

# **SUBSCRIPTION AGREEMENT**

**relating to**  
**up to HK\$100,000,000 eight and a half per cent. guaranteed notes**

**DATED 18 SEPTEMBER 2017**

**ERNEST BOREL HOLDINGS LIMITED 依波路控股有限公司**  
**as Issuer and Guarantor**

**and**

**COFCO CAPITAL (HONG KONG) CO., LIMITED 中粮资本(香港)有限公司**  
**as Initial Investor**



**Jun He Law Offices**  
**Suite 3701-10, 37/F, Jardine House**  
**1 Connaught Place, Central**  
**Hong Kong**

## CONTENTS

Clause	Page
1. Interpretation .....	3
2. Subscription and issuance.....	9
3. Nature of Investor's Rights and Obligations.....	10
4. Conditions precedent.....	10
5. Completion .....	11
6. Guarantee.....	12
7. Representations and warranties .....	14
8. General covenants .....	19
9. Information covenants .....	24
10. Events of Default.....	26
11. Co-operation between Investors .....	30
12. Evidence and calculations .....	30
13. Indemnity.....	30
14. Payments .....	31
15. Taxation.....	32
16. Changes to Parties .....	33
17. Waiver and modification .....	33
18. Duration.....	34
19. Notices.....	35
20. Remedies and waivers .....	36
21. Set-off.....	36
22. Severability.....	36
23. Governing law and jurisdiction .....	36
24. Counterparts .....	37
25. Confidentiality .....	37
<b>Schedule</b>	
1. Conditions precedent documents.....	39
2. Form of Director's Certificate .....	41
3. Form of Notice of Issuance .....	43
4. Form of Note Instrument .....	44
5. Deed of Guarantee.....	45
Signatories.....	46

**THIS AGREEMENT** is made on 18 September 2017

**BETWEEN:**

- (1) **ERNEST BOREL HOLDINGS LIMITED 依波路控股有限公司**, an exempted company incorporated under the laws of the Cayman Islands, whose registered office is at P.O. Box 309, Ugland House, Grand Cayman KY1-1104, Cayman Islands with company number MC-38485 and whose shares are listed on the Hong Kong Stock Exchange with stock code 1856 (the **Issuer or the Guarantor**);
- (2) **COFCO CAPITAL (HONG KONG) CO., LIMITED 中粮资本(香港)有限公司**, a company incorporated under the laws of Hong Kong, whose registered office is at Room 2901, 29/F, COFCO Tower, 262 Gloucester Road, Causeway Bay, Hong Kong, as the initial investor (the **Initial Investor**); and

**WHEREAS:**

- (A) The Issuer proposes to issue and the Initial Investor proposes to subscribe for up to HK\$100,000,000 eight and a half per cent. guaranteed notes.
- (B) The notes will be issued in registered form represented by, and subject to the terms and conditions set out in, the Note Instrument (as defined below) with denomination of HK\$100,000,000 due 2019 (if not redeemed at the first anniversary pursuant to the Note Conditions) (the **Notes**).

**1. INTERPRETATION**

**1.1 Definitions**

In this Agreement:

**Affiliate** means a Subsidiary or a Holding Company of a person or any other Subsidiary of that Holding Company.

**Business Day** means a day other than Saturday or Sunday on which banks are open for business in Hong Kong.

**Code** means the US Internal Revenue Code of 1986.

**Companies Ordinance** means the Companies Ordinance, Chapter 622 of the Laws of Hong Kong.

**Deed of Guarantee** means a guarantee dated on the date of this Agreement and made by the Individual Guarantor in favour of the Initial Investor.

**Default** means:

- (a) an Event of Default; or
- (b) an event or circumstance which would be (with the expiry of a grace period, the giving of notice or the making of any determination under the Finance Documents or any combination of them) an Event of Default.

**Default Redemption Notice** has the meaning given to such term in the Note Instrument.

**Event of Default** means an event or circumstance specified as such in Clause 10 (Events of Default).

**FATCA** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

**FATCA Deduction** means a deduction or withholding from a payment under a Finance Document required by FATCA.

**FATCA Exempt Party** means a Party that is entitled to receive payments free from any FATCA Deduction.

**Final Maturity Date** means the second (2<sup>nd</sup>) anniversary of the Issue Date.

**Financial Adviser** means Shenzhen Mingcheng Financial Services Co. Ltd 深圳市明誠金融服務有限公司.

**Financial Adviser Agreement** means the agreement entered into between the onshore Affiliate designated or procured by the Issuer and the Financial Adviser.

**Financial Adviser Fee** has the meaning given to it in Clause 14.2 (Financial adviser fee).

**Finance Document** means:

- (a) this Agreement;
- (b) the Note Instrument;
- (c) a Notice of Issuance;
- (d) a Default Redemption Notice;
- (e) the Deed of Guarantee;
- (f) the Warning Notice;
- (g) the Financial Adviser Agreement; or
- (h) any other document designated in writing as such by the Issuer.

and **Finance Documents** means all of the above.

**Financial Indebtedness** means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any acceptance credit (including any dematerialised equivalent);

- (c) any bond, note, debenture, loan stock or other similar instrument;
- (d) any redeemable preference share;
- (e) any agreement treated as a finance or capital lease in accordance with GAAP;
- (f) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (g) the acquisition cost of any asset or service to the extent payable before or after its acquisition or possession by the party liable where the advance or deferred payment:
  - (i) is arranged primarily as a method of raising finance or of financing the acquisition of that asset or service or the construction of that asset or service; or
  - (ii) involves a period of more than six months before or after the date of acquisition or supply;
- (h) any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark-to-market value of the derivative transaction will be used to calculate its amount);
- (i) any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing;
- (j) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution; or
- (k) any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in the above paragraphs.

**GAAP** means generally accepted accounting principles as consistently applied in the jurisdiction of incorporation of the Issuer.

**Group** means the Issuer and its Subsidiaries.

**Guaranteed Liabilities** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor to any Investor under any of the Finance Documents, except for any obligation which, if it were so included, would result in a Finance Document constituting unlawful financial assistance within the meaning of any applicable provisions under the laws of the jurisdiction of incorporation or the jurisdiction of the place of ordinary residence or domicile (as applicable) of any Obligor.

**Holding Company** means, in relation to a person, an entity of which that person is a Subsidiary.

**Hong Kong** means the Hong Kong Special Administrative Region of the PRC.

**Hong Kong dollar** or **HK\$** means the lawful currency for the time being of Hong Kong.

**Hong Kong Stock Exchange** means The Stock Exchange of Hong Kong Limited.

**Investor** means:

- (a) the Initial Investor; or

(b) any person which becomes a Party in accordance with Clause 16.2 (Transfers by Investors).

**Individual Guarantor** means Mr. Sit Yau Chiu.

**Investor Accession Deed** means a deed by which an Investor (other than the Initial Investor) becomes a party to this Agreement, in the form agreed between the Issuer and the Initial Investor from time to time.

**Issuance Proceeds** means all of the proceeds received by the Issuer from the Initial Investor as a result of the Issuer's issuance and the Initial Investor's subscription for the Notes in accordance with Clause 5.2(c).

**Issue Date** means a date on which completion of the subscription for a Note by the Initial Investor occurs in accordance with Clause 5 (Completion).

**Issuer's Auditors** means Deloitte Touche Tohmatsu or any other firm appointed by the Issuer to act as its statutory auditors.

**Issuer Share** means any share in the issued capital of the Issuer that is listed on the Hong Kong Stock Exchange.

**Listing Rules** means The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited.

**Material Adverse Effect** means a material adverse effect on:

- (a) the business, prospects or financial condition of any Obligor or the Group taken as a whole;
- (b) the ability of any Obligor to perform its or his obligations under any Finance Document;
- (c) the validity or enforceability of any Finance Document; or
- (d) any right or remedy of an Investor in respect of any Finance Document.

**Note Conditions** means the terms and conditions set out in the Note Instrument.

**Note Instrument** means a note instrument substantially in the form of Schedule 4 (Form of Note Instrument).

**Note Register** means the register of holders of the Notes which will be maintained and kept by the Issuer at the Specified Office in accordance with paragraph (a) of Clause 8.10 (Maintenance of Note Register).

**Note Subscription Amount** means HK\$100,000,000.

**Noteholder** has the meaning given to it in the Note Instrument.

**Notes** has the meaning given to it in Recital (B).

**Notice of Issuance** means a notice in substantially the same form as Schedule 3 (Form of Notice of Issuance).

**Obligor** means the Issuer, the Individual Guarantor or the Guarantor, and **Obligors** means all of them.

**Original Financial Statements** means the unaudited financial statements of the Issuer for the half year ended 30 June 2017.

**Party** means a party to this Agreement.

**PRC** means People's Republic of China, but (solely for the purpose of the Finance Documents) excluding Hong Kong, the Macau Special Administrative Region and Taiwan.

**Proceeds Account** means the account maintained in the name of the Issuer with Hang Seng Bank Limited and account number 239-442221-883, swift code **HASEHKHH**.

**RMB** means Renminbi, the lawful currency for the time being of PRC.

**Security Interest** means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having a similar effect.

**Specified Office** means the office situated at Units 1612-18, Level 16, Tower 1, Grand Century Place, 193 Prince Edward Road West, Mongkok, Kowloon, Hong Kong or such other address as the Issuer may notify the Parties in writing as its Specified Office from time to time.

**Subscription Period** means the period from and including the date of this Agreement to and including the date falling one month from the date of this Agreement.

**Subsidiary** means an entity from time to time of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership and **control** for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

**Tax** has the meaning given to it in Clause 15.1 (Tax).

**Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

**Trading Day** means any day on which the Hong Kong Stock Exchange is generally open for trading in shares.

**US** means the United States of America.

**Warning Notice** means the notice and acknowledgment to individual third party guarantor signed by the Individual Guarantor and if applicable, his independent legal adviser pursuant to the Code of Banking Practice of Hong Kong, the relevant circular issued by The Hong Kong Association of Banks and the Law Society of Hong Kong.

## 1.2 Construction

- (a) In this Agreement, unless the contrary intention appears, a reference to:
- (i) an **amendment** includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and **amended** will be construed accordingly;
  - (ii) **assets** includes present and future properties, revenues and rights of every description;

- (iii) an **authorisation** includes an authorisation, consent, approval, resolution, permit, licence, exemption, filing, registration or notarisation;
- (iv) the **equivalent** of one currency (the **first currency**) in another currency (the **second currency**) shall (unless otherwise specified) be determined by the Initial Investor or such person nominated by the Initial Investor acting reasonably for that purpose by reference to its spot rate of exchange in Hong Kong for the purchase of the second currency with the first currency at or about 11.00 a.m. on the date of the determination or if no such spot rate of exchange exists on that date, by such other method as the Initial Investor (in consultation with the Issuer) shall reasonably determine;
- (v) a **guarantee** means (other than a guarantee in Clause 6 (Guarantee)) any guarantee, bond, letter of credit, indemnity or similar assurance against financial loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make any investment in or loan to any person or to purchase assets of any person, where, in each case, that obligation is assumed in order to maintain that asset or the ability of that person to meet any of its indebtedness;
- (vi) **indebtedness** includes any obligation (whether incurred as principal or as surety and whether present or future, actual or contingent) for the payment or repayment of money;
- (vii) **know your customer requirements** are to the identification checks that an Investor requests in order to meet its obligations under any applicable law or regulation to identify a person who is (or is to become) its customer;
- (viii) a **person** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;
- (ix) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation, including without limitation, the rules set out in the Listing Rules;
- (x) **shares** includes equity or other forms of ownership interests and each and every category of shares and **share capital** and **shareholder** shall be construed accordingly;
- (xi) a currency is a reference to the lawful currency for the time being of the relevant country;
- (xii) a Default being **outstanding** means that it has not been remedied or waived and an Event of Default being **outstanding** means it has not been waived;
- (xiii) a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
- (xiv) a Clause or a Schedule is a reference to a clause of, or a schedule to, this Agreement;
- (xv) a person includes its successors in title, permitted assigns and permitted transferees;
- (xvi) wherever the context may require, any pronoun shall include the corresponding masculine, feminine or neuter forms;

- (xvii) a Finance Document or other document or security includes (without prejudice to any prohibition on amendments) any amendment to that Finance Document or other document or security; and
  - (xviii) a time of day is a reference to Hong Kong time.
- (b) Unless the contrary intention appears, a reference to a **month** or **months** is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month or the calendar month in which it is to end, except that:
- (i) if the numerically corresponding day is not a Business Day, the period will end on the next Business Day in that month (if there is one) or the preceding Business Day (if there is not);
  - (ii) if there is no numerically corresponding day in that month, that period will end on the last Business Day in that month; and
  - (iii) notwithstanding sub-paragraph (i) above, a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate.
- (c) Unless the contrary intention appears:
- (i) a word or expression used in any other Finance Document or in any notice given in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement;
  - (ii) any obligation of an Obligor under the Finance Documents which is not a payment obligation remains in force for so long as any payment obligation of an Obligor is, may be or is capable of becoming outstanding under the Finance Documents; and
  - (iii) if an amount paid to any Investor under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or provisional supervision of the payer or otherwise, then that amount will not be considered to have been unconditionally and irrevocably paid for the purpose of the Finance Documents.
- (d) The headings in this Agreement do not affect its interpretation.

### **1.3 Third party rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a party to a Finance Document has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong) (the **Third Parties Ordinance**), to enforce or to enjoy the benefit of any term of that Finance Document.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a party to that Finance Document is not required to rescind or vary any Finance Document at any time.

## **2. SUBSCRIPTION AND ISSUANCE**

Subject to the terms and conditions of this Agreement and the Note Instrument, the Initial Investor agrees to subscribe for, and the Issuer agrees to issue to the Initial Investor, within the Subscription Period, the Notes on the relevant Issue Date in accordance with Clause 5 (Completion), in the aggregate principal amount of the Note Subscription Amount for such Note(s).

## **2.1 Use of proceeds**

- (a) The Issuer must ensure that the Issuance Proceeds are applied only for:
  - (i) first, the payment of any fees, costs and expenses under, or in connection with, the Finance Documents; and
  - (ii) second, financing the working capital requirements of the Issuer.
- (b) None of the Issuance Proceeds may be used to subscribe for or otherwise acquire shares or securities of any company listed on any stock exchange.
- (c) Any costs and expenses in accordance payable by the Issuer under Clause 14.1 (Costs and Expenses) on an Issue Date shall be deducted from the Note Subscription Amount payable by the Initial Investor on that Issue Date.
- (d) The Investor shall have the right (but not the obligation) to monitor or verify the utilisation of the Issuance Proceeds. The Issuer shall use all its endeavours immediately to facilitate the Investor to monitor or verify such utilisation.

