidiary Guarantee is referred to as a “Future Subsidiary Guarantor” and, upon execution of the applicable supplemental indenture to the Indenture, will be a “Subsidiary Guarantor.”

In the case of a Restricted Subsidiary that is, or is proposed by the Company or any Restricted Subsidiary to be, established after the Original Issue Date or any entity (1) that is incorporated in any jurisdiction other than the PRC and (2) in respect of which the Company or any Restricted Subsidiary (x) in the case of a Restricted Subsidiary, is proposing to sell, whether through the sale of existing shares or the issuance of new shares, no less than 20% of the Capital Stock of such Restricted Subsidiary or (y) in the case of any other entity, is proposing to purchase the Capital Stock of such entity such that it becomes a Subsidiary and designate such entity as a Restricted Subsidiary, the Company may, concurrently with or as soon as practicable after the consummation of such sale or purchase, provide a JV Subsidiary Guarantee instead of a Subsidiary Guarantee for (a) such Restricted Subsidiary and (b) the Restricted Subsidiaries of such Restricted Subsidiary that are organized in any jurisdiction other than the PRC (other than Exempted Subsidiaries), if the following conditions are satisfied:

- as of the date of execution of the JV Subsidiary Guarantee, no document exists that is binding on the Company or any such Restricted Subsidiary that would have the effect of (1) prohibiting the Company or any such Restricted Subsidiary from providing such JV Subsidiary Guarantee or (2) requiring the Company or any Restricted Subsidiary 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 made from, an Independent Third Party at a consideration that is not less than the Fair Market Value of such Capital Stock;
- concurrently with providing the JV Subsidiary Guarantee, the Company shall or shall cause such JV Subsidiary Guarantor to deliver to the Trustee and, if applicable, the Common Security Trustee (as defined below):
  - (i) (A) a duly executed JV Subsidiary Guarantee of such JV Subsidiary Guarantor (the “JV Subsidiary Guarantee”) and each Restricted Subsidiary of such JV Subsidiary Guarantor that is not organized under the laws of the PRC (other than Exempted Subsidiaries) and (B) a duly executed supplemental indenture to the Indenture pursuant to which such JV Subsidiary Guarantor 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) a duly executed Security Document that pledges in favor of the Common Security Trustee on behalf of the Trustee and the holders of the Notes the Capital Stock of such JV Subsidiary Guarantor held by the Company or any Subsidiary Guarantor, but not the Capital Stock of the direct or indirect Subsidiaries of such JV Subsidiary Guarantor;
  - (iii) an Officers’ Certificate certifying a copy of the Board Resolution to the effect that such JV Subsidiary Guarantee has been approved by a majority of the disinterested members of the Board of Directors; and
  - (iv) a legal opinion by a law firm of recognized international standing confirming that under New York law such JV Subsidiary Guarantee is valid, binding and enforceable against the JV Subsidiary Guarantor providing the JV Subsidiary Guarantee (subject to customary qualifications and assumptions).

The Subsidiary Guarantee of each Subsidiary Guarantor:

- is a general obligation of such Subsidiary Guarantor;
- is effectively subordinated to secured obligations of such Subsidiary Guarantor, to the extent of the value of the assets serving as security therefor;
- 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* with all other unsecured, unsubordinated Indebtedness of such Subsidiary Guarantor (subject to any priority rights of such unsubordinated Indebtedness pursuant to applicable law); and
- effectively subordinated to all existing and future obligations of the Non-Guarantor Subsidiaries.

The JV Subsidiary Guarantee of any JV Subsidiary Guarantor:

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

In addition, subject to the limitations described in “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral,” the Subsidiary Guarantee of each Subsidiary Guarantor Pledgor:

- will be entitled to a security interest in the Collateral (subject to any Permitted Liens and the Intercreditor Agreement) pledged by such Subsidiary Guarantor Pledgor, as described below under the caption “— Security”; and
- will rank effectively senior in right of payment to the unsecured obligations of such Subsidiary Guarantor Pledgor with respect to the value of the Collateral securing such Subsidiary Guarantee (subject to any priority rights of such unsecured obligations pursuant to applicable law).

The JV Subsidiary Guarantee of any JV Subsidiary Guarantor will not be secured.

Under the Indenture, and any supplemental indenture to the Indenture, as applicable, each of the Subsidiary Guarantors and JV Subsidiary Guarantors 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 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 Company prior to exercising its rights under the Subsidiary Guarantees and the 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 restored, the rights of the Holders under the Subsidiary Guarantees and the 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 the JV Subsidiary Guarantees, as the case may be, are required to be made in U.S. dollars.

Under the Indenture and any supplemental indenture to the Indenture, as applicable, each Subsidiary Guarantee 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 fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. Each JV Subsidiary Guarantee will be limited to an amount which is the lower of (i) the 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 fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. If a Subsidiary Guarantee or JV Subsidiary Guarantee were to be rendered 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 Guarantee and, depending on the amount of such indebtedness, a Subsidiary Guarantor’s liability on its Subsidiary Guarantee or a JV Subsidiary Guarantor’s liability on its JV Subsidiary Guarantee could be reduced to zero.



The obligations of each Subsidiary Guarantor under its Subsidiary Guarantee and the enforceability of the Collateral granted in respect of the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors 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. See “Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral — The Subsidiary Guarantees or JV Subsidiary Guarantees may be challenged under applicable insolvency or fraudulent transfer laws, which could impair the enforceability of the Subsidiary Guarantees or JV Subsidiary Guarantees.”

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

A Subsidiary Guarantee given by a Subsidiary Guarantor and a JV Subsidiary Guarantee given by a JV Subsidiary Guarantor 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 Company of a Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be, as an Unrestricted Subsidiary in compliance with the terms of the Indenture;
- upon the sale, disposition or merger 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 described 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 JV Subsidiary Guarantor, as the case may be, no longer being a Restricted Subsidiary, so long as (1) such Subsidiary Guarantor or JV Subsidiary Guarantor, as the case may be, is simultaneously released from its obligations in respect of any of the Company’s other Indebtedness or any Indebtedness of any other Restricted Subsidiary and (2) the proceeds from such sale, disposition or merger 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
- in the case of a Subsidiary Guarantor that becomes a New Non-Guarantor Subsidiary, in compliance with the terms of the Indenture.

In the case of a Subsidiary Guarantor with respect to which the Company or any Restricted Subsidiary is proposing to sell, whether through the sale of existing shares or the issuance of new shares, no less than 20% of the Capital Stock of such Subsidiary Guarantor, the Company may concurrently with or as soon as practicable after the consummation of such sale or issuance of Capital Stock, (a) instruct the Trustee to release the Subsidiary Guarantees provided by such Subsidiary Guarantor and each of its Restricted Subsidiaries organized outside the PRC, and upon such release such Subsidiary Guarantor and its Restricted Subsidiaries organized outside the PRC will become “New Non-Guarantor Subsidiaries” (such that each New Non-Guarantor Subsidiary will no longer guarantee the Notes) and (b) instruct the Common Security Trustee to (i) discharge the pledge of the Capital Stock granted by each such New Non-Guarantor Subsidiary and (ii) discharge the pledge of Capital Stock made by the Company or any Subsidiary Guarantor over the shares it owns in such New Non-Guarantor Subsidiary (in each case, without any requirement to seek the consent or approval of the Holders of the Notes), *provided* that after the release of such Subsidiary Guarantees, the Consolidated Assets of all Restricted Subsidiaries organized outside the PRC (other than Exempted Subsidiaries) that are not Subsidiary Guarantors or JV Subsidiary Guarantors (including the New Non-Guarantor Subsidiaries) do not account for more than 20% of Total Assets. A Subsidiary Guarantee of a Subsidiary Guarantor may only be released pursuant to this paragraph if as of the date of such proposed release, no document exists that is binding on the Company or any Restricted Subsidiary that would have the effect of (a) prohibiting the Company or any Restricted Subsidiary from releasing such Subsidiary Guarantee or (b) requiring the Company or such Subsidiary Guarantor to deliver or keep in place a guarantee of other Indebtedness of the Company by such Subsidiary Guarantor.



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

A Subsidiary Guarantee given by a Subsidiary Guarantor may be released following the sale or issuance by the Company or any Restricted Subsidiary of Capital Stock in (x) such Subsidiary Guarantor or (y) any other Subsidiary Guarantor that, directly or indirectly, owns a majority of the Capital Stock of such Subsidiary Guarantor, in each case where such sale or issuance, whether through the sale of existing shares or the issuance of new shares, is for no less than 20% of the issued Capital Stock of the relevant Subsidiary Guarantor, *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 Company or any such Restricted Subsidiary that would have the effect of (1) prohibiting the Company or any such Restricted Subsidiary from releasing such Subsidiary Guarantee or (2) requiring the Company or any such Restricted Subsidiary 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;
- such sale or issuance of Capital Stock is made to an Independent Third Party at a consideration that is not less than the Fair Market Value of such Capital Stock;
- concurrently with the release of such Subsidiary Guarantee, the Company shall or shall cause such JV Subsidiary Guarantor to deliver to the Trustee and, if applicable, the Common Security Trustee:
  - (i) (A) a duly executed JV Subsidiary Guarantee of such JV Subsidiary Guarantor and each Restricted Subsidiary of such JV Subsidiary Guarantor that is not organized under the laws of the PRC and (B) a duly executed supplemental indenture to the Indenture pursuant to which such JV Subsidiary Guarantor 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) a duly executed Security Document that pledges in favor of the Trustee the Capital Stock of such JV Subsidiary Guarantor held by the Company or any Subsidiary Guarantor, but not the Capital Stock of the direct or indirect Subsidiaries of such JV Subsidiary Guarantor;
  - (iii) an Officers' Certificate certifying a copy of a Board Resolution to the effect that such JV Subsidiary Guarantees have been approved by a majority of the disinterested members of the Board of Directors; and
  - (iv) a legal opinion by a law firm of recognized international standing confirming that under New York law such JV Subsidiary Guarantee is valid, binding and enforceable against the JV Subsidiary Guarantor providing such JV Subsidiary Guarantee (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 the "Limitation on Asset Sales" and "Limitation on Restricted Payments" covenants.

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

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 Company has delivered to the Trustee an Officers' Certificate stating that all requirements relating to such release have been complied with and that such release is authorized and permitted by the terms of the Indenture.

## Security

Each of the Company and the initial Subsidiary Guarantor Pledgors has pledged the Capital Stock of the initial Subsidiary Guarantors (the “Collateral”) owned by it (subject to Permitted Liens and the Intercreditor Agreement) in order to secure the obligations of the Company and such Subsidiary Guarantor Pledgor under the Existing HY Notes and the Mandatorily Exchangeable Bonds (or the Exchange Convertible Bonds, as the case may be). On the Original Issue Date, each of the Trustee and the trustees with respect to any other senior notes that the Company may issue on the Original Issue Date (collectively with the Trustee, the “New Senior Notes Trustees”) will execute a supplement to and become a party to the Intercreditor Agreement, at which time each New Senior Notes Trustee will become a Secured Party (as defined below) under the Intercreditor Agreement, and the Holders and the holders of such other senior notes issued on the Original Issue Date will be entitled to share in the benefit of the pledge of such Capital Stock on a *pari passu* basis with the holders of the Existing HY Notes, the holders of the Mandatorily Exchangeable Bonds (or the Exchange Convertible Bonds, as the case may be) and the holders of any other Permitted *Pari Passu* Secured Indebtedness. See “— Intercreditor Agreement.”

The initial Subsidiary Guarantor Pledgors are Chang Ye Investment Company Limited (昌業投資有限公司), Da Hua Investment Company Limited (大華投資有限公司), Dong Chang Investment Company Limited (東昌投資有限公司), Dong Sheng Investment Company Limited (東升投資有限公司), Guang Feng Investment Company Limited (廣豐投資有限公司), Heng Chang Investment Company Limited (恒昌投資有限公司), Jie Feng Investment Company Limited (捷豐投資有限公司), Jin Chang Investment Company Limited (進昌投資有限公司), Rong Hui Investment Company Limited (榮輝投資有限公司), Rui Jing Investment Company Limited (瑞景投資有限公司), Tai An Da Investment Company Limited (泰安達投資有限公司), Tai Chang Jian Investment Company Limited (泰昌建投資有限公司), Tai Chong Fa Investment Company Limited (泰昌發投資有限公司), Tai Chong Li Investment Company Limited (泰昌利投資有限公司), Tai He Sheng Investment Company Limited (泰和盛投資有限公司), Tai He Xiang Investment Company Limited (泰和詳投資有限公司), Xie Mao Investment Company Limited (協茂投資有限公司), Ye Chang Investment Company Limited (葉昌投資有限公司), Zheng Zhong Tian Investment Company Limited (正中天投資有限公司), Bakai Investments Limited (八凱投資有限公司), Yifa Trading Limited (益發貿易有限公司), Kaisa Holdings Limited, Central Broad Limited (中博有限公司), Guo Cheng Investments Limited (國承投資有限公司), Ri Xiang Investments Limited (日翔投資有限公司), Yin Jia Investments Limited (銀佳投資有限公司), Jet Smart Global Development Limited (捷利環球發展有限公司), Apex Walk Limited (威行有限公司), Vast Wave Limited (廣濤有限公司), Fulbright Financial Group (Enterprise) Limited (富昌金融集團(企業)有限公司) and Fulbright Financial Group (Development) Limited (富昌金融集團(發展)有限公司).

None of the Capital Stock of the Non-Guarantor Subsidiaries will be pledged on the Original Issue Date or at any time in the future (unless they cease to be Non-Guarantor Subsidiaries). In addition, none of the Capital Stock of any future Restricted Subsidiary that may be organized under the laws of the PRC will be pledged at any time in the future. If any JV Subsidiary Guarantor is established, the Capital Stock of such JV Subsidiary Guarantor owned by the Company or any Subsidiary Guarantor will be pledged to secure the obligations of the Company under the Notes and the Indenture, and of such Subsidiary Guarantor under its Subsidiary Guarantee, as the case may be, in the manner described above. However, none of the JV Subsidiary Guarantors will provide a Security Document pledging the Capital Stock of its direct or indirect Restricted Subsidiaries as security in favor of the Common Security Trustee.

The Company has also agreed, for the benefit of the holders of the Notes, to pledge, or cause each Subsidiary Guarantor to pledge, the Capital Stock owned directly by the Company or such Subsidiary Guarantor of any Person that becomes a Subsidiary Guarantor or JV Subsidiary Guarantor after the Original Issue Date, as soon as practicable after such Person becomes a Subsidiary Guarantor or JV Subsidiary Guarantor, to secure (subject to Permitted Liens) the obligations of the Company under the Notes and the Indenture, and of such Subsidiary Guarantor under its Subsidiary Guarantee, in the manner described above.

Each Subsidiary Guarantor that pledges Capital Stock of a Restricted Subsidiary after the Original Issue Date is referred to as a “Future Subsidiary Guarantor Pledgor” and, upon giving such pledge, will be a “Subsidiary Guarantor Pledgor.”

The value of the Collateral securing the Notes and the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors is unlikely to be sufficient to satisfy the Company's and the Subsidiary Guarantor Pledgors' obligations under the Notes and the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors, and the Collateral securing the Notes and such Subsidiary Guarantees may be reduced or diluted under certain circumstances, including the issuance of Additional Notes and other Permitted *Pari Passu* Secured Indebtedness and the disposition of assets comprising the Collateral, subject to the terms of the Indenture and the Intercreditor Agreement. See "Security — Release of Security" and "Risk Factors — Risks Relating to the Subsidiary Guarantees, the JV Subsidiary Guarantees and the Collateral — The value of the Collateral is unlikely to be sufficient to satisfy our obligations under the Notes and other *pari passu* secured indebtedness."

No appraisals of the Collateral have been prepared in connection with this offering of the Notes. There can be no assurance that the proceeds of any sale of the Collateral, in whole or in part, pursuant to the Indenture, the Intercreditor Agreement and the Security Documents following an Event of Default, would be sufficient to satisfy amounts due on the Notes or the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors. By its nature, some or all of the Collateral will be illiquid and may have no readily ascertainable market value. Accordingly, there can be no assurance that the Collateral would be sold in a timely manner or at all.

So long as no Payment Default has occurred and is continuing, and subject to the terms of the Security Documents and the Indenture, the Company and the Subsidiary Guarantor Pledgors, as the case may be, will be entitled to exercise any and all voting rights and to receive, retain and use any and all cash dividends, stock dividends, liquidating dividends, non-cash dividends, shares or stock resulting from stock splits or reclassifications, rights issues, warrants, options and other distributions (whether similar or dissimilar to the foregoing) in respect of Capital Stock constituting Collateral.

#### ***Permitted *Pari Passu* Secured Indebtedness***

On or after the Original Issue Date, the Company and each Subsidiary Guarantor Pledgor may create Liens on the Collateral *pari passu* with the Lien for the benefit of the Holders to secure Indebtedness of the Company (including Additional Notes) or any Subsidiary Guarantor and any *Pari Passu* Guarantee with respect to such Indebtedness (such Indebtedness of the Company or any Subsidiary Guarantor and any such *Pari Passu* Guarantee, "Permitted *Pari Passu* Secured Indebtedness"); *provided* that (i) the Company or such Subsidiary Guarantor was permitted to Incur such Indebtedness under the covenant under the caption "Limitation on Indebtedness and Preferred Stock," (ii) the holders (or their representative) of such Indebtedness (other than Additional Notes) become party to the Intercreditor Agreement referred to below, (iii) the agreement in respect of such Indebtedness contains provisions with respect to releases of Collateral and such *Pari Passu* Guarantee substantially similar to and no more restrictive on the Company and such Subsidiary Guarantor than the provisions of the Indenture and the Security Documents, and (iv) the Company and such Subsidiary Guarantor Pledgor deliver to the Trustee and/or the Common Security Trustee (defined below) an Opinion of Counsel and an Officers' Certificate, each with respect to corporate and collateral matters in connection with the Security Documents, stating that either (x) all necessary actions have been taken with respect to the recording, registering and filing of the Security Documents or (y) no such action is necessary to make such Lien effective. The Trustee and/or the Common Security Trustee, as the case may be, will be permitted and authorized, without the consent of any Holder, to enter into any amendments to the Security Documents or the Indenture and take any other action necessary to permit the creation and registration of Liens on the Collateral to secure Permitted *Pari Passu* Secured Indebtedness in accordance with this paragraph (including, without limitation, the appointment of any collateral agent under the Intercreditor Agreement referred to below to hold the Collateral on behalf of the Holders and the holders of Permitted *Pari Passu* Secured Indebtedness).

Except for certain Permitted Liens and the Permitted *Pari Passu* Secured Indebtedness, the Company and its Restricted Subsidiaries will not be permitted to issue or Incur any other Indebtedness secured by all or any portion of the Collateral without the consent of each Holder of the Notes then outstanding.

### ***Intercreditor Agreement***

The Company, the Subsidiary Guarantor Pledgors, Wilmington Trust, National Association, as the trustee (the “Existing HY Notes Trustee”) with respect to the Existing HY Notes, U.S. Bank National Association, the trustee with respect to the Mandatorily Exchangeable Bonds (the “MEB Trustee”), and Citicorp International Limited, as the shared security agent (the “Common Security Trustee”), have entered into an amended and restated intercreditor agreement dated July 21, 2016 (such intercreditor agreement, as so supplemented and amended from time to time, the “Intercreditor Agreement”), to which the Trustee will accede on the Original Issue Date. Upon the issuance of the Exchange Convertible Bonds pursuant to the terms of the Mandatorily Exchangeable Bonds, the trustee with respect to the Exchange Convertible Bonds (the “CB Trustee”) will accede to the Intercreditor Agreement. Pursuant to the Intercreditor Agreement, the Existing HY Notes Trustee, the MEB Trustee (or the CB Trustee, as the case may be) and the Trustee agree to (1) share the Collateral on an equal and ratable basis, (2) the conditions that are applicable to the release of or granting of any Lien on such Collateral, and (3) the conditions under which their rights with respect to such Collateral and the Indebtedness secured thereby will be enforced.

In connection with any future Permitted Pari Passu Secured Indebtedness (other than Additional Notes), the holders of such Permitted Pari Passu Secured Indebtedness (or their representative) will accede to the Intercreditor Agreement and become parties to it. The Common Security Trustee, the Trustee, the Existing HY Notes Trustee, the MEB Trustee (or the CB Trustee, as the case may be) and the holders of future Permitted Pari Passu Secured Indebtedness (or their representative) are collectively referred to as the “Secured Parties.”

By accepting the Notes, each Holder shall be deemed to have consented to the execution of the Intercreditor Agreement, any supplements, amendments or modifications thereto, and any future intercreditor agreement required and permitted under the Indenture.

### ***Enforcement of Security***

The lien securing the Notes and the Subsidiary Guarantees of the Subsidiary Guarantor Pledgors will be granted to the Common Security Trustee. The Common Security Trustee, subject to the Intercreditor Agreement, will hold such Liens and security interests in the Collateral granted pursuant to the Security Documents with sole authority as directed by the Trustee (acting in accordance with written instruction of the Holders) and subject to receiving indemnity and/or security to its satisfaction to exercise remedies under the Security Documents. The Common Security Trustee has agreed to act as secured party on behalf of the Holders and the Trustee under the applicable Security Documents, to follow the instructions provided to it under the Indenture, the Security Documents and the Intercreditor Agreement and to carry out certain other duties.

The Indenture and/or the Security Documents principally provide that, at any time while the Notes are outstanding, the Common Security Trustee has the right to manage, perform and enforce the terms of the Security Documents relating to the Collateral and to exercise and enforce all privileges, rights and remedies thereunder according to its direction, including to take or retake control or possession of such Collateral and to hold, prepare for sale, process, lease, dispose of or liquidate such Collateral, including, without limitation, following the occurrence of an Event of Default under the Indenture.

The Intercreditor Agreement will provide, among other things, that any Secured Party may instruct the Common Security Trustee to enforce the Collateral and to deliver a notice of enforcement to the Company and the applicable Subsidiary Guarantor Pledgor (such instructions, the “Enforcement Instructions”). Upon receipt of an Enforcement Instruction from any Secured Party, the Common Security Trustee will provide a copy of such Enforcement Instruction and notice of enforcement to the Company and the other Secured Parties. If (a) the Common Security Trustee identifies a conflict (i) between Secured Parties’ interests in connection with any Enforcement Instruction or (ii) in the event that each of the Secured Parties issues Enforcement Instructions, between those Enforcement Instructions, and (b) the Common Security Trustee believes in its sole discretion that the interests of the Secured Parties would be in conflict upon the exercise of those Enforcement Instructions, or that compliance with an Enforcement Instruction would cause the Common Security Trustee to contravene another Enforcement Instruction, the Common Security Trustee shall notify each Secured Party in writing not more than five Business Days after it becomes aware of such conflict. In such circumstances, the Common Security Trustee is not obligated to take any action if it identifies such conflict.

The Intercreditor Agreement provides that any proceeds from any sale, collection, liquidation or enforcement of the Collateral shall be distributed by the Common Security Trustee in accordance with the terms of the Intercreditor Agreement and subject to the conditions of the relevant Security Document. Such proceeds shall be applied as follows:

*first*, to the Common Security Trustee for any unpaid fees, costs and expenses (including any indemnity expenses) reasonably incurred thereunder;

*second*, pro rata to each of the Trustee, the Existing HY Notes Trustee, the MEB Trustee (or the CB Trustee, as the case may be) and any agent, trustee or representative as a secured party for any series of Permitted Pari Passu Secured Indebtedness for any unpaid fees, costs and expenses (including any indemnity expenses) reasonably incurred under the applicable secured party document;

*third*, pro rata to each of the Trustee for the benefit of the Holders, the Existing HY Notes Trustee for the benefit of holders of the Existing HY Notes, the MEB Trustee (or the CB Trustee, as the case may be) for the benefit of holders of the Mandatorily Exchangeable Bonds (or the Exchange Convertible Bonds, as the case may be) and, to the extent applicable, to holders of Permitted Pari Passu Secured Indebtedness (or their representative for the benefit of such holders) in accordance with the terms of the applicable secured party document; and

*fourth*, any surplus remaining after such payments will be paid to the Company, the Subsidiary Guarantor Pledgors or to whomever may be lawfully entitled thereto.

The Trustee and/or the Common Security Trustee may decline to foreclose on the Collateral or exercise remedies available if it does not receive indemnification and/or security to its satisfaction. In addition, the Common Security Trustee's ability to foreclose on the Collateral may be subject to lack of perfection, the consent of third parties, prior Liens and practical problems associated with the realization of the Trustee's Liens on the Collateral. Neither the Trustee, the Common Security Trustee nor any of their respective officers, directors, employees, attorneys or agents will be responsible or liable for the existence, genuineness, value or protection of any Collateral securing the Notes, for the legality, enforceability, effectiveness or sufficiency of the Security Documents or the Intercreditor Agreement, for the creation, perfection, priority, sufficiency or protection of any of the Liens, or for any defect or deficiency as to any such matters, or for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens or Security Documents or any delay in doing so.

The Security Documents provide that the Company and the Subsidiary Guarantor Pledgors will indemnify the Common Security Trustee for all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind imposed against the Common Security Trustee arising out of the Security Documents except to the extent that any of the foregoing are finally judicially determined to have resulted from the gross negligence or willful misconduct of the Common Security Trustee.

This section, "— Enforcement of Security," shall be subject to any amendments to the Security Documents or the Indenture to permit the creation of Liens on the Collateral to secure Permitted Pari Passu Secured Indebtedness in accordance with "— Permitted *Pari Passu* Secured Indebtedness" above.

### ***Release of Security***

Subject to the provisions of the Indenture, the Security Documents and Intercreditor Agreement, the security created in respect of the Collateral granted under the Security Documents may be released in relation to the Notes and the Subsidiary Guarantees in certain circumstances, including:

- upon repayment in full of the Notes;
- upon defeasance and discharge of the Notes as provided below under the caption "— Defeasance — Defeasance and Discharge";
- upon certain dispositions of the Collateral in compliance with the covenants under the captions "— Certain Covenants — Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries" or "— Certain Covenants — Limitation on Asset Sales" or in accordance with the provision under the caption "— Consolidation, Merger and Sale of Assets";



- with respect to security granted by a Subsidiary Guarantor Pledgor, upon the release of the Subsidiary Guarantee of such Subsidiary Guarantor Pledgor in accordance with the terms of the Indenture;
- in whole or in part, with the requisite consent of the Holders in accordance with the provisions described under “— Amendments and Waivers”;
- with respect to a Subsidiary Guarantor that becomes a New Non-Guarantor Subsidiary, the release of the pledge of Capital Stock made by the Company or any Subsidiary Guarantor over the shares it owns in such New Non-Guarantor Subsidiary;
- in connection with and upon execution of a JV Subsidiary Guarantee to replace a Subsidiary Guarantee with respect to all pledges of Capital Stock granted by such JV Subsidiary Guarantor or its Subsidiaries in its direct and indirect Subsidiaries, in accordance with the terms of the Indenture; and
- with respect to any pledge over any Capital Stock of any Subsidiary Guarantor or JV Subsidiary Guarantor, upon the designation by the Company of such Subsidiary Guarantor or JV Subsidiary Guarantor as an Unrestricted Subsidiary in accordance with the terms of the Indenture.

### Further Issues

Subject to the covenants described below, the Company may, from time to time, without notice to or the consent of the Holders, create and issue Additional Notes having the same terms and conditions as the Notes (including the benefit of the Subsidiary Guarantees and JV Subsidiary Guarantees) 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) (a “Further Issue”) so that such Additional Notes may be consolidated and form a single class with the previously outstanding Notes and vote together as one class on all matters with respect to the Notes; *provided* that the issuance of any such Additional Notes shall then be permitted under the “— Certain Covenants — Limitation on Indebtedness and Preferred Stock” covenant described below.

### Optional Redemption

At any time on or after June 30, 2021, the Company may redeem the Notes, in whole or in part, at a redemption price equal to the percentage of principal amount set forth below, plus accrued and unpaid interest, if any, to the redemption date, if redeemed during the 12-month period commencing on June 30 of any year set forth below:

Period	Redemption Price
2021 . . . . .	104.688%
2022 . . . . .	102.344%
2023 . . . . .	101.172%

At any time prior to June 30, 2021, the Company may at its option redeem the Notes, in whole but not in part, at a redemption price equal to 100% of the principal amount of the Notes plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, the redemption date. Neither the Trustee nor any of the Agents shall be responsible for verifying or calculating the Applicable Premium.

In addition, at any time prior to June 30, 2021, the Company may redeem up to 35% of the aggregate principal amount of the Notes with the Net Cash Proceeds of one or more sales of Common Stock of the Company in an Equity Offering at a redemption price of 109.375% of the principal amount of the Notes, plus accrued and unpaid interest, if any, to the redemption date; *provided* that at least 65% of the aggregate principal amount of the Notes 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.

The Company will give not less than 30 days' nor more than 60 days' notice of any redemption. If less than all of the Notes are to be redeemed, the Notes will be selected for redemption as follows:

- if the Notes are listed on any securities exchange and/or being held through the clearing systems, in compliance with the requirements of the principal securities exchange on which the Notes are then listed, or the requirements of the clearing systems, as applicable; or
- if the Notes are not listed on any securities exchange and/or held through the clearing systems, on a pro rata basis or by lot or such other method as the Trustee may determine in its sole and absolute discretion, unless otherwise required by law.

However, no Note of US\$200,000 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. With respect to any Certificated Note, 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 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 Company 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.

The Company 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 Company, it is important to note that if the Company is unable to repay (or cause to be repaid) all of the Indebtedness, if any, that would prohibit 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 failure by the Company 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 will also constitute an event of default under certain other debt instruments of the Company and its Subsidiaries. Future debt of the Company may also (i) prohibit the Company from purchasing Notes in the event of a Change of Control, (ii) provide that a Change of Control is a default or (iii) require repurchase of such debt upon a Change of Control. Moreover, the exercise by the Holders of their right to require the Company 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 Company. The ability of the Company to pay cash to the Holders following the occurrence of a Change of Control may be limited by the Company's 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 — We may not be able to repurchase or repay the Notes upon certain change of control events."

The definition of Change of Control includes a phrase "all or substantially all" as used with respect to the assets of the Company. No precise definition of the phrase has been established under applicable law, and the phrase will likely be interpreted under applicable law of the relevant jurisdictions based on particular facts and circumstances. Accordingly, there may be a degree of uncertainty as to the ability of a Holder of Notes to require the Company to repurchase such Holder's Notes as a result of a sale of less than all the assets of the Company to another person or group.

Notwithstanding the above, the Company 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, at the same times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

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

Neither the Trustee nor the Agents shall be required to monitor or to take any steps to ascertain whether a Change of Control, or any event which could lead to the occurrence of a Change of Control, has occurred or may occur.

#### **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 Subsidiary Guarantees or the JV Subsidiary Guarantees 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 Company, a Surviving Person (as defined under the caption “— Consolidation, Merger and Sale of Assets”) or an applicable Subsidiary Guarantor or an applicable JV Subsidiary Guarantor is organized or resident for tax purposes or any jurisdiction from or through which payment is made (or any political subdivision or taxing authority thereof or therein) (each, as applicable, a “Relevant Jurisdiction”), unless such withholding or deduction is required by law or by regulation or governmental policy having the force of law. In the event that any such withholding or deduction is so required, the Company, a Surviving Person, the applicable Subsidiary Guarantor or the applicable JV Subsidiary Guarantor, as the case may be, 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:

- (a) for or on account of:
  - (i) any tax, duty, assessment or other governmental charge that would not have been imposed but for:
    - (A) the existence of any present or former connection between the Holder or beneficial owner of such Note, Subsidiary Guarantee or Security Document, as the case may be, and the Relevant Jurisdiction other than merely holding such Note or the receipt of payments thereunder or under a Subsidiary Guarantee or JV Subsidiary Guarantee, as the case may be, 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;
    - (B) 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;
    - (C) the failure of the Holder or beneficial owner to comply with a timely request of the Company, a Surviving Person or any Subsidiary Guarantor or JV Subsidiary Guarantor addressed to the Holder 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 would have reduced or eliminated any withholding or deduction as to which Additional Amounts would have otherwise been payable to such Holder or beneficial owner; or
    - (D) 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;
  - (ii) any estate, inheritance, gift, sale, transfer, personal property or similar tax, assessment or other governmental charge;

- (iii) any tax, assessment, withholding or deduction required by sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended (“FATCA”), any current or future Treasury Regulations or rulings promulgated thereunder, any law, regulation or other official guidance enacted in any jurisdiction implementing FATCA, any intergovernmental agreement between the United States and any other jurisdiction pursuant to the implementation of FATCA, or any other agreement pursuant to the implementation of FATCA; or
  - (iv) any combination of taxes, duties, assessments or other governmental charges referred to in the preceding clauses (i), (ii) and (iii); or
- (b) 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 for tax purposes in the income under the laws of a Relevant Jurisdiction 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.

As a result of these provisions, there are circumstances in which taxes could be withheld or deducted but Additional Amounts would not be payable to some or all beneficial owners of Notes.

Whenever there is mentioned in any context the payment of principal, premium or interest in respect of any Note, 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.

#### **Redemption for Tax Reasons**

The Notes may be redeemed, at the option of the Company or a Surviving Person (as defined under the caption “— Consolidation, Merger and Sale of Assets”), as a whole but not in part, upon giving not less than 30 days’ nor more than 60 days’ notice to the Holders (which notice shall be irrevocable), at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest (including any Additional Amounts), if any, to the date fixed by the Company 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 on or after (i) with respect to the Company or any initial Subsidiary Guarantor, the Original Issue Date or (ii) with respect to any Future Subsidiary Guarantor, JV Subsidiary Guarantor or Surviving Person, the date such Future Subsidiary Guarantor, JV Subsidiary Guarantor or Surviving Person becomes a Subsidiary Guarantor, JV Subsidiary Guarantor or Surviving Person, as the case may be, with respect to any payment due or to become due under the Notes or the Indenture, the Company, such Subsidiary Guarantor, JV Subsidiary Guarantor or such Surviving Person, 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 Company, such Subsidiary Guarantor, JV Subsidiary Guarantor or such Surviving Person, 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 Company, such Subsidiary Guarantor, such JV Subsidiary Guarantor or such Surviving Person, 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 giving of any notice of redemption of the Notes pursuant to the foregoing, the Company, a Subsidiary Guarantor, a JV Subsidiary Guarantor or a Surviving Person, as the case may be, will deliver to the Trustee at least 30 days but not more than 60 days before the Tax Redemption Date:

- (1) an Officers' Certificate stating that such change or amendment referred to in the prior paragraph has occurred, describing the facts related thereto and stating that such requirement cannot be avoided by the Company, such Surviving Person, such Subsidiary Guarantor or such JV Subsidiary Guarantor, as the case may be, by 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 or amendment referred to in the prior paragraph.

The Trustee shall be entitled to and shall accept such certificate and opinion as sufficient evidence of the satisfaction of the conditions precedent described above, in which event it shall be conclusive and binding on the Holders.

Any Notes that are redeemed will be cancelled.

### **Certain Covenants**

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

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

- (a) The Company will not, and will not permit any Restricted Subsidiary to, Incur any Indebtedness (including Acquired Indebtedness) and the Company will not permit any Restricted Subsidiary to issue any Preferred Stock; *provided* that the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor may Incur Indebtedness (including Acquired Indebtedness) and any Non-Guarantor 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 2.25 to 1.0. Notwithstanding the foregoing, the Company will not permit any Restricted Subsidiary to Incur any Disqualified Stock (other than Disqualified Stock held by the Company or a Subsidiary Guarantor, so long as it is so held).
- (b) Notwithstanding the foregoing, the Company and, to the extent provided below, any Restricted Subsidiary, may Incur each and all of the following ("Permitted Indebtedness"):
  - (1) Indebtedness under the Notes (excluding any Additional Notes), each Subsidiary Guarantee and each JV Subsidiary Guarantee and any Exchange Convertible Bonds issued pursuant to the terms of the Mandatorily Exchangeable Bonds;
  - (2) any Pari Passu Guarantees;
  - (3) Indebtedness of the Company or any Restricted Subsidiary outstanding on the Original Issue Date excluding Indebtedness permitted under clause (b)(4) of this covenant; *provided* that such Indebtedness of Non-Guarantor Subsidiaries shall be included in the calculation of Permitted Subsidiary Indebtedness;
  - (4) Indebtedness of the Company or any Restricted Subsidiary owed to the Company or any Restricted Subsidiary; *provided* that (x) any event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of such Indebtedness (other than to the Company or any Restricted Subsidiary) shall be deemed, in each case, to constitute an Incurrence of such Indebtedness not permitted by this clause (b)(4), and (y) if the Company is the obligor on such Indebtedness, such Indebtedness must be expressly subordinated in right of payment to the Notes, and if a Subsidiary Guarantor or a JV Subsidiary Guarantor is the obligor on such Indebtedness and the Company or any other Subsidiary Guarantor or JV Subsidiary Guarantor is not the obligee, such Indebtedness must be expressly subordinated in right of payment to the Subsidiary Guarantee of such Subsidiary Guarantor or the JV Subsidiary Guarantee of such JV Subsidiary Guarantor, as the case may be;



- (5) Indebtedness (“Permitted Refinancing Indebtedness”) issued in exchange for, or the net proceeds of which are used to refinance or refund, then outstanding Indebtedness Incurred under clause (a) or clause (b)(1), (b)(2), (b)(3), (b)(7), (b)(16), (b)(17), (b)(19), (b)(20), (b)(21), (b)(22), (b)(23), (b)(24) or (b)(25) of this covenant and any refinancings thereof in an amount not to exceed the amount so refinanced or refunded (plus premiums, accrued interest, fees and expenses); *provided* that (A) Indebtedness the proceeds of which are used to refinance or refund the Notes or Indebtedness that is *pari passu* with, or subordinated in right of payment to, the Notes, a Subsidiary Guarantee or a JV Subsidiary Guarantee shall only be permitted under this clause (b)(5) if (x) in case the Notes are refinanced in part or the Indebtedness to be refinanced is *pari passu* with the Notes, a Subsidiary Guarantee or a JV Subsidiary Guarantee, 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 subordinate in right of payment to, the remaining Notes, such Subsidiary Guarantee or such JV Subsidiary Guarantee or (y) in case the Indebtedness to be refinanced is subordinated in right of payment to the Notes, a Subsidiary Guarantee or a JV Subsidiary Guarantee, 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 subordinate in right of payment to the Notes, such Subsidiary Guarantee or such JV Subsidiary Guarantee at least to the extent that the Indebtedness to be refinanced is subordinated to the Notes, such Subsidiary Guarantee or such JV Subsidiary Guarantee, (B) 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 or refunded, and the Average Life of such new Indebtedness is at least equal to the remaining Average Life of the Indebtedness to be refinanced or refunded and (C) in no event may Indebtedness of the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor be refinanced pursuant to this clause (b)(5) by means of any Indebtedness of any Restricted Subsidiary that is not a Subsidiary Guarantor or a JV Subsidiary Guarantor;
- (6) Indebtedness Incurred by the Company or any Restricted Subsidiary pursuant to Hedging Obligations entered into in the ordinary course of business and designed solely to protect the Company or any Restricted Subsidiary from fluctuations in interest rates, currencies or the price of commodities and not for speculation;
- (7) Indebtedness Incurred by the Company or any Restricted Subsidiary for the purpose of financing (i) all or any part of the purchase price of real or personal property (including the lease purchase price of land use rights) or equipment to be used in the ordinary course of business by the Company or a Restricted Subsidiary in the Permitted Business, including any such purchase through the acquisition of Capital Stock of any Person that owns such real or personal property or equipment which will, upon such acquisition, become a Restricted Subsidiary (other than as provided for in the second proviso of this clause (b)(7)) or (ii) all or any part of the purchase price or the cost of development, construction or improvement of real or personal property (including the lease purchase price of land use rights) or equipment to be used in the ordinary course of business by the Company or such Restricted Subsidiary in the Permitted Business; *provided, however*, that in each case (A) the aggregate principal amount of such Indebtedness shall not exceed such purchase price or cost, (B) such Indebtedness shall be Incurred no later than 180 days after the acquisition of such property or completion of such development, construction or improvement, and (C) on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness permitted by this clause (b)(7) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(16), (b)(19), (b)(20), (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under this clause (b)(7) to the extent the amount of such Contractor Guarantee is otherwise reflected in such

aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets; *provided further* that, without prejudice to the first proviso in this clause (b)(7), the Company and any Restricted Subsidiary may Incur Indebtedness for the purpose of financing all or any part of the purchase price of real or personal property (including the lease purchase price of land use rights) or equipment to be used in the ordinary course of business by the Company or a Restricted Subsidiary in the Permitted Business through the acquisition of Capital Stock of any Person which will not, upon such acquisition, become a Restricted Subsidiary if on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all Indebtedness Incurred in reliance on this second proviso of this clause (b)(7) (together with refinancings of all such Indebtedness) does not exceed an amount equal to 10.0% of Total Assets;

- (8) Indebtedness Incurred by the Company 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 other than for an obligation for borrowed money);
- (9) Indebtedness Incurred by the Company 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 the 30 days following receipt by the Company or such Restricted Subsidiary, as applicable, of a demand for reimbursement;
- (10) 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 Company 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 shall at no time exceed the gross proceeds actually received by the Company or any Restricted Subsidiary from the disposition of such business, assets or Restricted Subsidiary;
- (11) 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, however*, that such Indebtedness is extinguished within five Business Days of Incurrence;
- (12) (i) guarantees by the Company or any Subsidiary Guarantor of Indebtedness of the Company or any Restricted Subsidiary that was permitted to be Incurred by another provision of this covenant, (ii) guarantees by any Restricted Subsidiary of Indebtedness of another Restricted Subsidiary that was permitted to be Incurred under clause (b)(7) above or clauses (b)(14) and (b)(16) below; or (iii) guarantees by any JV Subsidiary Guarantor of Indebtedness of any other JV Subsidiary Guarantor that is a direct or indirect Subsidiary or parent of such JV Subsidiary Guarantor, which Indebtedness was permitted to be Incurred by another provision of this covenant;
- (13) Pre-Registration Mortgage Guarantees by the Company or any Restricted Subsidiary;
- (14) Indebtedness of the Company or any Restricted Subsidiary with a maturity of one year or less used by the Company or any Restricted Subsidiary for working capital; *provided* that the aggregate principal amount of Indebtedness permitted by this clause (b)(14) at any time outstanding does not exceed US\$35.0 million (or the Dollar Equivalent thereof);
- (15) Indebtedness of the Company or any Restricted Subsidiary constituting an obligation to pay the deferred purchase price in the form of installment payments pursuant to a Staged Acquisition Agreement;
- (16) Preferred Stock or Disqualified Stock issued by a Restricted Subsidiary or Indebtedness Incurred by the Company or any Restricted Subsidiary constituting

- a guarantee by, or grant of a Lien on assets of, the Company or such Restricted Subsidiary in favor of any Insurance Company Investor in respect of the obligation of any Subsidiary of such Restricted Subsidiary to pay a guaranteed or preferred dividend or return on any shares of Capital Stock of such Subsidiary held by such Insurance Company Investor (including any shares of Preferred Stock or Disqualified Stock which may be issued by such Subsidiary pursuant to this clause (b)(16) to such Insurance Company Investor); *provided* that on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness permitted by this clause (b)(16) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clause (b)(7) above and clauses (b)(19), (b)(20), (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (17) Indebtedness of the Company or any Restricted Subsidiary in an aggregate principal amount outstanding at any time (together with refinancings thereof) not to exceed US\$25.0 million (or the Dollar Equivalent thereof);
- (18) Indebtedness constituting a Subordinated Shareholder Loan;
- (19) Indebtedness Incurred by any Restricted Subsidiary which is secured by Investment Properties, and guarantees thereof by the Company or any such Restricted Subsidiary; *provided* that on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness permitted by this clause (b)(19) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7) and (b)(16) above and clauses (b)(20), (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (20) Bank Deposit Secured Indebtedness Incurred by the Company or any Restricted Subsidiary, *provided* that on the date of Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of such Indebtedness permitted by this clause (b)(20) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16) and (b)(19) above and clauses (b)(21), (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (21) Indebtedness Incurred by the Company or any Restricted Subsidiary constituting a guarantee of Indebtedness of any Person (other than the Company or a Restricted Subsidiary) by the Company or such Restricted Subsidiary, if the aggregate of all Indebtedness Incurred under this clause (b)(21) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16), (b)(19) and (b)(20) above and clauses (b)(22) and (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;
- (22) Acquired Indebtedness of any Restricted Subsidiary Incurred and outstanding on the date on which such Person becomes 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 such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness Incurred pursuant to this clause (b)(22) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16), (b)(19), (b)(20) and (b)(21) above and clause (b)(25) below and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets;

- (23) Indebtedness represented by Existing HY Notes issued in respect the payment of Existing HY Notes PIK Interest in accordance with the Existing HY Notes Indentures by the Company and any related Subsidiary Guarantees and JV Subsidiary Guarantees;
  - (24) Indebtedness represented by any Mandatorily Exchangeable Bond PIK Interest or Exchange Convertible Bond PIK Interest capitalized pursuant to the terms of the Mandatorily Exchangeable Bonds or the Exchange Convertible Bonds, as the case may be; and
  - (25) Indebtedness Incurred by the Company or any Restricted Subsidiary under Credit Facilities; *provided* that on the date of the Incurrence of such Indebtedness and after giving effect thereto, the aggregate principal amount outstanding of all such Indebtedness Incurred pursuant to this clause (b)(25) (together with the aggregate principal amount outstanding of Indebtedness that was permitted to be Incurred under clauses (b)(7), (b)(16), (b)(19), (b)(20), (b)(21) and (b)(22) above and the refinancings of all such Indebtedness Incurred hereunder and thereunder, but excluding any Contractor Guarantee Incurred under clause (b)(7) above to the extent the amount of such Contractor Guarantee is otherwise reflected in such aggregate principal amount) does not exceed an amount equal to 35.0% of Total Assets.
- (c) 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 sentence of clause (a) of this covenant, the Company, 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.
  - (d) Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that may be Incurred or Preferred Stock that may be issued 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.