## **3. NATURE OF INVESTOR'S RIGHTS AND OBLIGATIONS**

Unless otherwise agreed by all the Investor:

- (a) the obligations of the Investor under this Agreement are several;
- (b) failure by an Investor to perform its obligations under any Finance Document does not affect the obligations of any other Investor under this Agreement;
- (c) no Investor is responsible for the obligations of any other Investor under the Finance Documents;
- (d) the rights of an Investor under the Finance Documents are separate and independent rights and they include the right to repayment of any debt owing to that Investor under the Finance Documents;
- (e) an Investor may, except as specifically provided in the Finance Documents, separately enforce those rights under or in connection with the Finance Documents; and
- (f) any debt arising under the Finance Documents to an Investor is a separate and independent debt. Any part of a Note or any other amount owed by an Obligor which relates to an Investor's participation in a Note or its role under a Finance Document is a debt owing to that Investor by that Obligor.

## **4. CONDITIONS PRECEDENT**

- (a) The Initial Investor's obligations to subscribe for any Note under this Agreement are conditional upon:
  - (i) the Initial Investor having received all of the documents and evidence set out in Schedule 1 (Conditions precedent documents) in form and substance satisfactory to it on or prior to the date of the Notice of Issuance or otherwise waived by the Initial Investor;

- (ii) the representations and warranties of each Obligor contained in the Finance Documents to which it is a party being correct, accurate and not misleading on the date of this Agreement and each Issue Date;
- (iii) if required, approval of the transactions contemplated under the Finance Documents from the board of directors of the Issuer have been obtained and such approval not being revoked;
- (iv) satisfactory results in the opinion of the Initial Investor on commercial, financial and legal due diligence of each Obligor, the Group and their respective business; and
- (v) the Issuer has published an announcement regarding the transaction contemplated under this Subscription Agreement at the website of The Stock Exchange of Hong Kong Limited;

in each case, in form and substance satisfactory to the Initial Investor.

- (b) For the avoidance of doubt, the Initial Investor shall not have any obligation to subscribe for any Note or have any other obligations under this Agreement if any of the conditions in this Clause is not satisfied or waived.

## **5. COMPLETION**

### **5.1 Notice of Issuance**

- (a) At or prior to 12.00 noon on the date falling five (5) Business Days (or such shorter period as the Initial Investor may agree) prior to a proposed Issue Date, the Issuer shall deliver to the Initial Investor a duly completed Notice of Issuance notifying the Initial Investor of the proposed Issue Date.
- (b) A Notice of Issuance is irrevocable.
- (c) A Notice of Issuance for a Note will not be regarded as duly completed unless:
  - (i) the proposed Issue Date specified in the Notice of Issuance is a Business Day falling within the Subscription Period; and
  - (ii) the principal amount of the Notes to be issued shall be the Note Subscription Amount; and
  - (iii) the aggregate principal amount of all Notes issued shall not exceed HK\$100,000,000.

The Issuer may deliver no more than one Notice of Issuance in respect of the Notes.

### **5.2 Completion**

- (a) Completion of the issuance and subscription for each Note between the Issuer and the Initial Investor shall take place on the relevant Issue Date for such Note as set out in the Notice of Issuance or at such other time as the Issuer and the Initial Investor may agree.
- (b) At or before 12.00 noon on the proposed Issue Date, the Issuer shall deliver to the Initial Investor:
  - (i) Note Instrument duly executed by the Issuer and issued in the name of the Initial Investor (or its nominee), representing the Notes in the same amount as the relevant Note Subscription Amount specified in the relevant Notice of Issuance; and

- (ii) a copy of the Note Register, certified by an authorised signatory of the Issuer as a true copy, evidencing that the name of the Initial Investor (or its nominee) has been entered on the Note Register as the holder of the Notes.
- (c) Subject to Clause 4 (Conditions precedent) and against the delivery by the Issuer of the documents and evidence set out in paragraph (b) above, the Initial Investor shall pay to the Issuer the subscription price for the Notes by transferring an amount equal to the relevant Note Subscription Amount, after deducting any amount described in sub-paragraph (a)(i) of Clause 14.1 (Costs and Expenses), into the Proceeds Account. The payment of such amount by the Initial Investor to the Proceeds Account (as designated by the Issuer) will constitute full and complete discharge of all payment obligations of the Initial Investor on the relevant Issue Date.

## **6. GUARANTEE**

### **6.1 Guarantee and indemnity**

The Guarantor irrevocably and unconditionally:

- (a) guarantees to the Investor's punctual performance by the Issuer of all its obligations under the Finance Documents;
- (b) undertakes with the Investor that, whenever the Issuer does not pay any amount when due under or in connection with the Finance Documents, it must, immediately on demand by an Investor, pay that amount (in the currency in which it is due) as if it was the principal debtor in respect of that amount; and
- (c) agrees with the Investor that if, for any reason, any amount claimed by the Investor under this Clause is not recoverable from the Guarantor on the basis of a guarantee, then it will be liable as a principal debtor and a primary obligor to indemnify (to the fullest extent permitted by applicable law) the Investor in respect of any loss it incur as a result of the Issuer failing to pay any amount expressed to be payable by it under any Finance Document on the date when it ought to have been paid.

### **6.2 Continuing guarantee**

The guarantee and indemnity created under this Clause is a continuing guarantee and indemnity and will extend to the ultimate balance of all sums payable by each Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

### **6.3 Reinstatement**

- (a) If any discharge (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) or arrangement is made in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation, administration or otherwise without limitation, the liability of the Guarantor under this Clause will continue or be reinstated as if the discharge or arrangement had not occurred.
- (b) The Investor may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

#### **6.4 Waiver of defences**

The obligations of the Guarantor under this Clause will not be affected by any act, omission or thing (whether or not known to the Guarantor or Investor) which, but for this provision, would reduce, release or prejudice any of his obligations under this Clause. This includes:

- (a) any time or waiver granted to, or composition with, any person;
- (b) any release of any person under the terms of any composition or arrangement with any creditor of any Obligor or any other member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- (d) any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- (f) any amendment of a Finance Document or any other document or security;
- (g) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Finance Document or any other document or security; or
- (h) any insolvency or similar proceedings.

#### **6.5 Immediate recourse**

- (a) The Guarantor waives any right it may have of first requiring the Investor to proceed against or enforce any other right or security or claim payment from any person before claiming from it under this Clause.
- (b) This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### **6.6 Appropriations**

Until all amounts which may be or become payable by each Obligor under or in connection with the Finance Documents have been irrevocably paid in full to the satisfaction of the Investor, the Investor (or any trustee or agent on their behalf) may without affecting the liability of the Guarantor under this Clause:

- (a)
  - (i) refrain from applying or enforcing any other moneys, security or rights held or received by the Investor (or any trustee or agent on their behalf) against those amounts; or
  - (ii) apply and enforce them in such manner and order as he sees fit (whether against those amounts or otherwise); and
- (b) hold in a suspense account any moneys received from the Guarantor or on account of the Guarantor's liability under this Clause.

## **6.7 Non-competition**

Unless:

- (a) all amounts which may be or become payable by each Obligor under or in connection with the Finance Documents have been irrevocably paid in full to the satisfaction of the Investor; or
- (b) the Initial Investor otherwise directs,

the Guarantor shall not, after a claim has been made or by virtue of any payment or performance by them under this Clause:

- (i) be subrogated to any rights, security or moneys held, received or receivable by the Investor (or any trustee or agent on their behalf);
- (ii) be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of their liability under this Clause;
- (iii) claim, rank, prove or vote as a creditor of any Obligor or its estate in competition with the Investor (or any trustee or agent on their behalf); or
- (iv) receive, claim or have the benefit of any payment, distribution or security from or on account of any Obligor, or exercise any right of set-off as against any Obligor.

The Guarantor must hold in trust for and immediately pay or transfer to the Investor any payment or distribution or benefit of security received by it contrary to this Clause or in accordance with any directions given by the Initial Investor under this Clause.

## **7. REPRESENTATIONS AND WARRANTIES**

### **7.1 Representations and warranties**

- (a) The representations and warranties set out in this Clause are made by each Obligor or (if the relevant provision so states) any one of them to each Investor.
- (b) Each Obligor acknowledges that the Investor enter into the Finance Documents and the transactions contemplated herein in reliance of the representations and warranties provided in this Clause.

### **7.2 Status**

- (a) The Issuer:
  - (i) is an exempted company, duly incorporated, validly existing and is in good standing under the laws of its jurisdiction of incorporation; and
  - (ii) has and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.
- (b) The Guarantor:
  - (i) has the capacity to enter into the Finance Documents to which it is a party; and

- (ii) is acting as principal and for its own account and not as agent or trustee or in any other capacity on behalf of any third party.
- (c) There is no step or procedure that has been taken in any other jurisdiction which would restrict the Guarantor's ability or legal capacity to enter into the Finance Documents to which the Guarantor is a party or would require the approval of a third party or an authority.

### **7.3 Powers and authority**

Each Obligor has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of, the Finance Documents to which it or he is or will be a party and the transactions contemplated by those Finance Documents.

### **7.4 Legal validity**

- (a) Each Finance Document to which an Obligor is a party is its or his legally binding, valid and enforceable obligation.
- (b) Each Finance Document to which an Obligor is a party is in the proper form for its enforcement in the jurisdiction of its incorporation or, in the case of the Individual Guarantor, the jurisdiction of his place of ordinary residence or domicile.

### **7.5 Non-conflict**

The entry into and performance by an Obligor of, and the transactions contemplated by, the Finance Documents to which it or he is a party do not conflict with:

- (a) any law or regulation applicable to it or him;
- (b) in the case of the Issuer, its or any of its Subsidiaries' constitutional documents;
- (c) any document which is binding upon it or him or its or his material assets; or
- (d) in the case of the Issuer, any document which is binding upon any of its Subsidiaries or its Subsidiaries' assets. .

### **7.6 Compliance with laws**

Each Obligor has complied in all respects with all laws to which it or he may be subject, if failure so to comply would impair its or his ability to perform its or his obligations under the Finance Documents, including but not limited to its obligations under the Securities and Futures Ordinance (Cap. 571) of Hong Kong and the Listing Rules.

### **7.7 No Default**

- (a) No event or circumstance has occurred or arisen which, had the Notes already been issued, would constitute a Default.
- (b) No other event or circumstance is outstanding which constitutes a default under any document which is binding on an Obligor or its or his assets or, in the case of the Issuer, any of its Subsidiaries or its Subsidiaries' assets which might have a Material Adverse Effect.

## **7.8 Authorisations**

All authorisations required by an Obligor in connection with its or his entry into, performance, validity and enforceability of, and the transactions contemplated by, the Finance Documents have been obtained or effected (as appropriate) and are in full force and effect.

## **7.9 No undue influence**

The Guarantor has acted independently and free from any undue influence by any person.

## **7.10 Financial statements**

The Issuer's financial statements most recently delivered to the Initial Investor (which, as at the date of this Agreement, are the Original Financial Statements):

- (a) have been prepared in accordance with GAAP, consistently applied; and
- (b) give a true and fair view of the financial condition of the Issuer as at the date to which they were drawn up,

except, in each case, as disclosed to the contrary in those financial statements.

## **7.11 No material adverse change**

- (a) There has been no material adverse change in the financial condition of the Issuer since the date on which the Original Financial Statements were drawn up.
- (b) No events have occurred since the date of this Agreement which would have a material adverse change on the Guarantor's ability to meet their obligations under this Agreement.

## **7.12 Litigation**

No litigation, arbitration or administrative proceedings against any Obligor or any other member of the Group which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have been started or (to the best of its knowledge and belief after due inquiry) threatened.

## **7.13 No insolvency or bankruptcy**

- (a) The Issuer has not taken any corporate action or any other steps been taken and no legal proceedings have been started or (to the best of its knowledge and belief after due inquiry) threatened against it for bankruptcy, insolvency, liquidation, winding-up, administration, receivership, judicial management, dissolution or reorganization or for the appointment of a liquidator, judicial manager, receiver, administrative receiver, trustee or similar officer of its or any or all of its assets or revenues.
- (b) No proceedings have been commenced or (to the best of its knowledge and belief after due inquiry) threatened, and no order has been made, against the Guarantor for its bankruptcy, insolvency, liquidation, winding-up or for the appointment of a receiver or similar officer to administer any or all of its assets.

## **7.14 Information**

- (a) All information supplied by or on behalf of an Obligor to the Investor in connection with the Finance Documents is true and accurate in all material respects as at its date or (if appropriate) as at the date (if any) at which it is stated to be given.

- (b) No Obligor has omitted to supply any information which, if disclosed, might make the information supplied by or on behalf of it or him untrue, inaccurate or misleading in any material respect.

#### **7.15 Taxes on payments**

All amounts payable by an Obligor under the Finance Documents may be made without any Tax Deduction.

#### **7.16 Stamp duties**

No stamp or registration duty or similar Tax or charge is payable in any Obligor's jurisdiction of incorporation or place of ordinary residence (as applicable) in respect of any Finance Document except that stamp duty will be payable on this Agreement if it is executed in, brought into or produced before the courts of the Cayman Islands.

#### **7.17 Immunity**

- (a) The entry into by an Obligor of each Finance Document to which it or he is a party constitutes, and the exercise by it or him of its or his rights and performance of its or his obligations under each Finance Document will constitute, private and commercial acts performed for private and commercial purposes.
- (b) None of the Obligors will be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in (in the case of the Issuer or the Guarantor) its jurisdiction of incorporation or (in the case of the Individual Guarantor) the jurisdiction of his place of ordinary residence in relation to any Finance Document.

#### **7.18 No adverse consequences**

- (a) It is not necessary under the laws of its jurisdiction of incorporation or his place of ordinary residence (as applicable):
  - (i) in order to enable any Investor to enforce its or his rights under any Finance Document; or
  - (ii) by reason of the entry into of any Finance Document or the performance by it or him of its or his obligations under any Finance Document,

that any Investor should be licensed, qualified or otherwise entitled to carry on business in its jurisdiction of incorporation.

- (b) No Investor is or will be deemed to be resident, domiciled or carrying on business in its jurisdiction of incorporation or his place of ordinary residence (as applicable) by reason only of the entry into, performance and/or enforcement of any Finance Document.