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

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

- (a) declare or pay any dividend or make any distribution on or with respect to the Company’s or any Restricted Subsidiary’s Capital Stock (other than dividends or distributions payable or paid in shares of the Company’s, or payable or paid solely in shares of any Restricted Subsidiary’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 Company or any Restricted Subsidiary;
- (b) 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 Company, any Restricted Subsidiary or any direct or indirect parent of the Company held by any Persons other than the Company or any Restricted Subsidiary (excluding (i) the purchase of any shares of Capital Stock of any Person pursuant to a Staged Acquisition Agreement and (ii) the purchase of any shares of Capital Stock of any Restricted Subsidiary held by any Insurance Company Investor);
- (c) 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, any Subsidiary Guarantee or any JV Subsidiary Guarantee (excluding any intercompany Indebtedness between or among the Company and any Restricted Subsidiary); or
- (d) 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 Company could not Incur at least US\$1.00 of Indebtedness under the proviso in the first sentence of clause (a) of the covenant described 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 Company and its Restricted Subsidiaries after the Measurement Date, shall exceed the sum (without duplication) of:
  - (i) 50% of the aggregate amount of the Consolidated Net Income of the Company (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 semi-annual fiscal period in which the Measurement Date occurred and ending on the last day of the Company’s most recently ended fiscal quarter period for which consolidated financial statements of the Company (which the Company 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 Company 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 Restricted Subsidiary of the Company, including any such Net Cash Proceeds received upon (x) the conversion of any Indebtedness (other than Subordinated Indebtedness) of the Company into Capital Stock (other than Disqualified Stock) of the Company, or (y) the exercise by a Person who is not a Restricted Subsidiary of the Company of any options, warrants or other rights to acquire Capital Stock of the Company (other than Disqualified Stock), in each case after deducting 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 Company; plus



- (iii) the amount by which Indebtedness of the Company or any Restricted Subsidiary is reduced on the Company's consolidated balance sheet upon the conversion or exchange (other than by a Restricted Subsidiary of the Company) subsequent to the Measurement Date of any Indebtedness of the Company or any Restricted Subsidiary convertible or exchangeable into Capital Stock (other than Disqualified Stock) of the Company (less the amount of any cash, or the Fair Market Value of any other property, distributed by the Company upon such conversion or exchange); 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 (w) payments of interest on Indebtedness, dividends or repayments of loans or advances by such Person, in each case, to the Company 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), (x) the unconditional release of a guarantee provided by the Company or any Restricted Subsidiary after the Measurement Date of an obligation of another Person, (y) the net cash proceeds from the sale of any such Investment (except to the extent such proceeds are included in the calculation of Consolidated Net Income) or (z) from redesignations of Unrestricted Subsidiaries as Restricted Subsidiaries, not to exceed, in each case, the amount of Investments made by the Company or a Restricted Subsidiary after the Measurement Date in any such Person; plus
- (v) US\$25.0 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 Company, any Subsidiary Guarantor or any 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 Company, any Subsidiary Guarantor or any 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 sale (other than to a Subsidiary of the Company) of, shares of Capital Stock (other than Disqualified Stock) of the Company, 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 Company, any Subsidiary Guarantor or any 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 Company) of, shares of Capital Stock (other than Disqualified Stock) of the Company, 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;
- (5) the payment of any dividends or distributions declared, paid or made by a Restricted Subsidiary that is not, directly or indirectly, Wholly Owned by the Company payable on a pro rata basis or on a basis more favorable to the Company to all holders of any class of Capital Stock of such Restricted Subsidiary;

- (6) the purchase by the Company or a Restricted Subsidiary of Capital Stock of any Restricted Subsidiary that is not Wholly Owned, directly or indirectly, by the Company from an Independent Third Party pursuant to an agreement entered into between/among the Company or any Restricted Subsidiary and such Independent Third Party solely for the purpose of acquiring real property or land use rights, *provided* that (x) such purchase occurs within 12 months after such Restricted Subsidiary acquires the real property or land use rights it was formed to acquire and (y) the Company 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;
- (7) (A) the repurchase, redemption or other acquisition or retirement for value of the Capital Stock of the Company or any Restricted Subsidiary (directly or indirectly, including through any trustee, agent or nominee) in connection with an employee benefit plan, and any corresponding Investment by the Company or any Restricted Subsidiary in any trust or similar arrangements to the extent of such repurchased, redeemed, acquired or retired Capital Stock, or (B) the repurchase, redemption or other acquisition or retirement for value of any Capital Stock of the Company or any Restricted Subsidiary held by an employee benefit plan of the Company or any Restricted Subsidiary, any current or former officer, director, consultant, or employee of the Company or any Restricted Subsidiary (or permitted transferees, estates or heirs of any of the foregoing); *provided* that the aggregate consideration paid for all such repurchased, redeemed, acquired or retired Capital Stock shall not exceed US\$25.0 million (or the Dollar Equivalent thereof using the Original Issue Date as the date of determination);
- (8) cash payments in lieu of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Company, *provided*, however, 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 Company);
- (9) repurchases of Capital Stock deemed to occur upon the surrender by the holder of a stock option of shares of Capital Stock otherwise issuable upon exercise of such stock options as payment of a portion of the exercise price thereof;
- (10) dividends paid to any Insurance Company Investor in respect of any Preferred Stock or Disqualified Stock issued by or any Indebtedness Incurred by any Restricted Subsidiary under paragraph (b)(16) of the “— Limitation on Indebtedness and Preferred Stock” covenant;
- (11) any payments made pursuant to the CVR Agreement;
- (12) the payment of any dividend or distribution payable or paid solely in Capital Stock (other than Disqualified Stock or Preferred Stock) of any Unrestricted Subsidiary or in options, warrants or other rights to acquire shares of such Capital Stock;
- (13) the declaration and payment of dividends on the Common Stock of the Company by the Company in an aggregate amount not to exceed 20.0% of profit for the year on the Company's consolidated financial statements in any fiscal year ending after the Original Issue Date; or
- (14) the distributions or payments of Securitization Fees in connection with Receivable Financings;

*provided* that, in the case of clause (2), (3), (4) or (13) above, 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 clauses (1) and (13) of the preceding paragraph made 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 and any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries as Unrestricted Subsidiaries (to the extent such Investment does not constitute a Permitted Investment pursuant to clause (18) of the definition thereof)) 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 Company 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\$10.0 million (or the Dollar Equivalent thereof).

Not later than the date of making any Restricted Payment (other than any Restricted Payment set forth in clauses (5) through (14) above and any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries as Unrestricted Subsidiaries (to the extent such Investment does not constitute a Permitted Investment pursuant to clause (18) of the definition thereof)) in excess of US\$10.0 million (or the Dollar Equivalent thereof), the Company 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.

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

- (a) Except as provided below, the Company 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:
- (1) pay dividends or make any other distributions on any Capital Stock of such Restricted Subsidiary owned by the Company or any other Restricted Subsidiary;
  - (2) pay any Indebtedness or other obligation owed to the Company or any other Restricted Subsidiary;
  - (3) make loans or advances to the Company or any other Restricted Subsidiary; or
  - (4) sell, lease or transfer any of its property or assets to the Company or any other Restricted Subsidiary;
- provided* that it being understood that (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 Company or any Restricted Subsidiary to other Indebtedness Incurred by the Company or any Restricted Subsidiary; and (iii) the provisions contained in documentation governing Indebtedness requiring transactions between or among the Company 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, in each case, shall not be deemed to constitute such an encumbrance or restriction.
- (b) The provisions of paragraph (a) do not apply to any encumbrances or restrictions:
- (1) existing in agreements as in effect on the Original Issue Date, or in the Exchange Convertible Bonds issued pursuant to the terms of the Mandatorily Exchangeable Bonds, the Notes, the Subsidiary Guarantees, the JV Subsidiary Guarantees, the Indenture, the Security Documents, or under any Permitted Pari Passu Secured Indebtedness of the Company or any Subsidiary Guarantor Pledgor or Pari Passu Guarantee, or in any extensions, refinancings, renewals or replacements of any of the foregoing agreements; *provided* that the encumbrances and restrictions in any such extension, refinancing, renewal or replacement, taken as a whole, are no more restrictive in any material respect than those encumbrances or restrictions that are then in effect and that are being extended, refinanced, renewed or replaced;
  - (2) existing under or by reason of applicable law, rule, regulation or order;
  - (3) with respect to any Person or the property or assets of such Person acquired by the Company or any Restricted Subsidiary, existing 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, or in any extensions, refinancings, renewals or replacements thereof; *provided* that the encumbrances and restrictions in any such extension, 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, refinanced, renewed or replaced;
- (4) that otherwise would be prohibited by the provision described in clause (a)(4) of this covenant if they arise, or are agreed to in the ordinary course of business, and that (x) restrict in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease or license, (y) exist by virtue of any Lien on, or agreement to transfer, option or similar right with respect to any property or assets of the Company or any Restricted Subsidiary not otherwise prohibited by the Indenture or (z) do not relate to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of property or assets of the Company or any Restricted Subsidiary in any manner material to the Company or any Restricted Subsidiary;
  - (5) with respect to a Restricted Subsidiary and imposed pursuant to an agreement that has been entered into for the sale 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” and “— Limitation on Asset Sales” covenants;
  - (6) with respect to any Restricted Subsidiary and imposed pursuant to an agreement that has been entered into for the Incurrence of Indebtedness or issuance of Preferred Stock of the type described under clause (b)(7), (b)(14), (b)(16), (b)(19), (b)(20), (b)(21), (b)(22), (b)(23), (b)(24) and (b)(25) of the “— Limitation on Indebtedness and Preferred Stock” covenant if, as determined by the Board of Directors, such encumbrances or restrictions (x) are customary for such types of agreements and (y) would not, at the time agreed to, be expected to materially and adversely affect the ability of the Company to make any required payment on the Notes, or in any extensions, refinancings, renewals or replacements of any of the foregoing agreements; *provided* that the encumbrances and restrictions in any such extension, 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, refinanced, renewed or replaced;
  - (7) existing in customary provisions in 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 that is a party to such joint venture and if (as determined in good faith by the Board of Directors) (i) the encumbrances or restrictions are customary for a 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 Company to make the required payments on the Notes or (y) any Subsidiary Guarantor or JV Subsidiary Guarantor to make required payments under its Subsidiary Guarantee or JV Subsidiary Guarantee; or
  - (8) 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 Subsidiary or its subsidiaries or the property or assets of such Subsidiary or its subsidiaries, or in any extensions, refinancing, renewals or replacements thereof; *provided* that the encumbrances and restrictions in any such extension, 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, refinanced, renewed or replaced.

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

The Company 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 Company or a Restricted Subsidiary;
- (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 Company or a Restricted Subsidiary;
- (3) for the issuance or sale of the 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 if the Company complies with the "— Limitation on Asset Sales" covenant; *provided* that, paragraph (c) of clause (16) of the definition of "Permitted Investments" shall not apply if such Restricted Payment would otherwise have been permitted under clause (16) of such definition;
- (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 Company or such Restricted Subsidiary applies the Net Cash Proceeds of such issuance or sale in accordance with the "— Limitation on Asset Sales" covenant.

Notwithstanding the foregoing, a Restricted Subsidiary may issue Common Stock to its shareholders on a pro rata basis or on a basis more favorable to the Company and its Restricted Subsidiaries.

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

The Company will not permit any Restricted Subsidiary which is not a Subsidiary Guarantor or a JV Subsidiary Guarantor, directly or indirectly, to guarantee any Indebtedness ("Guaranteed Indebtedness") of the Company or any Subsidiary Guarantor or JV Subsidiary Guarantor, unless (a) (1) such Restricted Subsidiary simultaneously executes and delivers a supplemental indenture to the Indenture providing for an unsubordinated Subsidiary Guarantee (in the case of a Subsidiary Guarantor) or JV Subsidiary Guarantee (in the case of a JV Subsidiary Guarantor) of payment of the Notes by such Restricted Subsidiary and (2) 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 Company or any other Restricted Subsidiary as a result of any payment by such Restricted Subsidiary under its Subsidiary Guarantee or JV Subsidiary Guarantee until the Notes have been paid in full, or (b) such guarantee is permitted by clause (b)(3), (b)(4), (b)(12)(ii) (other than, in the case of clause (b)(12)(ii), (x) a guarantee by a PRC Restricted Subsidiary of the Indebtedness of a non-PRC Restricted Subsidiary that is not a Subsidiary of such PRC Subsidiary or (y) a guarantee by a non-PRC Restricted Subsidiary that is not a Subsidiary Guarantor or a JV Subsidiary Guarantor of Indebtedness of a Subsidiary Guarantor or a JV Subsidiary Guarantor) or (b)(20) (in the case of clause (b)(20), with respect to the guarantee provided by any Restricted Subsidiary which is not a Subsidiary Guarantor or JV Subsidiary Guarantor through the pledge of cash deposits, bank accounts or other assets to secure (or the use of any guarantee or letter of credit or similar instrument to guarantee) any Bank Deposit Secured Indebtedness), under the covenant described under the caption "— Limitation on Indebtedness and Preferred Stock."

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

The Company will not permit any JV Subsidiary Guarantor, directly or indirectly, to guarantee any Indebtedness of the Company or any other Restricted Subsidiary unless the aggregate claims of the creditor under such guarantee will be limited to the JV Entitlement Amount. If any JV Subsidiary Guarantor guarantees any Indebtedness of the Company or any



other Restricted Subsidiary where the aggregate claims of the creditor under such guarantee exceed the JV Entitlement Amount, such JV Subsidiary Guarantee shall be replaced with a Subsidiary Guarantee given by a Subsidiary Guarantor.

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

The Company 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 (a) any holder (or any Affiliate of such holder) of 10% or more of any class of Capital Stock of the Company or (b) with any Affiliate of the Company (each an “Affiliate Transaction”), unless:

- (1) the Affiliate Transaction is on fair and reasonable terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable arm’s-length transaction by the Company or the relevant Restricted Subsidiary with a Person that is not such a holder or an Affiliate of the Company or such Restricted Subsidiary; and
- (2) the Company delivers to the Trustee:
  - (A) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of US\$5.0 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\$10.0 million (or the Dollar Equivalent thereof), in addition to the Board Resolution required in clause (2)(A) above, an opinion issued by an accounting, appraisal or investment banking firm of recognized international standing as to the fairness to the Company or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view.

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

- (1) the payment of reasonable and customary regular fees and other compensation to directors of the Company or any Restricted Subsidiary who are not employees of the Company or any Restricted Subsidiary;
- (2) transactions between or among the Company and any Subsidiary Guarantor or between or among Subsidiary Guarantors;
- (3) transactions between or among the Company and any Wholly Owned Restricted Subsidiary or between or among Wholly Owned Restricted Subsidiaries;
- (4) any Restricted Payment of the type described in clause (a), (b) or (c) of the first paragraph of the covenant described under the caption “— Limitation on Restricted Payments” if permitted by that covenant;
- (5) any sale of Capital Stock (other than Disqualified Stock) of the Company;
- (6) the payment of compensation to officers and directors of the Company or any Restricted Subsidiary pursuant to an employee stock or share option scheme, so long as such scheme is in compliance with the listing rules of The Stock Exchange of Hong Kong Limited, which as of the Original Issue Date require a majority shareholder approval of any such scheme;

- (7) any transaction between (A) the Company or any Restricted Subsidiary and (B) any entity in the Restructuring Group entered into in connection with the Restructuring, including, without limitation, transactions entered into for purposes of any reorganization in connection with the Restructuring and the entry into, and the performance thereof, of any underwriting agreement or other transaction documents in connection with the Restructuring; and
- (8) any transaction between (A) the Company or any Restricted Subsidiary and (B) any entity in the Restructuring Group entered into in the ordinary course of business, on fair and reasonable terms and disclosed in the offering document issued in connection with the Restructuring, or any amendment or modification or extension or replacement thereof, so long as such amendment, modification or replacement is not more disadvantageous to the Company and its Restricted Subsidiaries than the original transaction described in the offering document issued in connection with the Restructuring and in compliance with the rules of the relevant Qualified Exchange.

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 this offering memorandum, or any amendment or modification or replacement thereof, so long as such amendment, modification or replacement is not more disadvantageous to the Company and its Restricted Subsidiaries than the original agreement in effect on the Original Issue Date, (iii) any transaction between or among (A) any of the Company, any Wholly Owned Restricted Subsidiary and any Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary or (B) the Company or a Restricted Subsidiary on the one hand and a Minority Joint Venture or an Unrestricted Subsidiary on the other hand; *provided* that in the case of this clause (iii), (a) such transaction is entered into in the ordinary course of business and (b) none of the shareholders or partners (other than the Company or any Restricted Subsidiary) of or in such Minority Joint Venture, Unrestricted Subsidiary or Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary is a Person described in clause (a) or (b) of the first paragraph of this covenant (other than by reason of such shareholder or partner being an officer or director of such Restricted Subsidiary, Minority Joint Venture or Unrestricted Subsidiary, as the case may be) and (iv) any Investment by the Company or any Restricted Subsidiary in accordance with the requirements under clause (16) of the definition of “Permitted Investment” on a pro rata basis based on its percentage ownership at the time of such Investment.

#### ***Limitation on Liens***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, incur, assume or permit to exist any Lien on the Collateral (other than Permitted Liens).

The Company will not, and will not permit any Restricted Subsidiary 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 secured equally and ratably with (or, if the obligation or liability to be secured by such Lien is subordinated in right of payment to the Notes, prior to) the obligation or liability secured by such Lien, for so long as such obligation or liability is secured by such Lien.

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

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

- (a) the Company or any Restricted Subsidiary could have (1) incurred Indebtedness in an amount equal to the Attributable Indebtedness relating to such Sale and Leaseback Transaction under clause (a) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock” and (2) incurred a Lien to secure such Indebtedness pursuant to the covenant described under the caption “— Limitation on Liens,” in which case, the corresponding Indebtedness and Lien will be deemed incurred pursuant to those provisions;

- (b) 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
- (c) the transfer of assets in that Sale and Leaseback Transaction is permitted by, and the Company or any Restricted Subsidiary applies the proceeds of such transaction in compliance with, the covenant described under the caption “— Limitation on Asset Sales.”

***Limitation on Asset Sales***

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

- (a) no Default shall have occurred and be continuing or would occur as a result of such Asset Sale;
- (b) the consideration received by the Company 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;
- (c) 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 Company or such Restricted Subsidiary receives Replacement Assets involving aggregate consideration in excess of US\$35.0 million (or the Dollar Equivalent thereof), the Company shall deliver to the Trustee an opinion as to the fairness to the Company 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 Company’s most recent consolidated balance sheet, of the Company or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Notes, any Subsidiary Guarantee or any JV Subsidiary Guarantee) that are assumed by the transferee of any such assets pursuant to a customary assumption, assignment, novation or similar agreement that releases the Company or such Restricted Subsidiary from further liability; and
  - (B) any securities, notes or other obligations received by the Company or any Restricted Subsidiary from such transferee that are promptly, but in any event within 30 days of closing, converted by the Company 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 Company (or the applicable Restricted Subsidiary, as the case may be) may apply such Net Cash Proceeds to:

- (1) permanently repay Senior Indebtedness of the Company or any Restricted Subsidiary (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 Company or a Restricted Subsidiary; or
- (2) acquire properties and assets that replace the properties and assets that were the subject of such Asset Sale or in properties or assets that will be used in the Permitted Business (including any shares of Capital Stock in a Person holding such properties or assets that is primarily engaged in a Permitted Business) (“Replacement Assets”).

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\$10.0 million (or the Dollar Equivalent thereof) will be carried forward and accumulated. When accumulated Excess Proceeds equals to or exceeds US\$10.0 million (or the Dollar Equivalent thereof), within 10 days thereof, the Company must make an Offer to Purchase Notes having a principal amount equal to:

- (i) accumulated Excess Proceeds, multiplied by

- (ii) 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 plus accrued and unpaid interest to the date of purchase, and will be payable in cash.

If any Excess Proceeds remain after consummation of an Offer to Purchase, the Company may use such 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 into (or required to be prepaid or redeemed in connection with) such Offer to Purchase exceeds the amount of Excess Proceeds, the Notes and such other *pari passu* Indebtedness will be purchased on a pro rata basis based on the principal amount of Notes and such other *pari passu* Indebtedness tendered (or required to be prepaid or redeemed). Upon completion of each Offer to Purchase, the amount of Excess Proceeds will be reset at zero.

#### ***Limitation on the Company's Business Activities***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, engage in any business other than a Permitted Business; *provided, however*, that the Company 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 a Permitted Business as long as any Investment therein was not prohibited when made by the covenant under the caption “— Limitation on Restricted Payments.”

#### ***Use of Proceeds***

The Company will not, and 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 (a) in the approximate amounts and for the purposes specified under the caption “Use of Proceeds” in this offering memorandum and (b) pending the application of all of such net proceeds in such manner, to invest the portion of such net proceeds not yet so applied in Temporary Cash Investments.

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

The Board of Directors may designate any Restricted Subsidiary to be an Unrestricted Subsidiary; *provided* that (a) no Default shall have occurred and be continuing at the time of or after giving effect to such designation; (b) neither the Company nor any Restricted Subsidiary guarantees or provides credit support for the Indebtedness of such Restricted Subsidiary; (c) such Restricted Subsidiary has no outstanding Indebtedness that could trigger a cross-default to the Indebtedness of the Company or any other Restricted Subsidiary; (d) such Restricted Subsidiary does not own any Disqualified Stock of the Company or Disqualified or Preferred Stock of another Restricted Subsidiary or hold any Indebtedness, or any Lien on any property, of the Company or any Restricted Subsidiary, if such Disqualified or Preferred Stock or Indebtedness could not be Incurred under the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock” or such Lien would violate the covenant described under the caption “— Limitation on Liens”; (e) 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 as Unrestricted Subsidiaries in accordance with this paragraph; and (f) 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 the caption “Limitation on Restricted Payments” (other than any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Subsidiaries in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries, *provided* that (i) the Board of Directors of the Company has determined in good faith that the designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries is necessary to obtain approval from a Qualified Exchange for the Restructuring, (ii) at the time of such designation,

the members of the Restructuring Group remain Subsidiaries of the Company, and (iii) at the time of such designation, the members of the Restructuring Group remain primarily engaged in the Permitted Businesses).

The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that (a) no Default shall have occurred and be continuing at the time of or after giving effect to such designation; (b) 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 “— Limitation on Indebtedness and Preferred Stock”; (c) 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 “— Limitation on Liens”; (d) such Unrestricted Subsidiary is not a Subsidiary of another Unrestricted Subsidiary (that is not concurrently being designated as a Restricted Subsidiary); (e) if such Restricted 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 to the extent required under “— The Subsidiary Guarantees and JV Subsidiary Guarantees”; and (f) if such Restricted Subsidiary is not organized under the laws of the PRC, all Capital Stock of such Restricted Subsidiary owned by the Company or any other Restricted Subsidiary shall be pledged to the extent required under “— Security.”

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

The Company will, and will cause each Restricted Subsidiary to, (a) 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 Business, (b) 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 (c) 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 would not reasonably be expected to have a material adverse effect on (1) the business, results of operations or prospects of the Company and its Restricted Subsidiaries, taken as a whole, or (2) the ability of the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor to perform its obligations under the Notes, the relevant Subsidiary Guarantee or JV Subsidiary Guarantee or the Indenture.

#### ***Anti-Layering***

The Company will not, and will not permit 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 Company, such Subsidiary Guarantor or such JV Subsidiary Guarantor, as the case may be, unless such Indebtedness is also contractually subordinated in right of payment to the Notes, the applicable Subsidiary Guarantee or the applicable 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.

#### ***Suspension of Certain Covenants***

If, on any date following the date of the Indenture, the Notes have an Investment Grade Rating from any Rating Agency and no Default or Event of Default has occurred and is continuing (a “Suspension Event”), then, beginning on that day and continuing until such time, if any, at which the Notes cease to have an Investment Grade rating from either of the Rating Agencies, the provisions of the Indenture summarized under the following captions will be suspended:

- (1) “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
- (2) “— Certain Covenants — Limitation on Restricted Payments”;
- (3) “— Certain Covenants — Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries”;
- (4) “— Certain Covenants — Limitation on Sales and Issuances of Capital Stock in Restricted Subsidiaries”;



- (5) “— Certain Covenants — Limitation on Issuances of Guarantees by Restricted Subsidiaries”;
- (6) “— Certain Covenants — Limitation on Sale and Leaseback Transactions”;
- (7) “— Certain Covenants — Limitation on Asset Sales”;
- (8) “— Certain Covenants — Limitation on the Company’s Business Activities”;
- (9) clauses (3) and (4) of the first and second paragraphs of “—Consolidation, Merger and Sale of Assets.”

During any period that the foregoing covenants have been suspended, the Board of Directors may not designate any Restricted Subsidiary as an Unrestricted Subsidiary pursuant to the covenant described under the caption “— Certain Covenants — Designation of Restricted and Unrestricted Subsidiaries” or the definition of “Unrestricted Subsidiary.”

Such covenants will be reinstated and apply according to their terms as of and from the first day on which a Suspension Event ceases to be in effect. Such covenants will not, however, be of any effect with regard to actions of the Company or any Restricted Subsidiary properly taken in compliance with the provisions of the Indenture during the continuance of the Suspension Event and, following reinstatement, the calculations under the covenant described under the caption “— Certain Covenants — Limitation on Restricted Payments” will be made as if such covenant had been in effect since the date of the Indenture except that no Default will be deemed to have occurred solely by reason of a Restricted Payment made while that covenant was suspended. There can be no assurance that the Notes will ever achieve an Investment Grade rating or that, if achieved, any such rating will be maintained.

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

- (a) So long as any of the Notes remain outstanding, the Company will file with the Trustee and furnish to the Holders upon request, as soon as they are available but in any event not more than 10 calendar days after they are filed with The Stock Exchange of Hong Kong Limited or any other securities exchange on which the Company’s ordinary shares are at any time listed for trading, true and correct copies of any financial or other report in the English language filed with such exchange; *provided* that, if at any time the ordinary shares of the Company cease to be listed for trading on a recognized securities exchange, the Company will file with the Trustee and furnish to the Holders:
  - (1) as soon as they are available, but in any event within 90 calendar days after the end of the fiscal year of the Company, copies of its financial statements (on a consolidated basis and in the English language) in respect of such financial year (including a statement of income, balance sheet and cash flow statement) audited by a member firm of an internationally recognized firm of independent accountants;
  - (2) as soon as they are available, but in any event within 45 calendar days after the end of the first semi-annual fiscal period of the Company, copies of its financial statements (on a consolidated basis and in the English language) in respect of such half-year period (including a statement of income, balance sheet and cash flow statement) reviewed by a member firm of an internationally recognized firm of independent accountants; and
  - (3) as soon as they are available, but in any event within 45 calendar days after the end of each of the first and third fiscal quarters of the Company, copies of its unaudited financial statements (on a consolidated basis and in the English language), including a statement of income, balance sheet and cash flow statement, prepared on a basis consistent with the audited financial statements of the Company together with a certificate signed by the person then authorized to sign financial statements on behalf of the Company to the effect that such financial statements are true in all material respects and present fairly the financial position of the Company as at the end of, and the results of its operations for, the relevant quarterly period.

- (b) In addition, so long as any of the Notes remain outstanding, the Company will provide to the Trustee (1) within 120 days after the close of each fiscal year ending after the Original Issue Date, an Officers' Certificate stating the Fixed Charge Coverage Ratio with respect to the four most recent fiscal quarter periods 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, together with a certificate from the Company's external auditors verifying the accuracy and correctness of the calculation and arithmetic computation, *provided* that the Company shall not be required to provide such auditor 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 (2) as soon as possible and in any event within 30 days after the Company becomes aware or should reasonably become aware of the occurrence of a Default, an Officers' Certificate setting forth the details of such Default, and the action which the Company proposes to take with respect thereto.

### **Events of Default**

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

- (a) 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;
- (b) default in the payment of interest on any Note when the same becomes due and payable, and such default continues for a period of 30 consecutive days;
- (c) default in the performance or breach of the provisions of the covenants described under the caption "— Consolidation, Merger and Sale of Assets," the failure by the Company to make or consummate an Offer to Purchase in the manner described under the captions "— Repurchase of Notes upon a Change of Control" or "— Certain Covenants — Limitation on Asset Sales," or the failure by the Company to create, or cause its Restricted Subsidiaries to create, a lien on the Collateral (subject to any Permitted Liens and the Intercreditor Agreement) in accordance with the covenant described under the caption "— Security";
- (d) the Company 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 (a), (b) or (c) 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 (with a copy to the Trustee if given by the Holders);
- (e) there occurs with respect to any Indebtedness of the Company or any Restricted Subsidiary (other than a Subordinated Shareholder Loan) having an outstanding principal amount of US\$20.0 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, (1) 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 (2) a failure to make a principal payment when due;
- (f) one or more final judgments or orders for the payment of money are rendered against the Company or any Restricted Subsidiary and are not paid or discharged, 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\$20.0 million (or the Dollar Equivalent thereof, in excess of amounts which the Company'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;
- (g) an involuntary case or other proceeding is commenced against the Company 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 Company or any Significant Restricted Subsidiary or for any substantial part of the property and assets of the Company 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 Company or any Significant Restricted Subsidiary under any applicable bankruptcy, insolvency or other similar law as now or hereafter in effect;

- (h) the Company or any Significant Restricted Subsidiary (1) 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, (2) consents to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or any Significant Restricted Subsidiary, or for all or substantially all of the property and assets of the Company or any Significant Restricted Subsidiary, or (3) effects any general assignment for the benefit of creditors;
- (i) any Subsidiary Guarantor or any JV Subsidiary Guarantor denies or disaffirms its obligations under its Subsidiary Guarantee or JV Subsidiary Guarantee or, 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;
- (j) any default by the Company or any Subsidiary Guarantor Pledgor in the performance of any of its obligations under the Security Documents or the Indenture, which adversely affects the enforceability, validity, perfection or priority of the applicable Lien on the Collateral or which adversely affects the condition or value of the Collateral, taken as a whole, in any material respect; and
- (k) the Company or any Subsidiary Guarantor Pledgor denies or disaffirms its obligations under any Security Document or, other than in accordance with the Indenture and the Security Documents, any Security Document ceases to be or is not in full force and effect or the Common Security Trustee on behalf of the Trustee and the Holders ceases to have a security interest in the Collateral (subject to any Permitted Liens and the Intercreditor Agreement).

If an Event of Default (other than an Event of Default specified in clause (g) or (h) 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 Company (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 receiving indemnity and/or security to its satisfaction), declare the principal of, premium, if any, and 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 accrued and unpaid interest shall be immediately due and payable. If an Event of Default specified in clause (g) or (h) above occurs with respect to the Company or any Significant Restricted Subsidiary, the principal of, premium, if any, and 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 Holders of at least a majority in principal amount of the outstanding Notes by written notice to the Company and to the Trustee may on behalf of all Holders waive all past defaults and rescind and annul a declaration of acceleration and its consequences if:

- (x) all existing Events of Default, other than the non-payment 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
- (y) 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 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. In addition, 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 (subject to receiving indemnity and/or security to its satisfaction), instruct the Common Security Trustee to foreclose on the Collateral in accordance with the terms of the Security Documents and take such further action on behalf of the Holders of the Notes with respect to the Collateral as the Trustee deems appropriate or is directed by the Holders of at least 25% in aggregate principal amount of outstanding Notes. See “— Security.”

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. However, the Trustee may refuse to follow any direction that conflicts with law, the Indenture or the Security Documents that may involve the Trustee in personal liability, or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders not joining in the giving of such direction and may take any other action it deems proper that is not inconsistent with any such direction received from such Holders. A Holder may not pursue any remedy with respect to 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 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
- (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.

Two Officers of the Company must certify to the Trustee in writing, on or before a date not more than 120 days after the end of each fiscal year, that a review has been conducted of the activities of the Company and its Restricted Subsidiaries and the Company's and its Restricted Subsidiaries' performance under the Indenture and the Security Documents and that the Company and its Restricted Subsidiaries 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 Company 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 and the Security Documents. See “— Provision of Financial Statements and Reports.”

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

The Company 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), unless:

- (a) the Company 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 Cayman Islands, the British Virgin Islands, Hong Kong or the United States or any jurisdiction thereof and shall expressly assume, by a supplemental indenture to the Indenture, executed and delivered to the Trustee, all the obligations of the Company under the Indenture, the Notes and the Security Documents, 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 from or through which payment is made, and the Indenture, the Notes and the Security Documents, as the case may be, shall remain in full force and effect;

- (b) immediately after giving effect to such transaction, no Default shall have occurred and be continuing;
- (c) immediately after giving effect to such transaction on a pro forma basis, the Company 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 Company immediately prior to such transaction;
- (d) immediately after giving effect to such transaction on a pro forma basis, the Company or the Surviving Person, as the case may be, could Incur at least US\$1.00 of Indebtedness under the proviso in the first sentence of clause (a) of the covenant described under the caption “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
- (e) the Company delivers to the Trustee (1) an Officers’ Certificate (attaching the arithmetic computations to demonstrate compliance with clauses (c) and (d)) and (2) an Opinion of Counsel, in each case stating that such consolidation, merger or transfer and such 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
- (f) each Subsidiary Guarantor and JV Subsidiary Guarantor, unless such Subsidiary Guarantor or JV Subsidiary Guarantor is the Person with which the Company has entered into a transaction described under this covenant, shall execute and deliver a supplemental indenture to the Indenture confirming that its Subsidiary Guarantee or JV Subsidiary Guarantee shall apply to the obligations of the Company or the Surviving Person in accordance with the Notes and the Indenture.

No Subsidiary Guarantor or JV Subsidiary Guarantor will consolidate with or 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 Company or another Subsidiary Guarantor or, in the case of a JV Subsidiary Guarantor, other than to another JV Subsidiary Guarantor, the Company or a Subsidiary Guarantor), unless:

- (A) 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 Company, another Subsidiary Guarantor or shall become a Subsidiary Guarantor concurrently with the transaction by executing and delivering a supplemental indenture to the Indenture or, in the case of a JV Subsidiary Guarantor, another JV Subsidiary Guarantor, the Company or a Subsidiary Guarantor;
- (B) immediately after giving effect to such transaction, no Default shall have occurred and be continuing;
- (C) immediately after giving effect to such transaction on a pro forma basis, the Company shall have a Consolidated Net Worth equal to or greater than the Consolidated Net Worth of the Company immediately prior to such transaction;
- (D) immediately after giving effect to such transaction on a pro forma basis, the Company could Incur at least US\$1.00 of Indebtedness under the proviso in the first sentence of clause (a) of the covenant described under the caption “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”; and



- (E) the Company delivers to the Trustee (1) an Officers' Certificate (attaching the arithmetic computations to demonstrate compliance with clauses (C) and (D)) and (2) 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 (1) any sale or other disposition that complies with the "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 Subsidiary Guarantees and JV Subsidiary Guarantees" and (2) a consolidation or merger of any Subsidiary Guarantor or JV Subsidiary Guarantor with and into the Company or any other Subsidiary Guarantor or JV Subsidiary Guarantor, so long as the Company or such Subsidiary Guarantor or JV Subsidiary Guarantor survives such consolidation or merger.

For the avoidance of doubt, for purposes of this covenant, a sale of shares of Capital Stock of a Restricted Subsidiary which holds all or substantially all properties and assets of the Company or the relevant Subsidiary Guarantor or JV Subsidiary Guarantor to Independent Third Parties in an initial public offering and listing on a stock exchange of the shares of Capital Stock of such Restricted Subsidiary where such Restricted Subsidiary (i) remains a Restricted Subsidiary immediately after such sale and (ii) the Company or the relevant Subsidiary Guarantor or JV Subsidiary Guarantor, immediately after such sale, owns at least 30.0% of the Voting Stock of such Restricted Subsidiary shall not constitute a sale of substantially all properties and assets of the Company or the relevant Subsidiary Guarantor or JV Subsidiary 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, 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 provisions would not necessarily afford Holders protection in the event of highly leveraged or other transactions involving the Company that may adversely affect Holders.

#### **No Payments for Consents**

The Company 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.

Notwithstanding the foregoing, in any offer or payment of consideration for, or as an inducement to, any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes in connection with an exchange or tender offer, the Company and any Restricted Subsidiary may exclude (i) Holders or beneficial owners of the Notes that are not institutional "accredited investors" as defined in Rule 501 under the Securities Act, and (ii) Holders or beneficial owners of the Notes in any jurisdiction where the inclusion of such Holders or beneficial owners would require the Company or any Restricted Subsidiary to comply with the registration requirements or other similar requirements under any securities laws of such jurisdiction, or the solicitation of such consent, waiver or amendment from, or the granting of such consent or waiver, or the approval of such amendment by, Holders or beneficial owners in such jurisdiction would be unlawful, in each case as determined by the Company in its sole discretion.

## **Defeasance**

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

The Indenture will provide that the Company 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 and the Security Documents 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 hold monies for payment in trust and to pay compensation to the Trustee in accordance with the Indenture) if, among other things:

- (a) the Company has (1) deposited with the Trustee, in trust, money in U.S. dollars and/or U.S. Government Obligations that through the payment of interest and principal in respect thereof in accordance with their terms will provide money in U.S. dollars in an amount sufficient (without consideration of investment or reinvestment) 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 and (2) delivered 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 Company is sufficient to provide payment for the principal of, premium, if any, and accrued interest on, the Notes on the Stated Maturity of such payment in accordance with the terms of the Indenture;
- (b) the Company has delivered to the Trustee an Opinion of Counsel of recognized international standing to the effect that the creation of the defeasance trust does not violate the U.S. Investment Company Act of 1940, as amended, and after the passage of 123 days following the deposit, the trust fund 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
- (c) 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 Company or any Restricted Subsidiary is a party or by which the Company or any Restricted Subsidiary is bound.

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

The Indenture further will provide that the provisions of the Indenture will no longer be in effect with respect to clauses (c), (d) and (e)(1) under the first paragraph and clauses (C), (D) and (E)(1) 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,” clause (c) under “Events of Default” with respect to such clauses (c), (d) and (e)(1) under the first paragraph and clauses (C), (D) and (E)(1) under the second paragraph under “Consolidation, Merger and Sale of Assets” and with respect to the other events set forth in such clause, clause (d) under “Events of Default” with respect to such other covenants and clauses (e) and (f) under “Events of Default” shall be deemed not to be Events of Default upon, among other things, the deposit with the Trustee, in trust, of money in U.S. dollars, 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 U.S. dollars in an amount sufficient (without consideration of investment or reinvestment) 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 (b) of the preceding paragraph.

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

In the event the Company exercises its option to omit compliance with certain covenants and provisions of the Indenture with respect to the Notes 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 Company and the Subsidiary Guarantors will remain liable for such payments.

### **Amendments and Waiver**

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

The Indenture, the Notes, the Intercreditor Agreement or any Security Document may be amended, without the consent of any Holder, to:

- (a) cure any ambiguity, defect, omission or inconsistency in the Indenture, the Notes, the Intercreditor Agreement or any Security Document;
- (b) comply with the provisions described under “Consolidation, Merger and Sale of Assets”;
- (c) evidence and provide for the acceptance of appointment by a successor Trustee;
- (d) 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 provided or permitted by the terms of the Indenture;
- (e) provide for the issuance of Additional Notes in accordance with the limitations set forth in the Indenture;
- (f) add any Subsidiary Guarantor Pledgor or release any Subsidiary Guarantor Pledgor as provided or permitted by the terms of the Indenture;
- (g) add additional Collateral to secure the Notes or any Subsidiary Guarantee and create or register Liens on such additional Collateral;
- (h) 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;
- (i) effect any changes to the Indenture in a manner necessary to comply with the procedures of Euroclear and Clearstream;
- (j) permit Permitted Pari Passu Secured Indebtedness in accordance with the terms of the Indenture (including, without limitation, permitting the Trustee to enter into the Intercreditor Agreement or any amendments to the Security Documents or the Indenture, the appointment of any common security trustee or collateral agent under any Intercreditor Agreement to hold the Collateral on behalf of the Holders and the holders of Permitted Pari Passu Secured Indebtedness and taking any other action necessary to permit the creation and registration of Liens on the Collateral to secure Permitted Pari Passu Secured Indebtedness, in accordance with the Indenture);
- (k) make any other change that, in the good faith opinion of the Board of Directors, does not materially and adversely affect the rights of any Holder; or
- (l) conform the text of the Indenture, the Notes, the Subsidiary Guarantees or the JV Subsidiary Guarantees to any provision of this “Description of the 2024 Notes” to the extent that such provision in this “Description of the 2024 Notes” was intended to be a verbatim recitation of a provision of the Indenture, the Notes, the Subsidiary Guarantees or the JV Subsidiary Guarantees.

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

Amendments of the Indenture, the Notes, the Intercreditor Agreement or any Security Document may be made by the Company, the Subsidiary Guarantors, the Trustee and the Common Security Trustee 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 aggregate principal amount of the outstanding Notes may waive future compliance by the Company with any provision of the Indenture, the Notes, the Intercreditor Agreement or any Security Document; *provided, however*, that no such modification, amendment or waiver may, without the consent of each Holder affected thereby:

- (a) change the Stated Maturity of the principal of, or any installment of interest on, any Note;
- (b) reduce the principal amount of, or premium, if any, or interest on, any Note;
- (c) change the currency of payment of principal of, or premium, if any, or interest on, any Note;
- (d) 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;
- (e) reduce the above stated percentage of outstanding Notes the consent of whose Holders is necessary to modify or amend the Indenture;
- (f) waive a default in the payment of principal of, premium, if any, or interest on the Notes;
- (g) release any Subsidiary Guarantor or JV Subsidiary Guarantor from its Subsidiary Guarantee or its JV Subsidiary Guarantee, as the case may be, except as provided in the Indenture;
- (h) release any Collateral, except as provided in the Indenture, the Intercreditor Agreement and the Security Documents;
- (i) 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;
- (j) amend, change or modify any Subsidiary Guarantee or any JV Subsidiary Guarantee in a manner that adversely affects the Holders;
- (k) amend, change or modify any provision of any Security Document, the Intercreditor Agreement or any provision of the Indenture relating to the Collateral, in a manner that adversely affects the Holders, except in accordance with the other provisions of the Indenture, such Security Document or such Intercreditor Agreement;
- (l) 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 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 from any Asset Sale;
- (m) change the redemption date or the redemption price of the Notes from that stated under “— Optional Redemption” or “— Redemption for Tax Reasons”;
- (n) amend, change or modify the obligation of the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor to pay Additional Amounts; or
- (o) amend, change or modify any provision of the Indenture or the related definition affecting the ranking of the Notes, any Subsidiary Guarantee or any JV Subsidiary Guarantee in a manner which adversely affects the Holders.

## **Satisfaction and Discharge**

The Indenture will be discharged and will cease to be of further effect (except as to surviving rights of registration of transfer or exchange of the Notes, as expressly provided for in the Indenture) as to all outstanding Notes when:

- (1) either:
  - (a) all of the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust by the Company and thereafter repaid to the Company) have been delivered to the Paying Agent for cancellation; or
  - (b) all Notes not theretofore delivered to the Paying Agent for cancellation have become due and payable pursuant to an optional redemption notice or otherwise or will become due and payable within one year, and the Issuer has irrevocably deposited or caused to be deposited with the Paying Agent funds, in cash in U.S. dollars, non-callable U.S. Government Obligations or a combination thereof, in an amount sufficient to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Paying Agent for cancellation, for principal of, premium, if any, and interest on the Notes to the date of deposit together with irrevocable written instructions from the Issuer directing the Trustee or the Paying Agent to apply such funds to the payment thereof at maturity or redemption, as the case may be;
- (2) the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor has paid all other sums payable under this Indenture;
- (3) such deposit will not result in a breach or violation of, or constitute a default under, any instruments to which the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor is a party or by which the Company, any Subsidiary Guarantor or any JV Subsidiary Guarantor is bound (other than the Indenture, the Notes or any Security Document).