#### **7.19 Jurisdiction/governing law**

- (a) In this Clause:

**Relevant Jurisdiction** means in relation to an Obligor:

- (i) (in the case of the Issuer or the Guarantor) its jurisdiction of incorporation;
- (ii) (in the case of the Individual Guarantor) the jurisdiction of his place of ordinary residence; and

- (iii) any jurisdiction where it conducts its business.
- (b) Each Obligor's:
  - (i) irrevocable submission under the Finance Documents to the jurisdiction of such courts specified therein;
  - (ii) agreement that each Finance Document is governed by the governing law of that Finance Document; and
  - (iii) agreement not to claim any immunity to which it or he or its or his assets may be entitled,are legal, valid and binding under the laws of its Relevant Jurisdiction.
- (c) Any judgment obtained in any jurisdiction referred to in paragraph (b)(i) above will be recognised by and be enforceable in the courts of each Obligor's Relevant Jurisdiction.

#### **7.20 No public offering of the Notes**

No action has been or will be taken in any jurisdiction by the Issuer that would permit a public offering of the Notes or possession or distribution of any information or any other offering or publicity material relating to the Notes, in any country or jurisdiction where action for that purpose is required.

#### **7.21 Pari passu ranking**

- (a) The Notes, when issued, will constitute direct, general, unsubordinated and unconditional obligations of the Issuer which will at all times rank at least pari passu with all other present and future unsecured payment obligations of the Issuer.
- (b) The payment obligations of the Guarantor under this Agreement rank at least pari passu with the claims of all their other unsecured and unsubordinated creditors.

#### **7.22 Proper records**

- (a) All corporate records, statutory books and registers of each member of the Group have been properly kept and no notice or allegation that any of them is incorrect or should be rectified has been received by any member of the Group.
- (b) All returns and particulars, resolutions and other documents which the Issuer or its Subsidiaries is required by law to file with or deliver to any relevant authority have been correctly made up, duly filed and/or delivered.

#### **7.23 Tax returns and payment of Tax**

Each Obligor and each other member of the Group has, in a timely manner, filed all Tax returns that are required to be filed, and all such tax returns are true, complete and accurate in all respects and have been prepared in compliance with the applicable laws. All Tax due and payable by each Obligor and each other member of the Group have been paid by that Obligor or that member of the Group and there is no action, suit, investigation, taxing authority proceeding or audit now in progress, pending or threatened, against or with respect to any Obligor or any other member of the Group.

## **7.24 Anti-money laundering**

The operations of each Obligor and each of its Subsidiaries are and have been conducted at all time in compliance with applicable financial record keeping and reporting requirements and money laundering statutes in all jurisdictions in which an Obligor or any of its Subsidiaries conducts business, the laws and regulations thereunder and any related or similar laws or regulations issued, administered or enforced by any governmental agency or authority (collectively, **Anti-money laundering laws**) and no action, suit or proceedings by or before any court or governmental agency or authority or any arbitrator involving any Obligor or any of its Subsidiaries with respect to Anti-money laundering laws is pending and, to the best of its or his knowledge, no such actions, suits or proceedings are threatened or contemplated.

## **7.25 Times for making representations and warranties**

- (a) Each representation and warranty set out in this Clause is made by and is deemed to be repeated by each Obligor on each date from the date of this Agreement to the date on which all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor to the Investor under each Finance Document have been unconditionally and irrevocably paid and discharged in full to the satisfaction of the Investor.
- (b) When a representation and warranty in paragraph (a) of Clause 7.7 (No Default) is repeated on a date following the date of this Agreement, the reference to a Default will be construed as a reference to an Event of Default.
- (c) When a representation and warranty is repeated, it is applied to the circumstances existing at the time of repetition.

## **8. GENERAL COVENANTS**

Each Obligor agrees to be bound by the covenants set out in this Clause relating to it and, where the covenant is expressed to apply to any other member of the Group, each Obligor must ensure that its relevant Subsidiaries perform that covenant. The covenants in this Clause 8 remain in force from the date of this Agreement until all obligations under the Finance Documents have been performed and discharged in full by the Obligors to the satisfaction of the Initial Investor.

### **8.1 Authorisations**

Each Obligor must and must ensure each other member of the Group promptly:

- (a) obtain, maintain and comply with the terms; and
- (b) supply certified copies to the Initial Investor,

of any authorisation required under any law or regulation to:

- (i) enable it or him to perform its obligations under any Finance Document to which it or he is a party;
- (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document to which it or he is a party; and
- (iii) carry on its or his business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

## **8.2 Compliance with laws**

- (a) Each Obligor and each other member of the Group must comply in all respects with all laws to which it or he is subject where failure to do so has or is reasonably likely to have a Material Adverse Effect.
- (b) Each Obligor and each other member of the Group must comply in all material respect with all applicable laws and regulations relating to the transactions contemplated under the Finance Documents including any disclosure requirements under the Listing Rules.

## **8.3 Pari passu ranking**

Each Obligor must ensure that its payment obligations under the Finance Documents at all times rank at least *pari passu* with all its other present and future unsecured payment obligations, except for obligations mandatorily preferred by law applying to companies or, in the case of the Individual Guarantor, to individuals generally.

## **8.4 Change of business**

Each Obligor must and must ensure that each other member of the Group shall not change the general nature of the business from that carried on by it or that member of the Group as at the date of this Agreement.

## **8.5 Financial Indebtedness**

- (a) The Issuer shall not and shall ensure that no member of the Group will incur or permit to be outstanding any Financial Indebtedness.
- (b) Paragraph (a) does not apply to:
  - (i) any Financial Indebtedness incurred, envisaged or contemplated under the Finance Documents;
  - (ii) any Financial Indebtedness existing as at the date of this Agreement and disclosed to the Initial Investor in writing or published on the Hong Kong Stock Exchange website;
  - (iii) Financial Indebtedness which, individually does not exceed HK\$3,000,000, or in aggregate does not exceed HK\$25,000,000 at any time (but not within certain period of time); or
  - (iv) any Financial Indebtedness in addition to those described in sub-paragraphs (i), (ii) and (iii) above incurred with the prior written consent of the Initial Investor.

## **8.6 Negative pledge**

For so long as any of the Notes remains outstanding, except as provided below, the Issuer shall not and shall ensure no other member of the Group will create or allow to exist any Security Interest on any of its assets:

- (a) any Security Interest arising by operation of law and in the ordinary course of business of the Issuer or a member of the Group;
- (b) the Security Interests existing as at the date of this Agreement which have been disclosed to the Initial Investor in writing or published on the Hong Kong Stock Exchange website;

- (c) the Security Interests created by the Issuer or a member of the Group to secure any Financial Indebtedness which is below HK\$25,000,000 in aggregate (including the amount arising under Clause 8.6(a) above) at any time (but not within certain period of time); or
- (d) any Security Interest created with the prior written consent of the Initial Investor.

## **8.7 Disposals**

- (a) The Issuer shall not and shall ensure no other member of the Group will, either in a single transaction or in a series of transactions and whether related or not, dispose of all or any part of its assets.
- (b) Paragraph (a) does not apply to:
  - (i) any disposal made in the ordinary course of trading of the disposing entity;
  - (ii) any disposal of assets in exchange for other assets comparable or superior as to type, value and quality and for a similar purpose; or
  - (iii) any disposal made with the prior written consent of the Initial Investor.

## **8.8 Mergers**

The Issuer shall not and no other member of the Group may enter into any amalgamation, demerger, merger or corporate reconstruction, unless following completion of any such amalgamation, demerger, merger or corporate reconstruction, the Issuer or that member of the Group will remain as the surviving entity and continue to be bound by its obligations under the Finance Documents.

## **8.9 Arm's length basis**

No Obligor shall (and no other member of the Group may) enter into any transaction with any person except on arm's length terms and for full market value.

## **8.10 Maintenance of Note Register**

- (a) The Issuer shall at all times maintain a register of the holders of the Notes at the Specified Office, which records:
  - (i) in the case of the register of the holders of the Notes:
    - (A) the principal amount of the Notes and interest outstanding thereon from time to time owing to each holder of the Notes;
    - (B) the date on which a person becomes a holder of the Notes;
    - (C) details of all payments made in respect of the Notes;
    - (D) the name and address of each holder of the Notes;
    - (E) all transfers of interests in the Notes;
    - (F) details of any replacement Note Instrument issued to each holder of Notes;
    - (G) details of any cancellation of a Note Instrument; and

- (H) details of the bank account(s) of each holder of Notes (or, as the case may be, a person nominated by that holder of Notes) into which payments in respect of the Notes are payable.
- (b) The Issuer shall immediately notify each Party of a change of the Specified Office.
- (c) An Investor and any person authorised by it or any of them may at all reasonable times during office hours inspect the Note Register and take copies of or extracts from it.

#### **8.11 Loans and guarantees**

- (a) The Issuer shall not and shall ensure no other member of the Group will make or allow to subsist any loans, grant any credit (save in the ordinary course of business of such member of the Group) or give or allow to remain outstanding any guarantee or indemnity (except as required under any of the Finance Documents) to or for the benefit of any person or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation of any person.
- (b) The Issuer shall not and shall procure no member of the Group will:
  - (i) sell, transfer or otherwise dispose of any of its assets on terms where it is or may be leased to or re-acquired or acquired by it or any of its related entities;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into or permit to subsist any title retention arrangement;
  - (iv) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (v) enter into any other preferential arrangement having a similar effect,  
  
in circumstances where the transaction is entered into primarily as a method of raising Financing Indebtedness or of financing the acquisition of an asset.
- (c) Paragraph (a) and (b) above does not apply to:
  - (i) any loans made, credit granted, guarantee or indemnity given by the Issuer or any other member of the Group in its ordinary course of business;
  - (ii) any loans made, credit granted, guarantee or indemnity given by the Issuer or any member of the Group pursuant to the Finance Documents;
  - (iii) any loans made, credit granted, guarantee or indemnity given by the Issuer or any member of the Group in respect of obligations or liabilities of, or any loan or credit granted to, any member of the Group; or
  - (iv) any loans made, credit granted, guarantee or indemnity given by the Issuer or any member of the Group with the prior written consent of the Initial Investor.

#### **8.12 Redemption of the Notes**

The Issuer must, on the applicable Final Maturity Date, redeem all the Notes then in issue and outstanding by paying to each Investor in accordance with the terms of the Note Instrument.

### **8.13 Subordination of shareholder loans**

- (a) The Issuer shall ensure or procure that any Financial Indebtedness (whether of principal, interest, fee or otherwise) which is or at any time may be or become owing (whether actually or contingently) by the Issuer to any of its shareholders after the date of this Agreement (a **Shareholder Loan**), and the respective rights and claims any of its shareholders may have in relation to such Shareholder Loan are, subordinated to the Issuer's obligations owed to the Investor under or in connection with the Finance Documents and to the respective rights and claims of the Investor under or in connection with the Finance Documents.
- (b) The Issuer shall ensure that no payment (whether in cash or in kind) is made to any of its shareholders on account of any Shareholder Loan until all Guaranteed Liabilities have been paid or otherwise discharged in full to the satisfaction of the Initial Investor.
- (c) The Issuer shall disclose to the Initial Investor or promptly inform the Initial Investor of the details of each Shareholder Loan.

### **8.14 Right of first refusal to act as financial adviser**

- (a) The Issuer hereby grants the Initial Investor and its Affiliates a right of first refusal to act as the financial advisor in respect of any acquisition of business or shares, amalgamation, merger, demerger or other form of corporate reconstruction, financing or refinancing (whether by way of debt, equity or otherwise) or issuance or allotments of shares by it or any member of the Group (a **ROFR Transaction**) and shall serve a notice to the Initial Investor a notice in respect of such ROFR Transaction (a **ROFR Notice**) immediately upon becoming aware of such ROFR Transaction.
- (b) The Initial Investor has fifteen (15) Business Days from the date of receipt of the ROFR Notice to confirm in writing that it will act as the financial advisor in respect of such ROFR Transaction, after which the Initial Investor shall forfeit its rights under this Clause 8.14 and the Issuer may solicit any offer from any person (other than the Initial Investor and its Affiliates) to act as the financial advisor in such ROFR Transaction.
- (c) For the avoidance of doubt, the Issuer acknowledges that nothing in this Clause constitutes any offer or commitment by the Initial Investor or any of its Affiliates, whether express or implied, to act in any capacity in respect of, any ROFR Transaction.

### **8.15 Inventory**

The Issuer shall ensure that the inventory value of the work-in-progress and finished goods are equal to or more than HK\$150,000,000 at the end of each calendar month during the period from the Issue Date to the Final Maturity Date or the relevant redemption date as provided in Schedule 4. The Issuer shall provide to the Initial Investor the financial value of the work-in-progress and finished goods at the end of each calendar month and the Initial Investor has the right to verify the inventory.

### **8.16 Discharge of mortgage**

- (a) The beneficial owner of the Issuer, Mr. Sit Yau Chiu shall, and the Issuer shall make sure that Mr. Sit Yau Chiu shall discharge the mortgage against the property located at 33/F, Sunshine Plaza, 353 Lockhart Road, Wan Chai with a Property Reference Number (PRN) of A1461265 (“the **Property**”) within three (3) months upon signing of this Agreement.
- (b) Mr. Sit Yau Chiu shall not create, or permit to create any further mortgage, debenture, charge, pledge, lien or other encumbrance upon, or permit any lien or other encumbrance to arise on or affect, any part of the Property upon signing of this Agreement.

## **9. INFORMATION COVENANTS**

### **9.1 Financial statements**

Subject to Clause 9.4 (Limitation),

- (a) The Issuer must supply to the Initial Investor:
  - (i) its audited consolidated financial statements for each of its financial years; and
  - (ii) its interim consolidated financial statements for the first half-year of each of its financial years.
- (b) All financial statements must be supplied as soon as they are available and:
  - (i) in the case of the Issuer's audited consolidated financial statements, within 120 days; and
  - (ii) in the case of the Issuer's interim consolidated financial statements, within 90 days,of the end of the relevant financial period.

### **9.2 Form of financial statements**

- (a) The Issuer must ensure that each set of financial statements supplied under this Clause fairly represents its financial condition (consolidated or otherwise) as at the date to which those financial statements were drawn up.
- (b) The Issuer must notify the Initial Investor of any change to the manner in which its financial statements are prepared.
- (c) If requested by the Initial Investor, the Issuer must supply to it:
  - (i) a full description of any change notified under paragraph (b) above; and
  - (ii) sufficient information to enable it to make a proper comparison between the financial position shown by the set of financial statements prepared on the changed basis and its most recent financial statements delivered to the Initial Investor under this Clause.