In addition, the Company must deliver to the Trustee an Officers' Certificate stating that all conditions precedent to satisfaction and discharge have been satisfied.

## **Unclaimed Money**

Claims against the Company for the payment of principal of, premium, if any, or interest, on the Notes 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, Members, 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 Company or any of the Subsidiary Guarantors or JV Subsidiary Guarantors in the Indenture, or in any of the Notes, the Subsidiary Guarantees or JV Subsidiary Guarantees or because of the creation of any Indebtedness represented thereby, shall be had against any incorporator, stockholder, member, officer, director, employee or controlling person of the Company or any of the Subsidiary Guarantors or 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 Subsidiary Guarantees and JV Subsidiary Guarantees. Such waiver may not be effective to waive liabilities under any applicable law.



## **Concerning the Trustee, the Common Security Trustee and the Paying Agents**

Citicorp International Limited is to be appointed as Trustee under the Indenture, Citigroup Global Markets Deutschland AG is to be appointed as registrar and Citibank, N.A., London Branch is to be appointed as paying and transfer agent (the “Paying Agent”) 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. 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 as a prudent person would exercise under the circumstances in the conduct of such person’s own affairs.

The Indenture contains limitations on the rights of the Trustee, should it become a creditor of the Company or any of the Subsidiary Guarantors, 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 is permitted to engage in other transactions with the Company and its Affiliates; *provided, however*, that if it acquires any conflicting interest, it must eliminate such conflict or resign.

Citicorp International Limited will initially act as the Common Security Trustee under the Security Documents in respect of the security over the Collateral. The Common Security Trustee, acting in its capacity as such, shall have such duties with respect to the Collateral pledged, assigned or granted pursuant to the Security Documents as are set forth in the Indenture and the Security Documents. Under certain circumstances, the Common Security Trustee may have obligations under the Security Documents or the Intercreditor Agreement that are in conflict with the interests of the Holders. The Common Security Trustee will be under no obligation to exercise any rights or powers conferred under the Indenture, the Intercreditor Agreement or any of the Security Documents for the benefit of the Holders, unless such Holders have offered to the Common Security Trustee indemnity and/or security satisfactory to the Common Security Trustee against any loss, liability or expense. Furthermore, each Holder, by accepting the Notes will agree, for the benefit of the Trustee and the Common Security Trustee that it is solely responsible for its own independent appraisal of and investigation into all risks arising under or in connection with the Security Documents and has not relied on and will not at any time rely on the Trustee and the Common Security Trustee in respect of such risks.

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

The Notes will be represented by one or more global notes in registered form without interest coupons attached (each a “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.

### **Global Note**

Ownership of beneficial interests in the Global Note (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 Global Note 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.

The Notes are not issuable in bearer form.

## **Payments on the Global Note**

Payments of any amounts owing in respect of the Global Note (including principal, premium, interest and additional amounts) will be made to the paying agent. The Paying Agent will, in turn, make such payments to the common depository for Euroclear and Clearstream, which will distribute such payments to participants in accordance with their procedures. The Company 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 Company, the Trustee and the Agents will treat the registered holder of the Global Note (i.e., the common depository or its nominee) as the owner thereof for the purpose of receiving payments and for all other purposes. Consequently, none of the Company, 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
- 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 Note**

In the event any Global Note, or any portion thereof, is redeemed, the common depository 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 depository, Euroclear or Clearstream, as applicable, in connection with the redemption of such Global Note (or any portion thereof). The Company 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\$200,000 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 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 Note 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 Note in accordance with the normal procedures of Euroclear and Clearstream and in accordance with the provisions of the Indenture.

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 settlement procedures applicable. Book-entry interests will be credited to the securities custody accounts of Euroclear and Clearstream holders 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 immediately available 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**

We understand 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 Company, 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 Company 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 Company has received a written request from a Holder, the Company 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 Company 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 registrar in sufficient quantities and authenticated by the Trustee for delivery to Holders. Persons exchanging interests in a Global Note for individual definitive notes will be required to provide the registrar, through the relevant clearing system, with written instruction and other information required by the Company and the 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 by being deposited, first-class postage prepaid, in the United States mails (if intended for the Company or any Subsidiary Guarantor) addressed to the Company or such Subsidiary Guarantor at the principal office of the Company; (if intended for the Trustee) addressed to 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.

While the Notes are in global form, 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 and Clearstream. Any such notice shall be deemed to have been delivered on the day such notice is delivered to Euroclear and Clearstream or if by mail, when so sent or deposited.

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

The Company and each of the Subsidiary Guarantors will irrevocably (i) 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, any Subsidiary Guarantee, the Indenture or any transaction contemplated thereby and (ii) designate and appoint Cogency Global Inc., currently at 10 E 40th Street 10th Floor, New York, New York 10016, for receipt of service of process in any such suit, action or proceeding.

### **Governing Law**

Each of the Notes, the Subsidiary Guarantees 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 2024 Notes" for which no definition is provided.

"*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.

"*Adjusted Treasury Rate*" means, with respect to any redemption date, (i) the yield, under the heading which represents the average for immediately preceding week, appearing in the most recently published statistical release designated "H.15(519)" or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption "Treasury Constant Maturities", for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three (3) months before or after June 30, 2021, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be determined and the Adjusted Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month) or (ii) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per year equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date, in each case calculated on the third Business Day immediately preceding the redemption date.

“*Affiliate*” means, with respect to any Person, any other Person (i) directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person, (ii) who is a director or officer of such Person or any Subsidiary of such Person or of any Person referred to in clause (i) of this definition or (iii) 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 (i) or (ii). 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.

“*Applicable Premium*” means with respect to a Note at any redemption date, the greater of (i) 1.00% of the principal amount of such Note and (ii) the excess of (A) the present value at such redemption date of the redemption price of such Note on June 30, 2021 (such redemption price being described in the first paragraph in the “— Optional Redemption” section exclusive of any accrued interest), plus all required remaining scheduled interest payments due on such Note through June 30, 2021 (but excluding accrued and unpaid interest to the redemption date), computed using a discount rate equal to the Adjusted Treasury Rate plus 100 basis points, over (B) the principal amount of such Note.

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

“*Asset Disposition*” means the sale or other disposition by the Company or any Restricted Subsidiary (other than to the Company 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 Company or any Restricted Subsidiary which accounts for all or substantially all of the assets of such Restricted Subsidiary).

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

- (a) sales, transfers 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;
- (b) sales, transfers or other dispositions of assets constituting a Permitted Investment or Restricted Payment permitted to be made under the covenant described under the caption “— Certain Covenants — Limitation on Restricted Payments”;
- (c) sales, transfers or other dispositions of assets with a Fair Market Value not in excess of US\$1.0 million (or the Dollar Equivalent thereof) in any transaction or series of related transactions;
- (d) 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 Company or its Restricted Subsidiaries;
- (e) any transfer, assignment or other disposition deemed to occur in connection with creating or granting any Permitted Lien;
- (f) a transaction covered by the covenant under the caption “— Consolidation, Merger and Sale of Assets”; and
- (g) any sale, transfer or other disposition by the Company or any Restricted Subsidiary, including the sale or issuance by the Company or any Restricted Subsidiary of any Capital Stock of any Restricted Subsidiary to the Company 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 such Sale and Leaseback Transaction, of the total obligations of the lessee for rental payments during the remaining term of the lease in such 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 Company or any Restricted Subsidiary that is (i) secured by cash deposits, bank accounts or other assets of the Company or a Restricted Subsidiary and/or (ii) guaranteed by a guarantee or a letter of credit (or similar instruments) from or arranged by the Company or a Restricted Subsidiary and is used by the Company and its Restricted Subsidiaries to effect exchange of foreign currencies or remit money onshore or offshore.

“*Board of Directors*” means the board of directors elected or appointed by the stockholders of the Company to manage the business of the Company 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.

“*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 into such equity.

“*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.

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

- (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries, taken as a whole, to any “person” (within the meaning of Section 13(d) of the U.S. Securities Exchange Act of 1934, as amended (the “Exchange Act”)), other than one or more Permitted Holders;
- (2) the Company consolidates with, or merges with or into, any Person (other than one or more Permitted Holders), or any Person consolidates with, or merges with or into, the Company, in any such event pursuant to a transaction in which any of the outstanding Voting Stock of the Company or such other Person is converted into or exchanged for cash, securities or other property, other than any such transaction where the Voting Stock of the Company outstanding immediately prior to such transaction is converted into or exchanged for (or continues as) Voting Stock (other than Disqualified Stock) of the surviving or transferee Person constituting a majority of the outstanding shares of Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance) and in substantially the same proportion as before the transaction;
- (3) the Permitted Holders are the beneficial owners of less than 35.0% of the total voting power of the Voting Stock of the Company;

- (4) 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 the total voting power of the Voting Stock of the Company greater than such total voting power held beneficially by the Permitted Holders;
- (5) individuals who on the Original Issue Date constituted the Board of Directors (together with any new directors whose election was approved by a vote of at least a majority of the members of the Board of Directors then in office who were members of the Board of Directors on the Original Issue Date or whose election was previously so approved) cease for any reason to constitute a majority of the members of the Board of Directors then in office; or
- (6) the adoption of a plan relating to the liquidation or dissolution of the Company.

For the avoidance of doubt, for purposes of this “Change of Control” definition, a sale of shares of Capital Stock of a Restricted Subsidiary which holds all or substantially all properties and assets of the Company, and its Restricted Subsidiaries, taken as a whole, to Independent Third Parties in an initial public offering and listing on a stock exchange of the shares of Capital Stock of such Restricted Subsidiary where such Restricted Subsidiary (i) remains a Restricted Subsidiary immediately after such sale and (ii) the Company, a Subsidiary Guarantor or a JV Subsidiary Guarantor, as the case may be, immediately after such sale, owns, directly or indirectly, at least 30.0% of the Voting Stock of such Restricted Subsidiary shall not constitute a sale of substantially all properties and assets of the Company and its Restricted Subsidiaries.

“*Clearstream*” means Clearstream Banking S.A., its affiliates, successors or assigns.

“*Collateral*” means all collateral securing, or purported to be securing, directly or indirectly, the Notes or any Subsidiary Guarantee pursuant to the Security Documents, and shall initially consist of the Capital Stock of the initial Subsidiary Guarantors.

“*Commodity Agreement*” means any spot, forward, swap 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 on the Original Issue Date, and include, without limitation, all series and classes of such common stock or ordinary shares.

“*Comparable Treasury Issue*” means the U.S. Treasury security having a maturity comparable to the remaining term of the Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to June 30, 2021.

“*Comparable Treasury Price*” means, with respect to any redemption date, if clause (ii) of the Adjusted Treasury Rate is applicable, the average of three (or such lesser number as is received by the Trustee) Reference Treasury Dealer Quotations for such redemption date.

“*Consolidated Assets*” means, with respect to any Restricted Subsidiary at any date of determination, the Company 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 Company (which the Company shall use its reasonable best efforts to compile on a timely manner) are available (which may include 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 Company and its Restricted Subsidiaries in conformity with GAAP; *provided* that (i) 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 Company or any Restricted Subsidiary and (ii) 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 (i) Consolidated Interest Expense for such period and (ii) all cash and non-cash dividends paid, declared, accrued or accumulated during such period on any Disqualified Stock or Preferred Stock of the Company or any Restricted Subsidiary held by Persons other than the Company or any Wholly Owned Restricted Subsidiary, except for dividends payable in the Company’s Capital Stock (other than Disqualified Stock) or dividends paid to the Company or to a Wholly Owned Restricted Subsidiary.

“*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 Company 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 Company and its Restricted Subsidiaries, without duplication, (i) interest expense attributable to Capitalized Lease Obligations and imputed interest with respect to Attributable Indebtedness, (ii) amortization of debt issuance costs and original issue discount expense and non-cash interest payments in respect of any Indebtedness, (iii) the interest portion of any deferred payment obligation, (iv) 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, (v) the net costs associated with Hedging Obligations (including the amortization of fees), (vi) interest on Indebtedness of any other Person that is guaranteed by the Company or any Restricted Subsidiary (other than Pre-Registration Mortgage Guarantees), only to the extent such interest is actually paid by the Company or any Restricted Subsidiary and (vii) 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 to the extent of the amount of net income actually paid in cash to, or the amount of loss actually funded in cash by, the specified Person or a Restricted Subsidiary of the Person during such period;
- (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 Company or any Restricted Subsidiary or all or substantially all of the property and assets of such Person are acquired by the Company or any Restricted Subsidiary;

- (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 Company or any Restricted Subsidiary or (B) any Capital Stock of any Person (including any gains by the Company realized on sales of Capital Stock of the Company or any Restricted Subsidiary), in each case, which is not sold in the ordinary course of business of the Company or any Restricted Subsidiary;
- (6) any translation gains or losses due solely to fluctuations in currency values and related tax effects; and
- (7) any net after-tax extraordinary or non-recurring gains.

*provided* that any net after tax gains derived from direct or indirect sale by the Company or any Restricted Subsidiary of (i) Capital Stock of a Restricted Subsidiary primarily engaged in the holding of Investment Property or (ii) an interest in any Investment Property arising from the difference between the original cost basis and the cash sale price shall be added to Consolidated Net Income to the extent not already included in the net income for such period as determined in conformity with GAAP and Consolidated Net Income.

“*Consolidated Net Worth*” means, at any date of determination, stockholders’ equity as set forth on the most recently available fiscal quarter, semi-annual or annual consolidated balance sheet of the Company and its Restricted Subsidiaries, plus, to the extent not included, any Preferred Stock of the Company, 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 Company or any Restricted Subsidiary, each item to be determined in conformity with GAAP.

“*Contractor Guarantees*” means any guarantee by the Company or any Restricted Subsidiary of Indebtedness of any contractor, builder or other similar Person engaged by the Company or such Restricted Subsidiary in connection with the development, construction or improvement of real or personal property or equipment to be used in a Permitted Business by the Company or any Restricted Subsidiary in the ordinary course of business, which Indebtedness was Incurred by such contractor, builder or other similar Person to finance the cost of such development, construction or improvement.

“*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 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 (provided that such increase is permitted under the covenant described under “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”) or (4) otherwise altering the terms and conditions thereof.

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

“*CVR*” means the contingent value rights issued by the Company on July 21, 2016 pursuant to the CVR Agreement.

“*CVR Agreement*” means the Contingent Value Rights Agreement, dated as of July 21, 2016, between the Company and U.S. Bank National Association, as trustee.

“*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 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 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 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 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 “— 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 Company’s repurchase of the 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 Restricted Subsidiary from a bank that are secured by a pledge of deposits or bank accounts made by another 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 Company.

“*Equity Offering*” means any underwritten primary public offering or private placement of Common Stock of the Company after the Original Issue Date to any Person other than a Wholly Owned Restricted Subsidiary or any Permitted Holder; *provided* that the aggregate gross cash proceeds received by the Company from such transaction shall be no less than US\$20.0 million (or the Dollar Equivalent thereof).

“*Euroclear*” means Euroclear Bank SA/NV.

“*Exchange Convertible Bond PIK Interest*” means the interest that is capitalized and added to the then current outstanding principal amount of the Exchange Convertible Bonds pursuant to the terms of the Exchange Convertible Bonds.

“*Exchange Convertible Bonds*” means the U.S. dollar-denominated variable rate convertible bonds due 2019 issued by the Company pursuant to the terms of the Mandatorily Exchangeable Bonds and any Exchange Convertible Bond PIK Interest with respect thereto.



“*Exempted Subsidiary*” means any Restricted Subsidiary organized in any jurisdiction other than the PRC that is prohibited by applicable law or regulation to provide a Subsidiary Guarantee or a JV Subsidiary Guarantee or create any Lien over its Capital Stock to secure any of the secured obligations subject to the Intercreditor Agreement; *provided* that (x) the Company shall have failed, upon using commercially reasonable efforts, to obtain any required governmental or regulatory approval or registration with respect to such Subsidiary Guarantee, JV Subsidiary Guarantee or Lien over its Capital Stock, 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 Company having obtained such applicable approval or registration.

“*Existing HY Notes*” means the Series A Notes, the Series B Notes, the Series C Notes, the Series D Notes and the Series E Notes.

“*Existing HY Indentures*” means the indentures dated July 21, 2016 as amended and supplemented from time to time governing the Existing HY Notes.

“*Existing HY Notes PIK Interest*” means interest on the Existing HY Notes paid in the form of Existing HY Notes PIK Notes.

“*Existing HY Notes PIK Notes*” means Existing HY Notes issued under the relevant Existing HY Notes Indenture in the event the Company pays Existing HY Notes PIK Interest on the relevant series of Existing HY Notes pursuant to such Existing HY Notes Indenture.

“*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 Company.

“*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 Company (which the Company shall use its reasonable best efforts to compile in a timely manner) are available (which may include internal consolidated financial statements) (the “Four Fiscal-Quarter Period”) to (2) the aggregate Consolidated Fixed Charges during such Four Fiscal-Quarter Period. In making the foregoing calculation:

- (A) *pro forma* effect shall be given to any Indebtedness or Preferred Stock Incurred, repaid or redeemed during the period (the “Reference Period”) commencing on and including the first day of the Four Fiscal-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 Fiscal-Quarter Period), in each case as if such Indebtedness 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 Four Fiscal-Quarter Period shall not include any interest income actually earned by the Company or such Restricted Subsidiary during such Four Fiscal-Quarter Period in respect of the funds used to repay or redeem such Indebtedness 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 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;

- (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 have been made by any Person that has become a Restricted Subsidiary or has been merged with or into the Company 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; and
- (E) *pro forma* effect shall be given to the creation, designation or re-designation of Restricted Subsidiaries and Unrestricted Subsidiaries as if such creation, designation or re-designation had occurred on the first day of such Reference Period;

*provided* that to the extent that clause (C) or (D) of this paragraph 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 Hong Kong Financial Reporting Standards 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 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 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; and
- (9) all Disqualified Stock issued by such 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 (1) any capital commitments, deferred payment obligation, pre-sale receipts in advance from customers or similar obligations 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, (2) any Entrusted Loan; *provided* that such Indebtedness is not reflected as borrowings on the consolidated balance sheet of the Company (contingent obligations and commitments referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet) or (3) any obligations in respect of the CVRs.

The amount of Indebtedness of any Person at any time shall be the outstanding balance at such time 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:

- (A) 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;
- (B) 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;
- (C) that the amount of Indebtedness with respect to any Hedging Obligation shall be (i) zero if Incurred pursuant to paragraph (b)(6) under the “Limitation on Indebtedness and Preferred Stock” covenant or (ii) equal to the net amount payable by such Person if the Commodity Agreement, Currency Agreement or Interest Rate Agreement giving rise to such Hedging Obligation were terminated at that time due to default by such Person if not Incurred pursuant to such paragraph, and
- (D) that the contingent obligations arising from letters of credit, bankers’ acceptances or other similar instruments of a Restricted Subsidiary to secure Indebtedness of another Restricted Subsidiary shall not be deemed to be Indebtedness so long as such contingent obligations are used to secure the payment of Indebtedness of another Restricted Subsidiary permitted to be Incurred under the Indenture.

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

“*Insurance Company Investor*” means an Independent Third Party that is a financial institution or an insurance company or an Affiliate thereof that invests in any Capital Stock of a Restricted Subsidiary.

“*Intercreditor Agreement*” has the meaning set forth under “— Security.”

“*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:

- (i) any direct or indirect advance, loan or other extension of credit to another Person,
- (ii) 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),
- (iii) any purchase or acquisition of Capital Stock, Indebtedness, bonds, notes, debentures or other similar instruments or securities issued by another Person, or
- (iv) any guarantee of any obligation of another Person to the extent such obligation is outstanding and to the extent guaranteed by such Person.

For the purposes of the provisions of the “— Certain Covenants — Designation of Restricted and Unrestricted Subsidiaries” and “— Certain Covenants — Limitation on Restricted Payments” covenants: (i) the Company will be deemed to have made an Investment in an Unrestricted Subsidiary in an amount equal to the Fair Market Value of the Company’s proportionate interest in the assets (net of the Company’s proportionate interest in the liabilities owed to any Person other than the Company or a Restricted Subsidiary and that are not guaranteed by the Company or a Restricted Subsidiary) of a Restricted Subsidiary that is designated an Unrestricted Subsidiary at the time of such designation and (ii) 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.

“*Investment Property*” means any property that is owned and held by any Restricted Subsidiary for long-term rental yields or for capital appreciation or both, or any hotel owned by the Company or any Restricted Subsidiary from which the Company or any Restricted Subsidiary derives or expects to derive operating income.

“*Investment Grade*” means a rating of “AAA,” “AA,” “A” or “BBB,” as modified by a “+” or “-” indication, or an equivalent rating representing one of the four highest Rating Categories, by S&P or any of its successors or assigns or a rating of “Aaa,” “Aa,” “A” or “Baa,” as modified by a “1,” “2” or “3” indication, or an equivalent rating representing one of the four highest Rating Categories, by Moody’s or any of its successors or assigns or the equivalent ratings of any internationally recognized rating agency or agencies, as the case may be, which shall have been designated by the Company as having been substituted for S&P or Moody’s or both, as the case may be.

“*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 quarter end of the Company; and (ii) a percentage equal to the direct equity ownership percentage of the Company and/or its Restricted Subsidiaries in the Capital Stock of such JV Subsidiary Guarantor and its Subsidiaries.

“*JV Subsidiary Guarantee*” has the meaning set forth under the caption “— The Subsidiary Guarantees and 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).

“*Mandatorily Exchangeable Bond PIK Interest*” means the interest that is capitalized and added to the then current outstanding principal amount of the Mandatorily Exchangeable Bonds pursuant to the terms of the Mandatorily Exchangeable Bonds.

“*Mandatorily Exchangeable Bonds*” means the U.S. dollar-denominated variable rate mandatorily exchangeable bonds due 2019 issued by the Company and any Mandatorily Exchangeable Bond PIK Interest with respect thereto.

“*Measurement Date*” means April 28, 2010.

“*Minority Joint Venture*” means any corporation, association or other business entity that is accounted for by the equity method of accounting in accordance with GAAP by the Company or a Restricted Subsidiary and primarily engaged in the Permitted Businesses, and such Minority Joint Venture’s Subsidiaries.

“*Moody’s*” means Moody’s Investors Service, Inc., its affiliates, successors or assigns.

“*Net Cash Proceeds*” means:

- (a) with respect to any Asset Sale, the proceeds of such Asset Sale in the form of cash or Temporary Cash Investments, 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 Temporary Cash Investments and proceeds from the conversion of other property received when converted to cash or Temporary Cash Investments, net of
  - (1) brokerage commissions and other fees and expenses (including fees and expenses of counsel and investment banks) related to such Asset Sale;
  - (2) 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 Company and its Restricted Subsidiaries, taken as a whole;
  - (3) 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; and
  - (4) appropriate amounts to be provided by the Company 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
- (b) with respect to any issuance or sale of Capital Stock, the proceeds of such issuance or sale in the form of cash or Temporary Cash Investments, 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 Temporary Cash Investments and proceeds from the conversion of other property received when converted to cash or Temporary Cash Investments, 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 Subsidiary*” means any Restricted Subsidiary not providing a Subsidiary Guarantee or JV Subsidiary Guarantee.

“*Offer to Purchase*” means an offer to purchase the Notes by the Company from the Holders commenced by sending a notice to the Trustee, the Paying Agent and each Holder at its last address appearing in the Note register stating:

- (1) the provision of 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 sent) (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 Company 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 pursuant to the applicable procedures of Euroclear and Clearstream, together with the form entitled “Option of the Holder to Elect Purchase” on the reverse side of the Note completed, to the order of the Company’s agent appointed for the purpose of the Offer to Purchase (the “Tender Agent”) with a copy 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 Tender 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 the 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\$200,000 or integral multiples of US\$1,000.

One Business Day prior to the Offer to Purchase Payment Date, the Company will deposit with the Tender Agent money sufficient to pay the purchase price of all Notes or portions thereof to be accepted by the Company for payment on the Offer to Purchase Payment Date. On the Offer to Purchase Payment Date, the Company 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 Paying Agent all Notes or portions thereof so accepted together with an Officers' Certificate (with a copy to the Trustee) specifying the Notes or portions thereof accepted for payment by the Company. The Tender Agent shall promptly send to the Holders of Notes so accepted payment in an amount equal to the purchase price, and the Registrar shall promptly authenticate and deliver to such Holders a new Note equal in principal amount to any unpurchased portion of the Note surrendered; *provided* that each such Note purchased and each such new Note issued shall be in a principal amount of US\$200,000 or integral multiples of US\$1,000. The Company will publicly announce the results of an Offer to Purchase as soon as practicable after the Offer to Purchase Payment Date. The Company will comply with all applicable securities laws and regulations, in the event that the Company is required to repurchase the Notes pursuant to an Offer to Purchase.

The materials used in connection with an Offer to Purchase are required to contain or incorporate by reference information concerning the business of the Company and its Subsidiaries which the Company 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 Company 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.

“*Officer*” means one of the executive officers of the Company or, in the case of a Subsidiary Guarantor or a JV Subsidiary Guarantor, one of the directors or executive officers of 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 any Subsidiary Guarantor or JV Subsidiary Guarantor under the Indenture, Officers' Certificate means a certificate signed by one Officer if there is only one Officer in such Subsidiary Guarantor or JV Subsidiary Guarantor at the time such certificate is required to be delivered.

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

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

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

“*Payment Default*” means (i) any default in the payment of interest on any Note when the same becomes due and payable, (ii) any 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, (iii) the failure by the Company to make or consummate a Change of Control Offer in the manner described under the caption “— Repurchase of Notes upon a Change of Control,” or an Offer to Purchase in the manner described under the caption “— Certain Covenants — Limitation on Asset Sales” or (iv) any Event of Default specified in clause (e) of the definition of Events of Default.

“*Permitted Business*” means any business conducted by the Company and its Restricted Subsidiaries on the Original Issue Date and other businesses reasonably related, ancillary or complementary thereto, or any business in the financial services, internet, logistics, medical or agricultural industries or any business reasonably related, ancillary or complementary thereto.

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

- (1) Mr. Kwok Ying Shing, Mr. Kwok Chun Wai and Mr. Kwok Ying Chi;
- (2) any Affiliate (other than an Affiliate as defined in clause (ii) or (iii) of the definition of “Affiliate”) of any of the Persons specified in clause (1) of this definition; 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 80% owned by Persons specified in clauses (1) and (2) of this definition.

“*Permitted Investment*” means:

- (1) any Investment in the Company or a Restricted Subsidiary that is primarily engaged, directly or indirectly through one or more other Restricted Subsidiaries, in a Permitted Business or a Person which will, upon the making of such Investment, become a Restricted Subsidiary that is primarily engaged, directly or indirectly through one or more other Restricted Subsidiaries, in a Permitted Business or be merged or consolidated with or into or transfer or convey all or substantially all its assets to the Company or a Restricted Subsidiary that is primarily engaged in a Permitted Business.
- (2) Temporary Cash Investments;
- (3) payroll, travel and similar advances 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 designed solely to protect the Company or any Restricted Subsidiary against fluctuations in commodity prices, interest rates or foreign currency exchange rates and not for speculation;
- (7) receivables owing to the Company 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) any securities or other Investments received as consideration in, or retained in connection with, sales or other dispositions of property or assets, including Asset Dispositions made in compliance with the covenant described 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 the caption “— Certain Covenants — Limitation on Liens”;
- (10) any Investment pursuant to Pre-Registration Mortgage Guarantees or Contractor Guarantees by the Company or any Restricted Subsidiary otherwise permitted to be incurred under the Indenture;
- (11) Investments in securities of trade creditors or customers received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

- (12) advances to contractors and suppliers for the acquisition of assets or consumables or services in the ordinary course of a Permitted Business that are recorded as deposits or prepaid expenses on the Company's consolidated balance sheet;
- (13) deposits of pre-sale proceeds made in order to secure the completion and delivery of pre-sold properties and issuance of the related land use title in the ordinary course of a Permitted Business;
- (14) deposits made in order to comply with statutory or regulatory obligations to maintain deposits for workers, compensation claims and other purposes specified by statute or regulation from time to time in the ordinary course of a Permitted Business;
- (15) (i) deposits made in order to secure the performance of the Company or any Restricted Subsidiary, (ii) prepayments made in connection with the acquisition of real property or land use rights by the Company or any Restricted Subsidiary, in each case, in the ordinary course of a Permitted Business; and (iii) advances to government authorities or government affiliated entities in the PRC in connection with the financing of redevelopment of old urban areas or primary land development, in each case, in the ordinary course of business that are recorded as assets on the Company's consolidated balance sheet; and
- (16) any Investment (including any deemed Investment upon the redesignation of a Restricted Subsidiary as an Unrestricted Subsidiary or upon the sale of Capital Stock of a Restricted Subsidiary) by the Company or any Restricted Subsidiary in any Person; *provided* that:
  - (a) the Person into which such Investment is made is primarily engaged in the Permitted Businesses;
  - (b) none of the other shareholders of or partners in such Person is a Person described in clause (a) or (b) of the first paragraph of the covenant described under the caption “— Limitation on Transactions with Shareholders and Affiliates” (other than by reason of such shareholder or partner being an officer or director of the Company, a Restricted Subsidiary, a Minority Joint Venture or an Unrestricted Subsidiary or by reason of being a Restricted Subsidiary, a Minority Joint Venture or an Unrestricted Subsidiary);
  - (c) in the case of any Investment by the Company or any Restricted Subsidiary in a Person of which less than 50% of the voting power of the outstanding Voting Stock is owned, directly or indirectly, by the Company or its Restricted Subsidiaries, at the time of such Investment, the Company could Incur at least US\$1.00 of Indebtedness under the proviso in paragraph (a) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock”; *provided* that this paragraph (c) shall not apply if such Investment would otherwise have been permitted under this clause (16) and such Investment, together with the aggregate amount of all other Investments made in reliance on this proviso since the Original Issue Date, shall not exceed in aggregate an amount equal to 15% of Total Assets (such aggregate amount of Investments shall be calculated after deducting an amount equal to the net reduction in all Investments made in reliance on this proviso since the Original Issue Date resulting from the events set forth in paragraphs (e)(i) through (e)(iii) below, where references in such paragraphs to “under this clause (16)” shall be substituted with “in reliance on the proviso in paragraph (c)”);
  - (d) no Default has occurred and is continuing or would occur as a result of such Investment; and

- (e) such Investment, together with the aggregate of all other Investments made under this clause (16) since the Original Issue Date shall not exceed in aggregate an amount equal to 25% of Total Assets. 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:
- (i) payments of interest on Indebtedness, dividends or repayments of loans or advances made under this clause (16), in each case to the Company 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),
  - (ii) the unconditional release of a Guarantee provided by the Company or a Restricted Subsidiary after the Original Issue Date under this clause (16) of an obligation of any such Person, or
  - (iii) 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 Company or a Restricted Subsidiary after the Original Issue Date in any such Person under this clause (16);

*provided, further* that for the avoidance of doubt, the value of each Investment made pursuant to this clause (16) shall be valued at the time such Investment is made;

- (17) guarantees permitted under clause (b)(21) of the covenant entitled “— Limitation on Indebtedness and Preferred Stock”; and
- (18) any Investment deemed to have been made by the Company or any Restricted Subsidiary in the Subsidiaries in the Restructuring Group in connection with the Restructuring upon designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries, *provided* that (A) (i) the Board of Directors of the Company has determined in good faith that the designation of such Subsidiaries in the Restructuring Group as Unrestricted Subsidiaries is necessary to obtain approval from a Qualified Exchange for the Restructuring, (ii) at the time of such designation, the members of the Restructuring Group remain Subsidiaries of the Company, and (iii) at the time of such designation, the members of the Restructuring Group remain primarily engaged in the Permitted Businesses; and (B) the aggregate of all Investments made under this clause (18) since the Original Issue Date shall not exceed an amount equal to 15% of Total Assets (for the avoidance of doubt, any portion of such Investments exceeding 15% of Total Assets shall not constitute a Permitted Investment pursuant to this clause (18) but may be made, characterized and accounted for in accordance with the other provisions of the Indenture; and
- (19) any Investment in a subordinated tranche of interests in a Receivable Financing Incurred pursuant to clause (ii) of the definition thereof with multiple tranches offered and sold to investors that, in the good faith determination of the Board of Directors, is necessary or advisable to effect such Receivable Financing.

“*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 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 Company 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 Company or its Restricted Subsidiaries relating to such property or assets;
- (6) any interest or title of a lessor in the property subject to any operating lease;
- (7) 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 Company 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;
- (8) Liens in favor of the Company or any Restricted Subsidiary;
- (9) Liens arising from attachment or the rendering of a final judgment or order against the Company or any Restricted Subsidiary that does not give rise to an Event of Default;
- (10) 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;
- (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 (b)(5) of the covenant described under the caption "*— Limitation on Indebtedness and Preferred Stock*"; *provided* that such Liens do not extend to or cover any property or assets of the Company or any Restricted Subsidiary other than the property or assets securing the Indebtedness being refinanced;
- (13) Liens (including extensions and renewals thereof) upon real or personal property; *provided* that (a) such Lien is created solely for the purpose of securing Indebtedness of the type described under clause (b)(7) of the covenant described under the caption "*— Limitation on Indebtedness and Preferred Stock*," (b) such Lien is created prior to, at the time of or within 180 days after the later of the acquisition or the completion of development, construction or improvement of such property, (c) the principal amount of Indebtedness secured by such Lien does not exceed 100% of the cost of such property, development, construction or improvement and (d) such Lien shall not extend to or cover any property or assets other than such item of property and any improvements on such item; *provided* that, such Lien may cover other property or assets (instead of or in addition to such item of property or improvements) and the principal amount of Indebtedness secured by such Lien may exceed 100% of such cost if (x) such Lien is Incurred in the ordinary course of business and (y) the aggregate book value of property or assets (as of the last day of the most recent fiscal quarter period for which consolidated financial statements of the Company (which the Company shall use its reasonable best efforts to compile in a timely manner) are available (which may be internal consolidated 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 (13) does not exceed 130% of the aggregate principal amount of Indebtedness secured by such Liens;
- (14) Liens under the Security Documents;



- (15) Liens securing any Permitted Pari Passu Secured Indebtedness that complies with each of the requirements set forth under “Security — Permitted Pari Passu Secured Indebtedness”;
- (16) Liens securing Indebtedness of the Company or any Restricted Subsidiary under any Pre-Registration Mortgage Guarantee which is permitted to be Incurred under clause (b)(13) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock”;
- (17) 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 Company or any Restricted Subsidiary;
- (18) 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 (b)(6) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock”;
- (19) Liens on deposits of pre-sale proceeds made in order to secure the completion and delivery of pre-sold properties and issuance of the related land use title made in the ordinary course of business and not securing Indebtedness of the Company or any Restricted Subsidiary;
- (20) Liens on deposits made in order to comply with statutory obligations to maintain deposits for workers’ compensation claims and other purposes specified by statute made in the ordinary course of business and not securing Indebtedness of the Company or any Restricted Subsidiary;
- (21) Liens on deposits made in order to secure the performance of the Company or any Restricted Subsidiary in connection with the acquisition of real property or land use rights or personal property (including, without limitation, Capital Stock) by the Company or any Restricted Subsidiary (including, without limitation, by way of acquisition of Capital Stock of a Person) in the ordinary course of business and not securing Indebtedness of the Company or any Restricted Subsidiary;
- (22) Liens granted by the Company or any Restricted Subsidiary in favor of any Insurance Company Investor to secure the obligations of a Subsidiary of such Restricted Subsidiary to pay a guaranteed or preferred dividend or return on Capital Stock of such Subsidiary held by such Insurance Company Investor permitted to be Incurred under clause (b)(16) of the covenant described under the caption “— Limitation on Indebtedness and Preferred Stock;”
- (23) Liens on Investment Properties securing Indebtedness of the Company or any Restricted Subsidiary permitted to be Incurred under clause (b)(19) of the covenant described under “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
- (24) Liens Incurred on cash deposits, bank accounts or other assets of the Company or any Restricted Subsidiary to secure Bank Deposit Secured Indebtedness of the type described under clause (b)(20) of the covenant under “— Certain Covenants — Limitation on Indebtedness and Preferred Stock”;
- (25) Liens on current assets securing Indebtedness permitted to be Incurred under clause (b)(14) of the “— Limitation on Indebtedness and Preferred Stock” covenant;
- (26) Liens to secure Entrusted Loans;
- (27) Liens securing Indebtedness permitted to be Incurred under clause (b)(17) of the covenant entitled “— Limitation on Indebtedness and Preferred Stock” covenant;
- (28) 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 (b)(15) of the “— Limitation on Indebtedness and Preferred Stock” covenant;

- (29) Liens securing Indebtedness Incurred under clause (b)(21) of the “— Limitation on Indebtedness and Preferred Stock” covenant;
- (30) Liens on assets of a Non-Guarantor Subsidiary securing any Permitted Subsidiary Indebtedness of any Non-Guarantor Subsidiary permitted to be Incurred under the proviso in paragraph (a) of the covenant described under “— Limitation on Indebtedness and Preferred Stock”; and
- (31) Liens securing Indebtedness Incurred under clause (b)(25) of the covenant described under “— Limitation on Indebtedness and Preferred Stock.”

“*Permitted Pari Passu Secured Indebtedness*” has the meaning set forth under “Security — Permitted Pari Passu Secured Indebtedness.”

“*Permitted Subsidiary Indebtedness*” means Indebtedness of, and all Preferred Stock issued by, the Non-Guarantor Subsidiaries, 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 (excluding Public Indebtedness and the amount of any Indebtedness of any Non-Guarantor Subsidiary permitted under clauses (b)(1), (b)(2), (b)(4), (b)(6) and (b)(13) of the covenant described under the caption “— 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 Hong Kong Special Administrative Region, Macau and Taiwan.

“*PRC CJV*” means any future 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 September 3, 2016) 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 February 19, 2014), as such laws may be amended.

“*PRC CJV Partner*” means with respect to a PRC CJV, the other party or parties to the joint venture agreement relating to such PRC CJV with the Company 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 any other class of Capital Stock of such Person.

“*Pre-Registration Mortgage Guarantees*” means any Indebtedness of the Company or any Restricted Subsidiary consisting of a guarantee in favor of any bank or other similar financial institutions in the ordinary course of business of secured loans of purchasers of individual units of properties from the Company or any Restricted Subsidiary; *provided* that any such guarantee shall be released in full on or before the perfection of a security interest in such properties under applicable law in favor of the relevant lender.

“*Public Indebtedness*” means any bonds, debentures, notes or similar debt securities issued in a public offering or a private placement (other than the Notes) to institutional investors.

“*Qualified Exchange*” means either (1) the New York Stock Exchange, the London Stock Exchange, The Stock Exchange of Hong Kong Limited, the Nasdaq Stock Market, Singapore Exchange Securities Trading Limited, The Shanghai Stock Exchange or The Shenzhen Stock Exchange or (2) 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).

“*Qualified IPO*” means an initial public offering, and a listing of, Capital Stock of a company on a Qualified Exchange, *provided* that in the case that such listing is on 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), such listing shall result in a public float of not less than the percentage required by the applicable listing rules.

“*Rating Agencies*” means (i) S&P, (ii) Moody’s and (iii) if S&P or Moody’s or both shall not make a rating of the Notes publicly available, one or more “nationally recognized statistical rating organizations,” as the case may be, within the meaning of Section 3(a)(62) of the Exchange Act, selected by the Company, which shall be substituted for S&P or Moody’s or both, as the case may be.

“*Rating Category*” means (i) with respect to S&P, any of the following categories: “BB,” “B,” “CCC,” “CC,” “C” and “D” (or equivalent successor categories); (ii) with respect to Moody’s, any of the following categories: “Ba,” “B,” “Caa,” “Ca,” “C” and “D” (or equivalent successor categories); and (iii) the equivalent of any such category of S&P or Moody’s used by another Rating Agency. In determining whether the rating of the Notes has decreased by one or more gradations, gradations within Rating Categories (“+” and “-” for S&P; “1,” “2” and “3” for Moody’s; or the equivalent gradations for another Rating Agency) shall be taken into account (e.g., with respect to S&P, a decline in a rating from “BB+” to “BB,” as well as from “BB-” to “B+,” will constitute a decrease of one gradation).

“*Receivable Financing*” means any financing transaction or series of financing transactions that have been or may be entered into by the Company or any Restricted Subsidiary pursuant to which the Company or any Restricted Subsidiary may sell, convey or otherwise transfer to another Person, or may grant a security interest in, any of its receivables, mortgages, royalty, other revenue streams or interests therein (including without limitation, all security interests in goods financed thereby (including equipment and property), the proceeds of such receivables, and other assets which are customarily sold or in respect of which security interests are customarily granted in connection with securitization or factoring transactions involving such assets) for credit or liquidity management purposes (including discounting, securitization or factoring transactions) either (i) in the ordinary course of business or (ii) by way of selling by such other Person securities that are, or are capable of being, listed on any stock exchange or in any securities market and are offered using an offering memorandum or similar offering document.

“*Receivable Financing Assets*” means assets that are underlying and are sold, conveyed or otherwise transferred or pledged in a Receivable Financing.

“*Reference Treasury Dealer*” means each of any three investment banks of recognized standing that is a primary U.S. Government securities dealer in The City of New York, selected by the Company in good faith.

“*Reference Treasury Dealer Quotations*” means, with respect to each Reference Treasury Dealer and any redemption date, the average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing by such Reference Treasury Dealer at 5:00 p.m. on the fifth Business Day preceding such redemption date.

“*Renminbi*” or “*RMB*” means the lawful currency of the People’s Republic of China, excluding Hong Kong, Macau and Taiwan for the purposes of the Indenture.

“*Restricted Subsidiary*” means any Subsidiary of the Company other than an Unrestricted Subsidiary.

“*Restructuring*” means the restructuring and Qualified IPO of the common shares of a Subsidiary of the Company in the Restructuring Group.

“*Restructuring Group*” means the group of Subsidiaries of the Company which are engaged in the Permitted Business that the Company may spin off and separately listed on a Qualified Exchange as part of the Restructuring.

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

“*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 Company or any Restricted Subsidiary transfers such property to another Person and the Company or any Restricted Subsidiary leases it from such Person.

“*Securitization Fees*” means distributions or payments made directly or by means of discounts with respect to any Receivable Financing Asset or participation interest therein issued or sold in connection with and other fees paid to a Person that is not a Restricted Subsidiary in connection with any Receivable Financing.

“*Security Documents*” means, collectively, the pledge or charge agreements and any other agreements or instruments that may evidence or create any security interest in favor of the Common Security Trustee on behalf of the Trustee and/or any Holders in any or all of the Collateral.

“*Senior Indebtedness*” of the Company or any Restricted Subsidiary, as the case may be, means all Indebtedness of the Company or such 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 Company, the Notes, (b) in respect of any Restricted Subsidiary that is a Subsidiary Guarantor, its Subsidiary Guarantee; or (c) in respect of any Restricted Subsidiary that is a JV Subsidiary Guarantor, its JV Subsidiary Guarantee; *provided* that Senior Indebtedness does not include (i) any obligation to the Company or any Restricted Subsidiary, (ii) trade payables or (iii) Indebtedness Incurred in violation of the Indenture.

“*Series A Notes*” means the variable rate senior notes due December 31, 2019 issued by the Company.

“*Series B Notes*” means the variable rate senior notes due June 30, 2020 issued by the Company.

“*Series C Notes*” means the variable rate senior notes due December 31, 2020 issued by the Company.

“*Series D Notes*” means the variable rate senior notes due June 30, 2021 issued by the Company.

“*Series E Notes*” means the variable rate senior notes due December 31, 2021 issued by the Company.

“*Significant Restricted Subsidiary*” means a Restricted Subsidiary, or a 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 Company or any Restricted Subsidiary and an Independent Third Party pursuant to which the Company or such Restricted Subsidiary agrees to (x) acquire not less than a majority of the Capital Stock of a Person (which owns land use rights in respect of parcels of land suitable for Permitted Business) (the “Minimum Initial Purchase”) from such Independent Third Party and pay for the Minimum Initial Purchase in full or in installments at a purchase price that is not more than the Fair Market Value of such Capital Stock on the date of such agreement and/or (y) on or after the payment in full of the purchase price for the Minimum Initial Purchase and such Person becomes a Restricted Subsidiary, (i) acquire additional shares of Capital Stock of such Restricted Subsidiary from such Independent Third Party and pay for such additional shares in full or in installments after the date of such agreement at a purchase price that is not more than the Fair Market Value of such Capital Stock on the date of such agreement or (ii) acquire additional shares of Capital Stock of such Restricted Subsidiary from such Independent Third Party in accordance with a “right of first refusal” or “right of first offer” type of provision in such agreement at a purchase price that is not more than the Fair Market Value of such Capital Stock on or about the date of such purchase.

“*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 Shareholder Loan*” means any unsecured loan to the Company or any Restricted Subsidiary from Permitted Holders which (i) is expressly subordinated in right of payment to the Notes, (ii) by its terms (and by the terms of any security into which it is convertible or for which it is exchangeable) does not mature and is not required to be repaid, pursuant to a sinking fund obligation event of default or otherwise, in whole or in part, on or prior to the date that is one year after the Stated Maturity of the Notes and (iii) by its terms does not provide any cash payment of interest.