### **9.3 Information**

Subject to Clause 9.4 (Limitation), the Issuer must supply to the Initial Investor:

- (a) copies of all documents despatched by the Issuer to its creditors generally or any class of them at the same time as they are despatched;
- (b) as soon as practicable, any announcement, notice or circular in respect of any major or very substantial transactions, issuance of debt or equity securities or any other events or other document relating specifically to the Issuer posted onto any electronic website maintained by any stock exchange on which the Issuer Shares or other securities of the Issuer are listed or any electronic website required by any such stock exchange to be maintained by or on behalf of the Issuer;

- (c) as soon as practicable upon becoming aware of them, details of any litigation, arbitration or administrative proceedings against any Obligor or any other member of the Group which are current, threatened or pending;
- (d) as soon as practicable upon any update to the Note Register, a copy of the updated Note Register and certified by an authorised signatory of the Issuer as a true copy; and
- (e) promptly on request, such further information regarding its or the Group's financial condition, business and operations as the Initial Investor may request.

#### **9.4 Limitation**

The Issuer is under no obligation to deliver to the Initial Investor any information under Clause 9.1 (Financial statements) and 9.3 (Information) above to the extent it would breach any applicable laws, regulations or guidance applicable to the Issuer or any of its Subsidiaries, including those imposed by the Hong Kong Stock Exchange or any other relevant regulatory bodies in Hong Kong.

#### **9.5 Notification of Default**

- (a) The Issuer must notify the Initial Investor of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Promptly on request by the Initial Investor, the Issuer must supply to the Initial Investor a certificate, signed by a director of the Issuer on its behalf, certifying that no Default is outstanding or, if a Default is outstanding, specifying the Default and the steps, if any, being taken to remedy it.

#### **9.6 Year end**

The Issuer must not change its financial year end without the prior written consent of the Initial Investor.

#### **9.7 “Know your customer” requirements**

Each Obligor must promptly on the request of any Investor supply to that Investor any documentation or other evidence which is required by that Investor to enable it or any prospective new Investor to carry out and be satisfied with the results of all necessary “know your customer” requirements.

#### **9.8 FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party;
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA;

- (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Investor to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
  - (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

## **10. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 10 is an Event of Default.

### **10.1 Non-payment**

An Obligor does not pay on the due date any amount payable by it or him under the Finance Documents in the manner required under the Finance Documents unless:

- (a) its failure to pay is caused by administrative or technical error; and
- (b) payment is made within three (3) Business Days of its due date.

### **10.2 Breach of other obligations**

- (a) The Group has created any Security Interest on any of its assets in breach of the negative pledge covenant in Clause 8.6 hereof;
- (b) The Issuer fails to maintain the inventory value of the work-in-progress and finished goods or fails to provide the inventory value to the Initial Investor on a monthly basis pursuant to Clause 8.15 hereof;
- (c) The mortgage over the Property is not discharged by Mr. Sit Yau Chiu within three (3) months upon signing of this Agreement or any further mortgage, debenture, charge, pledge, lien or other encumbrance is created upon the Property in breach of Clause 8.16 hereof;
- (d) An Obligor does not comply with or is in default in the performance of any terms, covenants, representations, warranties or undertakings contained in any Finance Document other than those referred in paragraph (a) , paragraph (b) and paragraph (c) above.

- (e) No Event of Default under paragraph (d) above will occur if the failure to comply is capable of remedy and is remedied within ten (10) Business Days of the earlier of (i) the Initial Investor giving notice to the Issuer and (ii) the relevant Obligor becoming aware of the failure to comply.

### **10.3 Misrepresentation**

A representation or warranty made or deemed to be repeated by an Obligor in any Finance Document or in any document delivered by or on behalf of an Obligor under any Finance Document is incorrect or misleading in any material respect when made or deemed to be repeated.

### **10.4 Cross-default**

Any of the following occurs in respect of an Obligor or a member of the Group:

- (a) any of its Financial Indebtedness is not paid when due;
- (b) any of its Financial Indebtedness:
  - (i) becomes prematurely due and payable;
  - (ii) is placed on demand; or
  - (iii) is capable of being declared by or on behalf of a creditor to be prematurely due and payable or of being placed on demand,in each case, as a result of an event of default or any provision having a similar effect (howsoever described); or
- (c) any commitment for its Financial Indebtedness is cancelled or suspended as a result of an event of default or any provision having a similar effect (howsoever described).

### **10.5 Insolvency**

- (a) Any of the following occurs in respect of the Issuer or a member of the Group:
  - (i) it is, or is deemed for the purposes of any applicable law to be, unable to pay its debts as they fall due or insolvent;
  - (ii) it admits its inability to pay its debts as they fall due;
  - (iii) it suspends making payments on any of its debts or announces an intention to do so;
  - (iv) by reason of actual or anticipated financial difficulties, it begins negotiations with any creditor for the rescheduling or restructuring of any of its indebtedness;
  - (v) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities); or
  - (vi) any of its indebtedness is subject to a moratorium.
- (b) Any of the following occurs in respect of the Individual Guarantor:

- (i) he is, or is deemed for the purposes of any applicable law to be, unable to pay its debts as they fall due or bankrupt;
- (ii) he admits its inability to pay its debts as they fall due;
- (iii) he suspends making payments on any of his debts or announces an intention to do so;
- (iv) he commits an act of bankruptcy;
- (v) by reason of actual or anticipated financial difficulties, he begins negotiations with one or more of his creditors with a view to rescheduling any of his indebtedness;
- (vi) the value of his assets is less than his liabilities (taking into account contingent and prospective liabilities); or
- (vii) any of his indebtedness is subject to a moratorium.

## **10.6 Insolvency proceedings**

- (a) Except as provided below, any of the following occurs in respect of the Issuer or a member of the Group:
  - (i) any step is taken with a view to the suspension of payments, a moratorium or a composition, compromise, assignment or similar arrangement with any of its creditors;
  - (ii) in respect of the Issuer, a meeting of its shareholders, directors or other officers is convened for the purpose of considering any resolution for, to petition for or to file documents with a court or any registrar for, its winding-up, administration, judicial management, or dissolution or any such resolution is passed;
  - (iii) any person presents a petition, or files documents with a court or any registrar, in respect of the Issuer, for its winding-up, administration, judicial management, or dissolution;
  - (iv) any Security Interest is enforced over any of its or his assets;
  - (v) in respect of the Issuer, an order for its winding-up, administration, judicial management, dissolution or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise);
  - (vi) any liquidator, trustee in bankruptcy, judicial custodian, judicial manager, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets;
  - (vii) in respect of the Issuer, its shareholders, directors or other officers request the appointment of, or give notice of their intention to appoint, a liquidator, trustee in bankruptcy, judicial custodian, judicial manager, compulsory manager, receiver, administrative receiver, administrator or similar officer; or
  - (viii) any other analogous step or procedure is taken in any jurisdiction.
- (b) Any of the following occurs in respect of the Individual Guarantor:
  - (i) any step is taken with a view to the suspension of payments, a moratorium or a composition, compromise, assignment or similar arrangement with any of his creditors;

- (ii) he enters into any composition, scheme, individual voluntary arrangement or other arrangement with his creditors or has an interim order made in relation to him;
  - (iii) any Security Interest is enforced over any of his assets;
  - (iv) a certificate is issued for the summary administration of his estate;
  - (v) any person presents a petition or files documents with a court or any registrar for his bankruptcy;
  - (vi) a bankruptcy order is made against him or he is otherwise adjudicated bankrupt;
  - (vii) any liquidator, trustee in bankruptcy, judicial custodian, judicial manager, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets; or
  - (viii) any other analogous step or procedure is taken in any jurisdiction.
- (c) Paragraphs (a) and (b) above do not apply to a petition for winding-up presented by a creditor which is being contested in good faith and with due diligence and is discharged or struck out within 30 days.

#### **10.7 Creditors' process**

Any attachment, sequestration, distress, execution or analogous event affects any asset(s) of an Obligor or a member of the Group and is not discharged within 30 days.

#### **10.8 Cessation of business**

The Issuer or a member of the Group ceases, or threatens to cease, to carry on business except as a result of any disposal allowed under this Agreement.

#### **10.9 Effectiveness of Finance Documents**

- (a) It is or becomes unlawful for any Obligor to perform any of its or his obligations under the Finance Documents.
- (b) Any Finance Document is not effective in accordance with its terms or is alleged by any Obligor to be ineffective in accordance with its terms for any reason.
- (c) Any Obligor repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

#### **10.10 Investor Illegality**

It is or become unlawful in any applicable jurisdiction for an Investor to perform any of its obligations under a Finance Document or to hold any Note.

#### **10.11 Control and Ownership**

The Individual Guarantor is not or ceases to be a director and an executive director of the Issuer.

## **10.12 Listing status of the Issuer**

The shares of the Issuer cease to be listed on the Hong Kong Stock Exchange or the shares of the Issuer are suspended from trading on the Hong Kong Stock Exchange for more than five (5) consecutive Trading Days or, if the suspension arises as a result of any transaction under or related to Chapter 14 or 14A of the Listing Rules, ten (10) consecutive Trading Days.

## **10.13 Material adverse change**

Any event or series of events occurs which, in the reasonable opinion of the Investors, has or is reasonably likely to have a Material Adverse Effect.

## **10.14 Audit qualification**

The Issuer's Auditors qualify the audited annual consolidated financial statements of the Issuer.

## **11. CO-OPERATION BETWEEN INVESTORS**

Each Obligor authorises each of the Investors, for the purpose of the exercise of any rights under any Finance Document, to disclose to each other and to shareholders or other investors in any Obligor any information relating to any Obligor or any of its related entities and coming into the possession of any of them in connection with the Finance Documents.

## **12. EVIDENCE AND CALCULATIONS**

### **12.1 Certificates and determinations**

Any certification or determination by the Initial Investor of a rate, amount or ratio under the Finance Documents will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **12.2 Calculations**

Any interest or fee accruing under the Finance Documents accrues from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

## **13. INDEMNITY**

Without prejudice to the other rights or remedies of the Investor, each Obligor undertakes to each Investor, its permitted successors and assignees that if any Investor, its permitted successors or assignees or any of their Affiliates, directors, officers, employees, agents (each a **Relevant Party**) incurs any liability, damages, cost, loss or expense (including, without limitation, legal fees, costs and expenses) (a **Loss**) arising out of, in connection with the entering into of any Finance Document by an Investor, each Obligor will (to the fullest extent permitted by applicable law) pay to that Investor, its permitted successors or assignees on account of the Relevant Party (as the case may be) on demand an amount equal to such Loss. For the purposes of this Clause, an Affiliate of an Investor includes a fund, partnership or other entity managed by an Investor or by an Affiliate of an Investor. For the avoidance of doubt, the obligations of the Obligors under this Clause are joint and several.

## 14. PAYMENTS

### 14.1 Costs and Expenses

- (a) Subject to paragraph (b), the Issuer must pay to each Investor the amount of:
- (i) all costs and expenses (including legal fees) incurred by it in connection with the negotiation, preparation, printing or execution of the Finance Documents, including but not limited to any stamp or other duties or Taxes on or in connection with the issue and delivery of the Notes, or any Issuer Share incurred by any Investor;
  - (ii) any value added tax payable in connection with amounts payable or allowed under the Finance Documents and otherwise in connection with the transactions envisaged by the Finance Documents; and
  - (iii) all costs and expenses (including legal fees) incurred by it in connection with:
    - (A) any negotiation, preparation, printing and entry into of any Finance Document entered into after the date of this Agreement;
    - (B) any amendment, waiver or consent requested by or on behalf of an Obligor or specifically allowed under the Finance Documents.
- (b) The Issuer must pay any amount payable by it under this Clause:
- (i) whether or not the Notes have been issued or whether closing occurs in accordance with Clause 5 (Completion); and
  - (ii) within five (5) Business Days of demand from the relevant Investor or, if earlier, the first Issue Date after the issuance of a Note, provided that the Investor shall provide evidence of such costs and/or expenses as the Issuer may reasonably request.
- (c) Any amount payable by the Issuer under this Clause on an Issue Date shall be deducted from the Note Subscription Amount payable by the Initial Investor pursuant to Clause 2 (Subscription and issuance) on the Issue Date for and on the account of the relevant Investor.

### 14.2 Financial adviser fee

- (a) The Issuer shall designate or procure its onshore Affiliate to pay a fee to the Financial Adviser in RMB at an annual rate of HK\$1,000,000 (including tax) (“**Financial Adviser Fee**”) pursuant to the Financial Adviser Agreement.
- (b) The exchange rate used to calculate the equivalent RMB of the Financial Adviser Fee is the middle exchange rate announced by the People’s Bank of China one Business Day before the actual payment of the Financial Adviser Fee.

### 14.3 Currency indemnity

- (a) The Issuer must, as an independent obligation, indemnify each Investor against any loss or liability which that Investor incurs as a consequence of:
- (i) that Investor receiving an amount in respect of an Obligor's liability under the Finance Documents; or

(ii) that liability being converted into a claim, proof, judgment or order,

in a currency other than the currency in which the amount is expressed to be payable under the relevant Finance Document.

(b) Unless otherwise required by law, each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency other than that in which it is expressed to be payable.

## **15. TAXATION**

### **15.1 Tax**

All payments by an Obligor under the Finance Documents shall be paid without set-off or counterclaim, and free and clear of and without deduction or withholding for or on account of, any present or future taxes, levies, imports, duties, fees, assessments or other charges of whatever nature, imposed by Hong Kong or any other relevant jurisdiction or by any department, agency or other political subdivision or taxing authority thereof or therein, and all interest, penalties or similar liabilities with respect thereto (**Tax**). If any Tax is required by law to be deducted or withheld in connection with any such payment, that Obligor will (to the fullest extent permitted by applicable law) increase the amount paid so that the full amount of such payment is received by the payee as if no such deduction or withholding had been made. In addition, each Obligor agrees to indemnify and hold each Investor harmless against any Tax which it is required to pay in respect of any amount paid by an Obligor under any of the Finance Documents.

### **15.2 Stamp Duties**

Each Obligor shall pay all stamp, registration and other Taxes and duties (including any interest and penalties thereon or in connection therewith) which may be payable upon or in connection with the creation and issue of the Notes or the execution of the Finance Documents, and each Obligor shall indemnify each Investor against any claim, demand, action, liability, damages, cost, loss or expense (including, without limitation, legal fees) which it may incur as a result or arising out of or in relation to any failure to pay or delay in paying any of the same.

### **15.3 Indirect tax**

- (a) All amounts set out or expressed in a Finance Document to be payable by any Party to an Investor shall be deemed to be exclusive of any Indirect Tax. If any Indirect Tax is chargeable on any supply made by any Investor to any Party in connection with a Finance Document, that Party shall pay to the Investor (in addition to and at the same time as paying the consideration) an amount equal to the amount of the Indirect Tax.
- (b) Where a Finance Document requires any Party to reimburse an Investor for any costs or expenses, that Party shall also at the same time pay and indemnify the Investor against all Indirect Tax incurred by that Investor in respect of the costs or expenses to the extent the Investor reasonably determines that it is not entitled to credit or repayment in respect of the Indirect Tax.
- (c) For the purpose of this Clause, **Indirect Tax** means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.