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

“*Subsidiary*” means, with respect to any Person, any corporation, association or other business entity (i) 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 (ii) of which 50% or less of the outstanding Voting Stock is owned, directly or indirectly, by such Person and which is “controlled” and consolidated by such Person in accordance with GAAP.

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

“*Subsidiary Guarantor*” means any initial Subsidiary Guarantor named herein and any other Restricted Subsidiary which guarantees the payment of the Notes pursuant to the Indenture and the Notes; *provided* that Subsidiary Guarantor will not include (a) any Person whose Subsidiary Guarantee has been released in accordance with the Indenture and the Notes or (b) any JV Subsidiary Guarantor.

“*Subsidiary Guarantor Pledgor*” means any initial Subsidiary Guarantor Pledgor named herein and any other Subsidiary Guarantor which pledges Collateral to secure the obligations of the Company under the Notes and the Indenture and of such Subsidiary Guarantor under its Subsidiary Guarantee; *provided* that a Subsidiary Guarantor Pledgor will not include any Person whose pledge under the Security Documents has been released in accordance with the Security Documents, the Indenture and the Notes.

“*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 United Kingdom, the People’s Republic of China and Hong Kong or any agency of the foregoing or obligations fully and unconditionally guaranteed by the United States of America, any state of the European Economic Area, the United Kingdom, the People’s Republic of China and Hong Kong or any agency of the foregoing, in each case maturing within one year;
- (2) time deposit accounts, certificates of deposit, demand notes 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 or any state thereof, any state of the European Economic Area, the United Kingdom or Hong Kong, and which bank or trust company has capital, surplus and undivided profits aggregating in excess of US\$100.0 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 Section 3(a)(62) of the Exchange 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 within 180 days of the date of acquisition thereof, issued by a corporation (other than an Affiliate of the Company) 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) time deposit accounts, certificates of deposit, overnight or call deposits and money market deposits with any bank or financial institution organized under the laws of the PRC, Hong Kong or anywhere the Company or any Restricted Subsidiary conducts business operations; and
- (8) structured deposit products that are principal protected with any bank or financial institution organized under the laws of the PRC, Hong Kong or anywhere the Company or any Restricted Subsidiary conducts business operations 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 Company 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 Company (which the Company shall use its reasonable best efforts to compile on a timely manner) are available (which may include internal consolidated financial statements); *provided* that only with respect to clause (b)(7) 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, as measured by the purchase price or cost therefor or budgeted cost provided in good faith by the Company or any Restricted Subsidiary to the bank or other similar financial institutional lender providing such Indebtedness.

“*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.

“*Unrestricted Subsidiary*” means (1) any Subsidiary of the Company 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 holder 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 100% 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 are entitled to 95% or more of the economic benefits distributable by such Subsidiary.

## TAXATION

The following summary of certain Cayman Islands, British Virgin Islands, Hong Kong and PRC tax consequences of the purchase, ownership and disposition of Notes is based upon applicable laws, regulations, rulings and decisions in effect as of the date of this offering memorandum, all of which are subject to change (possibly with retroactive effect). This discussion does not purport to be a comprehensive description of all the tax considerations that may be relevant to a decision to purchase, own or dispose of the Notes and does not purport to deal with consequences applicable to all categories of investors, some of which may be subject to special rules. Persons considering the purchase of Notes should consult their own tax advisors concerning the tax consequences of the purchase, ownership and disposition of Notes, including such possible consequences under the laws of their country of citizenship, residence or domicile.

### **Cayman Islands**

The following is a discussion of certain Cayman Islands income tax consequences of an investment in the Notes. The discussion is a general summary of present law, which is subject to prospective and retroactive change. It is not intended as tax advice, does not consider any investor's particular circumstances, and does not consider tax consequences other than those arising under Cayman Islands law.

Under the laws of the Cayman Islands, payments of interest and principal on the Notes will not be subject to taxation and no withholding will be required on the payment of interest, principal or premium to any holder of the Notes, as the case may be, nor will gains derived from the disposal of the Notes be subject to any capital gains, income or corporation tax in the Cayman Islands. The Cayman Islands currently have no exchange control restrictions and are not party to any double taxation treaties. The Cayman Islands currently levy no taxes on individuals or corporations based upon profits, income, gains or appreciations and there is no taxation in the nature of inheritance tax or estate duty.

No stamp duties or similar taxes or charges are payable under the laws of the Cayman Islands in respect of the execution and issue of the Notes unless they are executed in or brought within (for example, for the purposes of enforcement) the jurisdiction of the Cayman Islands, in which case stamp duty of 0.25% of the face amount thereof may be payable on each Note (up to a maximum of 250 Cayman Islands dollars ("CI\$") (US\$312.50)) unless stamp duty of CI\$500 (US\$625) has been paid in respect of the entire issue of Notes.

The above conversions of Cayman Islands dollars to U.S. dollars have been made on the basis of US\$1.25 = CI\$1.00.

Pursuant to section 6 of the Tax Concessions Law (2011 Revision) of the Cayman Islands, the Company has obtained an undertaking from the Governor-in-Cabinet:

- (1) that no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciation shall apply to the Company or its operations; and
- (2) that the aforesaid tax or any tax in the nature of estate duty or inheritance tax shall not be payable on or in respect of the shares, debentures or other obligations of the Company.

The undertaking for the Company is for a period of twenty years from August 14, 2007.

### **British Virgin Islands**

There is no income or other tax of the British Virgin Islands imposed by withholding or otherwise on any payment to be made to or by the Subsidiary Guarantors pursuant to the Subsidiary Guarantees.

### **Hong Kong**

*Withholding Tax.* No withholding tax in Hong Kong is payable on payments of principal (including any premium payable on redemption of the Notes) or interest in respect of the Notes.

*Profits Tax.* Hong Kong profits tax is charged on every person carrying on a trade, profession or business in Hong Kong in respect of assessable profits arising in or derived from Hong Kong from such trade, profession or business. Under the Inland Revenue Ordinance (Chapter 112 of the Laws of Hong Kong) (the "Inland Revenue Ordinance"), as it is currently

applied, Hong Kong profits tax may be charged on revenue profits arising on the sale, disposal or redemption of the Notes where such sale, disposal or redemption is or forms part of a trade, profession or business carried on in Hong Kong.

Interest on the Notes will be subject to Hong Kong profits tax where such interest has a Hong Kong source, and is received by or accrues to:

- a financial institution (as defined in the Inland Revenue Ordinance) and arises through or from the carrying on by the financial institution of its business in Hong Kong; or
- a corporation carrying on a trade, profession or business in Hong Kong; or
- a person, other than a corporation, carrying on a trade, profession or business in Hong Kong and such interest is in respect of the funds of the trade, profession or business.

Although no tax is imposed in Hong Kong in respect of capital gains, Hong Kong profits tax may be chargeable on trading gains arising on the sale or disposal of the Notes where such transactions are or form part of a trade, profession or business carried on in Hong Kong.

*Stamp Duty.* No Hong Kong stamp duty will be chargeable upon the issue or transfer (for so long as the register of holders of the Notes is maintained outside Hong Kong) of a Note.

### **PRC Taxation**

The following summary of certain PRC tax consequences of the purchase, ownership and disposition of Notes is based upon applicable laws, rules and regulations in effect as of the date of this offering memorandum, all of which are subject to change (possibly with retroactive effect). This discussion does not purport to be a comprehensive description of all the tax considerations that may be relevant to a decision to purchase, own or dispose of the Notes and does not purport to deal with consequences applicable to all categories of investors, some of which may be subject to special rules. Persons considering the purchase of Notes should consult their own tax advisors concerning the tax consequences of the purchase, ownership and disposition of Notes, including such possible consequences under the laws of their country of citizenship, residence or domicile.

*Taxation on Interest.* The Enterprise Income Tax Laws, effective January 1, 2008, impose a tax at the rate of 10% on interest paid to holders of the Notes that are “non-resident enterprises” so long as any such “non-resident enterprise” holder does not have an establishment or place of business in China or, despite the existence of establishment or place of business in China, the relevant income is not effectively connected with such establishment or place of business in China, to the extent such interest is sourced within China. Pursuant to these provisions of the Enterprise Income Tax Laws, despite many uncertainties with respect to their application, if we are considered a PRC resident enterprise, interest payable to non-resident enterprise holders on the Notes may be treated as income derived from sources within China and be subject to the PRC withholding tax. To the extent that China has entered into arrangements relating to the avoidance of double-taxation with any jurisdiction, such as Hong Kong, that allow a lower rate of withholding tax, such lower rate may apply to qualified investors in the Notes.

*Taxation on Capital Gains.* The Enterprise Income Tax Laws impose a tax at the rate of 10% (or 20% in the case of individuals) on capital gains realized by holders of the Notes that are “non-resident enterprises” so long as any such “non-resident enterprise” holder does not have an establishment or place of business in China or, despite the existence of establishment or place of business in China, the relevant gain is not effectively connected with such establishment or place of business in China, to the extent such capital gains are sourced within China. Pursuant to these provisions of the Enterprise Income Tax Laws, despite many uncertainties with respect to their application, if we are considered a PRC resident enterprise, the capital gains realized by holders of the Notes may be treated as income derived from sources within China and be subject to the PRC tax. To the extent that China has entered into arrangements relating to the avoidance of double-taxation with any jurisdiction, such as Hong Kong, that allow a lower rate of withholding tax, such lower rate may apply to qualified investors in the Notes.

*Stamp duty.* No PRC stamp tax will be chargeable upon the issue or transfer (for so long as the register of holders of the Notes is maintained outside Mainland China) of a Note.

## PLAN OF DISTRIBUTION

Under the terms and conditions contained in a purchase agreement dated June 22, 2017, we have agreed to sell to Credit Suisse (Hong Kong) Limited, China CITIC Bank International Limited, BOCI Asia Limited, Deutsche Bank AG, Singapore Branch and China Merchants Securities (HK) Co., Ltd as the Initial Purchasers, and the Initial Purchasers have severally agreed to purchase from us, the following principal amount of the Notes:

<b>Initial Purchaser</b>	<b>Principal Amount of the 2020 Notes to Be Purchased</b>	<b>Principal Amount of the 2021 Notes to Be Purchased</b>	<b>Principal Amount of the 2022 Notes to Be Purchased</b>	<b>Principal Amount of the 2024 Notes to Be Purchased</b>
Credit Suisse (Hong Kong) Limited . . . . .	US\$13,477,248.13	US\$2,278,595.76	US\$ 5,469,814.74	US\$166,480,154.37
China CITIC Bank International Limited . . . . .	US\$13,477,248.13	US\$2,278,595.76	US\$ 5,469,814.74	US\$166,480,154.37
BOCI Asia Limited. . . . .	US\$13,477,248.13	US\$2,278,595.76	US\$ 5,469,814.74	US\$166,480,154.37
Deutsche Bank AG, Singapore Branch . . . . .	US\$13,477,248.13	US\$2,278,595.76	US\$ 5,469,814.74	US\$166,480,154.37
China Merchants Securities (HK) Co., Ltd . . . . .	US\$2,691,007.48	US\$ 500,616.96	US\$ 1,201,741.04	US\$ 36,576,382.52
<b>Total . . . . .</b>	<b>US\$56,870,000.00</b>	<b>US\$9,615,000.00</b>	<b>US\$23,081,000.00</b>	<b>US\$702,497,000.00</b>

The purchase agreement provides that the obligations of the Initial Purchasers are subject to the approval of certain legal matters by their counsel and certain conditions precedent. The purchase agreement provides that the Initial Purchasers are obligated to purchase all of the Notes if any are purchased. If an Initial Purchaser defaults, the purchase agreement provides that the purchase commitments of the non-defaulting Initial Purchasers may be increased or the purchase agreement may be terminated. The Initial Purchasers propose to offer the Notes initially at the price on the cover page of this offering memorandum (the “Offering Price”) and may also offer the Notes to selling group members at the Offering Price less a selling concession. After the initial offering, the Offering Price may be changed.

We and the Subsidiary Guarantors will pay the Initial Purchasers customary fees and commissions in connection with the offering and will reimburse the Initial Purchasers for certain expenses incurred in connection with the offering. In addition, we and the Subsidiary Guarantors have agreed with the Initial Purchasers that private banks be paid a commission in connection with the purchase of the Notes by their private bank clients, which commission may be deducted from the purchase price for the Notes payable by such private banks upon settlement.

No action has been taken or will be taken in any country or jurisdiction that would permit a public offering of the Notes or the possession or distribution of the Offering Memorandum or any other offering material relating to the Notes in any jurisdiction where action for any such purpose may be required.

The Initial Purchasers and their respective affiliates may have engaged in transactions with and performed various investment banking, commercial banking and other services for the Company and its affiliates in the past and may do so from time to time in the future. The Initial Purchasers and their affiliates have received customary fees and commissions for these transactions. We may enter into non-speculative hedging or other derivative transactions as part of our risk management strategy with the Initial Purchasers, which may include transactions relating to our obligations under the Notes. Our obligations under these transactions may be secured by cash or other collateral. The Initial Purchasers or certain of their affiliates may purchase Notes and be allocated Notes for asset management and/or proprietary purposes but not with a view to distribution. In the ordinary course of their businesses, the Initial Purchasers or their respective affiliates may at any time hold long or short positions, and may trade for their own account or the accounts of customers, in our securities, including in the Existing Notes and the Mandatorily Exchangeable Bonds. As the use of proceeds of this offering would be to redeem the Existing Notes and the Mandatorily Exchangeable Bonds (or any Exchange Convertible Bonds issued pursuant to the terms of the Mandatorily Exchangeable Bonds), the Initial Purchasers or their respective affiliates may receive a portion of the proceeds of this offering. See “Use of Proceeds.”

### **General**

Purchasers of the Notes outside the United States may be required to pay stamp taxes and other charges in compliance with the laws and practices of the country of purchase in addition to the Offering Price on the cover page of this Offering Memorandum.



We have agreed to indemnify the Initial Purchasers against certain liabilities or to contribute to payments which the Initial Purchasers may be required to make in that respect.

We and the Subsidiary Guarantors have agreed that for a period from the date of this offering memorandum to the settlement date, neither we nor any Subsidiary Guarantor will, directly or indirectly, take any of the following actions with respect to any United States dollar-denominated debt securities issued or guaranteed by us or such Subsidiary Guarantor and having a maturity of more than one year from the date of issue (“Lock-Up Securities”): (i) offer, sell, issue, contract to sell, pledge or otherwise dispose of Lock-Up Securities, (ii) offer, sell, issue, contract to sell, contract to purchase or grant any option, right or warrant to purchase Lock-Up Securities, (iii) enter into any swap, hedge or any other agreement that transfers, in whole or in part, the economic consequences of ownership of Lock-Up Securities, (iv) establish or increase a put equivalent position or liquidate or decrease a call equivalent position in Lock-Up Securities within the meaning of Section 16 of the Exchange Act or (v) file with the United States Securities and Exchange Commission a registration statement under the Securities Act relating to Lock-Up Securities or publicly disclose the intention to take any such action, without the prior written consent of the Initial Purchasers.

The Notes are a new issue of securities for which there currently is no trading market. Approval in-principle has been received from the SGX-ST for the listing and quotation of the Notes on the SGX-ST. However, we cannot assure you that we will ultimately obtain such listing or that we will be able to maintain such listing.

The Initial Purchasers have advised us that they presently intend to make a market in the Notes as permitted by applicable law. However, they are under no obligation to do so and may discontinue any market-making activities at any time at their sole discretion without any notice. Accordingly, no assurance can be given as to the development or liquidity of any market for the Notes. If an active trading market for the Notes does not develop, the market price and liquidity of the Notes may be adversely affected. If the Notes are traded, they may trade at a discount from their initial offering price, depending on prevailing interest rates, the market for similar securities, our operating performance and financial condition, general economic conditions and other factors.

We expect delivery of the Notes will be made against payment therefor on or about the closing date specified on the cover page of this offering memorandum, which will be the business day following the date of pricing (this settlement cycle being referred to as “T+6”). Under Rule 15c6-1 under the Exchange Act, trades in the secondary market generally are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade the Notes on the date of pricing or the succeeding two business days will be required, by virtue of the fact that the Notes initially will settle in T+6, to specify an alternate settlement cycle at the time of any such trade to prevent a failed settlement. Purchasers of the Notes who wish to trade the Notes on the date of pricing or the succeeding business days should consult their own adviser.

The Initial Purchasers may engage in over-allotment, stabilizing transactions, covering transactions and penalty bids in accordance with Regulation M under the Exchange Act.

- Over-allotment involves sales in excess of the offering size, which creates a short position for the Initial Purchasers.
- Stabilizing transactions permit bids to purchase underlying security so long as the stabilizing bids do not exceed a specified maximum.
- Covering transactions involve purchases of the Notes in the open market after the distribution has been completed in order to cover short positions.
- Penalty bids permit the Initial Purchasers to reclaim a selling concession from a broker/dealer when the Notes originally sold by such broker/dealer are purchased in a stabilizing or covering transaction to cover short positions.

These stabilizing transactions, covering transactions and penalty bids may cause the price of the Notes to be higher than it would otherwise be in the absence of these transactions. These transactions, if commenced, may be discontinued at any time.

## **United States**

The Notes, the Subsidiary Guarantees and the JV Subsidiary Guarantees (if any) have not been and will not be registered under the U.S. Securities Act, and may not be offered or sold in the United States or to, or for the account or benefit of, U.S. persons except to non-U.S. persons in offshore transactions in reliance on Regulation S. Each Initial Purchaser has agreed that it has not offered or sold, and will not offer or sell, any Notes within the United States or to, or for the account or benefit of, U.S. persons (i) as part of their distribution at any time or (ii) otherwise until 40 days after the later of the commencement of the offering and the date of the closing of the offering except in accordance with Rule 903 of Regulation S under the U.S. Securities Act. Terms used in this section have the meanings given to them by Regulation S. Resale of the Notes is restricted as described under “Transfer Restrictions.”

In addition, until 40 days following the commencement of this offering, an offer or sale of Notes within the United States by a dealer (whether or not participating in the offering) may violate the registration requirements of the U.S. Securities Act unless the dealer makes the offer or sell in compliance with an exemption from registration under the U.S. Securities Act.

## **European Economic Area**

This Offering Memorandum is not a prospectus for the purposes of the Prospectus Directive. This offering memorandum has been prepared on the basis that any offer of Notes in any Member State of the European Economic Area which has implemented the Prospectus Directive (each, a “Relevant Member State”) will be made pursuant to an exemption under the Prospectus Directive from the requirement to publish a prospectus for offers of the Notes. The expression “Prospectus Directive” means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State), and includes any relevant implementing measure in the Relevant Member State and the expression “2010 PD Amending Directive” means Directive 2010/73/EU.

## **United Kingdom**

In the United Kingdom, this Offering Memorandum is for distribution only to, and is only directed at, persons (i) who are investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended, (the “Financial Promotion Order”), (ii) who are persons falling within Article 49(2)(a) to (d) (high net worth companies, unincorporated associations, etc.) of the Financial Promotion Order or (iii) to whom this Offering Memorandum may otherwise lawfully be communicated (all such persons together being referred to as “relevant persons”). This Offering Memorandum is directed only at relevant persons and must not be acted on or relied on by persons who are not relevant persons.

Each of the Initial Purchasers has represented, warranted and agreed that it and each of its affiliates:

- (a) have only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the U. K. Financial Services and Markets Act 2000 (the “FSMA”)) received by them in connection with the issue and sale of the Notes in circumstances in which Section 21(1) of the FSMA does not apply to the Company; and
- (b) have complied and will comply with all applicable provisions of the FSMA with respect to anything done by them in relation to the Notes in, from or otherwise involving the United Kingdom.

## **British Virgin Islands**

No invitation will be made directly or indirectly to any person resident in the British Virgin Islands to subscribe for any of the Notes but the Notes may be acquired by British Virgin Islands persons who receive the offer outside the British Virgin Islands and in a manner which does not contravene the laws of the jurisdictions in which such offer is received.

## **Cayman Islands**

No Notes will be offered or sold to the public in the Cayman Islands.

## **Hong Kong**

The Notes may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to “professional investors” within the meaning of the SFO (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a “prospectus” within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32, Laws of Hong Kong) and no advertisement, invitation or document relating to the Notes may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to the Notes which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” within the meaning of the SFO and any rules made thereunder.

## **Japan**

The Notes have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948) (as amended) (the “FIEL”), and disclosure under the FIEL has not been made with respect to the Notes. Accordingly, the Notes may not be offered or sold, directly or indirectly, in Japan or to, or for the account of, any resident of Japan, or to others for re-offering or re-sale, directly or indirectly in Japan or to, or for the benefit of, any resident of Japan, except pursuant to any exemption from the registration requirements of the FIEL and otherwise in compliance with the FIEL and other applicable provisions of Japanese laws and regulations. As used in this paragraph, “resident of Japan” means any person residing in Japan, including any corporation or other entity organized under the laws of Japan.

## **Singapore**

This offering memorandum has not been and will not be registered as a prospectus with the Monetary Authority of Singapore under the Securities and Futures Act (Chapter 289 of Singapore) (the “SFA”). Accordingly, this offering memorandum and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the Notes may not be circulated or distributed, nor may the Notes be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to any person in Singapore other than (i) to an institutional investor under Section 274 of the SFA, (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275, of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the Notes are initially subscribed or purchased by (i) an institutional investor under Section 274 of the SFA, or (ii) a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275, of the SFA, the Notes may only be sold or transferred: (a) at any time, to an institutional investor under Section 274 of the SFA; (b) at any time, to a relevant person defined in Section 275(2) of the SFA or to any person pursuant to an offer referred to in Section 275(1A) of the SFA; or (c) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the Notes are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

- (a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or
- (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

securities (as defined in Section 239(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the Notes pursuant to an offer made under Section 275 of the SFA except:

- (1) to an institutional investor or to a relevant person defined in Section 275(2) of the SFA, or to any person arising from an offer referred to in Section 275(1A) or Section 276(4)(i)(B) of the SFA;
- (2) where no consideration is or will be given for the transfer;
- (3) where the transfer is by operation of law;
- (4) as specified in Section 276(7) of the SFA; or
- (5) as specified in Regulation 32 of the SFR.

### **The PRC**

This Offering Memorandum does not constitute a public offer of the Notes, whether by way of sale or subscription, in the PRC. Other than to qualified domestic institutional investors in the PRC, the Notes are not being offered and may not be offered or sold, directly or indirectly, in the PRC to or for the benefit of, legal or natural persons of the PRC. According to the laws and regulatory requirements of the PRC, with the exception of qualified domestic institutional investors in the PRC, the Notes may, subject to the laws and regulations of the relevant jurisdictions, only be offered or sold to non-PRC natural or legal persons in any country other than the PRC.

### **Switzerland**

This offer memorandum is not intended to constitute an offer or solicitation to purchase or invest in the Notes described herein. The Notes may not be publicly offered, sold or advertised, directly or indirectly, in, into or from Switzerland and will not be listed on the SIX Swiss Exchange or on any other exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the Notes constitutes a prospectus as such term is understood pursuant to article 652a or article 1156 of the Swiss Code of Obligations, and neither this document nor any other offering or marketing material relating to Notes may be publicly distributed or otherwise made publicly available in Switzerland.

## TRANSFER RESTRICTIONS

*Because of the following restrictions, prospective investors are advised to consult legal counsel prior to making any offer, sale, resale, pledge or other transfer of the Notes.*

The Notes and the Subsidiary Guarantees have not been and will not be registered under the Securities Act and may not be offered, sold or delivered within the United States (as defined in Regulation S) to, or for the account or benefit of, U.S. persons (as defined in Regulation S) outside the United States, except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

By purchasing the Notes, you will be deemed to have made the following acknowledgements, representations to, and agreements with, us and the Initial Purchasers:

1. You understand and acknowledge that:
  - the Notes have not been and will not be registered under the Securities Act or any other applicable securities laws;
  - the Notes are being offered for resale in transactions that do not require registration under the Securities Act or any other securities laws;
  - the Notes are being offered and sold only to non-U.S. persons (as defined in Regulation S under the Securities Act) outside the United States, in offshore transactions in reliance on Rule 903 of Regulation S under the Securities Act; and
  - unless so registered, the Notes may not be sold or otherwise transferred except under an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act or any other applicable securities laws.
2. You represent that you are not an affiliate (as defined in Rule 144 under the Securities Act) of ours, that you are not acting on our behalf and that you are not a U.S. person (as defined in Regulation S under the Securities Act) or purchasing for the account or benefit of a U.S. person, other than a distributor, and you are purchasing the Notes in an offshore transaction in accordance with Regulation S.
3. You acknowledge that none of us, the Initial Purchasers or any person representing us or the Initial Purchasers has made any representation to you with respect to us or the offering of the Notes, other than the information contained in this offer memorandum. You represent that you are relying only on this offer memorandum in making your investment decision with respect to the New Notes. You agree that you have had access to such financial and other information concerning us and the Notes as you have deemed necessary in connection with your decision to elect to purchase the Notes including an opportunity to ask questions of and request information from us.
4. You represent that you are acquiring Notes for your own account, or for one or more investor accounts for which you are acting as a fiduciary or agent, in each case not with a view to, or for offer or sale in connection with, any distribution of the Notes in violation of the Securities Act.
5. You acknowledge that each note will contain a legend substantially to the following effect:

**THIS NOTE AND THE GUARANTEES RELATED TO THIS NOTE (TOGETHER, THIS “SECURITY”) HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION.**



**THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE “RESALE RESTRICTION TERMINATION DATE”) THAT IS 40 DAYS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), ONLY (A) TO THE COMPANY, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATIONS UNDER THE SECURITIES ACT, OR (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY’S AND THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE. BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATIONS UNDER THE SECURITIES ACT.**

6. You acknowledge that we, the Initial Purchasers, the Paying and Transfer Agent and others will rely upon the truth and accuracy of the above acknowledgments, representations and agreements. You agree that if any of the acknowledgments, representations or agreements you are deemed to have made by your purchase of the Notes is no longer accurate, you will promptly notify us, the Initial Purchasers and the Paying and Transfer Agent. If you are receiving any Notes as a fiduciary or agent for one or more investor accounts, you represent that you have sole investment discretion with respect to each of those accounts and that you have full power to make the above acknowledgments, representations and agreements on behalf of each account.

## **LEGAL MATTERS**

Certain legal matters with respect to the offering and the Notes will be passed upon for us by Sidley Austin as to matters of United States federal and New York law and Hong Kong law, Harneys as to matters of Cayman Islands law and British Virgin Islands law and Commerce & Finance Law Offices as to matters of PRC law. Certain legal matters will be passed upon for the Initial Purchasers by Shearman & Sterling as to matters of United States federal and New York law and Jia Yuan Law Offices as to matters of PRC law.

## **INDEPENDENT AUDITOR**

Our audited consolidated financial statements as of and for the years ended December 31, 2015 and 2016 reproduced in this offering memorandum have been audited by Grant Thornton Hong Kong Limited, as stated in the reports therein and in our annual reports for the years ended December 31, 2015 and 2016, respectively.

## GENERAL INFORMATION

### Consents

We have obtained all necessary consents, approvals and authorizations in the Cayman Islands, the British Virgin Islands and Hong Kong in connection with the offering and the issue and performance of the Notes and the Subsidiary Guarantees. The entering into of the Indentures and the issue of the Notes have been authorized by a resolution of our Board of Directors dated June 6, 2017.

### Litigation

Except as disclosed in this offering memorandum, there are no legal or arbitration proceedings against or affecting us, any of our subsidiaries or any of our assets, nor are we aware of any pending or threatened proceedings, which are or might be material in the context of the offering and this issue of the Notes or the Subsidiary Guarantees.

### No Material Adverse Change

There has been no adverse change, or any development reasonably likely to involve an adverse change, in the condition (financial or otherwise) of our general affairs since December 31, 2016 that is material in the context of the offering and the issue of the Notes or the Subsidiary Guarantees.

### Documents Available

For so long as any of the Notes is outstanding, copies of the Indentures may be inspected free of charge during normal business hours on any weekday (except public holidays) at the corporate trust office of the relevant Notes Trustee.

For so long as any of the Notes is outstanding, copies of the independent auditor's reports and/or our published financial statements, if any, including the independent auditor's report set out in the section entitled "Index to Financial Statements," may be obtained during normal business hours on any weekday (except public holidays) at the corporate trust office of the relevant Notes Trustee.

### Clearing Systems and Settlement

The Notes have been accepted for clearance through the facilities of Euroclear and Clearstream. Certain trading information with respect to the Notes is set forth below:

	ISIN	Common Code
The 2020 Notes . . . . .	XS1627597013	162759701
The 2021 Notes . . . . .	XS1627597286	162759728
The 2022 Notes . . . . .	XS1627597955	162759795
The 2024 Notes . . . . .	XS1627598094	162759809

Only Notes evidenced by a Global Note have been accepted for clearance through Euroclear and Clearstream.

### Listing of the Notes

Approval in-principle has been received from the SGX-ST for the listing and quotation of the Notes on the SGX-ST. For so long as the Notes are listed on the SGX-ST and the rules of the SGX-ST so require, such Notes will be traded on the SGX-ST in a minimum board lot size of S\$200,000 (or its equivalent in foreign currencies). The SGX-ST assumes no responsibility for the correctness of any of the statements made, opinions expressed or reports contained in this offering memorandum. Approval in-principle from, admission to the Official List of, and listing and quotation of the Notes on, the SGX-ST are not to be taken as an indication of the merits of the offering, the Company, the Notes, the Subsidiary Guarantees, the Subsidiary Guarantors or their respective subsidiaries or associated companies (if any).

For so long as the Notes are listed on the SGX-ST and the rules of the SGX-ST so require, in the event that a Global Note is exchanged for definitive Notes, we will appoint and maintain a paying agent in Singapore where the Notes may be presented or surrendered for payment or redemption. In addition, in the event that a Global Note is exchanged for definitive Notes, an announcement of such exchange will be made by or on behalf of us through the SGX-ST and such announcement will include all material information with respect to the delivery of the definitive Notes, including details of the paying agent in Singapore, so long as the Notes are listed on the SGX-ST and the rules of the SGX-ST so require.

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*Note:*

- (1) *The audited consolidated financial statements set out herein have been reproduced from the Company's annual report for the year ended December 31, 2016, and page references are to pages set forth in such report. The audited consolidated financial statements have not been specifically prepared for inclusion in this offering memorandum.*



# INDEPENDENT AUDITOR'S REPORT



**To the members of Kaisa Group Holdings Ltd.**

*(incorporated in the Cayman Islands with limited liability)*

## OPINION

We have audited the consolidated financial statements of Kaisa Group Holdings Ltd. (the "Company") and its subsidiaries (the "Group") set out on pages 91 to 185, which comprise the consolidated statement of financial position as at 31 December 2016, and the consolidated statement of profit or loss and other comprehensive income, the consolidated statement of changes in equity and the consolidated statement of cash flows for the year then ended, and notes to the consolidated financial statements, including a summary of significant accounting policies.

In our opinion, the consolidated financial statements give a true and fair view of the consolidated financial position of the Group as at 31 December 2016, and of its consolidated financial performance and its consolidated cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards ("HKFRSs") issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA") and have been properly prepared in compliance with the disclosure requirements of the Hong Kong Companies Ordinance.

## BASIS FOR OPINION

We conducted our audit in accordance with Hong Kong Standards on Auditing ("HKSA") issued by the HKICPA. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Consolidated Financial Statements section of our report. We are independent of the Group in accordance with the HKICPA's Code of Ethics for Professional Accountants (the "Code"), and we have fulfilled our other ethical responsibilities in accordance with the Code. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

## KEY AUDIT MATTERS

Key audit matters are those matters that, in our professional judgement, were of most significance in our audit of the consolidated financial statements of the current period. These matters were addressed in the context of our audit of the consolidated financial statements as a whole, and in forming our opinion thereon, and we do not provide a separate opinion on these matters.

Key Audit Matter	How our audit addressed the Key Audit Matter
<p><b>Impairment of properties under development and completed properties held for sale</b></p> <p>As at 31 December 2016, the Group had properties under development and completed properties held for sale ("properties") amounting to RMB60,559,839,000 and RMB16,246,233,000, respectively, which in total represented approximately 46% of the total assets of the Group. These properties are carried at the lower of cost and net realisable value. Significant management judgement is required in determining the estimated net realisable values of these properties with reference to the latest selling prices of the properties and the budgeted costs to be incurred until completion and sale.</p> <p>The accounting policies and disclosures for the impairment of properties under development and completed properties held for sale are included in notes 4, 11 and 12 to the consolidated financial statements.</p>	<p>We have understood and evaluated the management's procedures on identifying properties for which the net realisable values may be lower than their carrying amounts, including the methodologies and inputs used in the estimation of the net realisable values.</p> <p>Our procedures included:</p> <ul style="list-style-type: none"> <li>(i) testing the calculation for the impairment assessment performed by management;</li> <li>(ii) assessing future costs to be incurred to completion on a sample basis;</li> <li>(iii) comparing the carrying amounts of the properties taking into account the estimated amounts to completion with the related net realisable value with regard to properties under development;</li> <li>(iv) engaging our affiliate member firm's valuation specialists to assist us in assessing the methodologies and assumptions used in impairment assessment.</li> </ul>

## INDEPENDENT AUDITOR'S REPORT

Key Audit Matter	How our audit addressed the Key Audit Matter
<p><b>Valuation of investment properties</b></p> <p>As at 31 December 2016, the Group had investment properties amounting to RMB30,690,680,000, which in total represented approximately 19% of the total assets of the Group.</p> <p>The estimate of the fair value of the Group's investment properties requires significant management judgement taking into account the conditions and locations of the properties as well as the latest market transactions. To support management's determination of the fair value, the Group has engaged an external valuer to perform valuations on the investment properties at end of the reporting period.</p> <p>The accounting policies and disclosures for the estimation of fair value of investment properties are included in notes 4 and 7 to the consolidated financial statements.</p>	<p>We read the valuation reports for all properties and discussed with the valuer to assess the methodologies and assumptions adopted in the valuation of the properties. We noted that the valuation approach and key assumptions used to estimate each of the Group's investment properties were suitable in determining the fair value of the Group's investment properties as at 31 December 2016.</p> <p>We assessed the valuers' qualifications and expertise and read their terms of engagement and evaluated the objectivity, independence and competence of the valuers.</p>
<p><b>Accounting for offshore debt restructuring</b></p> <p>The Offshore Debt Restructuring (as defined in note 22 to the consolidated financial statements) was effected in July 2016 (with details disclosed in note 22 to the consolidated financial statements). A gain on extinguishment of financial liabilities of RMB716,143,000 was recognised for the year ended 31 December 2016. Significant management judgement was required to determine whether the exchanges in debts had substantially different terms.</p>	<p>We reviewed the terms of the Original Offshore Debts and the new Offshore Debts (as defined in note 22 to the consolidated financial statements) and evaluated the management's assessment on whether the Original Offshore Debts and the New Offshore Debts have substantially different terms. We recalculated the gain on extinguishment of financial liabilities in accordance with HKAS 39.</p>

## INDEPENDENT AUDITOR'S REPORT

### OTHER INFORMATION

The directors are responsible for the other information. The other information comprises all the information in the 2016 annual report of the Company, but does not include the consolidated financial statements and our auditor's report thereon.

Our opinion on the consolidated financial statements does not cover the other information and we do not express any form of assurance conclusion thereon.

In connection with our audit of the consolidated financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the consolidated financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

### RESPONSIBILITIES OF DIRECTORS FOR THE CONSOLIDATED FINANCIAL STATEMENTS

The directors are responsible for the preparation of the consolidated financial statements that give a true and fair view in accordance with HKFRSs issued by the HKICPA and the disclosure requirements of the Hong Kong Companies Ordinance, and for such internal control as the directors determine is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, the directors are responsible for assessing the Group's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the Group or to cease operations, or have no realistic alternative but to do so.

The directors are assisted by the Audit Committee in discharging their responsibility for overseeing the Group's financial reporting process.

### AUDITOR'S RESPONSIBILITIES FOR THE AUDIT OF THE CONSOLIDATED FINANCIAL STATEMENTS

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. We report our opinion solely to you, as a body, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with HKSAAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated financial statements.

## INDEPENDENT AUDITOR'S REPORT

As part of an audit in accordance with HKSA's, we exercise professional judgement and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Group's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the directors.
- Conclude on the appropriateness of the directors' use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Group's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Group to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the consolidated financial statements, including the disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information of the entities or business activities within the Group to express an opinion on the consolidated financial statements. We are responsible for the direction, supervision and performance of the group audit. We remain solely responsible for our audit opinion.

We communicate with the Audit Committee regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

We also provide the Audit Committee with a statement that we have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on our independence, and where applicable, related safeguards.

## INDEPENDENT AUDITOR'S REPORT

From the matters communicated with the Audit Committee, we determine those matters that were of most significance in the audit of the consolidated financial statements of the current period and are therefore the key audit matters. We describe these matters in our auditor's report unless law or regulation precludes public disclosure about the matter or when, in extremely rare circumstances, we determine that a matter should not be communicated in our report because the adverse consequences of doing so would reasonably be expected to outweigh the public interest benefits of such communication.

**Grant Thornton Hong Kong Limited**

*Certified Public Accountants*

Level 12

28 Hennessy Road

Wanchai

Hong Kong

25 March 2017

**Lin Ching Yee Daniel**

Practising Certificate No.: P02771



# CONSOLIDATED STATEMENT OF PROFIT OR LOSS AND OTHER COMPREHENSIVE INCOME

For the year ended 31 December 2016

	Notes	2016 RMB'000	2015 RMB'000
<b>Revenue</b>	5	<b>17,771,517</b>	10,926,535
Cost of sales	28	<b>(15,459,546)</b>	(10,583,158)
<b>Gross profit</b>		<b>2,311,971</b>	343,377
Other gains and (losses), net	27	<b>(560,512)</b>	(216,339)
Selling and marketing costs	28	<b>(842,695)</b>	(559,419)
Administrative expenses	28	<b>(1,745,262)</b>	(1,066,169)
Changes in fair value of investment properties	7	<b>4,161,371</b>	3,824,520
Changes in fair value of financial derivatives		<b>(21,500)</b>	(42,219)
<b>Operating profit</b>		<b>3,303,373</b>	2,283,751
Share of results of associates	10(a)	<b>(40,578)</b>	(3,586)
Share of results of joint ventures	10(b)	<b>8,223</b>	–
Finance income		<b>39,236</b>	10,717
Finance costs		<b>(2,159,602)</b>	(2,117,161)
<b>Finance costs, net</b>	29	<b>(2,120,366)</b>	(2,106,444)
Gain on extinguishment of financial liabilities	22(a)	<b>716,143</b>	–
<b>Profit before income tax</b>		<b>1,866,795</b>	173,721
Income tax expenses	32	<b>(2,214,306)</b>	(1,428,205)
<b>Loss for the year</b>		<b>(347,511)</b>	(1,254,484)
<b>Other comprehensive loss, including reclassification adjustments</b>			
<i>Item that will be reclassified subsequently to profit or loss</i>			
Changes in value of available-for-sale financial assets, net of tax	13	<b>(210)</b>	–
<b>Other comprehensive loss for the year, including reclassification adjustments</b>		<b>(210)</b>	–
<b>Total comprehensive loss for the year</b>		<b>(347,721)</b>	(1,254,484)
<b>(Loss)/profit for the year attributable to:</b>			
Equity holders of the Company		<b>(612,380)</b>	(1,121,577)
Non-controlling interests		<b>264,869</b>	(132,907)
		<b>(347,511)</b>	(1,254,484)
<b>Total comprehensive (loss)/income for the year attributable to:</b>			
Equity holders of the Company		<b>(612,590)</b>	(1,121,577)
Non-controlling interests		<b>264,869</b>	(132,907)
		<b>(347,721)</b>	(1,254,484)
<b>Loss per share for loss attributable to equity holders of the Company during the year (expressed in RMB per share)</b>			
– Basic	33	<b>(0.119)</b>	(0.218)
– Diluted	33	<b>(0.119)</b>	(0.218)

The notes on pages 96 to 185 are an integral part of these consolidated financial statements.

# CONSOLIDATED STATEMENT OF FINANCIAL POSITION

As at 31 December 2016

	Notes	2016 RMB'000	2015 RMB'000
<b>ASSETS AND LIABILITIES</b>			
<b>Non-current assets</b>			
Property and equipment	6	1,087,064	760,171
Investment properties	7	30,690,680	20,738,703
Land use rights	8	163,178	162,942
Investments in associates	10(a)	1,331,121	783,175
Investments in joint ventures	10(b)	931,751	–
Available-for-sale financial assets	13	154,538	–
Goodwill and intangible assets	9	217,798	–
Long-term bank deposits	19	–	1,479
Deferred income tax assets	23	26,543	32,207
		<b>34,602,673</b>	22,478,677
<b>Current assets</b>			
Properties under development	11	60,559,839	63,861,735
Completed properties held for sale	12	16,246,233	17,663,012
Available-for-sale financial assets	13	13,104	10,000
Debtors, deposits and other receivables	14	5,786,042	5,357,835
Deposits for land acquisition	15	17,693,750	4,002,386
Prepayments for proposed development projects	16	13,620,415	10,566,950
Prepaid taxes		727,280	298,157
Restricted cash	18	5,696,597	969,403
Short-term bank deposits	19	56,917	13,974
Cash and cash equivalents	19	10,819,117	2,324,546
		<b>131,219,294</b>	105,067,998
<b>Current liabilities</b>			
Advance proceeds received from customers and deposits received	24	27,973,395	14,524,168
Accrued construction costs		10,704,790	14,591,720
Income tax payable		4,440,460	3,989,909
Borrowings	22	7,762,301	33,713,019
Financial derivatives	17	263,822	–
Other payables	25	6,816,833	5,287,570
Amounts due to non-controlling interests of subsidiaries	26	836,019	672,405
		<b>58,797,620</b>	72,778,791
<b>Net current assets</b>		<b>72,421,674</b>	32,289,207
<b>Total assets less current liabilities</b>		<b>107,024,347</b>	54,767,884

## CONSOLIDATED STATEMENT OF FINANCIAL POSITION

	Notes	2016 RMB'000	2015 RMB'000
<b>Non-current liabilities</b>			
Borrowings	22	<b>79,774,515</b>	38,405,150
Deferred income tax liabilities	23	<b>4,203,433</b>	3,163,089
		<b>83,977,948</b>	41,568,239
<b>Net assets</b>			
		<b>23,046,399</b>	13,199,645
<b>EQUITY</b>			
Share capital	20	<b>450,450</b>	450,450
Share premium	20	<b>4,253,704</b>	4,253,704
Reserves	21	<b>8,241,973</b>	8,845,390
<b>Equity attributable to equity holders of the Company</b>			
		<b>12,946,127</b>	13,549,544
<b>Non-controlling interests</b>			
		<b>10,100,272</b>	(349,899)
<b>Total equity</b>			
		<b>23,046,399</b>	13,199,645

The consolidated financial statements on pages 91 to 185 were approved by the Board of Directors on 25 March 2017 and were signed on its behalf.

**Kwok Ying Shing**  
Director

**Zheng Yi**  
Director

The notes on pages 96 to 185 are an integral part of these consolidated financial statements.

# CONSOLIDATED STATEMENT OF CHANGES IN EQUITY

For the year ended 31 December 2016

	Capital and reserves attributable to equity holders of the Company				Non-controlling interests RMB'000	Total equity RMB'000
	Share capital RMB'000 (note 20)	Share premium RMB'000 (note 20)	Reserves RMB'000 (note 21)	Total RMB'000		
Balances as at 1 January 2015	450,450	4,253,704	9,958,817	14,662,971	(213,992)	14,448,979
Total comprehensive loss for the year	–	–	(1,121,577)	(1,121,577)	(132,907)	(1,254,484)
Deregistration of a non-wholly owned subsidiary	–	–	–	–	(3,000)	(3,000)
Share-based payments	–	–	8,150	8,150	–	8,150
<b>Balance as at 31 December 2015 and 1 January 2016</b>	<b>450,450</b>	<b>4,253,704</b>	<b>8,845,390</b>	<b>13,549,544</b>	<b>(349,899)</b>	<b>13,199,645</b>
(Loss)/profit for the year	–	–	(612,380)	(612,380)	264,869	(347,511)
Other comprehensive loss for the year	–	–	(210)	(210)	–	(210)
Total comprehensive (loss)/income for the year	–	–	(612,590)	(612,590)	264,869	(347,721)
Acquisitions of subsidiaries (note 38)	–	–	–	–	10,185,302	10,185,302
Share-based payments	–	–	5,881	5,881	–	5,881
Others	–	–	3,292	3,292	–	3,292
<b>Balance as at 31 December 2016</b>	<b>450,450</b>	<b>4,253,704</b>	<b>8,241,973</b>	<b>12,946,127</b>	<b>10,100,272</b>	<b>23,046,399</b>

The notes on pages 96 to 185 are an integral part of these consolidated financial statements.

# CONSOLIDATED STATEMENT OF CASH FLOWS

For the year ended 31 December 2016

	Note	2016 RMB'000	2015 RMB'000
<b>Cash flow from operating activities</b>			
Cash generated from/(used in) operations	34	13,103,068	(91,375)
Income tax paid		(1,180,969)	(370,649)
Interest paid		(4,959,305)	(4,820,603)
<b>Net cash generated from/(used in) operating activities</b>		<b>6,962,794</b>	<b>(5,282,627)</b>
<b>Cash flow from investing activities</b>			
Purchase of property and equipment	6	(106,089)	(25,795)
Additions to investment properties	7	(3,334,880)	(658,023)
Dividend income received from available-for-sale financial assets		20,801	–
Proceeds from disposal of available-for-sale financial assets		252,172	46,823
Additions to land use rights	8	(6,522)	–
Acquisitions of subsidiaries, net of cash acquired		(5,786,306)	–
Proceeds from disposal of property and equipment		–	2,463
(Increase)/decrease in short-term bank deposits		(42,943)	175,886
Decrease in long-term bank deposits		1,479	63,216
Interest received		39,236	10,717
Additions to intangible assets	9	(74,378)	–
Acquisitions of associates	10(a)	(579,611)	(8,300)
Acquisitions of joint ventures	10(b)	(923,528)	–
Acquisitions of available-for-sale financial assets	13	(274,686)	–
Advance to an associate		(400,000)	–
Advance to a joint venture		(599,390)	–
Increase in other receivables		(132,186)	(522,270)
<b>Net cash used in investing activities</b>		<b>(11,946,831)</b>	<b>(915,283)</b>
<b>Cash flow from financing activities</b>			
Proceeds from bank and other borrowings		39,746,211	23,481,357
Repayments of bank and other borrowings		(27,108,483)	(20,982,854)
Proceeds from loan from a related company		–	1,377,000
Deregistration of a non-wholly owned subsidiary		–	(3,000)
Increase in other payables		534,545	1,526,041
Advance from an associate		132,157	–
Increase in amounts due to non-controlling interests of subsidiaries		163,614	87
<b>Net cash generated from financing activities</b>		<b>13,468,044</b>	<b>5,398,631</b>
<b>Net increase/(decrease) in cash and cash equivalents</b>			
Cash and cash equivalents at beginning of the year		2,324,546	3,131,154
Exchange adjustments		10,564	(7,329)
<b>Cash and cash equivalents at end of the year</b>		<b>10,819,117</b>	<b>2,324,546</b>

The notes on pages 96 to 185 are an integral part of these consolidated financial statements.



# NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

For the year ended 31 December 2016

## 1. GENERAL INFORMATION

Kaisa Group Holdings Ltd. (the “Company”) was incorporated in the Cayman Islands on 2 August 2007 as an exempted company with limited liability under the Companies Law, Cap. 22 (2009 Revision as consolidated and revised from time to time) of the Cayman Islands. The address of the Company’s registered office is Cricket Square, Hutchins Drive, P.O. Box 2681 Grand Cayman, KY1-1111 Cayman Islands. The Company has been engaged in investment holding and the subsidiaries of the Company have been principally engaged in property development, property investment, property management, hotel and catering operations and cinema, department store and cultural centre operations.

The Company’s shares have been listed on the Main Board of The Stock Exchange of Hong Kong Limited (the “Stock Exchange”).

These consolidated financial statements are presented in Renminbi (“RMB”), unless otherwise stated. These consolidated financial statements have been approved for issue by the Board of Directors of the Company on 25 March 2017.

## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The principal accounting policies applied in the preparation of these consolidated financial statements are set out below. These policies have been consistently applied to all the years presented, unless otherwise stated.

### 2.1 Basis of preparation

The consolidated financial statements of the Group have been prepared in accordance with all applicable Hong Kong Financial Reporting Standards (“HKFRSs”) issued by the Hong Kong Institute of Certified Public Accountants (the “HKICPA”) and with the applicable disclosure provisions of the Rules Governing the Listing of Securities on the Stock Exchange. The consolidated financial statements have been prepared under the historical cost convention, as modified by the revaluation of investment properties, as well as certain financial assets and financial liabilities which are carried at fair value at subsequent reporting dates.

The preparation of consolidated financial statements in conformity with the HKFRSs requires the use of certain critical accounting estimates. It also requires management to exercise its judgement in the process of applying the Group’s accounting policies. The areas involving a higher degree of judgement or complexity, or areas where assumptions and estimates are significant to the consolidated financial statements are disclosed in note 4.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

## 2.1 Basis of preparation (Continued)

## (i) New and amended standards adopted by the Group

The following amended standards that may be relevant to the Group's operations have been adopted by the Group for the first time for the financial year beginning on 1 January 2016:

Amendments to HKFRS 11	Accounting for Acquisition of Interests in Joint Operations
Amendments to HKAS 1	Disclose Initiative
Amendments to HKAS 16 and HKAS 38	Clarification of Acceptable Methods of Depreciation and Amortisation
HKFRSs (Amendments)	Annual Improvements 2012-2014 Cycle

The application of the above amended standards did not have material financial impact to the Group.

## (ii) New standards, amended standards and interpretation that have been issued but were not yet effective

The following new and amended standards, and interpretation have been issued but were not effective for the financial year beginning on 1 January 2016 that are relevant to and have not been adopted early by the Group:

		<b>Effective for the accounting period beginning on or after</b>
HKFRS 9	Financial Instruments	1 January 2018
HKFRS 15	Revenue from Contracts with Customers	1 January 2018
HKFRS 16	Leases	1 January 2019
HKFRS 15 (Amendments)	Clarifications to HKFRS 15 Revenue from Contracts with Customers	1 January 2018
HKFRS 10 and HKAS 28 (Amendments)	Sale or Contribution of Assets between an Investor and its Associate or Joint Venture	To be determined
HKAS 2 (Amendments)	Classification and Measurement of Share-based Payment Transactions	1 January 2018
HKAS 7 (Amendments)	Statement of Cash Flows: Disclosure Initiative	1 January 2017
HKAS 12 (Amendments)	Recognition of Deferred Tax Assets for Unrealised Losses	1 January 2017
Amendments to HKFRSs	Annual Improvements to HKFRSs 2014–2016 Cycle	1 January 2017 or 1 January 2018, as appropriate

The Group will adopt the above new and amended standards, and interpretation when they become effective. The Group has already commenced the assessment of the impact to the Group and is not yet in a position to state whether these would have a significant impact on its results of operations and financial position.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### 2.2 Consolidation

A subsidiary is an entity (including a structured entity) over which the Group has control. The Group controls an entity when the Group is exposed to, or has rights to, variable returns from its involvement with the entity and has the ability to affect those returns through its power over the entity. Subsidiaries are consolidated from the date on which control is transferred to the Group. They are deconsolidated from the date when the Group ceases to have control.

Intra-group transactions, balances, and unrealised gains on transactions between group companies are eliminated. Unrealised losses are also eliminated. When necessary, amounts reported by subsidiaries have been adjusted to confirm with the Group's accounting policies.

##### (i) Business combinations

The Group applies the acquisition method to account for business combinations. The consideration transferred for the acquisition of a subsidiary is the fair values of the assets transferred, the liabilities incurred to the former owners of the acquiree and the equity interests issued by the Group. The consideration transferred includes the fair value of any asset or liability resulting from a contingent consideration arrangement. Identifiable assets acquired and liabilities and contingent liabilities assumed in a business combination are measured initially at their fair values at the acquisition date. The Group recognises any non-controlling interest in the acquiree on an acquisition-by-acquisition basis, either at fair value or at proportionate share of the recognised non-controlling interest's amounts of the acquiree's identifiable net assets.

Non-controlling interests in the acquiree that are present ownership interests and entitle their holders to a proportionate share of the acquiree's net assets in the event of liquidation are measured at either fair value or the proportionate share of the recognised amounts of the acquiree's identifiable net assets. All other components of non-controlling interests are measured at their acquisition date fair value, unless another measurement basis is required by HKFRSs.

Acquisition-related costs are expensed as incurred.

If the business combination is achieved in stages, the acquisition date carrying value of the acquirer's previously held equity interest in the acquiree is re-measured to fair value at the acquisition date; any gains or losses arising from such re-measurement are recognised in profit or loss.

Any contingent consideration to be transferred by the Group is recognised at fair value at the acquisition date. Subsequent changes to the fair value of the contingent consideration that is deemed to be an asset or liability is recognised in accordance with HKAS 39 in profit or loss. Contingent consideration that is classified as equity is not remeasured, and its subsequent settlement is accounted for within equity.

The excess of the consideration transferred, the amount of any non-controlling interest in the acquiree and the acquisition-date fair value of any previous equity interest in the acquiree over the fair value of the identifiable net assets acquired is recorded as goodwill. If the total consideration transferred, non-controlling interest recognised and previously held interest measured is less than the fair value of the net assets of the subsidiary acquired in the case of a bargain purchase, the difference is recognised directly in profit or loss.

##### (ii) Changes in ownership interests in subsidiaries without change of control

Transactions with non-controlling interests that do not result in loss of control are accounted for as equity transactions – that is, as transactions with the owners of the subsidiary in their capacity as owners. The difference between fair value of any consideration paid and the relevant share of the subsidiary's carrying value of net assets is recorded in equity. Gains or losses on disposals of non-controlling interests are also recorded in equity.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### 2.2 Consolidation (Continued)

##### (iii) Disposal of subsidiaries

When the Group ceases to have control, any retained interest in the entity is re-measured to its fair value at the date when control is lost, with the difference being recognised in profit or loss. The fair value is the initial carrying amount for the purposes of subsequently accounting for the retained interest as an associate, joint venture or financial asset. In addition, any amounts previously recognised in other comprehensive income in respect of that entity are accounted for as if the Group has directly disposed of the related assets or liabilities. This may mean that the amounts previously recognised in other comprehensive income are reclassified to profit or loss.

##### (iv) Separate financial statements

In the Company's statement of financial position (in note 42 to the consolidated financial statements), the investments in subsidiaries are accounted for at cost less impairment. Cost also includes direct attributable costs of investment. The results of subsidiaries are accounted for by the Company on the basis of dividend received and receivable.

#### 2.3 Associates

An associate is an entity over which the Group has significant influence but not control, generally accompanying a shareholding of between 20% and 50% of the voting rights. Investments in associates are accounted for using equity method of accounting. Under the equity method, the investment is initially recognised at cost, and the carrying amount is increased or decreased to recognise the investor's share of profit or loss of the investee after the date of acquisition. The Group's investments in associates include goodwill identified on acquisition. Upon the acquisition of the ownership interest in an associate, any difference between the cost of the associate and the group's share of the net fair value of the associate's identifiable assets and liabilities is accounted for as goodwill.

If the ownership interest in an associate is reduced but significant influence is retained, only a proportionate share of the amounts previously recognised in other comprehensive income is reclassified to profit or loss where appropriate.

The Group's share of post-acquisition profit or loss is recognised in profit or loss, and its share of post-acquisition movements in other comprehensive income is recognised in other comprehensive income with a corresponding adjustment to the carrying amount of the investment. When the Group's share of losses in an associate equals or exceeds its interest in the associate, including any other unsecured receivables that, in substance, form part of the Group's investment in the associate, the Group does not recognise further losses, unless it has incurred legal or constructive obligations or made payments on behalf of the associate.

The Group determines at each reporting date whether there is any objective evidence that the investment in the associate is impaired. If this is the case, the Group calculates the amount of impairment as the difference between the recoverable amount of the associate and its carrying value and recognises the amount adjacent to share of result from associate in profit or loss.

Profits and losses resulting from upstream and downstream transactions between the Group and its associates are recognised in the Group's financial statements only to the extent of unrelated investor's interests in the associates. Unrealised losses are eliminated unless the transaction provides evidence of an impairment of the asset transferred. Accounting policies of associates have been changed where necessary to ensure consistency with the policies adopted by the Group.

Gains and losses on dilution of equity interest associates are recognised in profit or loss.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### 2.4 Joint arrangements

Under HKFRS 11, an investment in a joint arrangement is classified as either a joint operation or joint venture depending on the contractual rights and obligations of each investor. The Group has assessed the nature of its joint arrangements and determined them to be joint ventures. Joint ventures are accounted for using the equity method.

Under the equity method of accounting, interest in joint venture is initially recognised at cost and adjusted thereafter to recognise the Group's share of the post-acquisition profits or losses and movements in other comprehensive income. When the Group's share of losses in a joint venture equals or exceeds its interest in the joint venture (which includes any long-term interest that, in substance, form part of the Group's net investment in the joint venture), the Group does not recognise further losses, unless it has incurred obligations or made payments on behalf of the joint venture.

Unrealised gains on transactions between the Group and its joint venture are eliminated to the extent of the Group's interest in the joint venture. Unrealised losses are also eliminated unless the transaction provides evidence of an impairment of the asset transferred. Accounting policies of the joint ventures have been changed where necessary to ensure consistency with the policies adopted by the Group.

#### 2.5 Intangible assets acquired in a business combination

Intangible assets acquired in a business combination are identified and recognised separately from goodwill where they satisfy the definition of intangible assets and their fair values can be measured reliably. The cost of such intangible assets is their fair value at the acquisition date.

Subsequent to initial recognition, intangible assets with finite useful lives are carried at costs less accumulated amortisation and any accumulated impairment loss. Amortisation for intangible assets with finite useful lives is provided on a straight-line basis over their estimated useful lives. Intangible assets with indefinite useful lives are carried at cost less any accumulated impairment loss.

#### 2.6 Segment reporting

Operating segments are reported in a manner consistent with the internal reporting provided to the chief operating decision-maker ("CODM"). The CODM, who is responsible for allocating resources and assessing performance of the operating segments, has been identified as the executive directors of the Company that makes strategic decisions.

#### 2.7 Foreign currency translation

##### (i) Functional and presentation currency

Items included in the financial statements of each of the Group's entities are measured using the currency of the primary economic environment in which the entity operates (the "functional currency"). The consolidated financial statements are presented in Renminbi ("RMB"), which is the functional and presentation currency of the Company and the Group.

##### (ii) Transactions and balances

Foreign currency transactions are translated into the functional currency using the exchange rates prevailing at the dates of the transactions or valuation where items are re-measured. Foreign exchange gains and losses resulting from the settlement of such transactions and from the translation at year-end exchange rates of monetary assets and liabilities denominated in foreign currencies are recognised in profit or loss.

Foreign exchange gains and losses that relate to borrowings and cash and cash equivalents are presented in profit or loss within 'finance costs – net'. All other foreign exchange gains and losses are presented in profit or loss within 'other gains and (losses) – net'.



## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### 2.7 Foreign currency translation (Continued)

##### (iii) Group companies

The results and financial positions of all the group entities (none of which has the currency of a hyperinflationary economy) that have a functional currency different from the presentation currency are translated into the presentation currency as follows:

- assets and liabilities for each statement of financial position of the group entities are translated at the closing rate at the reporting date;
- income and expenses for each statement of profit or loss and other comprehensive income are translated at average exchange rates; and
- all resulting exchange differences are recognised in other comprehensive income.

#### 2.8 Impairment of non-financial assets

Intangible assets that have an indefinite useful life are not subject to amortisation and are tested annually for impairment. Assets that are subject to amortisation or depreciation are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. An impairment loss is recognised for the amount by which the asset's carrying amount exceeds its recoverable amount. The recoverable amount is the higher of an asset's fair value less costs of disposal and value in use. For the purpose of assessing impairment, assets are grouped at the lowest levels for which there are separately identifiable cash flows (cash-generating units). Non-financial assets other than goodwill that suffered an impairment are reviewed for possible reversal of the impairment at each reporting date.

#### 2.9 Land use rights

The Group makes upfront payments to obtain operating leases of land use rights. The upfront payments of the land use rights are recorded as assets. The amortisation of land use rights is recognised as an expense on a straight-line basis over the unexpired period of the land use rights.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### 2.10 Property and equipment

Property and equipment are stated at historical cost less depreciation and any impairment losses. Historical cost includes expenditure that is directly attributable to the acquisition of the items.

Subsequent costs are included in the asset's carrying amount or recognised as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the Group and the cost of the item can be measured reliably. All other repairs and maintenance costs are recognised in profit or loss during the financial period in which they are incurred.

Depreciation on property and equipment is calculated using the straight-line method to allocate their costs to their residual values over their estimated useful lives, as follows:

Hotel properties	20–25 years
Buildings	20–25 years
Motor vehicles	5–10 years
Furniture, fitting and equipment	3–8 years
Vessels	10 years

An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount (note 2.8 to the consolidated financial statements).

Gains and losses on disposals are determined by comparing proceeds with carrying amount and are recognised within "other (losses)/gains – net" in profit or loss.

#### 2.11 Investment properties

Investment properties, principally comprising leasehold land and buildings, are properties held for long-term rental yields or for capital appreciation or both, and are not occupied by the Group. They also include properties that are being constructed or developed for future use as investment properties. Land held under operating leases are accounted for as investment properties when the rest of the definition of an investment property is met. In such cases, the operating leases concerned are accounted for as if they were finance leases.

Investment properties are measured initially at its cost, including related transaction costs and where applicable borrowing costs. After initial recognition, investment properties are carried at fair value, representing open market value determined at each reporting date by external valuers. Fair value is based on active market prices, adjusted, if necessary, for any difference in the nature, location or condition of the specific asset. If this information is not available, the Group uses alternative valuation methods such as recent prices on less active markets or discounted cash flow projections. Subsequent expenditure is charged to the asset's carrying amount only when it is probable that future economic benefits associated with the item will flow to the Group and the cost of the item can be measured reliably. All other repairs and maintenance costs are expensed in profit or loss during the financial period in which they are incurred.

The fair value of investment properties reflects, among other things, rental income from current leases and assumptions about rental income from future leases in the light of current market conditions. The fair value also reflects, on a similar basis, any cash outflows that could be expected in respect of the properties.

Investment properties are derecognised either when they have been disposed of or when the investment properties are permanently withdrawn from use and no future economic benefit is expected from its disposals.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### 2.11 Investment properties (Continued)

When investment properties undergo a change in use, evidenced by commencement of development with a view to sale, the properties are transferred to property under development at its fair value at the date of change in use.

If investment properties become owner-occupied, or commences to be further developed for sale, they are reclassified into appropriate classes of properties, and their fair value at the date of reclassification becomes their cost for accounting purposes.

If the land use rights and the attached properties for own-use become an investment property because its use has changed, any difference resulting between the carrying amount and the fair value of this item at the date of transfer is recognised in equity as a revaluation of the land use rights and the attached properties under HKAS 16. Any revaluation reserve balance of the property is transferred to retained earnings in the statement of profit or loss and other comprehensive income upon the subsequent disposal of the investment property.

For a transfer from completed properties for sale to investment property that will be carried at fair value, any difference between the fair value of the property at that date and its previous carrying amount shall be recognised in profit or loss.

#### 2.12 Financial assets

The Group classifies its financial assets in the following categories: loans and receivables, available-for-sale financial assets and derivatives (see note 2.17 to the consolidated financial statements). The classification depends on the purpose for which the financial assets were acquired. Management determines the classification of its financial assets at initial recognition.

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. They are included in current assets, except for those with maturities greater than 12 months after the reporting date which are classified as non-current assets. Loans and receivables are classified as “debtors, deposits and other receivables”, “restricted cash”, “short-term bank deposits”, “long-term bank deposits” and “cash and cash equivalents” in the consolidated statement of financial position.

Available-for-sale financial assets are non-derivative that are either designated in this category or not classified in any of the other categories. They are included in non-current assets unless the investment matures or management intends to dispose of it within 12 months of the reporting date.

Regular way purchases and sales of financial assets are recognised on the trade-date – the date on which the Group commits to purchase or sell the asset. Investments are initially recognised at fair value plus transaction costs for all financial assets not carried at fair value through profit or loss. Financial assets are derecognised when the rights to receive cash flows from the investments have expired or have been transferred and the Group has transferred substantially all risks and rewards of ownership. Available-for-sale financial assets are subsequently carried at fair value. As an exception to this, investments in equity securities that do not have a quoted price in an active market for an identical instrument and whose fair value cannot otherwise be reliably measured are recognised in the consolidated statement of financial position at cost less impairment losses (see note 2.13 to the consolidated financial statements). Loans and receivables are subsequently carried at amortised cost using the effective interest method.

Changes in the fair value of monetary and non-monetary securities classified as available-for-sale are recognised in other comprehensive income.

When securities classified as available-for-sale are sold or impaired, the accumulated fair value adjustments recognised in equity are included in profit or loss.

Dividends on available-for-sale equity instruments are recognised in profit or loss when the Group’s right to receive payments is established.

Financial assets and liabilities are offset and the net amount reported in the statement of financial position when there is a legally enforceable right to offset the recognised amounts and there is an intention to settle on a net basis or realise the asset and settle the liability simultaneously. The legally enforceable right must not be contingent on future events and must be enforceable in the normal course of business and in the event of default, insolvency or bankruptcy of the Company or the counterparty.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### 2.13 Impairment of financial assets carried at amortised cost or at cost

The Group assesses at each reporting date whether there is objective evidence that a financial asset or group of financial assets is impaired. A financial asset or a group of financial assets is impaired when there is objective evidence of impairment as a result of one or more events that occurred after the initial recognition of the asset (a 'loss event') and that loss event (or events) has an impact on the estimated future cash flows of the financial asset or group of financial assets that can be reliably estimated.

Evidence of impairment may include indications that the debtor or a group of debtors is experiencing significant financial difficulty, default or delinquency in interest or principal payments, the probability that they will enter bankruptcy or other financial reorganisation, and where observable data indicates that there is a measurable decrease in the estimated future cash flows, such as changes in arrears or economic conditions that correlate with defaults.

For loans and receivables category, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows (excluding future credit losses that have not been incurred) discounted at the financial asset's original effective interest rate. The carrying amount of the asset is reduced and the amount of the loss is recognised in profit or loss.

If, in a subsequent period, the amount of the impairment loss decreases and the decrease can be related objectively to an event occurring after the impairment is recognised (such as an improvement in the debtor's credit rating), the reversal of the previously recognised impairment loss is recognised in profit or loss.

For equity investments classified as available-for-sale, a significant or prolonged decline in the fair value of the security below its cost is also evidence that the assets are impaired. If any such evidence exists for available-for-sale financial assets, the cumulative loss – measured at the difference between the acquisition cost and the current fair value, less any impairment loss on that financial asset previously recognised in profit or loss – is removed from equity and recognised in profit or loss. Impairment losses recognised in profit or loss on equity instruments are not reversed through profit or loss.

For unquoted equity securities carried at cost, the impairment loss is measured as the difference between the carrying amount of the financial asset and the estimated future cash flows, discounted at the current market rate of return for a similar financial asset where the effect of discounting is material. Impairment losses for equity securities carried at cost are not reversed.

#### 2.14 Properties under development

Properties under development are stated at the lower of cost and net realisable value. Net realisable value is determined by reference to the sale proceeds of properties sold in the ordinary course of business, less applicable variable selling expenses and the anticipated costs to completion, or by management estimates based on marketing conditions.

Development cost of properties comprises construction costs, land use rights in relation to properties under development for subsequent sale, borrowing costs on qualifying assets and professional fees incurred during the development period. On completion, the properties are transferred to completed properties held for sale.

Properties under development are classified as current assets unless the construction period of the relevant property development project is expected to complete beyond normal operating cycle.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### 2.15 Completed properties held for sale

Completed properties remaining unsold at each reporting date are stated at the lower of cost and net realisable value.

Cost comprises development costs attributable to the unsold properties and borrowing costs (see note 2.14 to the consolidated financial statements).

Net realisable value is determined by reference to the sale proceeds of properties sold in the ordinary course of business, less applicable variable selling expenses, or by management estimates based on prevailing marketing conditions.

#### 2.16 Trade and other receivables

Trade receivables are amounts due from customers for properties sold or services performed in the ordinary course of business. If collection of trade and other receivables is expected in one year or less (or in the normal operating cycle of the business if longer), they are classified as current assets. If not, they are presented as non-current assets.

Trade and other receivables are recognised initially at fair value and subsequently measured at amortised cost using the effective interest method, less provision for impairment.

#### 2.17 Financial derivatives

Financial derivatives are initially recognised at fair value on the date when the derivative contracts are entered into and are subsequently re-measured at their fair values.

Financial derivatives are accounted for at fair value through profit or loss. Changes in the fair value of these derivative instruments are recognised immediately in profit or loss.

#### 2.18 Cash and cash equivalents

Cash and cash equivalents include cash in hand, deposits held at call with banks.

Restricted cash, short-term bank deposits and long-term bank deposits are not included in cash and cash equivalents.

#### 2.19 Share capital

Ordinary shares are classified as equity.

#### 2.20 Trade and other payables

Trade payables are obligations to pay for goods or services that have been acquired in the ordinary course of business from suppliers. Trade payables are classified as current liabilities if payment is due within one year or less (or in the normal operating cycle of the business if longer). If not, they are presented as non-current liabilities.

Trade and other payables are recognised initially at fair value and subsequently measured at amortised cost using the effective interest method.



## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### 2.21 Borrowings

Borrowings are initially recognised at fair value, net of transaction costs incurred. Borrowings are subsequently carried at amortised cost using the effective interest method.

Fees paid to the establishment of loan facilities are recognised as transaction costs of the loan to the extent that it is probable that part or all of the facility will be drawn down. In this case, the fee is deferred until the draw-down occurs. To the extent there is no evidence that it is probable that some or all of the facility will be drawn down, the fee is capitalised as a pre-payment for liquidity services and amortised over the period of the facility which it relates.

Borrowings are removed from the consolidated statement of financial position when the obligation specified in the contract is discharged, cancelled or expired. The difference between the carrying amount of a financial liability that has been extinguished or transferred to another party and the consideration paid, including any non-cash assets transferred or liabilities assumed, is recognised in profit or loss.

Where the terms of a financial liability are renegotiated and the entity issues equity instruments to a creditor to extinguish all or part of the liability, a gain or loss is recognised in profit or loss, which is measured as the difference between the carrying amount of the financial liability and the fair value of the equity instruments issued. When the terms of a financial liability are modified that result in a substantial modification in the context of HKAS 39, the existing liabilities are derecognised and the new liabilities are recognised at fair values, with the difference net of related fees or transaction costs paid being recognised in profit or loss. When the terms of a financial liability are modified that do not result in a substantial modification in the context of HKAS 39, the existing debts are not derecognised. The related fees paid or transaction costs are adjusted to the carrying amount of the existing debts and amortised over the remaining terms of the liabilities.

Borrowings are classified as current liabilities unless the Group has an unconditional right to defer settlement of the liability for at least 12 months after the respective reporting date.

#### 2.22 Convertible bonds

##### (i) Convertible bonds with equity component

Compound financial instruments issued by the Group comprise convertible bonds that can be converted to share capital at the option of the holder, and the number of shares to be issued does not vary with changes in their fair value.

The liability component of a compound financial instrument is recognised initially at the fair value of a similar liability that does not have an equity conversion option. The equity component is recognised initially at the difference between the fair value of the compound financial instrument as a whole and the fair value of the liability component. Any directly attributable transaction costs are allocated to the liability and equity components in proportion to their initial carrying amounts.

Subsequent to initial recognition, the liability component of a compound financial instrument is measured at amortised cost using the effective interest method. The equity component of a compound financial instrument is not re-measured subsequent to initial recognition except on conversion or expiry or when the Group redeems some or all of the convertible bonds upon exercise of the put option by the bond holders.

Borrowings are classified as current liabilities unless the Group has an unconditional right to defer settlement of the liability for at least 12 months after the respective reporting date.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES** (Continued)**2.22 Convertible bonds** (Continued)

## (ii) Convertible bonds without equity component

All other convertible bonds which do not exhibit the characteristics mentioned in (i) above are accounted for as hybrid instruments consisting of an embedded derivative and a host debt contract. At initial recognition, the embedded derivative of the convertible bonds is accounted for as derivative financial instruments and is measured at fair value. Any excess of proceeds over the amount initially recognised as the derivative component is recognised as liability under the contract. Transaction costs that relate to the issue of the convertible bonds are allocated to the liability under the contract.

The derivative component is subsequently carried at fair value and changes in fair value are recognised in profit or loss. The liability under the contract is subsequently carried at amortised cost, calculated using the effective interest method, until extinguished on conversion or maturity.

When the convertible bonds are converted, the carrying amount of the liability under the contract together with the fair value of the relevant derivative component at the time of conversion are transferred to share capital and share premium as consideration for the shares issued. When the convertible bonds are redeemed, any difference between the redemption amount and the carrying amounts of both components are recognised in profit or loss.

**2.23 Borrowing costs**

General and specific borrowing costs directly attributable to the acquisition, construction or production of qualifying assets, which are assets that necessarily take a substantial period of time to get ready for their intended use or sale, are added to the cost of those assets, until such time as the assets are substantially ready for their intended use or sale. Investment income earned on the temporary investment of specific borrowings pending their expenditure on qualifying assets is deducted from the borrowing costs eligible for capitalisation. Other borrowing costs are recognised as an expense in the financial period which they are incurred.

**2.24 Current and deferred income tax**

The tax expense for the period comprises current and deferred tax. Tax is recognised in profit or loss, except to the extent that it relates to items recognised in other comprehensive income or directly in equity. In this case, the tax is also recognised in other comprehensive income or directly in equity, respectively.

The current income tax charge is calculated on the basis of the tax laws enacted or substantively enacted at the reporting date in the countries where the Company's subsidiaries and its associate operate and generate taxable income. Management periodically evaluates positions taken in tax returns with respect to situations in which applicable tax regulation is subject to interpretation. It establishes provisions where appropriate on the basis of amounts expected to be paid to the tax authorities.

Deferred income tax is recognised, using the liability method, on temporary differences arising between the tax bases of assets and liabilities and their carrying amounts in the consolidated financial statements. However, deferred income tax is not accounted for if it arises from initial recognition of an asset or liability in a transaction other than a business combination that at the time of the transaction affects neither accounting nor taxable profit or loss. Deferred income tax is determined using the tax rates (and laws) that have been enacted or substantively enacted by the reporting date and are expected to apply when the related deferred income tax asset is realised or the deferred income tax liability is settled.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### 2.24 Current and deferred income tax (Continued)

For the purposes of measuring deferred tax liabilities or deferred tax assets for investment properties that are measured using the fair value model, the carrying amounts of such properties are presumed to be recovered entirely through sale, unless the presumption is rebutted. The presumption is rebutted when the investment property is depreciable and is held within a business model whose objective is to consume substantially all of the economic benefits embodied in the investment property over time, rather than through sale. If the presumption is rebutted, deferred tax liabilities and deferred tax assets for such investment properties are measured in accordance with the above general principles set out in HKAS 12 (i.e. based on the expected manner as to how the properties will be recovered).

Deferred income tax assets are recognised only to the extent that it is probable that future taxable profit will be available against which the temporary differences can be utilised.

Deferred income tax is provided on temporary differences arising on investments in subsidiaries, except where the timing of the reversal of the temporary difference can be controlled by the Group and it is probable that the temporary difference will not reverse in the foreseeable future.

Deferred income tax assets and liabilities are offset when there is a legally enforceable right to offset current tax assets against current tax liabilities and when the deferred income taxes assets and liabilities relate to income taxes levied by the same taxation authority on either the taxable entity or different taxable entities where there is an intention to settle the balances on a net basis.

#### 2.25 Employee benefits

##### (i) Employee leave entitlements

Employee entitlements to annual leave and long service leave are recognised when they accrue to employees. A provision is made for the estimated liability for annual leave and long service leave as a result of services rendered by employees up to the reporting date.

Employee entitlements to sick leave and maternity leave are not recognised until the time of leave.

##### (ii) Retirement benefits

In accordance with the rules and regulations in the People's Republic of China (the "PRC"), the PRC based employees of the Group participate in various defined contribution retirement benefit plans organised by the relevant municipal and provincial governments in the PRC under which the Group and the PRC based employees are required to make monthly contributions to these plans calculated at a percentage of the employees' salaries.

The municipal and provincial governments undertake to assume the retirement benefit obligations of all existing and future retired PRC based employees payable under the plans described above. Other than the monthly contributions, the Group has no further obligation for the payment of retirement and other post retirement benefits of its employees. The assets of these plans are held separately from those of the Group in independently administrated funds managed by the PRC government.

The Group also participates in a pension scheme under the rules and regulations of the Mandatory Provident Fund Scheme Ordinance ("MPF Scheme") for all employees in Hong Kong, which is a defined contribution retirement scheme. The contributions to the MPF Scheme are based on minimum statutory contribution requirement of 5% of eligible employees' relevant aggregate income. The assets of this pension scheme are held separately from those of the Group in independently administered funds. Other than the contributions, the Group has no further obligation for the payment of retirement and other post retirement benefits of its employees in Hong Kong.

The Group's contributions to the defined contribution retirement schemes are expensed as incurred.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES** (Continued)**2.25 Employee benefits** (Continued)

## (iii) Bonus entitlements

The expected cost of bonus payment is recognised as a liability when the Group has a present legal or constructive obligation as a result of services rendered by employees and a reliable estimate of the obligation can be made. Liabilities of bonus plan are expected to be settled within twelve months and are measured at the amounts expected to be paid when they are settled.

## (iv) Share-based payments

The Group operates equity-settled share option schemes. The fair value of the employee services received in exchange for the grant of the options is recognised as an expense. The total amount to be expensed over the vesting period is determined by reference to the fair value of the options granted, excluding the impact of any non-market performance vesting conditions. At each reporting date, the Group revises its estimates of the number of options that are expected to vest based on the non-market performance and service conditions. It recognises the impact of the revision of original estimates, if any, in profit or loss, with a corresponding adjustment to equity.

The proceeds received net of any directly attributable transaction costs are credited to share capital (and share premium) when the options are exercised.

The grant by the Company of options over its equity instruments to the employees of subsidiary undertakings in the Group is treated as a capital contribution. The fair value of employee services received, measured by reference to the grant date fair value, is recognised over the vesting period as an increase to investments in subsidiaries undertakings, with a corresponding credit to equity in the parent entity accounts.

**2.26 Provisions, contingent liabilities and contingent assets**

Provisions are recognised when the Group has a present legal or constructive obligation as a result of past events; it is probable that an outflow of resources will be required to settle the obligation; and the amount has been reliably estimated. Provisions are not recognised for future operating losses.

Where there are a number of similar obligations, the likelihood that an outflow will be required in settlement is determined by considering the class of obligations as a whole. A provision is recognised even if the likelihood of an outflow with respect to any one item included in the same class of obligations may be small.

Provisions are measured at the present value of the expenditures expected to be required to settle the obligation using a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the obligation. The increase in the provision due to passage of time is recognised as interest expense.

A contingent liability is a possible obligation that arises from past events and whose existence will only be confirmed by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the Group. It can also be a present obligation arising from past events that is not recognised because it is not probable that outflow of economic resources will be required or the amount of obligation cannot be measured reliably.

A contingent liability is not recognised but is disclosed in the notes to the consolidated financial statements. When a change in the probability of an outflow occurs so that outflow is probable, it will then be recognised as a provision.

A contingent asset is a possible asset that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain events not wholly within the control of the Group.

Contingent assets are not recognised but are disclosed in the notes to the consolidated financial statements when an inflow of economic benefits is probable. When inflow is virtually certain, an asset is recognised.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### 2.27 Revenue recognition

Revenue comprises the fair value of the consideration received or receivable for the sales of properties and services, stated net of discounts, returns and value added tax, in the ordinary course of the Group's activities. Revenue is shown after eliminating sales with the group entities.

The Group recognises revenue when the amount of revenue can be reliably measured, it is probable that future economic benefits will flow to the entity and when specific criteria has been met for each of the Group's activities as described below. The amount of revenue is not considered to be reliably measurable until all contingencies relating to the sale have been resolved. The Group bases its estimates on historical results, taking into consideration the type of customers, the type of transactions and the specifics of each arrangement.

(i) Sales of properties

(1) *Completed properties held for sale*

Revenue from sales of completed properties held for sale is recognised when the risks and rewards of properties are transferred to the purchasers, which occurs when the construction of relevant properties has been completed and the properties have been delivered to the purchasers and collectability of related receivables is reasonably assured.

(2) *Properties under development/held for sale and proposed development projects*

Revenue from sales of properties under development and proposed development projects is recognised when the risks and rewards of properties or projects are transferred to the purchasers, which occurs when the relevant properties or projects have been delivered to the purchasers and collectability of related receivables is reasonably assured.

Deposits and instalments received on properties sold prior to the date of revenue recognition are included in the consolidated statement of financial position as advance proceeds received from customers and deposits received under current liabilities.

(ii) Rental income

Rental income from properties letting under operating leases is recognised on a straight-line basis over the lease terms.

(iii) Property management

Revenue arising from property management is recognised in the accounting period in which the service is rendered, using a straight-line basis over the term of the contract.

(iv) Hotel operation income

Hotel revenue from room rental, food and beverage sales and other ancillary services is recognised when the goods are delivered and the services are rendered.

(v) Catering income

Revenue from restaurant operations is recognised when food, beverages and services are delivered or rendered to customers and collectability of the related receivables is reasonably assured.

(vi) Hire income from charter

Hire income from time charter is accounted for as operating lease and is recognised on a straight-line basis over the period of each time charter contract.

(vii) Passenger transportation agency service

Revenues from passenger transportation agency service are recognised based on net agencies fee upon departure of ferries at terminals.



## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### 2.28 Interest income

Interest income is recognised using the effective interest method.

#### 2.29 Leases

Leases where a significant portion of the risks and rewards of ownership are retained by the lessor are classified as operating leases.

- (i) The Group is the lessee  
Payments made under operating leases (net of any incentives received from the lessor) are charged to profit or loss on a straight-line basis over the term of the lease.
- (ii) The Group is the lessor  
When assets are leased out under an operating lease, the assets are included in the consolidated statement of financial position based on the nature of the assets. Rental income from operating lease is recognised on a straight-line basis over the term of the lease.

#### 2.30 Dividend distribution

Dividend distribution to the equity holders of the Company is recognised as a liability in the Group's and the Company's financial statements in the period in which the dividends are approved by the equity holders or the board of directors, where applicable.

#### 2.31 Financial guarantee liabilities

Financial guarantee liabilities are recognised in respect of the financial guarantee provided by the Group to the banks for the property purchasers.

Financial guarantee liabilities are recognised initially at fair value plus transaction costs that are directly attributable to the issue of the financial guarantee liabilities. After initial recognition, such liabilities are measured at the higher of the present value of the best estimate of the expenditure required to settle the present obligation and the amount initially recognised less cumulative amortisation.

Financial guarantee liabilities are derecognised from the consolidated statement of financial position when, and only when, the obligation specified in the contract is discharged or cancelled or expired.

#### 2.32 Government Grants

Grants from the government are recognised where there is a reasonable assurance that the grant will be received and the Group will comply with all attached conditions.

Government grants relating to property and equipment are deferred and recognised in profit or loss over the period necessary to match them with the costs that they are intended to compensate.

#### 2.33 Related parties

For the purposes of these consolidated financial statements, a party is considered to be related to the Group if:

- (a) the party is a person or a close member of that person's family and if that person:
  - (i) has control or joint control over of the Group;
  - (ii) has significant influence over the Group; or
  - (iii) is a member of the key management personnel of the Group or of a parent of the Group.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

#### 2.33 Related parties (Continued)

- (b) the party is an entity and if any of the following conditions applies:
- (i) the entity and the Group are members of the same group;
  - (ii) one entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member);
  - (iii) the entity and the Group are joint ventures of the same third party;
  - (iv) one entity is a joint venture of a third entity and the other entity is an associate of the third entity;
  - (v) the entity is a post-employment benefit plan for the benefit of employees of either the Group or an entity related to the Group (*if the Group is itself such a plan*) and the sponsoring employers are also related to the Group;
  - (vi) the entity is controlled or jointly controlled by a person identified in (a);
  - (vii) a person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity); and
  - (viii) the entity, or any member of a group of which it is a part, provides key management personnel services to the Group or to the parent of the Group.

Close members of the family of a person are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity.

### 3. FINANCIAL RISK MANAGEMENT

The Group conducts its operations in the PRC and accordingly is subject to special considerations and significant risks. These include risks associated with, among others, the political, economic and legal environment, influence of national authorities over pricing regulation and competition in the industry.

The Group's major financial instruments include available-for-sale financial assets, debtors, deposits and other receivables, cash and cash equivalents, restricted cash, bank deposits, accrued construction costs, other payables, financial derivatives and borrowings. Details of these financial instruments are disclosed in respective notes. The Group's activities expose it to a variety of financial risks: market risk (including foreign exchange risk, interest rate risk and price risk), credit risk and liquidity risk.

#### 3.1 Financial risk factors

The Group's overall risk management programme focuses on the unpredictability of financial markets and seeks to minimise potential adverse effects on the Group's financial performance. The property industry is highly sensitive to the economic environment in the PRC, which will affect the volumes of property transactions and selling prices. The Group mainly relies on sales of properties and borrowings to fund its operations. The Group has alternative plans to monitor liquidity risk should there be significant adverse changes on the Group's cash flow projections.

Risk management is carried out by the Group's management under the supervision of the Board. The Group's management identifies, evaluates and manages significant financial risks in the Group's individual operating units. The Board provides guidance for overall risk management.

(i) Market risk

(1) Foreign currency exchange risk

The Group's businesses are principally conducted in RMB, except that certain borrowings are denominated in foreign currencies. The major non-RMB assets and liabilities are bank deposits, derivatives and borrowings denominated in Hong Kong dollar ("HKD") and the United States dollar ("USD").

The Company and all of its subsidiaries' functional currency is RMB, so the bank balances and borrowings denominated in foreign currencies are subject to retranslation at each reporting date. Fluctuation of the exchange rates of RMB against foreign currencies could affect the Group's results of operations.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**3. FINANCIAL RISK MANAGEMENT** (Continued)**3.1 Financial risk factors** (Continued)

## (i) Market risk (Continued)

(1) *Foreign currency exchange risk* (Continued)

The Group does not have a foreign currency hedging policy. However, management of the Group monitors foreign exchange exposure and will consider hedging significant foreign currency exposure should the need arise.

The carrying amount of the Group's foreign currency denominated monetary assets and monetary liabilities at the respective dates of consolidated statement of financial position are as follows:

	2016 RMB' 000	2015 RMB' 000
<b>Assets</b>		
HKD	<b>68,817</b>	98,792
USD	<b>19,212</b>	28,998
	<b>88,029</b>	127,790
<b>Liabilities</b>		
HKD	<b>280,066</b>	810,263
USD	<b>20,673,857</b>	17,134,275
	<b>20,953,923</b>	17,944,538

As at 31 December 2016, if RMB had strengthened/weakened by 5% (2015: 5%) against USD and HKD, with all other variables held constant, the Group's post-tax loss for the year would have been approximately RMB894,924,000 and RMB10,443,000 decreased/increased (2015: RMB814,550,000 and RMB34,086,000 decreased/increased) respectively, mainly as a result of net foreign exchange gains/losses on translation of USD and HKD denominated bank deposits and borrowings.

(2) *Interest rate risk*

The Group has been exposed to interest rate risk due to the fluctuation of the prevailing market interest rate on borrowings which carry prevailing market interest rates. The Group's income and operating cash flows are substantially independent of changes in market interest rates.

The Group's interest rate risk arises from interest bearing bank deposits, bank and other borrowings, convertible bonds and senior notes, Series A–E Senior Notes (the "New Senior Notes") and mandatorily exchangeable bonds ("MEBs"). Bank deposits and bank and other borrowings issued at variable rates expose the Group to cash flow interest-rate risk. Convertible bonds, senior notes, New Senior Notes, MEBs and other borrowing issued at fixed rates expose the Group to fair value interest rate risk. The Group currently does not use any derivative contracts to hedge its exposure to interest rate risk. However, management will consider hedging significant interest rate exposure should the need arise.

As at 31 December 2016, if interest rates had been increased/decreased by 100 (2015: 100) basis points and all other variables were held constant, the Group's post-tax loss for the year would have been RMB380,624,000 increased/decreased (2015: RMB68,213,000 increased/decreased). Majority of the interest expenses would be capitalised as a result of such interest expenses directly attributable to the property construction.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 3. FINANCIAL RISK MANAGEMENT (Continued)

#### 3.1 Financial risk factors (Continued)

##### (i) Market risk (Continued)

##### (3) Price risk

The Group is exposed to commodity price risk in relation to its products which is largely dependent on market price of the relevant commodity. The Group closely monitors the price of its products in order to determine its pricing strategies.

The Group is also exposed to price risk in connection with certain available-for-sale financial assets held by the Group which are publicly traded on stock exchange. The Group closely monitors the fluctuation of the price and assesses the impact on the Group's consolidated financial statements. If the price of the equity security had been 5% (2015: nil) increased/decreased, post-tax loss for the year ended 31 December 2016 would have been decreased/increased by approximately RMB41,000 (2015: nil).