## **16. CHANGES TO PARTIES**

### **16.1 Transfers by Obligors**

No Obligor may assign or transfer any of its rights (if any) and obligations under the Finance Documents.

### **16.2 Transfers by Investors**

- (a) Subject to the provisions under Condition 3 (Transfer of Note) of the Note Instrument and paragraph (b) below, any transfer by an Investor to any other person of its rights and obligations under the Finance Documents will not be effective unless such person agrees to be bound by this Agreement as an Investor by executing a duly completed Investor Accession Deed.
- (b) A person shall become a party to this Agreement as an Investor on the date of execution of an Investor Accession Deed.

### **16.3 No representation**

- (a) Unless expressly agreed to the contrary, the assignor or transferor of all or any part of a Note shall not be taken to have made any representations or warranty or assumes any responsibility to the transferee of such Note for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
  - (ii) the financial condition of any Obligor;
  - (iii) the performance and observance by any Obligor of its obligations under any of the Finance Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Documents or any other document.
- (b) The transferee of all or any part of a Note confirms to the assignor or transferor of such Note and the other Investor that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Obligors and their related entities and has not relied exclusively on any information provided to it by the assignor or transferor of such Note on any information in connection with any Finance Documents; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of the Obligors and their related entities whilst any amount if or may be outstanding under the Finance Documents.

## **17. WAIVER AND MODIFICATION**

### **17.1 Waiver**

The Initial Investor, without prejudice to any Investor's rights in respect of any subsequent breach, may waive any Event of Default or Default from time to time and at any time waive or authorise any breach or proposed breach by any Obligor of any of the covenants or provisions contained under this Agreement or in any Finance Document or determine that any Event of Default or Default shall not

be treated as such for the purposes of any Finance Document. Any such waiver, authorisation or determination may be given or made on such terms and subject to such conditions (if any) as the Initial Investor may determine, and shall be binding on any party who becomes an Investor after the date of such waiver, authorisation or determination.

## **17.2 Modification**

The Initial Investor may at any time and from time to time concur with the Issuer in making any modification to any Finance Document by written agreement with the Issuer or the relevant Obligor.

## **17.3 Waivers and remedies cumulative**

The rights of the Investor under the Finance Documents:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any right is not a waiver of that right.

## **18. DURATION**

### **18.1 Effectiveness**

This Agreement shall become effective upon execution and shall continue in full force and effect until the all Guaranteed Liabilities have been irrevocably paid and discharged in full to the satisfaction to the Initial Investor unless otherwise terminated in accordance with Clause 18.2 (Termination).

### **18.2 Termination**

Subject to Clause 18.3 (Survival), this Agreement may be terminated if:

- (a) any one or more of the conditions listed in Clause 4 (Conditions precedent) is not fulfilled or satisfied by the end of the Subscription Period; and
- (b) the Initial Investor notifies the Issuer of its intention to terminate this Agreement.

### **18.3 Survival**

- (a) Clause 1 (Interpretation) and the rights and obligations of the parties under Clause 14 (Payments), Clause 15 (Taxation), Clause 18.3 (Survival), Clause 19 (Notices), Clause 23 (Governing law and jurisdiction), Clause 25 (Confidentiality) of this agreement will survive any termination of this agreement.
- (b) This Clause is without prejudice to any rights or obligations which have accrued before termination of the Agreement.

## 19. NOTICES

### 19.1 Address

Any notice, demand or other communication to be given, made or served for any purpose under this Agreement shall be given in writing and, unless otherwise stated, may be made in person, by post or by facsimile. Any such notice, demand or other communication shall be given as follows:

(a) if to the Issuer:

Address: Units 1612-18, Level 16, Tower 1, Grand Century Place, 193 Prince Edward Road West, Mongkok, Kowloon, Hong Kong  
Telephone: 3628 5511  
Fax: 3582 4933  
E-mail: [anthealam@ernestborel.ch](mailto:anthealam@ernestborel.ch) and [thomson@ernestborel.ch](mailto:thomson@ernestborel.ch)  
Attention: Anthea Lam and Thomson Lau

(b) if to the Guarantor:

Address: Units 1612-18, Level 16, Tower 1, Grand Century Place, 193 Prince Edward Road West, Mongkok, Kowloon, Hong Kong  
Telephone: 6151 0289  
Fax: 3582 4933  
E-mail: [john@toppride.com.hk](mailto:john@toppride.com.hk)  
Attention: Sit Yau Chiu

(c) if to the Initial Investor:

Address: Room 2901, 29/F, COFCO Tower, 262 Gloucester Road, Causeway Bay, Hong Kong  
Telephone: (852)28330589  
Fax: (852)28330599  
E-mail: [huxn@cofco.com](mailto:huxn@cofco.com)  
Attention: HU Xiaonan

or to such other address, facsimile number as shall have been notified by giving five (5) Business Days' notice to the Initial Investor.

### 19.2 Obligor

- (a) All communications under the Finance Documents to or from an Obligor (other than the Issuer) shall be sent through the Issuer.
- (b) Each Obligor (other than the Issuer) irrevocably appoints the Issuer to act as its agent:
- (i) to give and receive all communications under the Finance Documents;
  - (ii) to supply all information concerning itself to any Investor; and
  - (iii) to sign all documents under or in connection with the Finance Documents.
- (c) Any communication given to the Issuer in connection with a Finance Document will be deemed to have been given also to the other Obligors.

- (d) Each Investor may assume that any communication made by the Issuer is made with the consent of each other Obligor.

### **19.3 Effective Time**

Any notice, demand or communication delivered shall be deemed to have been given or made:

- (a) if in person, at the time of delivery;
- (b) if by post, five (5) Business Days after being deposited in the post, postage prepaid, in a correctly addressed envelope; and
- (c) if by facsimile transmission, when received in legible form.

## **20. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Investor, any right or remedy under the Finance Documents will operate as a waiver, nor will any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law and may be waived only in writing and specifically.

## **21. SET-OFF**

An Investor may set off any matured obligation due from an Obligor under a Finance Document (to the extent beneficially owned by that Investor) against any matured obligation owed by that Investor to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Investor may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **22. SEVERABILITY**

If a term of any Finance Document is or becomes illegal, invalid or unenforceable in any respect under any jurisdiction, that will not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of the Finance Documents; or
- (b) the legality, validity or enforceability in any other jurisdiction of that or any other term of the Finance Documents.

## **23. GOVERNING LAW AND JURISDICTION**

### **23.1 Governing Law**

This Agreement is governed by, and shall be construed in accordance with, Hong Kong law.

### **23.2 Submission to Jurisdiction**

- (a) The Hong Kong courts have exclusive jurisdiction to settle any dispute in connection with this Agreement.

- (b) The Hong Kong courts are the most appropriate and convenient courts to settle any such dispute and each Party waives objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.
- (c) This Clause is for the benefit of the Investor only. To the extent allowed by law, an Investor may take proceedings in any other court and concurrent proceedings in any number of jurisdictions.
- (d) A reference in this Clause to a dispute in connection with this Agreement includes any dispute as to the existence, validity or termination of that Finance Document.

### **23.3 Waiver of immunity**

Each Obligor irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought by an Investor against it in relation to a Finance Document and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
- (c) waives all rights of immunity in respect of it or its assets.

### **24. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same agreement.

### **25. CONFIDENTIALITY**

- (a) Subject to paragraph (b) below, each Party will, and will cause its Affiliates to, subject to the applicable requirements of law, regulation or order issued by any administrative, government, regulatory or judicial authority, and the need to provide such information to its Affiliates, regulators, auditors and other professional advisers, maintain the confidentiality of the terms of the Finance Documents and any non-public information disclosed to it by or on behalf of any other party (the **Discloser**) regarding the Discloser or any of its Affiliates, in accordance with such procedures as it applies generally to information of this kind.
- (b) If an Obligor or any member of the Group is required by law, rule, regulation or any judicial, governmental or competent supervisory, regulatory body or authority (including without limitation, any securities exchange) to disclose any information or make any public announcement or filing with any supervisory, regulatory body or authority in respect of any Finance Document and/or any transaction contemplated thereunder, the Issuer shall, to the extent permitted by applicable law, rule or regulation, promptly:
  - (i) notify the Initial Investor in writing before such disclosure, announcement or filing; and
  - (ii) consult with the Initial Investor regarding the proposed form, timing, nature and purpose of such disclosure, announcement or filing.

The Issuer agrees, to the extent permitted by applicable law, rule or regulation, not to make any such disclosure, announcement or filing or take any other action in connection with the disclosure, announcement or filing in respect of any Finance Document and/or any transaction contemplated thereunder without the Initial Investor's prior written approval.

- (c) For the purposes of this Clause, an Affiliate of an Investor includes any fund, partnership or other entity managed by that Investor or by an Affiliate of that Investor.

This Agreement has been entered into as a deed by the Parties (or their duly authorised representatives) on the date which appears first on page 1.

## **SCHEDULE 1**

### **CONDITIONS PRECEDENT DOCUMENTS**

#### **A. Corporate documentation**

1. The constitutional documents of the Issuer, including:
  - (a) copy of its memorandum of association and articles of association;
  - (b) copy of its certificate of incorporation and certificate(s) of change of name (if any);
  - (c) copy of its business registration certificate;
  - (d) copy of its register of directors; and
  - (e) copy of its register of mortgages and charges (if any).
  - (f) an original certificate of incumbency issued by the registered office provider of the Issuer no more than one month prior to the date on which the last condition precedent under Clause 4 (Conditions precedent) is satisfied or waived and
  - (g) an original certificate of good standing issued by the Registry of Companies in the Cayman Islands no more than one month prior to the date on which the last condition precedent under Clause 4 (Conditions precedent) is satisfied or waived.
2. A copy of a resolution of the board of directors of the Issuer, in each case approving and authorising, among other things:
  - (a) the execution and performance of the relevant Finance Documents to which it is a party;
  - (b) in respect of the Issuer only:
    - (i) the issue of the Notes in accordance with the Note Instrument; and
    - (ii) the entry of the name of an Investor or its nominee into the Note Register in accordance with the terms of this Agreement and the Note Instrument.
3. A certificate of a director of the Issuer substantially in the form of Schedule 2 (Form of Director's Certificate).
4. A specimen of the signature of each person authorised on behalf of the Issuer to execute or witness the execution of any Finance Document to which it is a party or to sign or send any document or notice in connection with any Finance Document.

#### **B. Finance Documents**

1. This Agreement duly executed by the parties to it (other than the Initial Investor).
2. The Deed of Guarantee in the form set out in Schedule 5 hereof duly executed by the Individual Guarantor.
3. The Warning Notice.

**C. Other documents and evidence**

1. Certified copy of identification document of the Individual Guarantor.
2. A copy of the Original Financial Statements.
3. Evidence that the fees, costs and expenses then due from the Obligor under this Agreement have been paid or will be paid by the first Issue Date.

## SCHEDULE 2

### FORM OF DIRECTOR'S CERTIFICATE

[Date]

To: **COFCO CAPITAL (HONG KONG) CO., LIMITED** 中糧資本(香港)有限公司 as the Initial Investor

**Ernest Borel Holdings Limited** 依波路控股有限公司 (the **Issuer**) – **Subscription Agreement dated [ ] 2017 in relation to up to HK\$100,000,000 eight and a half per cent. guaranteed notes**

I refer to the Agreement. Terms defined in the Agreement have, unless defined in this certificate, the same meaning when used in this certificate.

I am a director of **Ernest Borel Holdings Limited** 依波路控股有限公司 (the **Company**). I am authorised to give this certificate and certify as follows:

1. Each document delivered by the Company to the Initial Investor under Schedule 1 (Conditions precedent documents) to the Agreement (including the documents listed below and attached to this certificate) is true, complete and in full force and effect on the date of this certificate:
  - (a) the memorandum of association and articles of association of the Company;
  - (b) the certificate of incorporation of the Company;
  - (c) its business registration certificate;
  - (d) the register of directors of the Company;
  - (e) its Register of Mortgages and Charges; and
  - (f) the Certificate of incumbency dated 15 September 2017;
  - (g) the Certificate of Good Standing dated 6 September 2017; and
  - (h) the minutes of a meeting of the board of directors of the Company held on 14 September 2017 (the **Resolutions**).
2. Neither the entry into of the Finance Documents by the Company, nor the exercise by it of its rights or performance of its obligations under the Finance Documents will breach any borrowing, guaranteeing, securing or other power or restriction binding on the Company or any member of the Group.
3. Each Resolution referred to above is in full force and effect without modification.
4. The Resolutions constitute all corporate action necessary on the part of the Company to:
  - (a) approve the terms of and transactions contemplated by the Finance Documents; and
  - (b) authorise the signing of, any communications and/or other action under or in connection with, the Finance Documents.

5. The following is a complete list of all persons who are directors of the Company as at the date of this Certificate and who were Directors on the date of the 14 September 2017 referred to above.

Mr. Sit Yau Chiu 薛由釗先生

Mr. Xiong Wei 熊威先生

Mr. Chan Kwan Pak Gilbert 陳君珀先生

Ms. Lou Liuqing 樓柳青女士

Mr. Lo Chi Chiu 盧志超先生

Mr. To Chun Kei 杜振基先生

6. Each person listed below:

- (a) occupies the position stated against his name (and occupied that position on the date each Finance Document was signed by him);
- (b) is the person duly authorised in the minutes to sign the Finance Documents (and any other document in connection with the Finance Documents) on behalf of the Company; and
- (c) has his true signature appearing opposite his name.

<b>Name</b>	<b>Position</b>	<b>Specimen Signature</b>
Sit Yau Chiu (薛由釗)	Chairman and Executive Director	

7. Unless disclosed to the Initial Investor in writing, the Company has not created any Security Interests which are subsisting at the date of this Certificate.

8. Unless we notify you to the contrary in writing, you may assume that this Certificate remains true and correct.

9. At the date of this certificate, the Company is solvent.

For

Ernest Borel Holdings Limited

.....