##### (ii) Credit risk

The Group has no significant concentration of credit risk. The carrying amounts of restricted cash, bank deposits, cash and cash equivalents, and debtors, deposits and other receivables represent the Group's maximum exposure to credit risk in relation to its financial assets. The Group reviews the recoverable amount of debtors, deposits and other receivables on a regular basis and an allowance for doubtful debts is made where there is an identified loss.

In order to minimise the credit risk, management of the Group has delegated a team responsible for determination of credit limits, credit approvals and other monitoring procedures to ensure that follow-up action is taken to recover overdue debts. In addition, the Group reviews the recoverable amount of each debtor at each reporting date to ensure that adequate impairment losses are made for irrecoverable amounts. In this regard, the directors of the Company consider that the Group's credit risk is limited.

The credit risk on liquid funds is limited because the counterparties are state-owned financial institutions and reputable banks with high credit rankings.

The Group has arranged bank financing for certain purchasers of property units for an amount up to 70% of the total purchase price of the property, and provided guarantees to banks to secure obligations of such purchasers for repayments. If a purchaser defaults on the payment of its mortgage during the term of the guarantee, the bank holding the mortgage may demand the Group to repay the outstanding principal of the loan and any interest accrued thereon. Under such circumstances, the Group is able to retain the customer's deposit and sell the property to recover any amounts paid by the Group to the bank. In this regard, the directors of the Company consider that the Group's credit risk is significantly reduced.

##### (iii) Liquidity risk

Management of the Group aims to maintain sufficient cash and cash equivalents or have available funding through an adequate amount of available financing, including short-term and long-term bank and other borrowings to meet its construction commitments. Due to the dynamic nature of the underlying businesses, the Group's finance department maintains flexibility in funding by maintaining adequate amount of cash and cash equivalents and flexibility in funding through having available sources of financing.

The Group has certain alternative plans to mitigate the potential impacts on anticipated cash flows should there be significant adverse changes in economic environment. These include adjusting and further slowing down the construction plans for properties under development, implementing cost control measures, accelerating sales with more flexible pricing, seeking partners to develop quality projects and renegotiating payment terms with counterparties for certain land acquisitions. The Group will, based on its assessment of the relevant future costs and benefits, pursue such options as are appropriate.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 3. FINANCIAL RISK MANAGEMENT (Continued)

## 3.1 Financial risk factors (Continued)

## (iii) Liquidity risk (Continued)

The following table details the Group's contractual maturities for its financial liabilities. The table has been drawn up based on the undiscounted cash flows of financial liabilities based on the earliest date on which the Group can be required to pay. The table represents both interest and principal cash flows.

	On demand or within 1 year RMB'000	Between 1 and 2 years RMB'000	Between 2 and 5 years RMB'000	Over 5 years RMB'000	Total RMB'000
<b>At 31 December 2016</b>					
Borrowings	14,451,809	33,154,732	60,760,105	1,052,734	109,419,380
Accrued construction costs	10,704,790	–	–	–	10,704,790
Other payables	6,816,833	–	–	–	6,816,833
Amounts due to non-controlling interests of subsidiaries	836,019	–	–	–	836,019
<b>Total</b>	<b>32,809,451</b>	<b>33,154,732</b>	<b>60,760,105</b>	<b>1,052,734</b>	<b>127,777,022</b>
Financial guarantees issued: Maximum amount guaranteed (note 36)	21,843,192	–	–	–	21,843,192
<b>At 31 December 2015</b>					
Borrowings	36,894,522	5,069,412	37,889,109	2,679,045	82,532,088
Accrued construction costs	14,591,720	–	–	–	14,591,720
Other payables	5,287,570	–	–	–	5,287,570
Amounts due to non-controlling interests of subsidiaries	672,405	–	–	–	672,405
<b>Total</b>	<b>57,446,217</b>	<b>5,069,412</b>	<b>37,889,109</b>	<b>2,679,045</b>	<b>103,083,783</b>
Financial guarantees issued: Maximum amount guaranteed (note 36)	15,105,912	–	–	–	15,105,912

As disclosed in note 22(a) to the consolidated financial statements, the Group was technically in breach of certain restrictive covenants during the year ended 31 December 2015. Given that the Group's creditors have the unconditional right to require the Group to repay these borrowings at any time in the events of default and potential default for the purpose of the above maturity profile, these amounts were classified under "On demand or within 1 year".



## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 3. FINANCIAL RISK MANAGEMENT (Continued)

#### 3.2 Capital risk management

The Group's objectives when managing capital are to safeguard the Group's ability to continue as a going concern in order to provide returns for shareholders and benefits for other stakeholders and to maintain an optimal capital structure to reduce the cost of capital.

The capital structure of the Group consists of debt, which includes the borrowings (note 22) less cash and cash equivalents, bank deposits and restricted cash (note 19) and equity attributable to equity holders of the Company, comprising share capital and reserves.

The directors of the Company review the capital structure periodically. As a part of this review, the directors of the Company assess the annual budget prepared by the treasury department which reviews the planned construction projects proposed by engineering department and prepare the annual budget taking into account of the provision of funding. Based on the proposed annual budget, the directors of the Company consider the cost of capital and the risks associated with each class of capital. The directors of the Company also balance its overall capital structure through the payment of dividends, new share issues as well as the issue of new debt or the redemption of existing debt.

Consistent with others in the industry, the Group monitors capital on the basis of the gearing ratio. This ratio is calculated as net debt divided by total equity. Net debt is calculated as total borrowings (including current and non-current borrowings, as shown in the consolidated statement of financial position) less cash and cash equivalents, bank deposits and restricted cash. Total capital is calculated as equity, as shown in the consolidated statement of financial position, plus net debt.

The gearing ratios of the Group at 31 December 2016 and 2015 were as follows:

	2016 RMB'000	2015 RMB'000
Total borrowings (note 22)	<b>87,536,816</b>	72,118,169
Less: Cash and cash equivalents, bank deposits (note 19) and restricted cash (note 19)	<b>(16,572,631)</b>	(3,309,402)
Net debt	<b>70,964,185</b>	68,808,767
Total equity	<b>23,046,399</b>	13,199,645
Gearing ratio	<b>307.92%</b>	521.29%

The gearing ratio for 2016 was lower than that for 2015 as a result of the increase in non-controlling interests as a result of acquisitions during the year.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 3. FINANCIAL RISK MANAGEMENT (Continued)

## 3.3 Fair value estimation

The different levels of the financial instruments carried at fair value, by valuation method, have been defined as follows:

- Quoted prices (unadjusted) in active markets for identical assets or liabilities (level 1).
- Inputs other than quoted prices included within level 1 that are observable for the asset or liability, either directly (that is, as prices) or indirectly (that is, derived from prices) (level 2).
- Inputs for the asset or liability that are not based on observable market data (that is, unobservable inputs) (level 3).

The carrying amounts of the Group's current financial assets including debtors, deposits and other receivables, restricted cash, short-term bank deposits, unlisted available-for-sale investments and cash and cash equivalents, the Group's non-current financial assets including available-for-sale financial assets, and the Group's current financial liabilities including current borrowings, accrued construction costs, other payables and amounts due to non-controlling interests of subsidiaries approximate their fair values due to their short maturities. The fair value of financial liabilities for disclosure purposes is estimated by discounting the future contractual cash flows at the current market interest rate that is available to the Group for similar financial instruments.

The following table presents the Group's financial assets/(liabilities) that are measured at fair value at 31 December 2016 and 2015.

	Level 1 RMB'000	Level 2 RMB'000	Level 3 RMB'000	Total RMB'000
<b>As at 31 December 2016</b>				
<b>Assets</b>				
Available-for-sale financial assets	1,104	–	–	1,104
<b>Liabilities</b>				
Financial derivatives	–	–	(263,822)	(263,822)
<b>As at 31 December 2015</b>				
<b>Assets</b>				
Available-for-sale financial assets	–	10,000	–	10,000

There were no transfers between level 1, 2 and 3 during the year.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 3. FINANCIAL RISK MANAGEMENT (Continued)

## 3.3 Fair value estimation (Continued)

## (i) Financial instruments in level 1

The fair value of financial instruments traded in active markets is based on quoted market prices at the reporting date. A market is regarded as active if quoted prices are readily and regularly available from an exchange, dealer, broker, industry group, pricing service, or regulatory agency, and those prices represent actual and regularly occurring market transactions on an arm's length basis. The quoted market price used for financial assets held by the Group is the current bid price. These instruments are included in level 1.

## (ii) Financial instruments in level 2

The fair value of financial instruments that are not traded in an active market is determined by using valuation techniques. These valuation techniques maximise the use-of observable market data where it is available and rely as little as possible on entity-specific estimates. If all significant inputs required to fair value an instrument are observable, the instrument is included in level 2.

## (iii) Financial instruments in level 3

*Information about level 3 financial derivatives' fair value measurements*

The reconciliation of the carrying amounts of the Group's financial derivatives within level 3 of the fair value hierarchy is as follows:

	2016 RMB'000	2015 RMB'000
Additions	<b>285,322</b>	–
Change in fair value	<b>(21,500)</b>	–
Fair value at 31 December	<b>263,822</b>	–

The fair value of financial derivatives are determined by using the Binominal option pricing model. The valuation techniques and significant unobservable inputs of the financial derivatives are as follows:

Valuation techniques	Significant unobservable inputs	Sensitivity relationship of unobservable inputs to fair value
Binominal option pricing model		
– Contingent value rights (“CVRs”)	Volatility of 45.51% (2015: nil)	The higher of the volatility, the higher of the fair value, and vice versa
	Risk free rate of 1.62% (2015: nil)	The higher of the risk free rate, the higher of the fair value, and vice versa
– Derivative component of MEBs	Volatility of 45.62% (2015: nil)	The higher of the volatility, the higher of the fair value, and vice versa
	Risk free rate of 1.29% (2015: nil)	The higher of the risk free rate, the higher of the fair value, and vice versa

Since one or more of the significant inputs are not based on observable market data, the fair value measurement of these instruments are categorised as level 3. For disclosures of fair value measurement of the Group's investment properties, details are disclosed in note 7 to the consolidated financial statements.

The Group does not have any financial assets/liabilities that are subject to offsetting, enforceable master netting arrangement and similar agreements during the years ended 31 December 2016 and 2015.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 4. CRITICAL ACCOUNTING ESTIMATES AND JUDGEMENTS

Estimates and judgements used in preparing the consolidated financial statements are evaluated and are based on historical experience and other factors, including expectations of future events that are believed to be reasonable under the circumstances. The Group makes estimates and assumptions concerning the future. The resulting accounting estimates will, by definition, seldom equal to the related actual results. The estimates and assumptions that may have a significant effect on the carrying amounts of assets and liabilities within the next financial year are discussed below.

#### 4.1 Fair value of investment properties

The Group carries its investment properties at fair value with changes in the fair value recognised in the consolidated statement of profit or loss. It obtains independent valuations at least annually. In making the judgement, consideration is given to assumptions that are mainly based on market conditions existing at the reporting date, expected rental from future leases in the light of current market conditions and appropriate capitalisation rates. Changes in subjective input assumptions can materially affect the fair value estimate. The key assumptions used in the valuation in determining fair value for the Group's portfolio of properties are set out in note 7 to the consolidated financial statements.

As at 31 December 2016, the aggregate fair value of the Group's investment properties amounted to RMB30,690,680,000 (2015: RMB20,738,703,000) based on the valuation performed by independent professional valuers.

#### 4.2 Provision for properties under development and completed properties held for sale

The Group assesses the carrying amounts of properties under development and completed properties held for sale according to their net realisable amounts based on the realisability of these properties, taking into account estimated costs to completion based on past experience (properties under development only) and committed contracts and estimated net sales value based on prevailing market conditions. Provision is made when events or changes in circumstances indicate that the carrying amounts may not be realised. The assessment requires the use of judgement and estimates.

As at 31 December 2016, based on management's best estimates, the Group has made a provision of RMB1,931,814,000 (2015: RMB1,788,030,000) for properties under development and completed properties held for sale.

#### 4.3 Prepayments for proposed development projects and deposits for land acquisitions for sale

The Group assesses the carrying amounts of deposits for land acquisitions and prepayments for proposed development projects according to their recoverable amounts based on the realisability of these land use rights and property development projects, taking into account estimated net sales values based on prevailing market conditions. Provision is made when events or changes in circumstances indicate that the carrying amounts may not be realised. The assessment requires the use of judgement and estimates.

As at 31 December 2016, the carrying amounts of prepayments for proposed development projects and deposits for land acquisitions are RMB13,620,415,000 (2015: RMB10,566,950,000) and RMB17,693,750,000 (2015: RMB4,002,386,000) respectively.

#### 4.4 Impairment of property and equipment and land use rights

The Group regularly reviews whether there are any indications of impairment and will recognise an impairment loss if the carrying amount of an asset is lower than its recoverable amount which is the greater of its fair value less cost of disposal or its value in use. In determining the value in use, the Group assesses the present value of the estimated future cash flows expected to arise from the continuing use of the asset and from its disposal at the end of its useful life. Estimates and judgements are applied in determining these future cash flows and the discount rate. The Group estimates the future cash flows based on certain assumptions, such as market competition and development and the expected growth in business.

As at 31 December 2016, based on management's best estimates, the Group has made a provision of RMB164,452,000 (2015: RMB164,452,000) for property and equipment and land use rights.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 4. CRITICAL ACCOUNTING ESTIMATES AND JUDGEMENTS (Continued)

#### 4.5 Income taxes, land appreciation taxes, withholding taxes and deferred income taxes

Significant judgement is required in determining the provision for income taxes and withholding taxes. There are many transactions and calculations for which the ultimate determination is uncertain during the ordinary course of business. Where the final tax outcome of these matters is different from the amounts that were initially recorded, such difference will impact the income tax and deferred income tax provision in the period in which such determination is made.

The Group is subject to land appreciation taxes in the PRC. However, the implementation and settlement of these taxes varies among various tax jurisdictions in cities of the PRC, and the Group has not finalised certain of its land appreciation taxes calculation and payments with any local tax authorities in the PRC for most of its property development projects. Accordingly, significant judgement is required in determining the amount of the land appreciation tax and its related taxes. The Group recognises these land appreciation taxes based on management's best estimates according to the interpretation of the tax rules. The final tax outcome could be different from the amounts that were initially recorded, and these differences will impact the income tax expenses and tax provision in the periods in which such taxes have been finalised with local tax authorities.

Deferred income tax liabilities have not been established for income tax and withholding tax that would be payable on certain profits of PRC subsidiaries to be repatriated and distributed by way of dividends as the directors consider that the timing of the reversal of the related temporary differences can be controlled and such temporary differences will not be reversed in the foreseeable future. If those undistributed earnings of the PRC subsidiaries are considered to be repatriated and distributed by way of dividends, the deferred income tax charge and deferred income tax liabilities would have been increased by the same amount of approximately RMB848,362,000 (2015: RMB395,080,000).

Deferred income tax assets relating to certain temporary differences and tax losses are recognised when management considers to be probable that future taxable profit will be available against which the temporary differences or tax losses can be utilised. The outcome of their actual utilisation may be different.

#### 4.6 Intangible assets – contracts with various sports players

Intangible assets acquired separately are measured on initial recognition at cost. The cost of intangible assets acquired in a business combination is the fair value as at the date of acquisition.

The life of the intangible assets ranges from 1 to 4 years based on the respective sports players' contract. These are reviewed annually on a player by player basis to determine whether there are indicators of impairment. Determining whether the intangible asset should be impaired at the end of the reporting period, factors such as whether the sports player will remain an active member of the playing squad and an assessment of the league that the football team will be playing in, will be taken into account.

As at 31 December 2016, the carrying amount of the intangible asset is RMB96,019,000 (2015: Nil).

#### 4.7 Fair value of derivative financial instruments

As described in note 22 to the consolidated financial statements, the derivative component of MEBs and CVRs are measured at fair value. The Group engaged an independent valuer to determine the fair values of these derivative financial instruments. The determination was based on generally accepted valuation procedures and practices that rely extensively on numerous assumptions taking into consideration of many uncertainties, including risk free interest rate, discount rate and volatility of the Group's share price, some of which cannot be easily quantified or ascertained. Changes in subjective input assumptions can materially affect the fair value estimate.

As at 31 December 2016, the fair value of derivative financial instruments is RMB263,822,000 (2015: nil).

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 5. SEGMENT INFORMATION

The CODM has been identified as the executive directors of the Company. The executive directors reviewed the Group's internal reporting in order to assess performance and allocate resources. The management has determined the operating segments based on these reports. The executive directors assessed the performance of each single operating segment based on a measure of segment results. Fair value of financial derivatives, corporate and other unallocated expenses, gain on extinguishment of financial liabilities, finance income, finance costs and income tax expenses are not included in the result for each operating segment.

The CODM identified the segments based on the nature of business operations. Specifically, the CODM assessed the performance of sales of properties, rental income, property management services, hotel and catering operations and cinema, department store and cultural centre operations and regarded these being the reportable segments. Other segments primarily relate to other businesses in the PRC with similar risks and returns.

Revenue for the year consists of sales of properties, rental income, property management services, hotel and catering operations, cinema, department store and cultural centre operations and other businesses mainly include hire income from charter and passenger transportation agency service income.

	2016 RMB'000	2015 RMB'000
Sales of properties		
– Completed properties held for sale	<b>16,739,010</b>	10,230,515
– Properties under development/held for sale and proposed development projects	–	61,380
Rental income	<b>228,054</b>	232,180
Property management services	<b>271,622</b>	224,089
Hotel and catering operations	<b>81,967</b>	67,274
Cinema, department store and cultural centre operations	<b>253,270</b>	111,097
Others	<b>197,594</b>	–
	<b>17,771,517</b>	10,926,535



## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 5. SEGMENT INFORMATION (Continued)

The segment information provided to the CODM for the reportable segments for the year ended 31 December 2016 is as follows:

	Property development RMB'000	Property investment RMB'000	Property management RMB'000	Hotel and catering operations RMB'000	Cinema, department store and cultural centre operations RMB'000	Others RMB'000	Total RMB'000
Revenue	16,739,010	242,829	524,384	88,702	257,905	197,594	18,050,424
Less: inter-segment revenue	–	(14,775)	(252,762)	(6,735)	(4,635)	–	(278,907)
Revenue from external customers	16,739,010	228,054	271,622	81,967	253,270	197,594	17,771,517
Segment results before changes in fair value of investment properties and share of results of associates and joint ventures	(867,614)	126,243	104,537	(37,746)	(68,146)	115,222	(627,504)
Share of results of associates and joint ventures (note 10)	(40,578)	–	–	–	–	8,223	(32,355)
Changes in fair value of investment properties (note 7)	–	4,161,371	–	–	–	–	4,161,371
Segment results	(908,192)	4,287,614	104,537	(37,746)	(68,146)	123,445	3,501,512
Changes in fair value of financial derivatives							(21,500)
Corporate and other unallocated expenses							(208,994)
Finance income							39,236
Finance costs							(2,159,602)
Finance costs – net (note 29)							(2,120,366)
Gain on extinguishment of financial liabilities							716,143
Profit before income tax							1,866,795
Income tax expenses (note 32)							(2,214,306)
Loss for the year							(347,511)

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 5. SEGMENT INFORMATION (Continued)

	Property development RMB'000	Property investment RMB'000	Property management RMB'000	Hotel and catering operations RMB'000	Cinema, department store and cultural centre operations RMB'000	Others RMB'000	Unallocated RMB'000	Total RMB'000
Other information:								
Depreciation (note 6)	45,085	3,740	3,116	4,841	10,838	1,117	32,632	101,369
Amortisation of land use rights (note 8)	2,160	–	–	1,808	2,318	–	–	6,286
Amortisation of intangible assets (note 9)	–	–	–	–	85,796	–	–	85,796
Write-down of completed properties held for sale and properties under development (note 27)	670,615	–	–	–	–	–	–	670,615
	Property development RMB'000	Property investment RMB'000	Property management RMB'000	Hotel and catering operations RMB'000	Cinema, department store and cultural centre operations RMB'000	Others RMB'000	Elimination RMB'000	Total RMB'000
Segment assets	267,711,662	17,032,340	3,400,867	2,650,132	68,056,017	25,309,894	(219,260,410)	164,900,502
Unallocated								921,465
<b>Total assets</b>								<b>165,821,967</b>
Segment liabilities	174,256,468	5,601,559	1,595,338	1,868,984	29,757,713	10,177,772	(176,926,797)	46,331,037
Unallocated								96,444,531
<b>Total liabilities</b>								<b>142,775,568</b>
Other information:								
Capital expenditure (notes 6, 7 and 8)	4,671	3,404,525	2,101	3,696	25,976	6,522	–	3,447,491

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 5. SEGMENT INFORMATION (Continued)

The segment information provided to the CODM for the reportable segments for the year ended 31 December 2015 is as follows:

	Property development RMB'000	Property investment RMB'000	Property management RMB'000	Hotel and catering operations RMB'000	Cinema, department store and cultural centre operations RMB'000	Total RMB'000
Revenue	10,291,895	244,450	450,106	71,403	113,251	11,171,105
Less: inter-segment revenue	–	(12,270)	(226,017)	(4,129)	(2,154)	(244,570)
Revenue from external customers	10,291,895	232,180	224,089	67,274	111,097	10,926,535
Segment results before changes in fair value of investment properties and share of results of associates	(1,479,395)	68,028	37,296	(69,933)	9,004	(1,435,000)
Share of results of associates (note 10a)	(3,586)	–	–	–	–	(3,586)
Changes in fair value of investment properties (note 7)	–	3,824,520	–	–	–	3,824,520
Segment results	(1,482,981)	3,892,548	37,296	(69,933)	9,004	2,385,934
Changes in fair value of financial derivatives						(42,219)
Corporate and other unallocated expenses						(63,550)
Finance income						10,717
Finance costs						(2,117,161)
Finance costs – net (note 29)						(2,106,444)
Profit before income tax						173,721
Income tax expenses (note 32)						(1,428,205)
Loss for the year						(1,254,484)

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 5. SEGMENT INFORMATION (Continued)

	Property development RMB'000	Property investment RMB'000	Property management RMB'000	Hotel and catering operations RMB'000	Cinema, department store and cultural centre operations RMB'000	Unallocated RMB'000	Total RMB'000
Other information:							
Depreciation (note 6)	47,066	6,142	7,627	33,436	9,954	616	104,841
Amortisation of land use rights (note 8)	680	–	–	2,195	3,411	–	6,286
Write-down of completed properties held for sale and properties under development (note 27)	240,276	–	–	–	–	–	240,276
	Property development RMB'000	Property investment RMB'000	Property management RMB'000	Hotel and catering operations RMB'000	Cinema, department store and cultural centre operations RMB'000	Elimination RMB'000	Total RMB'000
Segment assets	230,715,816	15,261,027	2,202,259	2,402,689	404,888	(123,780,368)	127,206,311
Unallocated							340,364
<b>Total assets</b>							<b>127,546,675</b>
Segment liabilities	151,056,825	2,167,609	1,568,503	1,457,390	319,788	(121,498,966)	35,071,149
Unallocated							79,275,881
<b>Total liabilities</b>							<b>114,347,030</b>
Other information:							
Capital expenditure (notes 6, 7 and 8)	17,570	661,649	1,236	2,074	1,289	–	683,818

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 5. SEGMENT INFORMATION (Continued)

No material revenues are derived from any single external customer (2015: none).

As at 31 December 2016, segment assets of property development segment and others segment included the investment in associates accounted for using the equity method totalling approximately RMB777,220,000 and RMB553,901,000 (2015: RMB783,175,000 and nil) respectively. In addition, the segment assets of property development segment included the investments in joint ventures of RMB931,751,000 (2015: nil) accounted for using the equity method.

Segment assets consist primarily of property and equipment, investment properties, investments in joint ventures, investments in associates, goodwill and intangible assets, land use right, properties under development, completed properties held for sale, debtors, deposits and other receivables, deposits for land acquisition, prepayments for proposed development projects, restricted cash, short-term bank deposits, long-term bank deposits and cash and cash equivalents. They exclude available-for-sale financial assets, deferred income tax assets and prepaid taxes.

Segment liabilities consist primarily of advance proceeds received from customers and deposits received, accrued construction costs, operating borrowings, other payables and amounts due to non-controlling interests of subsidiaries. They exclude deferred income tax liabilities, financial derivatives, income tax payable and corporate borrowings.

### 6. PROPERTY AND EQUIPMENT

	Hotel properties RMB'000	Buildings RMB'000	Motor vehicles RMB'000	Furniture, fitting and equipment RMB'000	Total RMB'000
<b>At 1 January 2015</b>					
Cost	434,973	378,916	78,269	356,698	1,248,856
Accumulated depreciation and impairment	(51,476)	(107,339)	(46,403)	(195,459)	(400,677)
Net carrying amounts	383,497	271,577	31,866	161,239	848,179
<b>Year ended 31 December 2015</b>					
Opening net carrying amounts	383,497	271,577	31,866	161,239	848,179
Additions	–	–	3,393	22,402	25,795
Disposals	–	–	(8,477)	(485)	(8,962)
Depreciation (note 5, 28)	(17,382)	(14,936)	(7,856)	(64,667)	(104,841)
Closing net carrying amounts	366,115	256,641	18,926	118,489	760,171
<b>At 31 December 2015</b>					
Cost	434,973	378,916	61,085	374,681	1,249,655
Accumulated depreciation and impairment	(68,858)	(122,275)	(42,159)	(256,192)	(489,484)
Net carrying amounts	366,115	256,641	18,926	118,489	760,171

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 6. PROPERTY AND EQUIPMENT (Continued)

	Hotel properties RMB'000	Buildings RMB'000	Motor vehicles RMB'000	Furniture, fitting and equipment RMB'000	Vessels RMB'000	Construction in progress RMB'000	Total RMB'000
<b>Year ended 31 December 2016</b>							
Opening net carrying amounts	366,115	256,641	18,926	118,489	–	–	760,171
Additions	–	–	5,829	43,999	56,261	–	106,089
Acquisitions of subsidiaries (note 38)	–	33,354	8,647	14,651	209,620	56,694	322,966
Disposals	–	–	(171)	(622)	–	–	(793)
Depreciation (note 5, 28)	(17,381)	(14,405)	(8,452)	(61,131)	–	–	(101,369)
Closing net carrying amounts	348,734	275,590	24,779	115,386	265,881	56,694	1,087,064
<b>At 31 December 2016</b>							
Cost	434,973	412,270	73,374	430,558	265,881	56,694	1,673,750
Accumulated depreciation and impairment	(86,239)	(136,680)	(48,595)	(315,172)	–	–	(586,686)
Net carrying amounts	348,734	275,590	24,779	115,386	265,881	56,694	1,087,064

As at 31 December 2016, the Group's certain hotel properties and buildings with net carrying amounts of approximately RMB344,139,000 (2015: RMB324,438,000) were pledged as collateral for the Group's borrowings (note 22).

As at 31 December 2015, certain property and equipment with the aggregate carrying amount of approximately RMB229,237,000 were partially restricted. As at 31 December 2016, the restrictions on these property and equipment have been fully released.

Depreciation of RMB101,369,000 (2015: RMB104,841,000) has been charged in administrative expenses during the year.

There was no impairment loss provided for the years ended 31 December 2016 and 2015.



## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 7. INVESTMENT PROPERTIES

	Under construction RMB'000	Completed RMB'000	Total RMB'000
At 1 January 2015	10,777,003	5,479,157	16,256,160
Additions	658,023	–	658,023
Transfer upon completion	(1,578,200)	1,578,200	–
Increase in fair value (note 5)	2,934,238	890,282	3,824,520
At 31 December 2015 and 1 January 2016	<b>12,791,064</b>	<b>7,947,639</b>	<b>20,738,703</b>
Additions	<b>3,334,880</b>	–	<b>3,334,880</b>
Transfer from completed properties held for sale	–	<b>12,971</b>	<b>12,971</b>
Transfer from deposits for land acquisition	<b>2,481,508</b>	–	<b>2,481,508</b>
Disposals	–	<b>(38,753)</b>	<b>(38,753)</b>
Increase in fair value (note 5)	<b>2,675,558</b>	<b>1,485,813</b>	<b>4,161,371</b>
<b>At 31 December 2016</b>	<b>21,283,010</b>	<b>9,407,670</b>	<b>30,690,680</b>

The following amounts have been recognised in the consolidated statement of profit or loss and other comprehensive income for investment properties:

	2016 RMB'000	2015 RMB'000
Rental income	<b>193,528</b>	193,328
Direct operating expenses arising from investment properties that generate rental income	<b>17,650</b>	24,129

**Valuation processes of the Group**

The Group obtains independent valuations from Savills Valuation and Professional Services Limited, for its investment properties at least annually. For all investment properties, their current use equates to the highest and best use.

The Group's finance department includes a team that reviews the valuations performed by the independent valuers for financial reporting purposes. This team reports directly to the senior management and to the audit committee. Discussions of valuation processes and results are held between the management, audit committee and valuers at least once every six months, in line with the Group's interim and annual reporting dates.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**7. INVESTMENT PROPERTIES** (Continued)**Valuation processes of the Group** (Continued)

At each financial year end, the finance department:

- Verifies major inputs to the independent valuation report;
- Assesses property valuations movements when compared to the prior year valuation report;
- Holds discussions with the independent valuer.

**Valuation techniques**

Fair value measurements using significant unobservable inputs

Fair values of completed commercial properties are generally derived using the income capitalisation method. This valuation method is based on the capitalisation of the net income and reversionary income potential by adopting appropriate capitalisation rates, which are derived from analysis of sale transactions and valuers' estimates of prevailing investor requirements or expectations. The prevailing market rents adopted in the valuation have reference to recent lettings, within the subject properties and other comparable properties.

Fair values of commercial properties under development are generally derived using the combination of direct comparison method by making reference to the comparable market transactions for the land portion as available in the market and the income capitalisation method by capitalising market rent derived from the properties. This valuation method is essentially a means of valuing the land and properties under development by reference to its development potential by deducting development costs together with developer's profit and risk from the estimated capital value of the proposed development assuming completed as at the date of valuation.

There were no changes to the valuation techniques during the year.

Significant inputs used to determine fair value

As at 31 December 2016, the key assumptions adopted in determining the fair value of the Group's investment properties were as follows:

	2016	2015
Capitalisation rate	<b>3.0%-5.5%</b>	3.0%-6.5%
Discount rate	<b>4.75%</b>	4.75%
Expected vacancy rate	<b>0.0%-10.0%</b>	0.0%-10.0%
Monthly rental (RMB/sqm/month)	<b>44-551</b>	57-540
Budgeted construction cost (RMB/sqm)	<b>4,907-8,977</b>	5,477-7,839
Anticipated developer's profit margin	<b>5.0%-25.0%</b>	5.0%-20.0%

Capitalisation and discount rates are estimated by the valuer based on the risk profile of the properties being valued. The higher the rates, the lower the fair value.

Prevailing market rents per square meter are estimated based on recent lettings of the subject properties and other comparable properties. The lower the rents, the lower the fair value.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 7. INVESTMENT PROPERTIES (Continued)

#### Valuation techniques (Continued)

Estimated costs to complete per square meter and developer's profit margin required are estimated by the valuer based on market conditions at the year end dates. The estimates are largely consistent with the budgets developed internally by the Group based on management's experience and knowledge of market conditions. The higher the costs, the lower the fair value.

As at 31 December 2016 and 2015, the fair value measurement of the Group's investment properties are categorised at level 3. During the years ended 31 December 2016 and 2015, there were no transfer into or out of level 3.

The Group's investment properties are analysed as follows:

	2016 RMB'000	2015 RMB'000
In the PRC, held on:		
Leases of between 10 to 50 years	<b>30,673,480</b>	20,738,703
Leases of over 50 years	<b>17,200</b>	–
	<b>30,690,680</b>	20,738,703

As at 31 December 2016, the investment properties with fair value totaling RMB13,758,986,000 (2015: RMB11,709,238,000) were pledged as collateral for the Group's borrowings (note 22).

As at 31 December 2015, certain investment properties with the aggregate carrying amount of approximately RMB480,729,000 were partially restricted. As at 31 December 2016, the restrictions on these properties have been fully released.

### 8. LAND USE RIGHTS

	2016 RMB'000	2015 RMB'000
At 1 January	<b>162,942</b>	169,228
Additions	<b>6,522</b>	–
Amortisation – expensed in administrative expenses (note 5, 28)	<b>(6,286)</b>	(6,286)
At 31 December	<b>163,178</b>	162,942
In PRC, held on:		
Leases of over 50 years	<b>24,488</b>	27,018
Leases of between 10-50 years	<b>138,690</b>	135,924
As 31 December	<b>163,178</b>	162,942

As at 31 December 2016, land use rights with net carrying amounts totaling RMB52,471,000 (2015: RMB52,162,000) were pledged as collateral for the Group's borrowings (note 22).

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 9. GOODWILL AND INTANGIBLE ASSETS

	Goodwill RMB'000 (note a)	Contracts with sports players RMB'000 (note b)	Total RMB'000
<b>Cost</b>			
At 1 January 2015, 31 December 2015 and 1 January 2016	–	–	–
Acquisitions of subsidiaries (note 38)	<b>121,779</b>	<b>107,437</b>	<b>229,216</b>
Additions	–	<b>74,378</b>	<b>74,378</b>
At 31 December 2016	<b>121,779</b>	<b>181,815</b>	<b>303,594</b>
<b>Accumulated amortisation</b>			
At 1 January 2015, 31 December 2015 and 1 January 2016	–	–	–
Amortisation – expensed in administrative expenses (note 5, 28)	–	<b>(85,796)</b>	<b>(85,796)</b>
At 31 December 2016	–	<b>(85,796)</b>	<b>(85,796)</b>
<b>Net carrying amounts</b>			
At 31 December 2016	<b>121,779</b>	<b>96,019</b>	<b>217,798</b>
At 31 December 2015	–	–	–

Note:

- (a) The Group's goodwill arose from business combinations in 2016 in connection with the acquisition of (i) Shanghai Yitao Sports Culture Communication Co. Ltd and its subsidiary (collectively referred to as the "Shanghai Yitao Group") and (ii) Shenzhen Football Club Co. Ltd ("Shenzhen Football Club").

For the purpose of impairment testing, goodwill has been allocated to two cash-generating units ("CGUs") of RMB121,493,000 in sports operations and of RMB286,000 in entertainment operations.

The recoverable amounts of the CGUs are determined by directors of the Company based on value-in-use calculations. These calculations use in cash flow projections in relation to the CGU of sports operations based on financial budgets approved by management covering a 10-year period and assumed the growth rate and inflation rate of 8% per annum and 3% per annum respectively. The cash flow discounted using a pre-tax discount rate of 12.68% and reflects specific risks relating to the relevant segments. The financial budgets are prepared based on 10-year business plan which is appropriate after considering the sustainability of business growth and achievement of business target extrapolated from a track record of financial results. The value assigned to the key assumptions on market development and discount rates are consistent with external information sources. As at 31 December 2016, the directors of the Company conducted a review on goodwill and no impairment loss in respect of goodwill has been recognised (2015: RMB Nil).

- (b) The amounts represent the costs to acquire sports players' contracts or to extend their contracts, including the related agent's fees. The amortisation period ranged from 1 to 4 years.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 10. INVESTMENTS ACCOUNTED FOR USING THE EQUITY METHOD

## (a) Investments in associates

	2016 RMB'000	2015 RMB'000
At 1 January	<b>783,175</b>	778,461
Acquisition of subsidiaries (note 38(a))	<b>8,913</b>	–
Additions	<b>579,611</b>	8,300
Share of results of associates	<b>(40,578)</b>	(3,586)
At 31 December	<b>1,331,121</b>	783,175

During the year ended 31 December 2016, the Group acquired 21.72% equity interest in Mega Medical Technology Limited (“Mega”) and other individually immaterial associates for cash consideration of RMB348,415,000 and RMB231,196,000 respectively.

Set out below are details of the associates of the Group as at 31 December 2016 which, in the opinion of the directors, are material to the Group.

Name of entity	Place of business/ country of establishment	Proportion of issued capital/interest held by the Group	Principal activity
Mega	the PRC/Bermuda	21.72% (2015: Nil)	Investment holding, manufacturing and trading of electronic components and dental prosthetics
Xing Huo Ju Long Technology Investment Co., Ltd.* (“Xing Huo”) 星火巨龍科技投資有限公司(「星火」)	the PRC	49% (2015: 49%)	Property investment

\* The English translation of the name of the Company established in the PRC is for reference only. The official name of this company is in Chinese.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 10. INVESTMENTS ACCOUNTED FOR USING THE EQUITY METHOD (Continued)

## (a) Investments in associates (Continued)

As at 31 December 2016, the fair value of the Group's investment in an associate, Mega, of which the shares are listed on the Stock Exchange of Hong Kong was RMB327,045,000 (2015: nil) based on the market prices available on the Stock Exchange of Hong Kong, which is level 1 input in terms of HKFRS 13 "Fair value measurement".

Xing Huo is a private company.

There are no contingent liabilities relating to the Group's interests in the associates.

Summarised financial information in respect of the Group's material associates accounted for using equity method, adjusted for any differences in accounting policies, and a reconciliation to the carrying amount in the consolidated financial statements are disclosed below:

	Mega 2016 RMB'000	Xing Huo 2016 RMB'000	2015 RMB'000
Current assets	158,420	1,504,516	1,504,679
Non-current assets	366,132	235,208	235,925
Current liabilities	(64,968)	(196,767)	(197,738)
Non-current liabilities	(6,518)	–	–
Net assets	453,066	1,542,957	1,542,866

Summarised financial information for the associates

Summarised statement of profit or loss and other comprehensive income of the Group's material associates:

	Mega 2016 RMB'000	Xing Huo 2016 RMB'000	2015 RMB'000
Revenue	25,114	–	–
Loss for the year from continuing operation	(7,990)	–	–
Loss for the year/since acquisition	(24,984)	(377)	(1,205)
Other comprehensive loss for the year/since acquisition	(9,531)	–	–
Total comprehensive loss for the year/since acquisition	(34,515)	(377)	(1,205)

The information above reflects the amounts presented in the consolidated financial statements of the Group's material associates adjusted for differences in accounting policies between the Group and the associates.



## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 10. INVESTMENTS ACCOUNTED FOR USING THE EQUITY METHOD (Continued)

## (a) Investments in associates (Continued)

Summarised financial information for the associates (Continued)

*Reconciliation of summarised financial information*

Reconciliation of the above summarised financial information to the carrying amount of each of the investments in the Group's material associates recognised in the consolidated financial statements:

	Mega 2016 RMB'000	Xing Huo 2016 RMB'000	2015 RMB'000
Net assets of the Group's material associates	453,066	1,542,957	1,542,866
Portion of ownership interests held by the Group	21.72%	49%	49%
Carrying amount of the Group's interests in material associates	98,406	756,049	756,004
Goodwill	283,399	–	–
Carrying amount of the Group's interests in material associates	381,805	756,049	756,004

Set out below are the aggregate financial information of associates that are not individually material:

	2016 RMB'000	2015 RMB'000
The Group's share of losses for the year	(32,897)	(2,996)
Aggregate carrying amounts of the Group's interests in these associates	193,267	27,171

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 10. INVESTMENTS ACCOUNTED FOR USING THE EQUITY METHOD (Continued)

## (b) Investments in joint ventures

	2016 RMB'000
Additions	923,528
Share of results of joint ventures	8,223
At 31 December	931,751

For the year ended 31 December 2016, the Group entered into agreements with third parties to acquire an immaterial joint venture amounting to RMB800,000 and 51% equity interest in a jointly control company, Kaileju, a company that holds a parcel of land for property development in the PRC, for a cash consideration of RMB922,728,000. The purpose of the acquisition was mainly for acquiring the land. The Group exercises joint control over decision about the relevant activities of Kaileju, which require unanimous consent with the joint venture partner in accordance with joint venture agreement, Kaileju has been accounted for as joint venture.

Set out below are details of Kaileju as at 31 December 2016 which, in the opinion of the directors, is material to the Group.

Name of entity	Place of business/country of establishment	Proportion of the issued capital/interest held by the Group	Principal activity
Huizhou City Kaileju Company Limited* ("Kaileju") 惠州市愷樂居置業有限公司	the PRC	51% (2015: nil)	Property development

\* The English translation of the name of the Company established in the PRC is for reference only. The official name of the company is in Chinese.

Kaileju is a private company.

There are no contingent liabilities relating to the Group's interests in the joint venture.

Summarised financial information of the Group's material joint venture, adjusted for any differences in accounting policies, and a reconciliation to the carrying amount in the consolidated financial statements are disclosed below:

	2016 RMB'000
Current assets	2,408,625
Non-current assets	2
Current liabilities	(600,034)
Net assets	1,808,593

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 10. INVESTMENTS ACCOUNTED FOR USING THE EQUITY METHOD (Continued)

## (b) Investments in joint ventures (Continued)

Summarised statement of profit or loss and other comprehensive income of the material joint venture:

	2016 RMB'000
Total expenses, loss for the year and total comprehensive loss for the year since acquisition	<b>(678)</b>

*Reconciliation of summarised financial information*

Reconciliation of the summarised financial information reconciled to the carrying amount of its investment in the Group's material joint venture recognised in the consolidated financial statements.

	2016 RMB'000
Net assets of the Group's material joint venture	<b>1,808,593</b>
Carrying amount of the Group's interests in the material joint venture	<b>922,382</b>

Set out below are the aggregate financial information of joint venture that is not individually material:

	2016 RMB'000
The Group's share of profit for the year	<b>8,569</b>
Carrying amount of the Group's interest in this joint venture	<b>9,369</b>

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 11. PROPERTIES UNDER DEVELOPMENT

	2016 RMB'000	2015 RMB'000
Amount comprises:		
Construction costs	<b>17,269,019</b>	17,321,518
Interest capitalised	<b>10,287,223</b>	9,356,596
Land use rights	<b>33,571,451</b>	38,250,878
	<b>61,127,693</b>	64,928,992
Less: Provision for properties under development	<b>(567,854)</b>	(1,067,257)
	<b>60,559,839</b>	63,861,735

The properties under development are all located in the PRC.

For the year ended 31 December 2016, the provision of properties under development of RMB190,253,000 was reversed to reflect the increase in net realisable value of certain properties under development. For the year ended 31 December 2015, provision of properties under development of RMB11,998,000 was made to reflect the decrease in net realisable value of certain properties under development located in certain regions of the PRC.

During the year ended 31 December 2016, the provision for properties under development of RMB309,150,000 (2015: RMB68,627,000) in aggregate were transferred to the provision for completed properties held for sale.

As at 31 December 2016, the net aggregate amount of properties under development of approximately RMB40,017,551,000 (2015: RMB42,234,238,000) were pledged as collateral for the Group's borrowings (note 22).

As at 31 December 2016, certain properties under development with the aggregate carrying amounts of approximately RMB502,793,000 (2015: RMB11,832,654,000) were partially restricted. As at the date when the consolidated financial statements are authorised for issue, the restrictions on these properties with the aggregate carrying amount of approximately RMB494,453,000 has not been released.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 12. COMPLETED PROPERTIES HELD FOR SALE

	2016 RMB'000	2015 RMB'000
Completed properties held for sale	<b>17,610,193</b>	18,383,785
Less: Provision for completed properties held for sale	<b>(1,363,960)</b>	(720,773)
	<b>16,246,233</b>	17,663,012

Completed properties held for sale are all located in the PRC.

For the year ended 31 December 2016, completed properties held for sale of RMB860,868,000 (2015: RMB228,278,000) were impaired to reflect the decrease in net realisable value of certain completed properties located in certain regions of the PRC. In addition, the provision for completed properties held for sale of RMB309,150,000 (2015: RMB68,627,000) in aggregate were transferred from the provision for properties under development during the year ended 31 December 2016.

As at 31 December 2016 and 2015, the aggregate carrying amount of completed properties held for sale of approximately RMB5,760,042,000 (2015: RMB2,293,416,000) were pledged as collateral for the Group's bank borrowings (note 22).

As at 31 December 2016, certain completed properties held for sale with the aggregate carrying amount of approximately RMB208,414,000 (2015: RMB1,190,296,000) were partially restricted. As at the date when the consolidated financial statements are authorised for issue, the restrictions on these properties with the aggregate carrying amount of approximately RMB146,257,000 has not been released.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 13. AVAILABLE-FOR-SALE FINANCIAL ASSETS

Available-for-sale financial assets include the following:

	2016 RMB' 000	2015 RMB' 000
At 1 January	10,000	56,823
Acquisitions of subsidiaries (note 38 (a))	96,903	–
Additions	274,686	–
Disposals	(213,667)	(46,823)
Net gain recognised in other comprehensive income	(280)	–
At 31 December (note 40)	167,642	10,000
Less: non-current portion	(154,538)	–
Current portion	13,104	10,000

Available-for-sale financial assets include the following:

	2016 RMB' 000	2015 RMB' 000
Listed equity investments, at fair value	1,104	–
Unlisted equity investments, at cost	166,538	10,000
	167,642	10,000

Unlisted investments as at 31 December 2016 represented the followings:

- (i) approximately 20% equity interest in Shenzhen Gengxin Management Partnership (Limited Partnership)\* (“Shenzhen Gengxin”), a partnership in the PRC. Shenzhen Gengxin has a registered capital of RMB50 million;
- (ii) 8% equity interest in Yue Peng LNG Shipping Co. Limited (“Yue Peng”) and Yue Gang LNG Shipping Co. Limited (“Yue Gang”), companies in the PRC. Yue Peng and Yue Gang have registered capital of USD40.2 million and USD40.9 million respectively;
- (iii) approximately 16% equity interest in Yue Yang LNG Shipping Co. Limited (“Yue Yang”), a company in the PRC. Yue Yang has a registered capital of USD39.8 million;
- (iv) 2% equity interest in Zhong Chang Sheng Fund Management Company Limited\* (“Zhong Chang Sheng”), a company in the PRC. Zhong Chang Sheng has a registered capital of RMB100 million; and
- (v) 20% equity interest in Shenzhen He Chuang Fu Investment Company Limited\*, a company in the PRC.

\* The English translation of the names of the companies established in the PRC is for reference only. The official names of these companies are in Chinese.



## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**13. AVAILABLE-FOR-SALE FINANCIAL ASSETS** (Continued)

Unlisted investments as at 31 December 2015 represented approximately 20% equity interest in Shenzhen Gengxin.

The Group did not have significant influence nor participate in the policy-making process and the operating and financial decisions of these unlisted investments as at 31 December 2016 and 31 December 2015.

The unlisted investments are measured at cost less impairment at the reporting date as the range of fair values is so significant that the directors of the Company are of the opinion that the fair values cannot be measured reliably.

**14. DEBTORS, DEPOSITS AND OTHER RECEIVABLES**

	2016 RMB'000	2015 RMB'000
Trade receivables (note a)	<b>328,002</b>	625,756
Other receivables (note b)	<b>1,268,750</b>	1,841,949
Other deposits	<b>612,242</b>	349,360
Prepayments (note c)	<b>1,432,918</b>	1,978,988
Prepaid other taxes	<b>1,144,740</b>	561,782
Amount due from an associate (note d)	<b>400,000</b>	–
Amount due from a joint venture (note e)	<b>599,390</b>	–
	<b>5,786,042</b>	5,357,835

As at 31 December 2016 and 2015, the carrying amounts of debtors, deposits and other receivables approximates their fair values.

- (a) Trade receivables mainly arise from sales of properties. Proceeds in respect of sales of properties are to be received in accordance with the terms of the related sales and purchase agreements. The ageing analysis of trade receivables as at the respective reporting dates is as follows:

	2016 RMB'000	2015 RMB'000
Within 90 days	<b>250,634</b>	186,102
91-180 days	–	7
181-270 days	<b>7,825</b>	98
271-365 days	<b>6</b>	187
Over 365 days	<b>69,537</b>	439,362
	<b>328,002</b>	625,756

Included in the Group's trade receivables balances of nil and RMB6,130,000 as at 31 December 2016 and 2015, respectively, were not yet due. The balances represented receivables from sales of commercial and residential properties, properties under development/held for sale and proposed development projects from independent third parties. These receivables were repayable within one year after the completion of certain legal documents, which were expected to be settled in the next year.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**14. DEBTORS, DEPOSITS AND OTHER RECEIVABLES** (Continued)

(a) (Continued)

Ageing of trade receivables which were past due but not impaired:

	2016 RMB'000	2015 RMB'000
Overdue within 90 days	<b>250,634</b>	179,972
Overdue within 91-180 days	–	7
Overdue within 181-270 days	<b>7,825</b>	98
Overdue within 271-365 days	<b>6</b>	187
Overdue over 365 days	<b>69,537</b>	439,362
	<b>328,002</b>	619,626

Receivables that were past due but not impaired related to the balances primarily represented receivables from sales of residential properties to independent third parties of which the majority of the balances were due from customers in the process of applying mortgage loans. Generally, no credit terms were granted to these customers. These relate to a number of independent customers for whom there was no recent history of default.

Up to the date when these consolidated financial statements are authorised for issue, the amounts of RMB100,590,000 and RMB552,610,000 of the trade receivables as at 31 December 2016 and 2015 have been settled, respectively.

- (b) These receivables mainly included bills receivables, amounts to be refunded by the government in relation to the land acquisition in the PRC and advances to third parties, which are interest-free, unsecured and repayable on demand, and expected to be recovered within 12 months from the end of the reporting period and are therefore classified as current assets.
- (c) Prepayments mainly represent prepayments for purchase of construction materials and services.
- (d) The amount is unsecured, carry at interest rate of 12% p.a. and repayable in 2017.
- (e) The amount is unsecured, interest-free and repayable on demand, and expected to be recovered within 12 months from the end of the reporting period and is therefore classified as current asset.
- (f) The maximum credit risk exposure is the amount shown on the consolidated statement of financial position.
- (g) The carrying amounts of the Group's receivables are mainly denominated in Renminbi.

**15. DEPOSITS FOR LAND ACQUISITION**

Deposits for land acquisition arise from the acquisition of land in various regions in the PRC. These deposits would be converted into land use rights when the rights to use the lands have been obtained. The carrying amounts of the Group's deposits for land acquisition are mainly denominated in Renminbi. Details of the acquisition of deposits for land acquisition as disclosed in note 38(a) to the consolidated financial statements.

As at 31 December 2016, certain land deposits with the aggregate carrying amounts of approximately RMB2,922,000 (2015: RMB2,763,183,000) were partially restricted. As at the date of when the consolidated financial statements are authorised for issue, the restrictions on these properties have been fully released. Please also see note 38(a) regarding certain land deposits.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 16. PREPAYMENTS FOR PROPOSED DEVELOPMENT PROJECTS

The Group has entered into a number of contractual arrangements relating to redevelopment of certain areas and other development projects with independent third parties and has made prepayments in accordance with the terms of these respective contracts. These prepayments would be converted into properties under development upon the completion of the contracts.

### 17. FINANCIAL DERIVATIVES

	2016 Assets RMB'000	2016 Liabilities RMB'000	2015 Assets RMB'000	2015 Liabilities RMB'000
Measured at fair value at each reporting date and included in the consolidated statement of financial position as liabilities:				
Derivative component of MEBs	–	<b>(229,790)</b>	–	–
CVRs (note 22(a))	–	<b>(34,032)</b>	–	–
	–	<b>(263,822)</b>	–	–

### 18. RESTRICTED CASH

Restricted cash mainly comprised of:

- (a) In accordance with relevant documents issued by local State-Owned Land and Resource Bureau, certain subsidiaries of the Group engaged in property development are required to place in designated bank accounts certain amount of proceeds from pre-completion sale of properties as guaranteed deposits for constructions of related properties. The deposits can only be used for purchases of construction materials and construction of the relevant property projects when approvals are obtained from local State-Owned Land and Resource Bureau. As at 31 December 2016, such guaranteed deposits amounted to RMB2,857,189,000 (2015: RMB695,272,000). They will be released after the construction of the relevant properties is completed or the related property ownership certificates are issued, whichever is earlier.
- (b) As at 31 December 2016, the Group's cash of RMB2,827,957,000 (2015: RMB257,717,000) was deposited in certain banks as guaranteed deposits for the benefit of mortgage loan facilities (note 36) granted by the banks to the purchasers of the Group's properties.
- (c) As at 31 December 2016, the Group's cash of RMB11,451,000 (2015: RMB16,414,000) was deposited in certain banks as guaranteed deposits for issuance of bills payables.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 19. RESTRICTED CASH, BANK DEPOSITS AND CASH AND CASH EQUIVALENTS

	2016 RMB'000	2015 RMB'000
Restricted cash (note 18)	<b>5,696,597</b>	969,403
Long-term bank deposits	–	1,479
Short-term bank deposits	<b>56,917</b>	13,974
Cash and cash equivalents	<b>10,819,117</b>	2,324,546
Cash and bank balances	<b>16,572,631</b>	3,309,402

Note:

The effective interest rates and maturities of bank deposits in the PRC are ranged from 2.25% to 3.25% (2015: 2.5% to 5.23%) per annum and from 6 to 12 months (2015: 12 to 51 months) as at 31 December 2016.

Cash and bank balances are denominated in the following currencies:

	2016 RMB'000	2015 RMB'000
Denominated in – RMB	<b>16,484,602</b>	3,181,612
Denominated in – HKD	<b>68,817</b>	98,792
Denominated in – USD	<b>19,212</b>	28,998
Less: Restricted cash (note 18)	<b>(5,696,597)</b>	(969,403)
Less: Long-term bank deposits	–	(1,479)
Less: Short-term bank deposits	<b>(56,917)</b>	(13,974)
Cash and cash equivalents	<b>10,819,117</b>	2,324,546

The conversion of RMB denominated balances into foreign currencies and the remittance of such foreign currencies denominated bank balances and cash out of the PRC are subject to relevant rules and regulation of foreign exchange control promulgated by the PRC government.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 20. SHARE CAPITAL AND SHARE PREMIUM

	Number of ordinary shares	Nominal value of ordinary shares HK\$'000	Equivalent nominal value of ordinary shares RMB'000	Share premium RMB'000	Total RMB'000
Authorised: Ordinary share of HK\$0.10 each At 1 January 2015, 31 December 2015, 1 January 2016 and 31 December 2016	5,000,000,000	5,000,000	4,405,545	–	4,405,545
Issued and fully paid: At 1 January 2015, 31 December 2015, 1 January 2016 and 31 December 2016	5,135,427,910	513,543	450,450	4,253,704	4,704,154

## 21. THE GROUP'S RESERVES

	Merger reserve RMB'000 (note a)	Exchange reserve RMB'000	Statutory reserves RMB'000 (note b)	Share option reserve RMB'000 (note c)	Capital reserve RMB'000	Other reserve RMB'000	Conversion option reserve RMB'000 (note 22(c))	Retained earnings RMB'000	Total RMB'000
Balance at 1 January 2015	382	24,835	758,043	105,166	(487,047)	–	220,824	9,336,614	9,958,817
Loss and total comprehensive loss for the year	–	–	–	–	–	–	–	(1,121,577)	(1,121,577)
Share-based payments (note c)	–	–	–	8,150	–	–	–	–	8,150
Share options lapsed	–	–	–	(57,988)	–	–	–	57,988	–
Transfer to statutory reserves (note b)	–	–	76,487	–	–	–	–	(76,487)	–
Balance at 31 December 2015 and 1 January 2016	382	24,835	834,530	55,328	(487,047)	–	220,824	8,196,538	8,845,390
Total comprehensive loss for the year	–	–	–	–	–	–	–	(612,590)	(612,590)
Share-based payments (note c)	–	–	–	5,881	–	–	–	–	5,881
Share options lapsed	–	–	–	(6,840)	–	–	–	6,840	–
Derecognition of conversion options included in the Convertible Bonds issued in 2010 (note 22(c))	–	–	–	–	–	–	(220,824)	220,824	–
Transfer to statutory reserves (note b)	–	–	79,068	–	–	–	–	(79,068)	–
Others	–	–	–	–	–	3,292	–	–	3,292
Balance at 31 December 2016	382	24,835	913,598	54,369	(487,047)	3,292	–	7,732,544	8,241,973

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**21. THE GROUP'S RESERVES** (Continued)

Notes:

- (a) The merger reserve of the Group represents the difference between the nominal value of the share capital and share premium of the subsidiaries acquired pursuant to the group reorganisation in December 2007 and the nominal value of the share capital of the Company issued in exchange thereof. The reorganisation qualifies as common control combinations and has been accounted for using merger accounting.
- (b) In accordance with the relevant rules and regulations in the PRC and the provision of the articles of association of the PRC companies comprising the Group, before 1 January 2006, the local investment enterprises were required to appropriate at each year end 5% to 10% of the profit for the year after setting off the accumulated losses brought forward (based on figures reported in the statutory financial statements) to the statutory surplus reserve and the statutory public welfare fund (collectively the "Statutory Reserves"), respectively. After 1 January 2006, the local investment enterprises are allowed to appropriate 10% of the net profit to the Statutory Reserves until the accumulated appropriation exceeds 50% of the registered capital.

For Chinese-foreign entities, in accordance with the Law of the PRC on Chinese-foreign Equity Joint Ventures, the percentage of profits to be appropriated to the Statutory Reserves is solely determined by the Board of Directors of these foreign investment enterprises.

In accordance with the Laws of the PRC on Enterprises Operated Exclusively with Foreign Capital and the companies' articles of association, an appropriation to the Statutory Reserves, after net of accumulated losses of previous years, have to be made prior to profit distribution to the investor. The appropriation for the Statutory Reserve of these foreign investment enterprises shall be no less than 10% of the net profit until the accumulated appropriation exceeds 50% of the registered capital.

For the year ended 31 December 2016, the Board of Directors of the Company's subsidiaries in the PRC, including both local and foreign investment enterprises, appropriated RMB79,068,000 (2015: RMB76,487,000) to the Statutory Reserves.

- (c) Share option reserve represents value of employee services in respect of share options granted under the share option scheme (note 39).



## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 22. BORROWINGS

	Notes	2016 RMB'000	2015 RMB'000
Borrowings included in non-current liabilities:			
New Senior Notes	(a)	<b>18,799,783</b>	–
MEBs	(a)	<b>1,453,020</b>	–
Bank borrowings – secured	(d)	<b>43,896,382</b>	24,998,806
Bank borrowings – unsecured	(d)	<b>3,454,040</b>	1,270,000
Other borrowings – secured	(d)	<b>10,931,290</b>	10,299,344
Other borrowings – unsecured	(d)	<b>1,240,000</b>	460,000
Loan from a related company	(e)	–	1,377,000
		<b>79,774,515</b>	38,405,150
Borrowings included in current liabilities:			
Senior Notes	(b)	–	16,098,577
Convertible Bonds	(c)	–	1,625,790
Bank borrowings – secured	(d)	<b>112,815</b>	4,515,156
Bank borrowings – unsecured	(d)	<b>2,643,664</b>	2,609,467
Other borrowings – secured	(d)	<b>300,000</b>	5,983,299
Other borrowings – unsecured	(d)	<b>1,828,822</b>	1,380,730
Loans from a related company	(e)	<b>2,877,000</b>	1,500,000
		<b>7,762,301</b>	33,713,019
<b>Total borrowings</b>		<b>87,536,816</b>	72,118,169

Notes:

## (a) Debt restructuring

**Onshore Debt Restructuring**

On 17 August 2015, the Group entered into a framework agreement for the Onshore Debt Restructuring with the Onshore Creditors Committee which was formed by certain largest onshore creditors of the Group. The Onshore Creditors Committee was authorised to negotiate on behalf of all onshore creditors in respect of the Onshore Debt Restructuring. During 2015 and 2016, the Onshore Creditors entered into respective definitive agreements with the Group to restructure the outstanding debts or agreed that their outstanding debts being continued to be governed by their respective existing agreements. During the years ended 31 December 2015 and 2016, the Group has successfully restructured all of the onshore loans. The changes in terms did not constitute a substantial modification and the impact was insignificant.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**22. BORROWINGS** (Continued)

Notes: (Continued)

**(a) Debt restructuring** (Continued)**Offshore Debt Restructuring**

On 21 July 2016, the Debt Restructuring (as defined in the Company's announcement dated 22 July 2016 (the "Announcement") was effected whereby the Group's offshore debts, including various senior notes, convertible bonds, bank and other borrowings (collectively and individually referred to as the "Original Offshore Debts") were exchanged for new notes, being mainly New Senior Notes and MEBs as described in the Announcement (collectively and individually referred to as the "New Offshore Debts").

For those exchanges with substantially different terms, the Original Offshore Debts were derecognised and the related New Offshore Debts were recognised at their fair values at the effective date. A gain of approximately RMB716,143,000 was recognised for the year ended 31 December 2016, representing the difference between the carrying amount of the related Original Offshore Debts derecognised and the fair value of the related New Offshore Debts recognised, net of the total related fees paid and transaction costs amounting to RMB58,329,000 and the consent fee of RMB54,423,000. The fair values of the New Senior Notes recognised at initial recognition were determined with reference to the valuation performed by Savills Valuation and Professional Services Limited. The fair values were calculated based on the present value of contractually determined stream of future cash flows discounted at the market borrowing rates as at the nearest date to the date of initial recognition, as of that date and remaining time to maturity.

For the remaining exchanges that did not constitute a substantial modification, the consent fees paid to the holders of the Original Offshore Debts amounting to RMB104,355,000 in aggregate and the transaction costs amounting to RMB43,381,000 attributable to the Existing Senior Notes not derecognised were adjusted against the carrying amounts of the related Original Offshore Debts and amortised over the remaining terms of the related New Offshore Debts.

The above mentioned offshore debt restructuring was completed on 21 July 2016 through the Company's proposed schemes of arrangement which had been respectively sanctioned by the Grand Court of the Cayman Islands and the High Court of Hong Kong. The United States Court had also granted the order to recognise the scheme sanctioned by the High Court of Hong Kong under Chapter 15 of Title 11 of the United States Code.

All of the Existing senior notes, convertible bonds and other offshore facilities were exchanged into the New Senior Notes, MEBs, and CVRs in accordance with the options selected by the holders of the Original Offshore Debts:

	Principal/Notional Amount (in US\$)	Maturity date
MEBs <sup>1</sup>	259,486,248	31 December 2019
New Senior Notes <sup>3</sup> including:		
Series A Notes	277,460,905	31 December 2019
Series B Notes	499,429,957	30 June 2020
Series C Notes	610,414,552	31 December 2020
Series D Notes	665,906,865	30 June 2021
Series E Notes	721,398,993	31 December 2021
<b>Total</b>	<b>3,034,097,520</b>	
CVRs <sup>2</sup>	16,283,470	31 December 2021

<sup>1</sup> The MEBs represent USD-denominated and USD-settled variable rate bonds due 31 December 2019 (at the option of the Company, can be extended by one year to 31 December 2020) which shall be mandatorily exchange into Exchangeable Convertible Bonds pursuant to the Automatic Exchange Transaction as defined in the Company's announcement on 17 March 2016. The MEBs contain a host debt element and an exchange right to the Exchangeable Convertible Bonds which is recognised separately as a derivative liability recognised at fair values at initial recognition and at each reporting date. The fair value of the derivative liability was measured using certain valuation techniques as described in note 3.3 to the consolidated financial statements. At the initial recognition on 21 July 2016 and at the reporting date, the fair value of the derivative was measured using binomial option pricing model.

<sup>2</sup> It represents 232,621 contingent value rights with a notional amount of US\$70 each that entitle the holders to the payment of US\$14 for each CVR they hold upon occurrence of certain triggering events as specified in the related agreements. Such CVRs are classified as derivative liabilities with details shown in note 17 to the consolidated financial statement.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 22. BORROWINGS (Continued)

Notes: (Continued)

#### (a) Debt restructuring (Continued)

- <sup>3</sup> Each series of the Senior Notes may be redeemed at any time before Maturity Date, in whole or in part, at a redemption price ranging from 100% to 102% (depending on when the notes are early redeemed) of the principal amount plus any accrued and unpaid interest. The directors of the Company consider that the fair value of the redemption options are insignificant on issue date and the reporting date, and are therefore not recognised.

The fair value of the host debt of the MEBs on initial recognition was determined by reference to the valuation performed by Savills Valuation and Professional Services Limited which was calculated based on the present value of contractually determined stream of future cash flows discounted at the required yield which was determined with reference to the market interest rate for an equivalent non-exchangeable bond and remaining time to maturity. The host debt is measured at amortised cost subsequently with the movements shown below:

	The host debt of the MEBs RMB'000
Fair value at initial recognition	1,324,519
Less: transaction costs	(14,957)
Carrying amount at initial recognition	1,309,562
Accrued interest (note 29)	79,405
Exchange difference	64,053
Carrying amount as at 31 December 2016	1,453,020

The fair value of the host debt of the MEBs amounted to RMB1,602,050,000 (2015: nil) as at 31 December 2016. The fair value is calculated using the market price of the MEBs on 31 December 2016.

The movement of the Existing Senior Notes and other facilities, and New Senior Notes is as follow:

	New Senior Notes RMB'000
At 1 January 2016	17,034,527
Accrued interests	1,648,193
Derecognition of certain Existing Senior Notes and other facilities	(5,030,137)
New Senior Notes recognised	4,480,668
Consent fee attributable to certain Existing Senior Notes and other facilities	(104,355)
Transaction costs	(43,381)
Exchange differences	814,268
At 31 December 2016	18,799,783

The fair value of the New Senior Notes amounted to RMB17,790,421,000 (2015: nil) as at 31 December 2016. The fair value is calculated using the market price of the New Senior Notes on 31 December 2016.

The New Senior Notes and MEBs are listed on the Singapore Exchange Securities Trading Limited.

The New Senior Notes and MEBs are secured by the pledge of shares of the Group's subsidiaries incorporated outside the PRC, and are jointly and severally guaranteed by certain subsidiaries of the Group.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**22. BORROWINGS** (Continued)

Notes: (Continued)

**(b) Existing Senior Notes**

The Senior Notes as at 31 December 2015 included:

	Senior Note 2012 RMB'000	Senior Note January 2013 RMB'000	Senior Note March 2013 RMB'000	Senior Note April 2013 RMB'000	Senior Note January 2014 RMB'000	Senior Note June 2014 RMB'000	Total RMB'000
Carrying amount as at 1 January 2015	1,551,031	3,158,810	3,411,597	1,806,777	1,550,421	2,411,572	13,890,208
Accrued interest (note 29)	213,312	326,297	343,349	127,471	117,372	229,790	1,357,591
Acceleration of unwinding interest (note 29)	36,746	53,270	41,389	17,021	19,123	53,342	220,891
Coupon payment	–	(156,887)	–	–	–	–	(156,887)
Exchange difference	105,141	198,860	223,927	–	100,062	158,784	786,774
Carrying amount as at 31 December 2015	1,906,230	3,580,350	4,020,262	1,951,269	1,786,978	2,853,488	16,098,577

On 18 September 2012, the Company issued additional 12.875% senior note due 2017 in an aggregate principal amount of US\$250,000,000 (equivalent to approximately RMB1,581,225,000) at 100% of face value (the "Senior Note 2012").

On 8 January 2013, the Company issued additional 10.25% senior note due 2020 in an aggregate principal amount of US\$500,000,000 (equivalent to approximately RMB3,142,750,000) at 100% of face value (the "Senior Note January 2013").

On 19 March 2013, the Company issued additional 8.875% senior note due 2018 in an aggregate principal amount of US\$550,000,000 (equivalent to approximately RMB3,457,025,000) at 100% of face value (the "Senior Note March 2013").

On 22 April 2013, the Company issued additional 6.875% senior note due 2016 in an aggregate principal amount of RMB1,800,000,000 at 100% of face value (the "Senior Note April 2013").

On 13 January 2014, the Company issued additional US\$250,000,000 (equivalent to approximately RMB1,524,225,000) at 101% of face value (the "Senior Note January 2014").

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 22. BORROWINGS (Continued)

Notes: (Continued)

#### (b) Existing Senior Notes (Continued)

On 6 June 2014, the Company issued 9% senior note due 2019 in an aggregate principal amount of US\$400,000,000 (equivalent to approximately RMB2,460,840,000) at 99% of face value (the "Senior Note June 2014").

Senior Note 2012, Senior Note January 2013, Senior Note March 2013, Senior Note April 2013, Senior Note January 2014 and Senior Note June 2014 are collectively referred to as the "Existing Senior Notes".

As described in note (a) above, on 21 July 2016, all Existing Senior Notes were exchanged into the New Senior Notes, MEBs and CVRs.

The Senior Notes are listed on the Singapore Exchange Securities Trading Limited for the year ended 31 December 2015 and up to 21 July 2016.

The fair value of the Existing Senior Notes amounted to RMB9,932,573,000 as at 31 December 2015. The fair value was calculated using the market price of the Existing Senior Notes on 31 December 2015.

The Senior Notes are secured by the pledge of shares of the Group's subsidiaries incorporated outside the PRC, and are jointly and severally guaranteed by certain subsidiaries of the Group as at 31 December 2015.

As at 31 December 2015, all Existing Senior Notes were due and immediately payable.

#### (c) Convertible Bonds

On 20 December 2010, the Company issued RMB denominated US\$ settled 8.0% convertible bonds (the "Convertible Bonds"), of an initial principal amount of RMB1,500,000,000 (equivalent to approximately US\$225,000,000).

The Convertible Bonds are listed on the Singapore Exchange Securities Trading Limited for the year ended 31 December 2015 and up to 21 July 2016.

The Convertible Bonds are secured by the pledge of certain shares of the Group's subsidiaries incorporated outside the PRC, and are jointly and severally guaranteed by certain subsidiaries of the Group as at 31 December 2015.

The convertible bonds contain a liability component and a conversion option. The liability component is subsequently stated at amortised cost until extinguished on conversion or maturity of the bond. The conversion option, which is an equity component was recognised as a conversion option reserve and included in reserves (note 21).

	2016 RMB'000	2015 RMB'000
As at 1 January	1,625,790	1,437,385
Accrued interest (note 29)	89,610	122,486
Acceleration of unwinding interest (note 29)	–	65,919
Extinguished on 21 July 2016 (note a)	<b>(1,715,400)</b>	–
As at 31 December	–	1,625,790

The fair value of the Convertible Bonds amounted to RMB1,066,500,000 as at 31 December 2015. The fair value was calculated using the market price of the Convertible Bonds on 31 December 2015.

There was no conversion and redemption during the year ended 31 December 2015.

As at 31 December 2015, the convertible notes were due and immediately payable.

As described in note (a) above, on 21 July 2016, the convertible bonds were exchanged to New Senior Notes and MEBs and CVRs.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**22. BORROWINGS** (Continued)

Notes: (Continued)

**(d) Bank and other borrowings**

The Group's bank and other borrowings of RMB55,240,487,000 (2015: RMB45,796,605,000) were secured by certain properties, investment properties, land use rights, properties under development and completed properties held for sale of the Group (notes 6, 7, 8, 11 and 12) and shares of certain of the Group's subsidiaries.

The Group's bank and other borrowings are guaranteed by certain subsidiaries of the Group:

	2016 RMB'000	2015 RMB'000
Group companies		
– guaranteed and secured by the Group's assets	<b>49,210,913</b>	43,569,605
– guaranteed and unsecured by the Group's assets	<b>6,852,238</b>	3,396,704
	<b>56,063,151</b>	46,966,309

The Group's other borrowings comprised of the loans from certain non-bank financial institutions.

**(e) Loan from a related company**

The amount due is unsecured, carries interest rate at 12.0% and repayable on demand. The related company is controlled by a substantial shareholder of the Company. As at 31 December 2016, a loan agreement with principal of RMB1,500,000,000 has expired, the Group has negotiated with the related company to renew the repayment term and the new repayment term has not finalised, and therefore the amounts are classified as repayable on demand.

**(f) The effective interest rates at each of the reporting dates were as follows:**

	2016	2015
Bank borrowings, included in non-current liabilities	<b>6.8%</b>	6.3%
Bank borrowings, included in current liabilities	<b>6.7%</b>	7.6%
Other borrowings, included in non-current liabilities	<b>10.5%</b>	10.9%
Other borrowings, included in current liabilities	<b>9.8%</b>	11.7%
Loans from a related company, included in non-current liabilities	–	12.0%
Loans from a related company, included in current liabilities	<b>12.0%</b>	12.0%
New Senior Notes	<b>8.27%-12.05%</b>	–
MEBs	<b>13.58%</b>	–
Senior Note 2012	–	12.9%
Senior Note January 2013	–	10.3%
Senior Note March 2013	–	8.9%
Senior Note April 2013	–	6.9%
Senior Note January 2014	–	8.9%
Senior Note June 2014	–	9.0%
Convertible Bonds	–	8.0%

**(g) The amounts of the Group's borrowings are denominated in RMB except for New Senior Notes, MEBs and bank and other borrowings with aggregate amounts of RMB20,673,857,000 and RMB280,066,000 (2015: RMB17,134,275,000 and RMB810,263,000), which are denominated in USD and HKD respectively.**



## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 23. DEFERRED INCOME TAX

Deferred income tax assets and liabilities are offset when there is a legally enforceable right to offset tax assets against tax liabilities and when the deferred income taxes relate to the same tax authority. The offset amounts are as follows:

	2016 RMB'000	2015 RMB'000
Deferred income tax assets	<b>26,543</b>	32,207
Deferred income tax liabilities	<b>(4,203,433)</b>	(3,163,089)
The net movement on the deferred income tax is as follows:		
Beginning of the year	<b>(3,130,882)</b>	(2,148,135)
Recognised in profit or loss (note 32)	<b>(1,046,008)</b>	(982,747)
End of the year	<b>(4,176,890)</b>	(3,130,882)

The movements in deferred income tax assets and liabilities without taking into consideration the offsetting of balances within the same tax jurisdiction, were as follows:

Deferred income tax assets arose from:

	Tax losses RMB'000
At 1 January 2015	145,420
Charged to profit or loss	(26,617)
At 31 December 2015 and 1 January 2016	118,803
Charged to profit or loss	(5,664)
<b>At 31 December 2016</b>	<b>113,139</b>

Deferred income tax assets are recognised for tax losses carried forward to the extent that the realisation of the related benefit through the future taxable profits is probable. The Group did not recognise tax losses amounting to RMB12,020,382,000 (2015: RMB7,756,825,000) that can be carried forward against future taxable income. These tax losses have no expiry date except that approximately RMB457,286,000 (2015: RMB7,388,198,000) will expiry from 2016 to 2020.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**23. DEFERRED INCOME TAX** (Continued)

Deferred income tax liabilities arose from:

	Revaluation of investment properties RMB'000
At 1 January 2015	2,232,118
Charged to profit or loss	956,130
At 31 December 2015 and 1 January 2016	3,188,248
Charged to profit or loss	1,040,343
<b>At 31 December 2016</b>	<b>4,228,591</b>

At 31 December 2016, the unrecognised deferred income tax liabilities were RMB848,362,000 (2015: RMB395,080,000), relating to withholding tax that would be payable for undistributed profits of PRC subsidiaries, as the directors consider that the timing for the reversal of the related temporary differences can be controlled and such temporary differences will not be reversed in the foreseeable future. The total undistributed profits of these PRC subsidiaries as at 31 December 2016 amounted to RMB16,967,239,000 (2015: RMB7,901,604,000).

**24. ADVANCE PROCEEDS RECEIVED FROM CUSTOMERS AND DEPOSITS RECEIVED**

The amount of RMB27,973,395,000 (2015: RMB14,524,168,000) represents deposits and installments received on properties sold to independent third parties after the issuance of pre-sale certificates by local government authorities.

**25. OTHER PAYABLES**

	2016 RMB'000	2015 RMB'000
Other payables and accruals (note (i))	<b>5,278,315</b>	4,882,120
Bills payables	<b>321,662</b>	96,930
Consideration payable related to purchase of subsidiaries	–	45,417
Other taxes payables	<b>292,699</b>	263,103
Amounts due to associates (note (ii))	<b>924,157</b>	–
	<b>6,816,833</b>	5,287,570

The carrying amounts of other payables are denominated in RMB and approximate to their fair values.

Notes:

- (i) Other payables and accruals mainly included accrued expenses and advance from third parties, which are interest-free, unsecured and repayable on demand.
- (ii) The amounts due are unsecured, interest-free and repayable on demand.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**26. AMOUNTS DUE TO NON-CONTROLLING INTERESTS OF SUBSIDIARIES**

Amounts due to non-controlling interests of subsidiaries were unsecured, interest-free and repayable on demand.

**27. OTHER (GAINS) AND LOSSES – NET**

	2016 RMB'000	2015 RMB'000
Forfeited customer deposits	(9,099)	(4,480)
Write-down of completed properties held for sale and properties under development (notes 11, 12)	670,615	240,276
Government subsidy income (note)	(80,104)	(53,740)
Gain on disposal of available-for-sale financial assets	(38,505)	–
Dividend income received from available-for-sale financial assets	(20,801)	–
Loss on disposal of property and equipment	793	6,499
Others	37,613	27,784
	<b>560,512</b>	216,339

Note: The amount represented the subsidy received from the local government bureau in the PRC as an incentive for the development in the region. There was no unfulfilled conditions and other contingencies attached to the receipt of the subsidy.

**28. EXPENSES BY NATURE**

Expenses included in cost of sales, selling and marketing costs and administrative expenses are analysed as follows:

	2016 RMB'000	2015 RMB'000
Auditors' remuneration	5,230	6,127
Advertising and other promotional costs	405,204	347,709
Agency fee	131,252	51,599
Business taxes/value-added taxes	737,201	624,255
Cost of properties sold	14,091,333	9,686,224
Depreciation (note 6)	101,369	104,841
Amortisation of land use rights (note 8)	6,286	6,286
Amortisation of intangible assets (note 9)	85,796	–
Donations	25,989	10
Legal and professional fees	265,586	121,053
Operating lease rental	35,509	33,434
Staff costs – including directors' emoluments (note 30)	777,888	517,717
Office expenses	106,805	55,520
Travelling	21,985	8,445
Others	1,250,070	645,526
	<b>18,047,503</b>	12,208,746

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 28. EXPENSES BY NATURE (Continued)

Note:

In accordance with the Circular on the full implementation of Levying Value-Added Tax ("VAT") in place of Business Tax (Caishui No.36, 2016) (the "Circular") jointly issued by the Ministry of Finance and the State Administration of Taxation, taxpayers providing taxable services included in the Circular would be subject to VAT and no longer to business tax starting from 1 May 2016. The Group has applied the Circular since 1 May 2016.

The PRC companies comprising the Group are subject to VAT on their revenues from 1 May 2016 and onwards at the following rates:

Category	Rate of VAT
Sales of properties (i)	5%, 11%
Rental income (i)	5%, 11%
Property management services (ii)	3%, 6%
Hotel and catering operations (ii)	3%, 6%

(i) According to the Circular, VAT for sales of properties and income from property investment, in the case that the construction of properties commenced or the investment property was acquired before 1 May 2016, is calculated at a tax rate of 5% based on a simple method. Otherwise, the VAT is calculated at a tax rate of 11%.

(ii) According to the Circular, VAT for property management services and hotel service and catering are calculated at tax rate of 6% and 3% respectively.

## 29. FINANCE COSTS – NET

	2016 RMB'000	2015 RMB'000
<b>Finance income</b>		
Interest income on bank deposits	39,236	10,717
<b>Finance costs</b>		
Interest expense		
– Bank borrowings	3,661,536	2,882,827
– Senior Notes	917,594	1,578,482
– Convertible Bonds (note 22)	89,610	188,405
– New Senior Notes	698,254	–
– MEBs (note 22)	79,405	–
– Other borrowings	1,493,656	1,702,922
Total interest expenses	6,940,055	6,352,636
Less: interest capitalised (note)	(6,017,783)	(5,230,439)
Net exchange losses	922,272	1,122,197
	1,237,330	994,964
	2,159,602	2,117,161
Finance costs – net (note 5)	(2,120,366)	(2,106,444)

Note: The capitalisation rate of borrowings is 14.37% (2015: 10.91%) for the year.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 30. STAFF COSTS – INCLUDING DIRECTORS' EMOLUMENTS

	2016 RMB'000	2015 RMB'000
Wages and salaries	531,582	395,227
Pension costs – statutory pension	31,532	25,224
Medical benefits	13,300	10,598
Share-based payments	5,881	8,150
Other allowances and benefits	195,593	78,518
	<b>777,888</b>	517,717

## 31. DIRECTORS', CHIEF EXECUTIVE'S AND SENIOR MANAGEMENT'S REMUNERATION

## (a) Directors' and chief executive's emoluments

Details of emoluments paid to each director and chief executive for the year ended 31 December 2016 are as follows:

Name of director	Year ended 31 December 2016					Total RMB'000
	Fees RMB'000	Salary RMB'000	Other benefits RMB'000	Contribution to pension scheme RMB'000	Share option benefits RMB'000 (note vi)	
<b>Executive Directors</b>						
Mr. Kwok Ying Shing (Chairman) (note ii)	–	3,739	–	18	–	3,757
Mr. Sun Yuenan (Vice Chairman)	–	7,021	57	32	361	7,471
Mr. Yu Jianqing	–	5,749	42	32	716	6,539
Mr. Zheng Yi (Chief Executive Officer) (note iii)	–	4,440	42	32	35	4,549
Mr. Lei Fugui (note iv)	–	1,119	–	–	–	1,119
<b>Non-Executive Director</b>						
Ms. Chen Shaohuan	–	255	–	–	–	255
<b>Independent Non-Executive Directors</b>						
Mr. Rao Yong	–	268	–	–	18	286
Mr. Zhang Yizhao	–	268	–	–	18	286
<b>Total</b>	–	<b>22,859</b>	<b>141</b>	<b>114</b>	<b>1,148</b>	<b>24,262</b>

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 31. DIRECTORS', CHIEF EXECUTIVE'S AND SENIOR MANAGEMENT'S REMUNERATION

(Continued)

## (a) Directors' and chief executive's emoluments (Continued)

Name of director	Year ended 31 December 2015					
	Fees RMB'000	Salary RMB'000	Other benefits RMB'000	Contribution to pension scheme RMB'000	Share option benefits RMB'000 (note vi)	Total RMB'000
<b>Executive Directors</b>						
Mr. Kwok Ying Shing (Chairman) (note ii)	–	1,183	–	18	–	1,201
Mr. Sun Yuenan (Vice Chairman)	–	7,103	52	28	788	7,971
Mr. Yu Jianqing	–	5,565	37	29	1,114	6,745
Mr. Zheng Yi (Chief Executive Officer) (note iii)	–	3,371	37	28	62	3,498
Mr. Lei Fugui (note iv)	–	1,257	1	–	–	1,258
Mr. Ye Lieli (note i)	–	698	–	–	–	698
Mr. Jin Zhigang (note i)	–	2,420	15	11	–	2,446
<b>Non-Executive Director</b>						
Ms. Chen Shaohuan	–	92	–	–	–	92
<b>Independent Non-Executive Directors</b>						
Mr. Rao Yong	–	251	–	–	40	291
Mr. Zhang Yizhao	–	251	–	–	39	290
<b>Total</b>	–	22,191	142	114	2,043	24,490

Notes:

- (i) Resigned on 11 June 2015.
- (ii) Re-appointed on 13 April 2015.
- (iii) Appointed on 13 April 2015.
- (iv) Resigned on 1 November 2016.
- (v) Appointed on 28 February 2017.
- (vi) Share option benefits represent fair value of share options granted to the relevant director which was charged to the consolidated statement of profit or loss and other comprehensive income in accordance with HKFRS 2.



## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**31. DIRECTORS', CHIEF EXECUTIVE'S AND SENIOR MANAGEMENT'S REMUNERATION**

(Continued)

**(b) Five highest paid individuals**

The five individuals whose emoluments were the highest in the Group for the year included 3 directors (2015: 2), whose emoluments are reflected in note (a) above. The emoluments for the remaining 2 (2015: 3) individual are as follows:

	2016 RMB'000	2015 RMB'000
Salaries and other benefits	7,580	11,004
Contribution to pension schemes	64	85
Share option benefits	301	917
	<b>7,945</b>	12,006

The emoluments of the five highest paid individuals fell within the following bands:

	2016	2015
HK\$3,500,001 to HK\$4,000,000	1	2
HK\$4,000,001 to HK\$4,500,000	1	1
HK\$4,500,001 to HK\$5,000,000	1	–
HK\$5,000,001 to HK\$12,000,000	2	2
	<b>5</b>	5

During the years ended 31 December 2016 and 2015, none of the above individuals has received any emoluments from the Group as an inducement to join or leave the Group or compensation for loss of office; none of the above individuals has waived or has agreed to waive any emoluments.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**32. INCOME TAX EXPENSES**

The Company was incorporated in the Cayman Islands as an exempted company with limited liability under the Company Law of Cayman Islands and, accordingly, is exempted from payment of Cayman Islands income tax.

**PRC enterprise income tax**

PRC enterprise income tax has been provided on the estimated assessable profits of subsidiaries operating in the PRC at 25% (2015: 25%).

**Hong Kong profits tax**

No Hong Kong profits tax was provided for the years ended 31 December 2016 and 2015 as the Group has no assessable profits arising in or derived from Hong Kong for the years.

**PRC land appreciation tax**

PRC land appreciation tax is levied at progressive rates ranging from 30% to 60% on the appreciation of land value, being the proceeds of sales of properties less deductible expenditures including lease charges of land use rights and all property development expenditures, which is included in the consolidated statement of profit or loss as income tax.

	2016 RMB'000	2015 RMB'000
Current income tax		
– PRC enterprise income tax	<b>674,476</b>	258,557
– PRC land appreciation tax	<b>465,003</b>	178,701
Under-provision in prior years		
– PRC land appreciation tax	<b>28,819</b>	8,200
Deferred income tax (note 23)	<b>1,046,008</b>	982,747
	<b>2,214,306</b>	1,428,205

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**32. INCOME TAX EXPENSES** (Continued)

The income tax reconciliation is as follows:

	2016 RMB'000	2015 RMB'000
Profit before income tax	<b>1,866,795</b>	173,721
Add: Share of results of associates and joint ventures (note 10(a) and 10(b))	<b>32,355</b>	3,586
	<b>1,899,150</b>	177,307
Calculated at PRC foreign enterprise income tax rate of 25% (2015: 25%)	<b>474,787</b>	44,327
Effect of different income tax rates of certain companies	<b>335,746</b>	110,845
Income not subject to tax	<b>(395,498)</b>	(114,297)
Expenses not deductible for tax purposes	<b>189,601</b>	364,054
Tax losses not recognised	<b>1,110,184</b>	836,375
Utilisation of tax losses in prior years	<b>5,664</b>	–
PRC enterprise income tax	<b>1,720,484</b>	1,241,304
PRC land appreciation tax	<b>493,822</b>	186,901
Income tax expenses	<b>2,214,306</b>	1,428,205

**33. LOSS PER SHARE**

Basic loss per share is calculated by dividing the loss attributable to equity holders of the Company by the weighted average number of ordinary shares in issue during the year.

	2016	2015
Loss attributable to equity holders of the Company (RMB'000)	<b>(612,380)</b>	(1,121,577)
Weighted average number of ordinary shares in issue (note 20)	<b>5,135,427,910</b>	5,135,427,910
Basic loss per share (RMB)	<b>(0.119)</b>	(0.218)

The calculation of basic loss per share is based on the Group's loss attributable to equity holders of the Company of RMB612,380,000 (2015: RMB1,121,577,000) and the weighted average number of 5,135,427,910 (2015: 5,135,427,910) ordinary shares in issue during the year.

The diluted loss per share for the years ended 31 December 2016 and 2015 was the same as the basic loss per share for the respective year as the potential ordinary shares (convertible bonds and share options) were anti-dilutive.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 34. CASH GENERATED FROM/(USED IN) OPERATIONS

	2016 RMB'000	2015 RMB'000
Loss for the year	<b>(347,511)</b>	(1,254,484)
Adjustments for:		
Income tax expenses (note 32)	<b>2,214,306</b>	1,428,205
Interest income (note 29)	<b>(39,236)</b>	(10,717)
Interest expense (note 29)	<b>922,272</b>	1,122,197
Net exchange losses (note 29)	<b>1,237,330</b>	994,964
Depreciation (note 6)	<b>101,369</b>	104,841
Amortisation of land use rights (note 8)	<b>6,286</b>	6,286
Amortisation of intangible assets (note 9)	<b>85,796</b>	–
Share of results of associates (note 10(a))	<b>40,578</b>	3,586
Share of results of joint ventures (note 10(b))	<b>(8,223)</b>	–
Loss on disposal of property and equipment (note (i))	<b>793</b>	6,499
Share-based payment	<b>5,881</b>	8,150
Changes in fair value of investment properties (note 7)	<b>(4,161,371)</b>	(3,824,520)
Changes in fair value of financial derivatives	<b>21,500</b>	42,219
Gain on extinguishment of financial liabilities (note 22(a))	<b>(716,143)</b>	–
Write-down of completed properties held for sale and properties under development (note 27)	<b>670,615</b>	240,276
Gain on disposal of available-for-sale financial assets (note 27)	<b>(38,505)</b>	–
Dividend income received from available-for-sale financial assets (note 27)	<b>(20,801)</b>	–
<b>Changes in working capital:</b>		
Properties under development and completed properties held for sale	<b>10,091,625</b>	4,121,882
Debtors, deposits and other receivables	<b>7,662,800</b>	(1,138,351)
Deposits for land acquisition	<b>(597,244)</b>	(225,702)
Prepayments for proposed development projects	<b>(3,053,465)</b>	(949,164)
Restricted cash	<b>(4,727,194)</b>	108,888
Advance proceeds received from customers and deposits received	<b>13,447,636</b>	(1,246,919)
Accrued construction costs	<b>(3,886,930)</b>	472,855
Other payables	<b>(5,809,096)</b>	(102,366)
<b>Cash generated from/(used in) operations</b>	<b>13,103,068</b>	(91,375)

Note:

Loss on disposal of property and equipment are as follows:

	2016 RMB'000	2015 RMB'000
Net carrying value disposed (note 6)	<b>793</b>	8,962
Proceeds received	–	(2,463)
Loss on disposal	<b>793</b>	6,499

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 35. DIVIDEND

No dividend was declared by the Company in respect of the years ended 31 December 2016 and 2015.