Director

**SCHEDULE 3**

**FORM OF NOTICE OF ISSUANCE**

To: **COFCO CAPITAL (HONG KONG) CO., LIMITED** 中粮资本(香港)有限公司

From: **Ernest Borel Holdings Limited** 依波路控股有限公司

Date: [       ]

**Ernest Borel Holdings Limited 依波路控股有限公司 (the Issuer) – Subscription Agreement dated [   ] 2017 in relation to up to HK\$100,000,000 eight and a half per cent. guaranteed notes (the Agreement)**

1. We refer to the Agreement. This is a Notice of Issuance.
2. We hereby notify you that the proposed Issue Date for the Notes in the principal amount of HK\$*[insert principal amount of Notes to be issued in integral multiple of HS\$10,000,000]*.
3. We confirm that each condition precedent under the Agreement which must be satisfied on the date of this notice is so satisfied.
4. This notice is irrevocable.

By:

---

**ERNEST BOREL HOLDINGS LIMITED** 依波路控股有限公司

**SCHEDULE 4**  
**FORM OF NOTE INSTRUMENT**

## NOTE INSTRUMENT

(Face value of Note) HK\$100,000,000

Note Instrument No. \_\_\_\_\_

**THIS NOTE INSTRUMENT** is made by way of deed poll by **ERNEST BOREL HOLDINGS LIMITED** 依波路控股有限公司, an exempted company incorporated under the laws of the Cayman Islands, whose registered office is at P.O. Box 309, Ugland House, Grand Cayman KY1-1104, Cayman Islands with company number MC-38485, on

This Note Instrument is made pursuant to a subscription agreement dated \_\_\_\_\_ 2017 originally between, among others, the Issuer and the Initial Investor in connection with, among others things, the issue by the Issuer of up to HK\$100,000,000 eight and a half per cent. guaranteed notes due 2019 (if not redeemed at the first anniversary pursuant to the Notes Conditions)(the **Subscription Agreement**), authorised by resolutions of the board of directors of the Issuer passed on 14 September 2017.

For value received, the Issuer promises to pay, subject to the terms and conditions set out in the Subscription Agreement and this Note Instrument, the Initial Investor and holder of this Note Instrument or its permitted successors, transferees or assignees (in such capacity, the **Noteholder**), the principal amount of HK\$100,000,000 (the **Note Amount**) and all sums that may be payable by the Issuer under this Note Instrument and the Subscription Agreement.

The Noteholder has the benefit of, and is subject to, the provisions contained in the Subscription Agreement and this Note Instrument. This Note Instrument is a Note under the terms of the Subscription Agreement and executed by the Issuer pursuant to the Subscription Agreement.

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In these Conditions:

**Default Redemption Amount** means an amount equal to, at any time and in respect of such portion of the Note redeemed or to be redeemed, the sum of:

- (a) the total principal amount outstanding of such portion of the Note;
- (b) all amounts of accrued but unpaid interest (including any default interest) on such portion of the Note then outstanding; and
- (c) the Default Interest which has the meaning given to it in the Condition 8(c)(ii).

**Default Redemption Notice** has the meaning given to it in Condition 8 (Events of Default).

**Interest** has the meaning given to it in Condition 5.1 (Interest Rate).

**Interest Payment Date** means five (5) Business Days before each of the following:

- (a) the date falling 3 months from the first Issue Date;
- (b) the date falling 6 months from the first Issue Date;
- (c) the date falling 9 months from the first Issue Date;
- (d) the date falling 12 months from the first Issue Date; and

if any principal amount of the Notes has not been redeemed after the first anniversary from the Issue Date pursuant to the Note Conditions,

- (e) the date falling 15 months from the first Issue Date;
- (f) the date falling 18 months from the first Issue Date;
- (g) the date falling 21 months from the first Issue Date; and
- (h) the Final Maturity Date.

**Interest Rate** has the meaning given to it in Condition 5.1 (Interest Rate).

**Interest Period** means each period determined in accordance with Condition 5.2 (Interest accrual).

**Issuer Redemption Notice** means a notice in substantially the form of Schedule 5 (Form of Issuer Redemption Notice).

**Note Transfer** means a transfer form in substantially the form of Schedule 2 (Form of Note Transfer).

**Note Transfer Notice** means a notice in substantially the form of Schedule 3 (Form of Note Transfer Notice).

**Noteholder Redemption Notice** means a notice in substantially the form of Schedule 4 (Form of Noteholder Redemption Notice).

## **1.2 Construction**

- (a) Capitalised terms defined in the Subscription Agreement have the same meaning when used in this Note Instrument unless expressly defined herein.
- (b) The provisions of clause 1.2 (Construction) of the Subscription Agreement apply to this Note Instrument as though they were set out in full in this Note Instrument except that references to the Subscription Agreement are to be construed as references to this Note Instrument.

## **2. FORM, DENOMINATION AND TITLE**

### **2.1 Form and Denomination**

The Notes are issued in registered form. The Noteholder holding a Note Instrument will be recorded in the Note Register as a Noteholder.

## **2.2 Title**

Title to the Note passes only by registration in the Note Register. The registered holder of the Note will (except as otherwise required by law) be treated as its legal owner for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any interest or any writing on, or the theft or loss of, this Note Instrument) and no person will be liable for so treating the holder.

## **2.3 Note Register**

The Note Register shall be kept by the Issuer at its Specified Office in accordance with the provisions of the Subscription Agreement.

## **2.4 Replacement of Note Instrument**

If this Note Instrument is lost, stolen, mutilated, defaced or destroyed, it may be replaced at the Specified Office of the Issuer upon request of the Noteholder. Any mutilated or defaced Note Instrument must be surrendered before a replacement will be issued.

## **3. TRANSFER OF NOTE**

### **3.1 Transfer – general**

Subject to the following provisions of this Condition 3 (Transfer of Note), the Noteholder may transfer to any other person (the **New Noteholder**) all or part of the Note represented by this Note Instrument by:

- (a) giving the Issuer the original of a Note Transfer Notice; and
- (b) depositing the original of each of the following at the Specified Office of the Issuer:
  - (i) this Note Instrument;
  - (ii) a Note Transfer duly completed and signed by the transferring Noteholder and the New Noteholder; and
  - (iii) an Investor Accession Deed duly completed and signed by the New Noteholder.

### **3.2 No prohibition on participation**

Nothing in this Condition shall in any way prohibit the Noteholder from entering into, or impose any condition on the Noteholder in respect of, any kind of participation or hedge agreement in relation to any Finance Document or any other transaction under which payments are to be made by reference to any Finance Document or any Obligor.

### **3.3 Issuance of new Note**

- (a) Upon the receipt of a Note Transfer Notice from the Noteholder in respect of any transfer of any portion of the Note and each of the documents in respect of such transfer of such portion of the Note referred to in Condition 3.1 (Transfer – general), the Issuer shall promptly but in any event within three (3) Business Days from the date of the Note Transfer Notice:
  - (i) cancel this Note Instrument;

- (ii) re-execute and re-issue a Note Instrument in the same form as this Note Instrument and in principal amount equal to the amount represented by such portion of the Notes transferred but in favour of the New Noteholder (the **New Note Instrument**);
  - (iii) deliver to the New Noteholder, at the address specified in the Note Transfer Notice and the Note Transfer, the New Note Instrument;
  - (iv) update the Note Register with details of the transfer of such portion of the Note under this Condition 3 (Transfer of Note) in accordance with the provisions set out in the Subscription Agreement; and
  - (v) deliver to the New Noteholder a copy of the updated Note Register certified as a true copy by a director of the Issuer.
- (b) Notwithstanding sub-paragraph (a)(iii) above, the transferring Noteholder and the New Noteholder may specify in the Note Transfer Notice, that upon the issuance of the New Note Instrument, that it wishes to collect such documents at the Specified Office of the Issuer.
- (c) If the New Noteholder has not specified in the Note Transfer Notice that it will collect the relevant New Note Instrument at the Issuer's Specified Office, the Issuer shall deliver the New Note Instrument in accordance with sub-paragraph (a)(iii) above and such delivery shall be deemed to have been made upon being deposited in the post, postage prepaid, in a correctly addressed envelope, and the official receipt of the relevant post office showing the payment of the relevant postage and the correct address in respect of such registered post shall, in the absence of manifest error, be conclusive evidence thereof.

### **3.4 Formalities free of charge and without duty**

Registration of all transfers of the Note will be effected at the cost of Issuer. The Issuer shall pay, and forthwith on demand indemnify the Noteholder against any liability the Noteholder may incur in respect of any stamp, registration or similar Tax which is or becomes payable in connection with the registration of any transfer of the Note in the Note Register.

### **3.5 Transfer requirements**

All transfers of the Note and entries on the Note Register will be made subject to the detailed regulations as set out in the Subscription Agreement.

## **4. STATUS AND GUARANTEE**

### **4.1 Status**

Subject as provided in this Condition 4, the Note represented by this Note Instrument constitutes direct, general, unsubordinated and unconditional obligations of the Issuer which will at all times rank at least *pari passu* with all other present and future unsecured payment obligations of the Issuer, except for obligations mandatorily preferred by law applying to companies generally.

### **4.2 Guarantee**

The Guarantors have severally, unconditionally and irrevocably:

- (a) guaranteed the punctual performance by the Issuer of all its obligations under the Notes and each other Finance Document;
- (b) undertaken with each holder of a Note that, whenever the Issuer does not pay any amount when due under or in connection with the Notes or any other Finance Documents, they will immediately on demand pay that amount as if they were the principal obligors in respect of that amount; and
- (c) agreed with each holder of a Note that they will be liable as principal debtors and primary obligors to indemnify that holder of the Notes (to the fullest extent permitted by applicable law) in respect of any loss it incurs as a result of the Issuer failing to pay any amount expressed to be payable by it under the Notes or any other Finance Documents on the date when it ought to have been paid, in each case in accordance with the terms of the Subscription Agreement.

## **5. INTEREST**

### **5.1 Interest Rate**

The Note represented by this Note Instrument bears interest (the **Interest**) from (and including) the Issue Date to (but excluding) the Final Maturity Date or the relevant redemption date (as the case may be) at the rate of eight and a half per cent. (8.5%) per annum (the **Interest Rate**) on the outstanding aggregate principal amount of the Note represented by this Note Instrument.

### **5.2 Interest accrual**

- (a) Interest under the Note accrues from day to day and is calculated on the basis of a 365-day year.
- (b) Each Note has successive Interest Periods.
- (c) The first Interest Period for the Note shall start on (and include) the Issue Date for the Note and shall end on the immediate following Interest Payment Date.
- (d) Subject to paragraph (c) above, each subsequent Interest Period for a Note will be three (3) months.
- (e) An Interest Period for the Note shall not extend beyond its Final Maturity Date.
- (f) Principal amount of the Note which has been redeemed before the Final Maturity Date shall not be subject to Interest.

### **5.3 Interest payments**

Interest accrued under the Notes shall be payable in arrears on each Interest Payment Date.

## **6. PAYMENTS**

### **6.1 Payments in respect of the Note**

- (a) Unless a Finance Document specifies that payments under it are to be made in a different manner, the currency of each amount payable under the Finance Documents is determined under this Condition 6.1 (Payments in respect of the Note).
- (b) All amounts payable under the Finance Documents is payable in Hong Kong dollars (including amounts payable in respect of Taxes, fees, costs and expenses).

- (c) All amounts payable to the Noteholder will be paid by the Issuer by transferring such amounts to the account of the Noteholder as notified in writing to the Issuer.
- (d) Immediately upon the making of any payment in accordance with this Condition 6, the Issuer shall update the record in the Note Register in accordance with Clause 8.10 (Maintenance of Note Register) of the Subscription Agreement.

## **6.2 Payments subject to applicable laws**

Payments in respect of principal and interest to the Noteholder are subject in all cases to any fiscal or other laws and regulations applicable in the place of payment, but without prejudice to the provisions of Condition 9 (Taxation).

## **6.3 No commissions**

No commissions or expenses shall be charged to the Noteholder in respect of any payments made in accordance with this Condition 6.

## **6.4 Payment on Business Days**

- (a) Where payment is to be made by transfer to a registered account, payment shall be made as per the payment instructions (for value on the due date or, if that is not a Business Day, for value on the first following day which is a Business Day, unless such payment would then become due in the following calendar month, in which case the payment shall be due on the immediately preceding Business Day) on the due date for payment (as modified in accordance with this Condition 6.4) as follows:

Beneficiary Bank : China Minsheng Banking Corp. Ltd. Hong Kong Branch  
SWIFT BIC: MSBCHKHH  
Beneficiary : COFCO Capital (Hong Kong) Co., Ltd.  
Beneficiary A/C ( HKD ) : 800040590201

- (b) The Noteholder will not be entitled to any interest or other payment for any delay after the due date in receiving the amount due if the due date is not a Business Day.

## **6.5 Partial Payments**

Without prejudice to the exercise of any other right or remedy by the Noteholder under any of the Finance Documents, if the amount of principal or interest which is due on a Note issued to the Noteholder is not paid in full to the Noteholder, the Noteholder shall notify the Issuer promptly who shall annotate the Note Register with a record of the amount of principal or interest that is not paid and within three (3) Business Days from the date of such notice from the Noteholder, the Issuer shall deliver to each Noteholder a copy of the Note Register, certified by the Issuer, updated with such annotation.

## **7. REDEMPTION**

### **7.1 Redemption on Final Maturity Date**

The Issuer shall redeem the Notes at the then outstanding principal amount of the Notes, plus any accrued and outstanding interests up to the Final Maturity Date on the Final Maturity Date and any other outstanding amount due but unpaid under the Notes.

## 7.2 Voluntary Redemption

Unless previously redeemed pursuant to Condition 8 (Events of Default), at any time on or after the first (1st) anniversary of the Issue Date, (i) upon the Noteholder giving thirty days' notice substantially in the form set out in Schedule 4 (Form of Noteholder Redemption Notice) ("**Noteholder Redemption Notice**"), the Noteholder shall be entitled to require the Issuer to redeem all or part of the entire outstanding principal amount of the Notes plus accrued and unpaid interests and fees on such date as specified in the Noteholder Redemption Notice; and (ii) by giving thirty days' notice substantially in the form set out in Schedule 5 (Form of Issuer Redemption Notice) ("**Issuer Redemption Notice**"), the Issuer may redeem all or part of the entire outstanding principal amount of the Notes by repaying the then relevant outstanding principal amount of the Notes plus any accrued and outstanding interests and fees on such date as specified in the Issuer Redemption Notice.

## 7.3 Surrender

Immediately after the applicable redemption amount has been unconditionally and irrevocably received by the Noteholder in full, the Noteholder shall surrender the relevant Note Instrument to the Issuer. In the event that less than all of the outstanding principal amount represented by the Note Instrument is redeemed, the Issuer shall promptly (but no later than the date on which the Noteholder has actually received such amount) issue to the Noteholder a new Note Instrument evidencing any remaining principal (where such new Note Instrument shall either: i) be mailed by uninsured mail at the risk of the holder of the Notes to the address of such holder appearing on the Register of Noteholders or ii) be made available for collection by the holder entitled to the Note at the Specified Office), and update the Register of Noteholders accordingly and deliver to the Noteholder a certified true copy of the updated Register of Noteholders.

## 7.4 Expenses and costs

Any reasonable expenses and costs (including attorney's fees, commissions, and other expenses) and any applicable taxes directly or indirectly arising out of, relating to, connected with or incidental to the redemption of this Notes contemplated under these Conditions shall be borne by the Issuer.

## 7.5 Cancellations

All Notes which are redeemed will forthwith be cancelled, and accordingly may not be reissued or resold.

## 8. EVENTS OF DEFAULT

- (a) Each of the events or circumstances set out in Clause 10 (Events of Default) of the Subscription Agreement is an Event of Default.
- (b) If an Event of Default has occurred, the Noteholder may (but shall not be obliged to), by giving notice substantially in the form set out in Schedule 1 (Form of Default Redemption Notice) (the "**Default Redemption Notice**") to the Issuer, and, upon the giving of such notice, the Issuer shall within five (5) Business Days after the delivery by the Noteholder of such notice, redeem all or such portion of the Notes (as determined by the Noteholder in its sole discretion) in the Default Redemption Amount in respect of all or such portion of the Notes.
- (c) Notwithstanding the foregoing, if an Event of Default has occurred, each Noteholder may either:
  - (i) by notice to the Issuer pursuant to paragraph (b) above so that the Issuer will redeem all or a portion of the Note held by such Noteholder pursuant to paragraph (b) above; or

- (ii) by notice to the Issuer requiring the Issuer to, and upon the giving of such notice, the Issuer shall, in addition to and without prejudice to any of its other payment obligations under these Conditions, pay an additional default interest to such Noteholder (the “**Default Interest**”) in the amount to be determined as follows:
  - (A) in the case of an Event of Default as referred to in Clause 10.1 (Non-payment) of the Subscription Agreement, the Default Interest shall accrue on the aggregate unpaid amount owed by the Issuer to such Noteholder from the relevant due date of such unpaid amount until the date on which such unpaid amount is settled in full by the Issuer at a rate of 0.1% per day (simple interest) and such Default Interest shall be payable by the Issuer monthly in cash.
  - (B) in the case of any other Event of Default, the Default Interest shall accrue on the total outstanding principal amount of the Note from the date on which such Event of Default occurs until the date on which such Event of Default has been fully remedied in the opinion of the Noteholder at a rate of 0.1% per day (simple interest), and such Default Interest shall be payable by the Issuer monthly in cash.

## **9. TAXATION**

### **9.1 Tax**

All payments by the Issuer under this Note Instrument shall be paid without set-off or counterclaim, and free and clear of and without deduction or withholding for or on account of, any present or future taxes, levies, imports, duties, fees, assessments or other charges of whatever nature, imposed by Hong Kong or any other relevant jurisdiction or by any department, agency or other political subdivision or taxing authority thereof or therein, and all interest, penalties or similar liabilities with respect thereto. If any Tax is required by law to be deducted or withheld in connection with any such payment, the Issuer will increase the amount paid so that the full amount of such payment is received by the payee as if no such deduction or withholding had been made. In addition, the Issuer agrees to indemnify and hold the Noteholder harmless against any Tax which it is required to pay in respect of any amount paid by the Issuer under this Note Instrument.

### **9.2 Stamp Duties**

The Issuer shall pay all stamp, registration and other Taxes and duties (including any interest thereon or in connection therewith) which may be payable upon or in connection with the creation and issue of the Notes and the execution of this Note Instrument, and the Issuer shall indemnify the Noteholder against any claim, demand, action, liability, damages, cost, loss or expense (including, without limitation, legal fees) which it may incur as a result or arising out of or in relation to any failure to pay or delay in paying any of the same.

## **10. SET-OFF**

The Noteholder may set off any matured obligation owed to it by the Issuer under the Finance Documents (to the extent beneficially owned by that Investor) against any obligation (whether or not matured) owed by it to the Issuer, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Noteholder may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **11. GOVERNING LAW**

This Note Instrument is governed by, and shall be construed in accordance with, Hong Kong law.

## **12. SUBMISSION TO JURISDICTION**

### **12.1 Jurisdiction**

- (a) The Hong Kong courts have exclusive jurisdiction to settle any dispute in connection with this Note Instrument.
- (b) The Hong Kong courts are the most appropriate and convenient courts to settle any such dispute and each party hereto waives objection to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Note Instrument.
- (c) This Condition is for the benefit of the Investor only. To the extent allowed by law, an Investor may take proceedings in any other court and concurrent proceedings in any number of jurisdictions.
- (d) References in this Condition 12 to a dispute in connection with this Note Instrument include any dispute as to the existence, validity or termination of this Note Instrument.

### **12.2 Waiver of immunity**

The Issuer irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought by an Investor against it in relation to a Finance Document and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
- (c) waives all rights of immunity in respect of it or its assets.

**SCHEDULE 1**

**FORM OF DEFAULT REDEMPTION NOTICE**

To: **ERNEST BOREL HOLDINGS LIMITED** 依波路控股有限公司  
P.O. Box 309, Ugland House, Grand Cayman KY1-1104

Date: [ ]

**ERNEST BOREL HOLDINGS LIMITED** 依波路控股有限公司 (the Issuer) – **Subscription Agreement dated [ ] (the Subscription Agreement) relating to, among other things, the issue of up to HK\$100,000,000 eight and a half per cent. guaranteed notes (the Notes)**

1. We refer to the Subscription Agreement and the Notes. This is a Finance Document.
2. Capitalised terms defined in the Subscription Agreement and the Note Instrument representing the Notes have the same meaning when used in this notice unless expressly defined in this notice.
3. We hereby declare that an Event of Default has occurred and upon the delivery of this notice, you must immediately (and in any event no later than five Business Days after the delivery of this notice) redeem the Notes in the Default Redemption Amount as follows to *[insert account details]*:

<b>Redeemed Principal Amount</b>	<b>Default Redemption Amount</b>
[●]	[●]

4. This notice is governed by, and shall be construed in accordance with, Hong Kong law.

Yours faithfully

.....  
Authorised signatory

**[NOTEHOLDER]**

**SCHEDULE 2  
FORM OF NOTE TRANSFER**

For Note Instrument No. [ ]

**ERNEST BOREL HOLDINGS LIMITED** 依波路控股有限公司  
(Incorporated under the laws of Cayman Islands)

UP TO HK\$100,000,000 EIGHT AND A HALF PER CENT. GUARANTEED NOTE

FOR VALUE RECEIVED [*Please print or type name and address of transferor*] (the **Transferor**) hereby sells, assigns and transfers to

.....  
.....  
.....

(Please print or type name and address of transferee) (the **Transferee**)

HK\$[*amount*] principal amount of the Note represented by the Note Instrument No. [●] dated [●] specified above (the **Note Instrument**) and irrevocably requests and authorises Ernest Borel Holdings Limited 依波路控股有限公司 in its capacity as the Issuer, in relation to the Note Instrument to effect the relevant transfer by means of appropriate entries in the Note Register kept by it (and issuance of any new New Note Instrument in respect thereof in accordance with the Note Instrument [and deliver to [*the address above/insert address*]]).

**TRANSFEROR**

Signature:

Date:

**TRANSFEEE**

Signature:

Date:

**N.B.:**

This Note Transfer must be accompanied by such documents, evidence and information as may be required pursuant to the Note Instrument and the Subscription Agreement (as defined in the Note Instrument).

**SCHEDULE 3**  
**FORM OF NOTE TRANSFER NOTICE**

To: [NOTEHOLDER]

[insert address]

To: [NOTEHOLDER]

[insert address]

Date: [ ]

**ERNEST BOREL HOLDINGS LIMITED 依波路控股有限公司 (the Issuer) – Subscription Agreement dated [ ] (the Subscription Agreement) relating to, among other things, the issue of up to HK\$100,000,000 eight and a half per cent. guaranteed notes (the Notes)**

1. We refer to the Note Instrument. This is a Note Transfer Notice.
2. Capitalised terms defined in the Note Instrument have the same meaning when used in this notice unless expressly defined in this notice.
3. We confirm that as at the date of this notice, we are the registered holder of the Note represented by the Note Instrument the details of which are as follows:
  - (a) Principal amount: HK\$[ ]
  - (b) Note Instrument number: [ ]
  - (c) Registered address: [ ]
  - (d) Registered name: [ ]
4. Pursuant to Condition 3.1 (Transfer – general) of the Note Instrument, we hereby notify you that we will transfer all of the Note represented by the Note Instrument number [●] to the person named below (the **Transferee**):
  - (a) Name of transferee: [ ]
  - (b) Registered address of transferee: [ ].

If you would like to redeem the Note referred to above, please inform us in writing of such intention within five Business Days from the date of this notice.
5. The principal amount of the Note represented by the Note Instrument to be transferred is HK\$[ ].
6. If you do not object to the transfer or you fail to inform us your intention to redeem the Note referred to above within five Business Days from the date of this notice pursuant to paragraph 4 above:

(a) we will send to you the Note Transfer in respect of the transfer of the Note referred to above and a Noteholder Accession Deed duly signed and completed by the Transferee; and

(b) upon your receipt of the documents referred to in paragraph 6(a) above, please issue a New Note Instrument in favour of the Transferee with details of the transfer referred to in this notice.

7. [The Transferee will collect the New Note Instrument at the Specified Office of the Issuer]<sup>1</sup>

---

For and on behalf of [NOTEHOLDER]

---

[For and on behalf of [TRANSFEREE]]

---

<sup>1</sup> Delete as appropriate

**SCHEDULE 4**

**FORM OF NOTEHOLDER REDEMPTION NOTICE**

[date]

To: **ERNEST BOREL HOLDINGS LIMITED** 依波路控股有限公司

**Noteholder Redemption Notice in relation to [HK\$100,000,000] 8.5 per cent. guaranteed secured notes due 2019 (if not redeemed at the first anniversary pursuant to the Notes Conditions) (the "Notes") issued on [ ] 2017 and the terms and conditions endorsed on the Notes (the "Note Conditions")**

Dear Sirs:

We refer to the Notes, and capitalized terms used herein and not otherwise defined shall have their respective meanings as set forth in the Note Conditions.

We, the Noteholder, hereby deliver this Noteholder Redemption Notice pursuant to Condition 7.2 of the Note Conditions and hereby notify you, as the Issuer of the Notes, of the exercise of the redemption right as set out in Condition 7.2 and you shall redeem the following amount of the Notes which has or will become immediately due and payable on the Noteholder Redemption Date (as set out below).

Noteholder Redemption Date: [●]

Outstanding principal amount of the Notes to be redeemed: [HK\$][●]

Accrued interests unpaid: [HK\$][●]

You shall immediately transfer the above mentioned outstanding principal amount of the Notes in accordance with the provisions of the Note Conditions.

By: \_\_\_\_\_  
Name:  
Title

**SCHEDULE 5**

**FORM OF ISSUER REDEMPTION NOTICE**

[date]

To: [NOTEHOLDER]

**Issuer Redemption Notice in relation to [HK\$100,000,000] 8.5 per cent. guaranteed secured notes due 2019 (if not redeemed at the first anniversary pursuant to the Note Conditions) (the "Notes") issued on [ ] 2017 and the terms and conditions endorsed on the Notes (the "Note Conditions")**

Dear Sirs:

We refer to the Notes, and capitalized terms used herein and not otherwise defined shall have their respective meanings as set forth in the Note Conditions.

We, the Issuer, hereby deliver this Issuer Redemption Notice pursuant to Condition 7.2 of the Note Conditions and hereby notify you, of the exercise of the redemption right as set out in Condition 7.2 and we shall redeem the following amount of the Notes which has or will become immediately due and payable (as set out below).

Noteholder Redemption Date: [●]

Outstanding principal amount of the Notes to be redeemed: [HK\$][●]

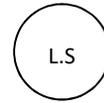
Accrued interests unpaid: [HK\$][●]

We shall transfer the above mentioned outstanding principal amount of the Notes in accordance with the provisions of the Note Conditions and upon the completion of which the Notes shall be redeemed pursuant to the Notes Conditions.

By: \_\_\_\_\_  
Name:  
Title

This Note Instrument has been executed as a deed poll on the date stated at the beginning of this Note Instrument.

**SIGNED, SEALED and DELIVERED** )  
as a deed by SIT YAU CHIU (薛由釗) )  
 )  
acting for and on behalf of )  
ERNEST BOREL HOLDINGS LIMITED 依波路控股 )  
有限公司 )  
 )



in the presence of:

Witness signature:  
Witness name:  
Witness address:

**SCHEDULE 5**  
**DEED OF GUARANTEE**

**DATED** \_\_\_\_\_

**Deed of Guarantee**

by

**SIT YAU CHIU (薛由釗)**

as Guarantor

in favour of

**COFCO CAPITAL (HONG KONG) CO., LIMITED 中粮资本(香港)有限公司**

as Secured Party

**THIS DEED OF GUARANTEE (this “Guarantee”)** is made on \_\_\_\_\_ 2017

**BETWEEN**

- (1) Mr. Sit Yau Chiu (薛由釗), a Hong Kong citizen with identification card number H384770(7) as whose address is at 33/F, Sunshine Plaza, 353 Lockhart Road, Wan Chai, Hong Kong (the “**Guarantor**”); and
- (2) COFCO CAPITAL (HONG KONG) CO., LIMITED 中粮资本(香港)有限公司, a company incorporated in Hong Kong whose registered office is at Room 2901, 29/F, COFCO Tower, 262 Gloucester Road, Causeway Bay, Hong Kong (the “**Secured Party**”).

(The Guarantor and the Secured Party shall be referred to individually as a “**Party**”, or collectively as the “**Parties**”.)

**WHEREAS:**

- (A) Ernest Borel Holdings Limited (the “**Borrower**”) and the Secured Party have entered into a subscription agreement (the “**Subscription Agreement**”) pursuant to which the Borrower has agreed to issue, and the Secured Party has agreed to subscribe for up to HK\$100,000,000 eight and a half per cent. guaranteed notes.
- (B) As security for the obligations of the Obligors (as defined below) under the Subscription Agreement, and any other Finance Documents, the Guarantor has agreed to enter into this Guarantee in favour of the Secured Party.
- (C) It is a condition precedent to the Secured Party completing the transactions contemplated under the Subscription Agreement that the Guarantor shall execute this Guarantee in favour of the Secured Party and the same is executed by the Guarantor for good and valuable consideration (the sufficiency of which the Guarantor hereby agrees and acknowledges).