### 36. FINANCIAL GUARANTEES CONTRACTS

The Group had the following financial guarantees as at 31 December 2016 and 2015:

	2016 RMB'000	2015 RMB'000
Guarantees in respect of mortgage facilities for certain purchasers of the property units sold by the Group	<b>21,843,192</b>	15,105,912

The guarantees in respect of mortgage facilities granted by certain banks related to mortgage loans arranged for certain purchasers of the Group's properties. Pursuant to the terms of the guarantees, upon default in mortgage payments by these purchasers, the Group is responsible to repay the outstanding mortgage principals together with accrued interest and penalty owed by the defaulted purchasers to the banks and the Group is entitled to take over the legal title and possession of the related properties. Such guarantees expire or terminate upon the earlier of (i) issuance of the property ownership certificates which are generally be available within six months to one year after the purchasers take possession of the relevant properties; and (ii) the mortgage loans obtained by the purchasers of properties.

The directors consider that in case of default in payments, the net realisable value of the related properties can cover the repayment of the outstanding mortgage principals together with the accrued interest and penalty and therefore no provision has been made in the consolidated financial statements for the guarantees.

### 37. COMMITMENTS

#### (a) Commitments for property development expenditures

	2016 RMB'000	2015 RMB'000
Contracted but not provided for	<b>27,186,258</b>	24,511,831

Note:

The amount represented capital commitments for land use rights, prepayments for proposed development contracts and construction contracts.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**37. COMMITMENTS** (Continued)**(b) Operating lease commitments**

The future aggregate minimum lease payments under non-cancellable operating leases in respect of land and buildings are as follows:

	2016 RMB' 000	2015 RMB' 000
Not later than one year	<b>27,278</b>	22,884
Later than one year and not later than five years	<b>29,906</b>	14,301
Later than five years	<b>324</b>	648
	<b>57,508</b>	37,833

**(c) Operating lease rentals receivable**

The future aggregate minimum lease rentals receivable under non-cancellable operating leases in respect of land and buildings are as follows:

	2016 RMB' 000	2015 RMB' 000
Not later than one year	<b>176,819</b>	194,728
Later than one year and not later than five years	<b>427,198</b>	484,406
Later than five years	<b>236,789</b>	305,882
	<b>840,806</b>	985,016

**38. ACQUISITIONS OF SUBSIDIARIES****(a) Acquisition of Shenzhen Marine Group Company Limited\* (“Shenzhen Marine”)**

On 12 May 2016, the Group acquired 70% equity interest of Shenzhen Marine at a cash consideration of RMB5,822,438,000 to obtain control over Shenzhen Marine. Shenzhen Marine mainly held a piece of land located at Donjaoton in Nanshan District (the “Land”) through a 51% owned subsidiary (the “entity”) and operates water-way passenger and cargo transportation business through other subsidiaries before they were acquired by the Group. The purpose of the acquisition was mainly for acquiring the Land for future development, while the water-way passenger and cargo transportation business was insignificant. Thus, the directors of the Company are of the view that the acquisition is treated as acquisition of land in substance.

The business license of the entity has been expired in 2014 and the entity applied for liquidation to the court. Based on the PRC laws and regulations, after the expiry of the operation period, the legal identity of the entity still exists and its net assets (net of the liquidation expenses and repayment to the creditors) will be distributed to the shareholders in accordance with the respective proportion of equity contributions.



## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**38. ACQUISITIONS OF SUBSIDIARIES** (Continued)**(a) Acquisition of Shenzhen Marine Group Company Limited\* (“Shenzhen Marine”)** (Continued)

Up to the date when the consolidated financial statements are authorised for issue, the Group and the entity’s other shareholder jointly consulted with the relevant government departments on various matters, in particular compensation arrangement for land expropriation, development of the Land for the city infrastructure and arrangements for the Land to be divided between the shareholders. The final plan will be subject to court approval. Up to the date when the consolidated financial statements are authorised for issue, the court has not approved the plan.

The non-controlling interests recognised at the acquisition date were measured by reference to the proportionate share of the recognised amounts of the acquiree’s identifiable net assets.

The assets and liabilities recognised at the date of acquisition are as follows:

	2016 RMB'000
Property and equipment (note 6)	311,719
Investments in associates	8,913
Deposits for land acquisition	15,575,628
Available-for-sale financial assets (note 13)	96,903
Debtors, deposits and other receivables	864,926
Cash and cash equivalents	263,521
Other payables	(596,930)
Advance deposits received from customers and deposits received	(1,591)
Income tax payable	(19,278)
Borrowings	(510,740)
Net assets	15,993,071
Less: non-controlling interests	(10,170,633)
Net assets acquired	5,822,438
Purchase consideration settled in cash	5,822,438
Cash and cash equivalents acquired	(263,521)
Cash outflow on acquisition of subsidiaries	5,558,917

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**38. ACQUISITIONS OF SUBSIDIARIES** (Continued)**(b) Acquisition of Shenzhen Football Club Co., Ltd.\* (“Shenzhen Football Club”)**

On 5 February 2016, the Group acquired 90% equity interest of Shenzhen Football Club at a cash consideration of RMB203,446,000. The directors are of the view that the acquisition constitutes acquisition of business.

Goodwill arose because the consideration paid included amounts in relation to the revenue growth and future market development of the business acquired. These benefits are not recognised separately from goodwill, because they do not meet the recognition criteria for identifiable intangible assets. Goodwill arising from the acquisition is not expected to be deductible for tax purpose.

The non-controlling interests recognised at the acquisition date were measured by reference to the proportionate share of the recognised amounts of the acquiree’s identifiable net assets of Shenzhen Football Club.

The following table summarises the consideration paid for the acquisition, the fair value of the assets acquired and liabilities assumed at the acquisition date.

	2016 RMB'000
Property and equipment (note 6)	1,446
Intangible assets – contracts with various sports players (note 9)	107,437
Debtors, deposits and other receivables	239,300
Cash and cash equivalents	358
Other payables	(225,728)
Income tax payable	(14,806)
Net assets	108,007
Less: non-controlling interests	(10,801)
Net assets acquired	97,206
Purchase consideration settled in cash	203,446
Cash and bank balances in the subsidiary acquired	(358)
Cash outflow on acquisition of the subsidiary	203,088
Total purchase consideration	203,446
Identifiable net assets acquired	(97,206)
Goodwill (note 9)	106,240

**(c) Acquisition of Shanghai Yitao Sports Culture Communication Co., Ltd\* (“Shanghai Yitao”) and Guangzhou Starshine Cinema Co., Ltd\* (“Guangzhou Starshine”)**

On 26 August 2016, the Group acquired 70% equity interest in Shanghai Yitao at a cash consideration of RMB20,000,000 to diversify its business. Shanghai Yitao is principally engaged in sports operation. Thus, the directors of the Company are of the view that the acquisition constitutes acquisition of business.

On 22 July 2016, the Group acquired 100% equity interest in Guangzhou Starshine at a cash consideration of RMB9,000,000 to diversify its business. Guangzhou Starshine is principally engaged in entertainment operation. Thus, the directors of the Company are of the view that the acquisition constitutes acquisition of business.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**38. ACQUISITIONS OF SUBSIDIARIES** (Continued)**(c) Acquisition of Shanghai Yitao Sports Culture Communication Co., Ltd\* (“Shanghai Yitao”) and Guangzhou Starshine Cinema Co., Ltd\* (“Guangzhou Starshine”)** (Continued)

Goodwill arose because the consideration paid included amounts in relation to the revenue growth and future market development of the business acquired. These benefits are not recognised separately from goodwill, because they do not meet the recognition criteria for identifiable intangible assets. Goodwill arising from the acquisition is not expected to be deductible for tax purpose.

The non-controlling interests recognised at the acquisition date were measured by reference to the proportionate share of the recognised amounts of the acquiree’s identifiable net assets.

The following table summarises the aggregated consideration paid for the acquisition, the fair value of the assets acquired and liabilities assumed of Shanghai Yitao and Guangzhou Starshine at the acquisition date.

	2016 RMB'000
Property and equipment (note 6)	9,801
Debtors, deposits and other receivables	32,737
Cash and cash equivalents	1,223
Other payables	(26,347)
Income tax payable	(85)
Net assets	17,329
Less: non-controlling interests	(3,868)
Net assets acquired	13,461
Purchase consideration settled in cash	8,001
Cash and bank balances in subsidiaries acquired	(1,223)
Cash outflow on acquisition of the subsidiaries	6,778
Total purchase consideration	29,000
Identifiable net assets acquired	(13,461)
Goodwill (note 9)	15,539

\* The English translation of the name of the companies established in the PRC is for reference only. The official name of these companies are in Chinese.

- (d) The acquired subsidiaries contributed total revenue of RMB277,785,000 and net loss of RMB29,756,000 to the Group for the period from their respective acquisition dates to 31 December 2016. Has these companies been consolidated from 1 January 2016, the consolidated statement of profit or loss would show pro-forma revenue of RMB17,923,182,000 and net loss for the year of RMB365,369,000.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 39. SHARE OPTION

**Share Option Scheme**

Pursuant to the shareholders' resolution passed on 22 November 2009, a post-IPO share option scheme (the "Share Option Scheme") was conditionally adopted. Pursuant to the terms of the Share Option Scheme, the Company may grant options at its discretion, to any eligible person (including directors, employees, officers of any member of the Group, advisers, consultants, suppliers, agents and customers of any members of the Group). The maximum number of shares which may be issued upon exercise of all options (the "Share Option") granted and yet to be exercised under the Share Option Scheme or any other share option schemes adopted by the Company must not exceed 30% of the Company's shares in issue from time to time.

No options may be granted under the Share Option Scheme after 10 years since the adoption. The vesting periods, exercise periods and vesting conditions may be specified by the Company at the time of the grant, and the options expire no later than 10 years from the relevant date of grant. The exercise price of the option under the Share Option Scheme shall be no less than the highest of (i) the official closing price of the Company's shares as stated in the daily quotation sheet issued by the Stock Exchange on the date of grant; (ii) the average of the official closing price of the Company's shares as stated in the daily quotation sheets issued by the Stock Exchange for the five Stock Exchange business days immediately preceding the date of grant; (iii) the nominal value of a share of the Company.

Details of the movement of the share options under Share Option Scheme are as follows:

	2016		2015	
	Weighted average exercise price in HK\$ per share	Number	Weighted average exercise price in HK\$ per share	Number
At 1 January	<b>1.690</b>	<b>123,612,000</b>	1.844	236,872,000
Lapsed during the year	<b>1.802</b>	<b>(16,144,000)</b>	2.011	(113,260,000)
At 31 December	<b>1.674</b>	<b>107,468,000</b>	1.690	123,612,000

As at 31 December 2016, 81,752,000 (2015: 64,912,000) outstanding options granted under the Share Option Scheme were exercisable (note).

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 39. SHARE OPTION (Continued)

## Share Option Scheme (Continued)

Note: Terms of share options at the reporting date were as follows:

Exercised period	Exercise price per share HK\$	Number of share options	
		2016	2015
23/7/2011–22/7/2020	2.000	3,620,000	3,620,000
23/7/2012–22/7/2020	2.000	3,620,000	3,620,000
23/7/2013–22/7/2020	2.000	3,820,000	3,820,000
23/7/2014–22/7/2020	2.000	4,420,000	4,420,000
23/7/2015–22/7/2020	2.000	8,540,000	10,240,000
6/6/2013–5/6/2022	1.500	4,856,000	5,102,000
6/6/2014–5/6/2022	1.500	6,244,000	6,540,000
6/6/2015–5/6/2022	1.500	22,116,000	25,750,000
6/6/2016–5/6/2022	1.500	22,116,000	25,750,000
6/6/2017–5/6/2022	1.500	22,116,000	25,750,000
21/2/2015-20/2/2024	2.610	1,200,000	1,200,000
21/2/2016-20/2/2024	2.610	1,200,000	1,200,000
21/2/2017-20/2/2024	2.610	1,200,000	1,200,000
21/2/2018-20/2/2024	2.610	1,200,000	1,200,000
21/2/2019-20/2/2024	2.610	1,200,000	1,200,000
21/08/2015-20/8/2024	2.840	–	600,000
21/08/2016-20/8/2024	2.840	–	600,000
21/08/2017-20/8/2024	2.840	–	600,000
21/08/2018-20/8/2024	2.840	–	600,000
21/08/2019-20/8/2024	2.840	–	600,000
		<b>107,468,000</b>	123,612,000

The Company offered to grant several directors and employees (the “July 2010 Grant”) of 179,750,000 share options of HK\$0.10 each in the capital of the Company on 23 July 2010. On 6 June 2012, the Company further offered to grant several directors and employees (the “June 2012 Grant”) of 326,790,000 share options respectively of HK\$0.10 each in the capital of the Company. During the year ended 31 December 2014, the Company offered to grant an employee and a consultant (the “February 2014 Grant”) total of 11,000,000 share options and an employee (the “August 2014 Grant”) total of 3,000,000 share option respectively of HK\$0.10 each in the capital of the Company on 21 February 2014 and 21 August 2014 respectively. The valuations were based on the Binomial Model with the following data and assumptions:

	July 2010 Grant	June 2012 Grant	February 2014 Grant	August 2014 Grant
Fair value under binomial model	HK\$142,362,000	HK\$198,688,000	HK\$8,514,000	HK\$2,592,000
Closing share price at grant date	HK\$1.71	HK\$1.39	HK\$2.60	HK\$2.83
Exercise price	HK\$2.00	HK\$1.50	HK\$2.61	HK\$2.84
Annual risk free interest rate	2.29%	1.04%	2.30%	1.94%
Expected volatility	40%	44%	45%	43%
Expected option life	10 years	10 years	10 years	10 years
Expected dividend yield	Nil	Nil	6.0%	5.0%

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 40. FINANCIAL INSTRUMENTS BY CATEGORY

	2016 RMB'000	2015 RMB'000
Loans and receivables		
Debtors, deposits and other receivables, excluding prepayments and prepaid other taxes	<b>3,208,384</b>	2,817,065
Restricted cash (note 19)	<b>5,696,597</b>	969,403
Long-term bank deposits (note 19)	–	1,479
Short-term bank deposits (note 19)	<b>56,917</b>	13,974
Cash and cash equivalents (note 19)	<b>10,819,117</b>	2,324,546
	<b>19,781,015</b>	6,126,467
Available-for-sale financial assets (note 13)	<b>167,642</b>	10,000
	2016 RMB'000	2015 RMB'000
Other financial liabilities at amortised cost		
Accrued construction costs	<b>10,704,790</b>	14,591,720
Other payables, excluding other tax payables	<b>6,524,134</b>	5,024,467
Borrowings (note 22)	<b>87,536,816</b>	72,118,169
Amounts due to non-controlling interests of subsidiaries	<b>836,019</b>	672,405
	<b>105,601,759</b>	92,406,761
Liabilities at fair value through profit or loss		
Financial derivatives (note 17)	<b>263,822</b>	–



## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 41. RELATED PARTY TRANSACTIONS

## (a) Name and relationship with related parties

**A joint venture**

Huizhou City Kaileju Company Limited\* (“惠州市愷樂居置業有限公司”)

**Controlling shareholder and former controlling shareholder**

Mr. Kwok Ying Shing (a controlling shareholder) and Mr. Kwok Chun Wai (a former controlling shareholder)

**A related company, a company controlled by a substantial shareholder of the Company**

Shenzhen Fund Resources Investment Holding Limited\* (“深圳市富德資源投資有限公司”)

**Associates**

Shenzhen Qianhai Gold – Earth Wealth Management Co., Ltd.\* (“深圳前海金土財富管理有限公司”)

Shenzhen Longcheng Plaza Property Development Co., Ltd.\* (“深圳市龍城廣場房地產開發有限公司”)

Shenzhen Shenxin Financial Holding Co., Ltd.\* (“深圳深信金融控股有限公司”)

\* The English translation of the name of the companies established in the PRC is for reference only. The official name of these companies are in Chinese.

## (b) Key management compensation

	2016 RMB'000	2015 RMB'000
Salaries and other short-term employee benefits	<b>44,386</b>	53,402
Retirement scheme contributions	<b>254</b>	272
Share option benefits	<b>1,892</b>	4,171
	<b>46,532</b>	57,845

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 41. RELATED PARTY TRANSACTIONS (Continued)

## (c) Transactions

	2016 RMB'000	2015 RMB'000
Interest expense paid to a related company (note (i))	<b>345,240</b>	303,012
Rental expenses paid to controlling shareholders (note (ii))	<b>1,943</b>	1,911

Note:

- Interest expense was charged at interest rate of 12% per annum on loans from a related company.
- This represents payment of rental expense for various office premises to a former controlling shareholder, Mr. Kwok Chun Wai and a controlling shareholder, Mr. Kwok Ying Shing, respectively. The rental expense paid during the year was determined at prevailing market rate of respective office premise.

## (d) Balances with related parties

	2016 RMB'000	2015 RMB'000
Loans from a related company (note 22(e))	<b>2,877,000</b>	2,877,000
Amount due from an associate (note 14)	<b>400,000</b>	–
Amount due from a joint venture (note 14)	<b>599,390</b>	–
Amounts due to associates (note 25)	<b>(924,157)</b>	–

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 42. STATEMENT OF FINANCIAL POSITION AND RESERVE MOVEMENT OF THE COMPANY

Statement of financial position of the Company as at 31 December 2016

	2016 RMB'000	2015 RMB'000
<b>ASSETS AND LIABILITIES</b>		
<b>Non-current asset</b>		
Investments in subsidiaries	<b>25,550,718</b>	23,473,255
<b>Current assets</b>		
Debtors, deposits and other receivables	<b>3,015</b>	1,862
Cash and cash equivalents	<b>1,297</b>	27,124
	<b>4,312</b>	28,986
<b>Current liabilities</b>		
Other payables	<b>77,171</b>	93,913
Financial derivatives	<b>263,822</b>	–
Borrowings	–	18,533,434
	<b>340,993</b>	18,627,347
<b>Net current liabilities</b>	<b>(336,681)</b>	(18,598,361)
<b>Total assets less current liabilities</b>	<b>25,214,037</b>	4,874,894
<b>Non-current liabilities</b>		
Borrowings	<b>20,252,803</b>	–
<b>Net assets</b>	<b>4,961,234</b>	4,874,894
<b>EQUITY</b>		
Share capital	<b>450,450</b>	450,450
Share premium (note 20)	<b>4,253,704</b>	4,253,704
Reserves (note (a))	<b>257,080</b>	170,740
<b>Total equity</b>	<b>4,961,234</b>	4,874,894

The statement of financial position of the Company was approved by the Board of Directors on 25 March 2017 and was signed on its behalf.

**Kwok Ying Shing**  
Director

**Zheng Yi**  
Director

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 42. STATEMENT OF FINANCIAL POSITION AND RESERVE MOVEMENT OF THE COMPANY (Continued)

Note (a) Reserve movement of the Company

	Share option reserve RMB'000 (note 21(c))	Conversion option reserve RMB'000 (note 22(c))	Retained earnings/ (accumulated losses) RMB'000	Total RMB'000
Balance at 1 January 2015	105,166	220,824	423,091	749,081
Loss and total comprehensive loss for the year	–	–	(528,503)	(528,503)
Share-based payments (note 21(c))	8,150	–	–	8,150
Share options lapsed	(57,988)	–	–	(57,988)
Balance at 31 December 2015 and 1 January 2016	55,328	220,824	(105,412)	170,740
Profit and total comprehensive income for the year	–	–	80,459	80,459
Derecognition of conversion options included in the Convertible Bonds issued in 2010 (note 22(c))	–	(220,824)	220,824	–
Share-based payment	5,881	–	–	5,881
Share options lapsed	(6,840)	–	6,840	–
Balance at 31 December 2016	54,369	–	202,711	257,080

## 43. PARTICULAR OF PRINCIPAL SUBSIDIARIES

Particulars of the principal subsidiaries of the Group as at 31 December 2016 and 2015 are set out below:

These entities are local investment enterprises, which established in the PRC and operating principally in the PRC:

Name	Date of incorporation/ establishment	Nominal value of issued and fully paid share capital/ paid-in-capital	Percentage of attributable equity interest	Principal activities
Jinsheng Engineering Management Consulting (Shenzhen) Co., Ltd. 今盛工程管理諮詢(深圳)有限公司	27 July 2001	HK\$714,000,000	100%	Property development
Kaisa Urban Redevelopment Group (Shenzhen) Co., Ltd. 佳兆業城市更新集團(深圳)有限公司	26 March 2004	RMB10,000,000	100%	Property development
Kaisa Group (Shenzhen) Co., Ltd. 佳兆業集團(深圳)有限公司	3 June 1999	RMB2,826,163,980	100%	Property development

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 43. PARTICULAR OF PRINCIPAL SUBSIDIARIES (Continued)

These entities are local investment enterprises, which established in the PRC and operating principally in the PRC: (Continued)

Name	Date of incorporation/ establishment	Nominal value of issued and fully paid share capital/ paid-in-capital	Percentage of attributable equity interest	Principal activities
Shenzhen Naiao Kaisa Property Development Co., Ltd. 深圳市南澳佳兆業房地產開發有限公司	15 February 2004	RMB640,000,000	100%	Property development
Huizhou Canrong Property Ltd. 惠州燦榮房產公司	14 January 1994	RMB35,926,506	100%	Property development
Woodland Height Property (Yingkou) Co., Ltd. 桂芳園地產(營口)有限公司	14 December 2010	RMB495,750,000	100%	Property development
Kaisa Property (Yingkou) Co., Ltd. 佳兆業地產(營口)有限公司	14 December 2010	RMB372,570,000	100%	Property development
Zhaoruijing Hotel Zhiye Management (Suizhong) Co., Ltd. 兆瑞景酒店置業管理(綏中)有限公司	20 December 2010	HK\$68,300,000	100%	Hotel management
Leisure Land Hotel Zhiye Management (Suizhong) Co., Ltd. 可域酒店置業管理(綏中)有限公司	20 December 2010	RMB144,653,000	100%	Hotel management
Zhuzhou Kaisa Zhiye Co., Ltd. 株洲佳兆業置業有限公司	13 January 2011	HK\$600,000,000	100%	Property development
Kaisa Zhiye (Nanchong) Co., Ltd. 佳兆業置業(南充)有限公司	28 December 2010	RMB850,000,000	100%	Property development
Kasia Real Estate (Benxi) Co., Ltd. 佳兆業地產(本溪)有限公司	7 March 2011	HK\$210,000,000	100%	Property development
Zhuhai Kaisa Property Development Co., Ltd. 珠海市佳兆業房地產開發有限公司	9 June 2011	RMB518,000,000	100%	Property development
Bakai Property Development (Weifang) Co., Ltd. 八凱房地產開發(濰坊)有限公司	22 June 2011	USD50,000,000	100%	Property development
Kaisa Property (Wuhan) Co., Ltd. 佳兆業地產(武漢)有限公司	1 July 2011	RMB547,528,247	100%	Property development

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**43. PARTICULAR OF PRINCIPAL SUBSIDIARIES** (Continued)

These entities are local investment enterprises, which established in the PRC and operating principally in the PRC: (Continued)

Name	Date of incorporation/ establishment	Nominal value of issued and fully paid share capital/ paid-in-capital	Percentage of attributable equity interest	Principal activities
Kaisa Tourism Development Co., Ltd. 佳兆業旅遊開發有限公司	15 July 2011	HK\$93,600,000	100%	Property development
Kaisa Property (Suizhong) Co., Ltd. 佳兆業地產(綏中)有限公司	15 July 2011	HK\$246,500,000	100%	Property development
Kaisa Property (Liaoyang) Co., Ltd. 佳兆業地產(遼陽)有限公司	24 August 2011	USD31,000,000	100%	Property development
Anshan Kaisa Commerce Operation Management Co., Ltd 鞍山佳兆業商業管理有限公司	26 September 2011	USD26,582,581	100%	Commerce management
Kaisa Xindu Zhiye (Qingdao) Co., Ltd. 佳兆業新都置業(青島)有限公司	18 February 2013	USD60,000,000	100%	Property development
Zhuhai Zhanda Property Development Co., Ltd. 珠海市展大房地產開發有限公司	11 April 1992	RMB98,040,000	100%	Property development
Huizhou Kaisa Property Development Co., Ltd. 惠州市佳兆業房地產開發有限公司	29 January 2007	RMB50,000,000	100%	Property development
Kaisa Property Management (Shenzhen) Co., Ltd. 佳兆業物業管理(深圳)有限公司	20 October 1999	RMB310,000,000	100%	Property management
Kaisa Commerce Group Co., Ltd. 佳兆業商業集團有限公司	19 July 2004	RMB1,000,000,000	100%	Commerce management
Shenzhen Jililong Shiye Co., Ltd. 深圳市吉利隆實業有限公司	21 March 1997	RMB12,000,000	100%	Property development
Guangzhou Jinmao Property Development Co., Ltd. 廣州金貿房地產開發有限公司	27 October 2005	RMB202,500,000	100%	Property development
Shenzhen Woodland Height Shiye Co., Ltd. 深圳市桂芳園實業有限公司	13 October 2003	RMB500,000,000	100%	Property development



## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 43. PARTICULAR OF PRINCIPAL SUBSIDIARIES (Continued)

These entities are sino-foreign equity joint venture enterprises, which established in the PRC and operating principally in the PRC:

Name	Date of incorporation/ establishment	Nominal value of issued and fully paid share capital/ paid-in-capital	Percentage of attributable equity interest	Principal activities
Huizhou Jinhua Property Development Co., Ltd. 惠州市金湖房地產有限公司	26 March 1993	RMB100,000,000	100%	Property development
Shenzhen Longgang Kaisa Property Development Co., Ltd. 深圳市龍崗佳兆業房地產開發有限公司	14 November 2006	RMB204,680,000	100%	Property development
Chengdu Nanxing Property Development Co., Ltd. 成都南興銀基房地產開發有限公司	5 November 2004	RMB420,000,000	100%	Property development
Guangdong Kaisa Property Development Co., Ltd. 廣東佳兆業房地產開發有限公司	12 July 2007	RMB10,000,000	100%	Property development
Hunan Kaisa Property Development Co., Ltd. 湖南佳兆業房地產開發有限公司	21 August 2007	RMB220,000,000	100%	Property development
Shenzhen Dapeng Kaisa Property Development Co., Ltd. 深圳市大鵬佳兆業房地產開發有限公司	17 November 2000	RMB100,000,000	100%	Property development
Chengdu Kaisa Investment Co., Ltd. 成都佳兆業投資有限公司	22 June 2007	RMB20,000,000	100%	Property development
Shenzhen Taijian Construction & Engineering Co., Ltd. 深圳市泰建建築工程有限公司	19 July 2007	RMB1,000,000,000	100%	Construction engineering
Shenzhen Xingwoer Property Development Co., Ltd. 深圳市興沃爾房地產開發有限公司	29 January 1999	RMB10,000,000	100%	Property development
Shanghai Xinwan Investment Development Co., Ltd. 上海新灣投資發展有限公司	17 January 2007	RMB35,000,000	100%	Property development
Huizhou Huasheng Investment Co., Ltd. 惠州市華盛投資有限公司	29 August 2007	RMB60,000,000	100%	Property development
Boluo Kaisa Property Co., Ltd. 博羅縣佳兆業房地產有限公司	2 June 2008	RMB10,000,000	100%	Property development

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 43. PARTICULAR OF PRINCIPAL SUBSIDIARIES (Continued)

These entities are sino-foreign equity joint venture enterprises, which established in the PRC and operating principally in the PRC: (Continued)

Name	Date of incorporation/ establishment	Nominal value of issued and fully paid share capital/ paid-in-capital	Percentage of attributable equity interest	Principal activities
Boluo Kaisa Zhiye Co., Ltd. 博羅縣佳兆業置業有限公司	2 June 2008	RMB10,000,000	100%	Property development
Shenzhen Golden Bay Hotel Co., Ltd. 深圳市金沙灣大酒店有限公司	17 June 1997	RMB50,000,000	100%	Hotel management
Leisure Land Hotel Property Management Jiangyin Co., Ltd. 可域酒店置業管理江陰有限公司	15 October 2009	RMB150,000,000	100%	Property development
Shenzhen Tianlian Industry Development Co., Ltd. 深圳市天利安實業發展有限公司	4 September 2002	RMB46,000,000	100%	Property development
Jiangsu Kaisa Investment Co., Ltd. 江蘇佳兆業投資有限公司	18 May 2010	RMB15,000,000	100%	Property development
Baoji Crafts (Shenzhen) Co., Ltd. 寶吉工藝品(深圳)有限公司	28 December 1988	RMB877,725,000	100%	Property development
Jiangyin Washington Waterfront Property Development Co., Ltd. 江陰水岸華府房地產開發有限公司	10 December 2010	RMB20,000,000	100%	Property development
Zhejiang Wufeng Zhiye Co., Ltd. 浙江伍豐置業有限公司	7 January 2010	RMB260,000,000	100%	Property development
Jiangyin Juicui Garden Property Development Co., Ltd. 江陰金翠園房地產開發有限公司	22 February 2011	RMB20,000,000	100%	Property development
Foshan Shunde Ideal City Real Estate Investment Co., Ltd. 佛山市順德區理想城房地產投資有限公司	9 October 2010	RMB775,510,000	100%	Property development
Dalian Kaisa Commerce Operation Management Co., Ltd. 大連市佳兆業商業經營管理有限公司	18 March 2011	RMB120,000,000	100%	Commerce management
Shenzhen Yantian Kaisa Property Development Co., Ltd. 深圳市鹽田佳兆業房地產開發有限公司	19 April 2011	RMB800,000,000	100%	Property development

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 43. PARTICULAR OF PRINCIPAL SUBSIDIARIES (Continued)

These entities are sino-foreign equity joint venture enterprises, which established in the PRC and operating principally in the PRC: (Continued)

Name	Date of incorporation/ establishment	Nominal value of issued and fully paid share capital/ paid-in-capital	Percentage of attributable equity interest	Principal activities
Kaisa Dai River East Property Development Co.,Ltd. 佳兆業東戴河房地產開發有限公司	6 July 2011	RMB50,000,000	100%	Property development
Hunan Mingtai Zhiye Development Co., Ltd. 湖南明泰置業發展有限公司	12 October 2000	RMB310,000,000	100%	Property development
Shenzhen YueFeng Investment Co., Ltd. 深圳市悅峰投資有限公司	25 April 2012	RMB100,000,000	100%	Property development
Guangzhou Yaxiang Property Development Co., Ltd. 廣州市雅翔房地產開發有限公司	7 May 2012	RMB918,370,000	100%	Property development
Taizhou Kaisa Jiangshan Property Development Co., Ltd. 泰州佳兆業江山房地產開發有限公司	30 December 2011	RMB50,000,000	100%	Property development
Kaisa Property (Shanghai) Co., Ltd. 佳兆業地產(上海)有限公司	17 July 2012	RMB30,000,000	100%	Property development
Wuhan Kaisa Investment Co., Ltd. 武漢市佳兆業投資有限公司	13 July 2012	RMB250,000,000	100%	Property development
Shanghai Jinwan Zhaoye Property Development Co., Ltd. 上海金灣兆業房地產開發有限公司	2 August 2012	RMB30,000,000	100%	Property development
Jiangyin Binjiangyayuan Property Development Co., Ltd. 江陰濱江雅園房地產開發有限公司	14 September 2012	RMB20,000,000	100%	Property development
Chongqing Shenlian Investment Co., Ltd. 重慶深聯投資有限公司	22 August 2012	RMB20,000,000	60%	Property development
Dalian Huapu Zhiye Co., Ltd. 大連華普置業有限公司	9 December 2009	RMB100,000,000	100%	Property development
Shanghai Jiawan Zhaoye Property Co., Ltd. 上海嘉灣兆業房地產有限公司	24 December 2012	RMB30,000,000	100%	Property development

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 43. PARTICULAR OF PRINCIPAL SUBSIDIARIES (Continued)

These entities are sino-foreign equity joint venture enterprises, which established in the PRC and operating principally in the PRC: (Continued)

Name	Date of incorporation/ establishment	Nominal value of issued and fully paid share capital/ paid-in-capital	Percentage of attributable equity interest	Principal activities
Kaisa Culture and Sports Investment Development (Shenzhen) Co., Ltd. 佳兆業文化體育(深圳)有限公司	25 January 2013	RMB72,000,000	90%	Commerce management
Kaisa Property (Hangzhou) Co., Ltd. 佳兆業房地產(杭州)有限公司	6 March 2013	RMB40,820,000	100%	Property development
Chengdu Tianjia Zhiye Co., Ltd. 成都天佳置業有限公司	19 April 2013	RMB200,000,000	100%	Property development
Shenzhen Jiawangji Property Development Co., Ltd. 深圳市佳旺基房地產開發有限公司	5 February 2010	RMB50,000,000	70%	Property development
Guangzhou Jiayu Property Development Co., Ltd. 廣州市佳宇房地產開發有限公司	21 May 2013	RMB50,000,000	100%	Property development
Guangzhou Jiarui Property Development Co., Ltd. 廣州市佳瑞房地產開發有限公司	5 June 2013	RMB200,000,000	100%	Property development
Wuhan Junhui Property Development Co., Ltd. 武漢市君匯房地產開發有限公司	20 May 2013	RMB50,000,000	100%	Property development
Shanghai Yingwan Zhaoye Property Development Co., Ltd. 上海贏灣兆業房地產有限公司	20 June 2013	RMB50,000,000	100%	Property development
Shanghai Rongwan Zhaoye Property Development Co., Ltd. 上海榮灣兆業房地產開發有限公司	17 October 2013	RMB30,000,000	100%	Property development
Wan Tai Chang Property Development (Suizhong) Co., Ltd. 萬泰昌房地產開發(綏中)有限公司	15 October 2013	HKD428,999,750	100%	Property development
Hangxiongye Property (Hangzhou) Co., Ltd. 杭溪隆業房地產(杭州)有限公司	26 June 2013	RMB98,000,000	100%	Property development
Shanghai Chengwan Zhaoye Property Development Co., Ltd. 上海誠灣兆業房地產有限公司	2 August 2013	RMB58,820,000	100%	Property development

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 43. PARTICULAR OF PRINCIPAL SUBSIDIARIES (Continued)

These entities are sino-foreign equity joint venture enterprises, which established in the PRC and operating principally in the PRC: (Continued)

Name	Date of incorporation/ establishment	Nominal value of issued and fully paid share capital/ paid-in-capital	Percentage of attributable equity interest	Principal activities
Hunan Daye Property Development Co., Ltd. 湖南達業房地產開發有限公司	9 August 2013	RMB100,000,000	100%	Property development
Chongqing Kaisa Property Development Co., Ltd. 重慶佳兆業房地產開發有限公司	13 November 2013	RMB946,675,000	100%	Property development
Guanzhou Zhaochang Property Development Co., Ltd. 廣州市兆昌房地產開發有限公司	21 June 2013	RMB30,000,000	100%	Property development
Sichuan Tianzi Zhiye Co., Ltd. 四川天姿置業有限公司	15 September 2006	RMB20,000,000	100%	Property development
Fenglong Group Co., Ltd. 豐隆集團有限公司	29 October 1993	RMB168,000,000	100%	Property development
Huizhou Weitong Property Co., Ltd. 惠州緯通房產有限公司	14 January 1994	HK\$256,026,685	100%	Property development
Kaisa Technology (Huizhou) Co., Ltd. 佳兆業科技(惠州)有限公司	24 March 2008	USD90,000,000	100%	Property development
Kaisa Real Estate Jiangyin Co., Ltd. 佳兆業地產江陰有限公司	15 October 2009	RMB450,000,000	100%	Property development
Kaisa Real Estate (Liaoning) Co., Ltd. 佳兆業地產(遼寧)有限公司	28 January 2010	RMB1,086,670,000	100%	Property development
Kaisa Commerce Property Management (Panjin) Co., Ltd. 佳兆業商業置業管理(盤錦)有限公司	16 March 2011	USD61,660,000	100%	Property development
Shenzhen Zhengchangtai Investment Consulting Co., Ltd. 深圳市正昌泰投資諮詢有限公司	13 June 2007	RMB10,000,000	100%	Property development
Wanyuchang Computer Technology Development Co., Ltd. 萬裕昌電腦技術開發(深圳)有限公司	26 October 2001	HK\$2,000,000	100%	Commerce management

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**43. PARTICULAR OF PRINCIPAL SUBSIDIARIES** (Continued)

These entities are sino-foreign equity joint venture enterprises, which established in the PRC and operating principally in the PRC: (Continued)

Name	Date of incorporation/ establishment	Nominal value of issued and fully paid share capital/ paid-in-capital	Percentage of attributable equity interest	Principal activities
Kaisa Holdings Limited 佳兆業集團有限公司	16 July 1999	HK\$10,000	100%	Property development
Beijing Jinmao Caixun Xinci Co., Ltd 北京金貿財迅資訊有限公司	5 December 2005	RMB24,400,000	100%	Commerce management
Dong Sheng Investment Company Limited 東升投資有限公司	25 July 2007	USD1	100%	Investment holding
Rui Jing Investment Company Limited 瑞景投資有限公司	23 July 2007	HK\$1	100%	Investment holding
Kaisa Group Holdings Ltd. 佳兆業集團控股有限公司	2 August 2007	HK\$450,418,586	100%	Investment holding
Kaisa (Huizhou) Road Construction Development Co., Ltd. 佳兆業(惠州)道路建設發展有限公司	2 February 2008	USD40,000,000	100%	Commerce management
Tai An Da Investment Company Limited 泰安達投資有限公司	2 March 2010	USD2	100%	Investment holding
Wan Rui Fa Investment Company Limited 萬瑞發投資有限公司	2 March 2010	HK\$10,000	100%	Investment holding
Tai He Sheng Investment Company Limited 泰和盛投資有限公司	2 March 2010	USD1	100%	Investment holding
Tai Chong Li Investment Company Limited 泰昌利投資有限公司	2 March 2010	USD1	100%	Investment holding
Wan Jin Chang Investment Limited 萬晉昌投資有限公司	2 March 2010	HK\$1	100%	Investment holding
Wan Rui Chang Investment Company Limited 萬瑞昌投資有限公司	2 March 2010	HK\$1	100%	Investment holding
Wan Tai Chang Investment Company Limited 萬泰昌投資有限公司	2 March 2010	HK\$1	100%	Investment holding



## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

## 43. PARTICULAR OF PRINCIPAL SUBSIDIARIES (Continued)

These entities are sino-foreign equity joint venture enterprises, which established in the PRC and operating principally in the PRC: (Continued)

Name	Date of incorporation/ establishment	Nominal value of issued and fully paid share capital/ paid-in-capital	Percentage of attributable equity interest	Principal activities
Shenzhen Kaisa hotel Management Co., Ltd. 深圳市佳兆業酒店管理有限公司	15 September 2010	RMB110,750,000	100%	Hotel management
Hong Kong Kaisa Industry Co., Limited 香港佳兆業實業有限公司	24 November 2010	USD1,000	100%	Investment holding
Changzhou Kaisa Property Development Co., Ltd. 常州佳兆業房地產開發有限公司	8 December 2010	RMB506,958,095	100%	Property development
Sunny Sino Investments Limited 熙華投資有限公司	21 September 2011	USD1	100%	Investment holding
Xifeng Management Consulting (Shenzhen) Co., Ltd. 熙豐管理諮詢(深圳)有限公司	17 November 2011	RMB1,000,000	100%	Commerce management
Shenzhen Denghong Management Consulting Co., Ltd. 深圳市德弘管理諮詢有限公司	8 November 2011	RMB500,000,000	100%	Commerce management
Action Enrich Limited 行裕有限公司	2 May 2012	USD1,000	100%	Investment holding
Chengdu Dingchengda Property Development Co., Ltd. 成都市鼎誠達房地產開發有限公司	6 July 2012	RMB10,000,000	80%	Property development
Zuobo Management Consulting (Shenzhen) Co., Ltd. 佳兆業左博置業(深圳)有限公司	21 August 2012	RMB20,000,000	100%	Property development
Wan Rui Chang Property Development (Suizhong) Co., Ltd. 萬瑞昌房地產開發(綏中)有限公司	1 August 2012	HK\$244,000,000	100%	Property development
Kaisa Property (Dandong) Co., Ltd. 佳兆業地產(丹東)有限公司	30 October 2012	USD50,500,000	100%	Property development
Shenzhen Cixiang Kaisa Property Development Co., Ltd. 深圳市西鄉佳兆業房地產開發有限公司	27 May 2013	RMB50,000,000	100%	Property development

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**43. PARTICULAR OF PRINCIPAL SUBSIDIARIES** (Continued)

These entities are sino-foreign equity joint venture enterprises, which established in the PRC and operating principally in the PRC: (Continued)

Name	Date of incorporation/ establishment	Nominal value of issued and fully paid share capital/ paid-in-capital	Percentage of attributable equity interest	Principal activities
Splendid Maple Limited 燁楓有限公司	21 May 2013	USD10,000	100%	Investment holding
Huidong Kaisa Property Development Limited 惠東縣佳兆業房地產開發有限公司	13 February 2014	RMB50,000,000	100%	Property development
Suzhou Kaisa Property Development Co., Ltd. 蘇州市佳兆業房地產開發有限公司	20 February 2014	RMB196,000,000	100%	Property development
Suzhou Kaisa Shangpin Property Development Co., Ltd. 蘇州市佳兆業上品房地產開發有限公司	21 February 2014	RMB98,000,000	100%	Property development
Chengdu Jincheng Jiaye Property Development Co., Ltd. 成都錦城佳業房地產開發有限公司	24 February 2014	RMB10,000,000	100%	Property development
Nanjing Aoxin Property Development Co., Ltd. 南京奧信房地產開發有限公司	11 November 2013	RMB50,000,000	100%	Property development
Shanghai Qingwan Zhaoye Property Development Co., Ltd. 上海青灣兆業房地產開發有限公司	21 August 2014	RMB50,000,000	100%	Property development
Chengdu Jinxinrui Property Development Co., Ltd. 成都市錦新瑞房地產開發有限公司	7 November 2012	RMB50,000,000	100%	Property development
Shenzhen Chuangzhan Hotel Development Co., Ltd. 深圳市創展酒店發展有限公司	12 June 2012	RMB10,000,000	51%	Property development
Shenzhen Guanyang Property Development Co., Ltd. 深圳冠洋房地產有限公司	5 June 2009	RMB100,000,000	51%	Property development
Shenzhen Jielingzixun Co., Ltd. 深圳市傑領信息諮詢有限公司	3 November 2014	RMB1,000,000	100%	Commerce management

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**43. PARTICULAR OF PRINCIPAL SUBSIDIARIES** (Continued)

Details of non-wholly owned subsidiaries that have material non-controlling interests:

The table below shows details of non-wholly owned subsidiaries of the Company that have material non-controlling interests:

Name of subsidiaries	Place of incorporation	Proportion of ownership interests and voting rights held by non-controlling interests		Total comprehensive income/(losses) allocated to non-controlling interests		Accumulated non-controlling interests	
		2016	2015	2016	2015	2016	2015
		RMB'000	RMB'000	RMB'000	RMB'000	RMB'000	RMB'000
Shenzhen Marine and its subsidiaries	the PRC	<b>30% (note)</b>	N/A	<b>27,739</b>	N/A	<b>10,918,372</b>	N/A

Note: As at 31 December 2016, the Group held 70% (2015: nil) equity interest in Shenzhen Marine, which indirectly held 51% (2015: nil) equity interest in Shenzhen Zhenhua Harbour Enterprise Limited\*.

\* The English translation of the name of the company established in the PRC is for reference only. The official name of the company is in Chinese.

Summarised financial information in respect of the Group's subsidiaries that have material non-controlling interests as set out below. The summarised financial information below represents amounts before intra-group eliminations.

**(i) Shenzhen Marine and its subsidiaries**

	2016 RMB'000
Current assets	<b>16,175,854</b>
Non-current assets	<b>475,459</b>
Current liabilities	<b>(467,457)</b>
Non-current liabilities	<b>(220,535)</b>
Equity	<b>15,963,321</b>
Equity attributable to owners of the Company	<b>5,044,949</b>
Equity attributable to non-controlling interests	<b>10,918,372</b>

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**43. PARTICULAR OF PRINCIPAL SUBSIDIARIES** (Continued)**(i) Shenzhen Marine and its subsidiaries** (Continued)

	Since acquisition to 31 December 2016 RMB'000
Revenue	<b>222,195</b>
Other income	<b>40,022</b>
Expenses	<b>(162,891)</b>
Profit for the period	<b>99,326</b>
Total comprehensive income attributable to owners of the Company	<b>27,739</b>
Total comprehensive income attributable to the non-controlling interests	<b>71,587</b>
Total comprehensive income for the period	<b>99,326</b>
Net cash from operating activities	<b>196,900</b>
Net cash used in investing activities	<b>(52,318)</b>
Net cash used in financing activities	<b>(105,410)</b>
Net cash inflow	<b>39,172</b>

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