**IT IS AGREED as follows:**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 Except as otherwise provided in this Guarantee, terms and expressions defined in the Subscription Agreement shall have the same meanings when used in this Guarantee.
- 1.2 The “Guarantor” or the “Secured Party” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees.
- 1.3 The headings and subtitles used in this Guarantee are used for convenience only and are not to be considered in construing or interpreting this Guarantee.
- 1.4 In this Guarantee, unless the context requires otherwise:
  - 1.4.1 references to “Clauses” are references to Clause of this Guarantee; references to sub-clauses are, unless otherwise stated, references to sub-clauses of the Clause;
  - 1.4.2 references to the singular shall include the plural and vice versa and references to the masculine shall include the feminine or neuter and vice versa;
  - 1.4.3 the term “or” is not exclusive;

- 1.4.4 the terms “herein”, “hereof”, and other similar words refer to this Guarantee as a whole and not to any particular section, subsection, paragraph, clause, or other subdivision;
  - 1.4.5 the term “including” shall be construed to mean “including without limitation”;
  - 1.4.6 the terms “shall”, “will”, and “agrees” are mandatory, and the term “may” is permissive;
  - 1.4.7 the term “day” means “calendar day”;
  - 1.4.8 a “person” means any individual, corporation, partnership, limited partnership, proprietorship, association, limited liability company, firm, trust, estate or other enterprise or entity and to that person’s legal personal representatives, successors and assigns;
  - 1.4.9 references to “assets” include present and future properties, rights and assets of every description;
  - 1.4.10 references to “indebtedness” include any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - 1.4.11 references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and shall include references to any provisions of which they are re-enactments (whether with or without modification);
  - 1.4.12 references to any document are to be construed as references to such document as amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time;
  - 1.4.13 a reference to a legal term for a legal document, court, judicial process, action, remedy, legal status, official or any other legal concept, in respect of a jurisdiction other than Hong Kong, shall be deemed to be a reference to whatever most closely equates to the Hong Kong legal term in that jurisdiction; and
  - 1.4.14 the Recitals to this Guarantee form part of it and shall have the same force and effect as if expressly set out in the body of this Guarantee.
- 1.5 If the Secured Party considers that an amount paid by any Obligor to the Secured Party under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of such Obligor, then that amount shall not be considered to have been irrevocably paid for the purposes of this Guarantee.
  - 1.6 The Parties intend that this document shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand.
  - 1.7 Notwithstanding any terms of this Guarantee, the consent of any third party is not required for any variation (including any release or compromise of any liability) or termination of this Guarantee.
- 2. GUARANTEE**
- 2.1 The Guarantor hereby irrevocably, absolutely and unconditionally:

- 2.1.1 guarantees to the Secured Party punctual performance by the Borrower of all its obligations under the Finance Documents;
- 2.1.2 undertakes with the Secured Party that, whenever the Borrower does not pay any amount when due under or in connection with the Finance Documents, he must, immediately on demand by the Secured Party, pay that amount (in the currency in which it is due) as if he was the principal debtor in respect of that amount;
- 2.1.3 agrees with the Secured Party that if, for any reason, any amount claimed by the Secured Party under this Clause is not recoverable from the Guarantor on the basis of a guarantee, then he will be liable as principal debtor and primary obligor to indemnify (to the fullest extent permitted by applicable law) the Secured Party in respect of any loss it incurs as a result of the Borrower failing to pay any amount expressed to be payable by it under any Finance Document on the date when it ought to have been paid;
- 2.1.4 undertakes that he will ensure that payment shall be made to the Secured Party earlier than any other creditors of the Borrower in the event that the indebtedness under the Subscription Agreement and any other indebtedness of the Borrower become due and payable at the same time and undertakes to make payment in such manner as if he has the principal obligation in respect to that amount;
- 2.1.5 undertakes that he will discharge the mortgage against the property located at 33/F, Sunshine Plaza, 353 Lockhart Road, Wan Chai with a Property Reference Number (PRN) of A1461265 (“the **“Property”**”) within three (3) months upon signing of the Subscription Agreement; and
- 2.1.6 undertakes that he will not create, or permit to create any further mortgage, debenture, charge, pledge, lien or other encumbrance upon, or permit any lien or other encumbrance to arise on or affect, any part of the Property upon signing of the Subscription Agreement.

### **3. CONTINUING GUARANTEE**

The guarantee and indemnity created under Clause 2 is a continuing guarantee and indemnity and will extend to the ultimate balance of all sums payable by each Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

### **4. REINSTATEMENT**

- 4.1 If any discharge (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) or arrangement is made in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation, administration or otherwise without limitation, the liability of the Guarantor under this Clause will continue or be reinstated as if the discharge or arrangement had not occurred.
- 4.2 The Secured Party may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

### **5. WAIVER OF DEFENCES**

- 5.1 The obligations of the Guarantor under this Clause will not be affected by any act, omission or thing (whether or not known to the Guarantor or Secured Party) which, but for this provision, would reduce, release or prejudice any of his obligations under this Clause. This includes:

- 5.1.1 any time or waiver granted to, or composition with, any person;
- 5.1.2 any release of any person under the terms of any composition or arrangement with any creditor of any Obligor or any other member of the Group;
- 5.1.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- 5.1.4 any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- 5.1.5 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;
- 5.1.6 any amendment of a Finance Document or any other document or security;
- 5.1.7 any unenforceability, illegality, invalidity or non-provability of any obligation of any person under any Finance Document or any other document or security; or
- 5.1.8 any insolvency or similar proceedings.

**6. IMMEDIATE RECOURSE**

- 6.1 The Guarantor waives any right he may have of first requiring the Secured Party to proceed against or enforce any other right or security or claim payment from any person before claiming from him under this Clause.
- 6.2 This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

**7. APPROPRIATIONS**

- 7.1 Until all amounts which may be or become payable by each Obligor under or in connection with the Finance Documents have been irrevocably paid in full to the satisfaction of the Secured Party, the Secured Party (or any trustee or agent on their behalf) may without affecting the liability of the Guarantor under this Clause:
  - 7.1.1 refrain from applying or enforcing any other moneys, security or rights held or received by the Secured Party (or any trustee or agent on their behalf) against those amounts; or
  - 7.1.2 apply and enforce them in such manner and order as it sees fit (whether against those amounts or otherwise); and
  - 7.1.3 hold in a suspense account any moneys received from the Guarantor or on account of the Guarantor' liability under this Clause.

**8. NON-COMPETITION**

- 8.1 Unless:
  - 8.1.1 all amounts which may be or become payable by each Obligor under or in connection with the Finance Documents have been irrevocably paid in full to the satisfaction of the Secured Party; or

8.1.2 the Secured Party otherwise directs,

the Guarantor shall not, after a claim has been made or by virtue of any payment or performance by it under this Clause:

- (a) be subrogated to any rights, security or moneys held, received or receivable by the Secured Party (or any trustee or agent on their behalf);
- (b) be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of their liability under this Clause;
- (c) claim, rank, prove or vote as a creditor of any Obligor or its estate in competition with the Secured Party (or any trustee or agent on their behalf); or
- (d) receive, claim or have the benefit of any payment, distribution or security from or on account of any Obligor, or exercise any right of set-off as against any Obligor.

The Guarantor must hold in trust for and immediately pay or transfer to the Secured Party any payment or distribution or benefit of security received by it contrary to this Clause or in accordance with any directions given by the Secured Party under this Clause.

## **9. REPRESENTATIONS AND WARRANTIES**

9.1 The Guarantor hereby repeats the representations and warranties set out in Clause 7 of the Subscription Agreement, excluding Clause 7.21.

9.2 The Guarantor further represents and warrants to the Secured Party that:

9.2.1 he is a resident of Hong Kong and holds Hong Kong identity card;

9.2.2 he has full power and legal capacity to enter into, execute and deliver this Guarantee and to undertake, perform, discharge, observe and comply with all his obligations and liabilities hereunder and the transactions contemplated hereby;

9.2.3 he is of full age and sound mind, fully understands the contents of this Guarantee and has obtained independent legal advice with respect to this Guarantee and the transactions contemplated hereby prior to his execution and delivery of this Guarantee;

9.2.4 no order has been made or receiver appointed in respect of the Guarantor under the Mental Health Ordinance (Cap. 136 of the Laws of Hong Kong) nor has any step or procedure been taken in any other jurisdiction which would restrict the Guarantor's ability or legal capacity to enter into this Deed to which he is a party or would require the approval of a third party or an authority.

## **10. NOTICES**

10.1 Any notice required or permitted pursuant to this Guarantee shall be given in writing and shall be given either personally or by sending it by next-day or second-day courier service, fax, or similar means to the address, fax number or email address of the relevant Party as provided in

Clause 10.3 below (or at such other address as such Party may designate by five (5) days' advance written notice to the other Party given in accordance with this Clause 10).

10.2 Any notice, demand or other communication so addressed to the relevant Party shall be deemed to have been delivered (a) if delivered by hand, at the time of delivery; (b) if sent by pre-paid post, on the fourth (4th) Business Day after the time of posting; and (c) if given or made by fax, immediately after it has been dispatched with a confirmation that all pages have been transmitted except where dispatch is not on a Business Day; and (d) if given or made by email or other electronic communication, only when receive in legible form. If a communication would otherwise be deemed to have been delivered outside normal business hours (after 5:30 p.m. on a Business Day) in the time zone of the territory of the recipient under the preceding provisions of this Clause 10, it shall be deemed to have been delivered at 9:30 a.m. on the next opening of business in the territory of the recipient. In proving service of a communication, it shall be sufficient to show that delivery by hand was made or that the envelope containing the communication was properly addressed and posted as a pre-paid letter or that the facsimile transmission was dispatched and a confirmatory transmission report or other acknowledgment of good receipt was received.

10.3 The addresses and fax numbers for service of a notice in connection with this Guarantee are:

To the Guarantor:

Address: 33/F, Sunshine Plaza, 353 Lockhart Road, Wan Chai, Hong Kong  
Fax: 2815 7998  
Attention: Mary Wong  
E-mail: mary@toppride.com.hk

To the Secured Party:

Name: COFCO CAPITAL (HONG KONG) CO., LIMITED 中粮资本(香港)有限公司  
Address: Room 2901, 29/F, COFCO Tower, 262 Gloucester Road, Causeway Bay, Hong Kong  
Fax: (852) 28330599  
Attention: HU Xiaonan  
Email address: huxn@cofco.com

## **11. COSTS, EXPENSES AND STAMP DUTY**

The costs and expenses reasonably incurred by each of the Parties in connection with this Guarantee shall be borne by the Guarantor.

## **12. ASSIGNMENTS AND SUCCESSORS**

This Guarantee shall be binding upon and enure to the benefit of each Party hereto and its successors. The Guarantor may not assign or transfer any of his rights, benefits, duties or obligations hereunder without the prior written consent of the Secured Party. The Secured Party may assign or transfer any of its rights, benefits, duties or obligations hereunder, and the Guarantor shall upon the request of the Secured Party (or any prospective assignee or transferee of the Secured Party) execute and deliver such documents and take such actions as may be required by the Secured Party (or any prospective assignee or transferee of the Secured Party) to effect such assignment or transfer.

**13. AMENDMENTS AND WAIVERS**

- 13.1 Any provision of this Guarantee may be amended or waived only by agreement in writing between the Secured Party and the Guarantor.
- 13.2 No failure on the part of the Secured Party to exercise, or delay on its part in exercising, any or all of its rights hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any further or other exercise of such or any other right. The rights, powers and remedies contained in this Guarantee are cumulative and not exclusive of any rights, powers or remedies provided by law.

**14. GOVERNING LAW AND JURISDICTION**

- 14.1 This Guarantee and any non-contractual obligations arising out of or in connection with it are governed by the Laws of Hong Kong.
- 14.2 Each of the Guarantor and the Secured Party agrees that any legal action or proceeding arising out of or relating to this Guarantee may be brought in the courts of Hong Kong and irrevocably submits to the exclusive jurisdiction of such courts.

**15. INDEPENDENT LEGAL ADVICE**

The Guarantor agrees and acknowledges that (a) he was afforded sufficient opportunity to obtain independent legal advice regarding this Guarantee and the transactions contemplated under the other Finance Documents; and (b) he fully understands all of the terms, conditions, restrictions and provisions set forth in this Guarantee and the other Finance Documents and the obligations and liabilities thereof, and that each such term, condition, restriction and provision is fair and reasonable with respect to the subject matter thereof.

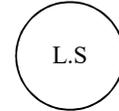
**16. COUNTERPARTS**

This Guarantee may be executed in any number of counterparts, and this has the same effect as if the execution on the counterparts were on a single copy of this Guarantee.

**IN WITNESS WHEREOF** this Guarantee has been executed as a deed by the Guarantor and signed by the Secured Party underhand, and is intended to be delivered and is hereby delivered on the date specified on the first page of this Guarantee.

**The Guarantor**

**SIGNED, SEALED AND DELIVERED** )  
by **SIT YAU CHIU (薛由釗)** )



in the presence of: )

(Seal)

\_\_\_\_\_)  
Witness Signature )

\_\_\_\_\_)  
Name )

\_\_\_\_\_)  
Address )

**The Secured Party**

**SIGNED** by )

for and on behalf of )

COFCO CAPITAL (HONG KONG) CO., )

LIMITED 中粮资本(香港)有限公司 )

) \_\_\_\_\_  
) Signature of authorized person

) \_\_\_\_\_  
) Office held

) \_\_\_\_\_  
) Name of authorized person

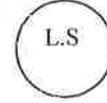
**SIGNATORIES**

**Issuer**

**SIGNED, SEALED and DELIVERED**  
as a deed by **SIT YAU CHIU** (薛由釗)

  
)  
)  
)  
)  
)  
)  
)  
)  
)

acting for and on behalf of  
**ERNEST BOREL HOLDINGS LIMITED** 依波路控股有  
限公司



in the presence of:

Witness signature:

Witness name: **LAM FAU YU**

Witness address: **UNIT NOS. 1612-18, LEVEL 16, TOWER 2  
GRAND CENTURY PLACE, 193 PRINCE EDWARD ROAD WEST  
MONG KOK, KOWLOON, HONG KONG**



**Initial Investor**

Signed by **Yang Yong** )  
for and on behalf of )  
**COFCO CAPITAL (HONG KONG) CO., LIMITED** )  
中粮资本(香港)有限公司 )



in the presence of:

Witness signature:  
Witness name:  
Witness address:

  
\_\_\_\_\_  
Ho Ka Ming, Catherine  
Solicitor, HKSAR  
JUN HE LAW OFFICES