



Registration of a Charge

Company name: **ECLIPSE HOTEL CARDIFF LIMITED**

Company number: **04790688**



X94TK6EG

Received for Electronic Filing: **11/05/2020**

Details of Charge

Date of creation: **06/05/2020**

Charge code: **0479 0688 0006**

Persons entitled: **COUTTS & COMPANY**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **DWF LAW LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 4790688

Charge code: 0479 0688 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 6th May 2020 and created by ECLIPSE HOTEL CARDIFF LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th May 2020 .

Given at Companies House, Cardiff on 12th May 2020

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006

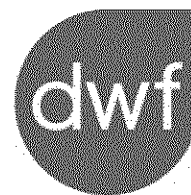


Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

EXECUTION VERSION



6 May 2020

(1) ECLIPSE HOTEL CARDIFF LIMITED
(as Borrower)

and

(2) COUTTS & COMPANY
(as Lender)

DEED OF ASSIGNMENT
IN RELATION TO A FRANCHISE AGREEMENT

DWF Law LLP
20 Fenchurch Street
London
EC3M 3AG

CONTENTS

1.	Definitions and interpretation	1
2.	Assignment	3
3.	Nature of Security created	3
4.	Trust	4
5.	Negative pledge	4
6.	Representations and warranties	4
7.	Assigned contract	5
8.	Enforcement	5
9.	Appointment and powers of Receivers	7
10.	Protection of purchasers	8
11.	Protection of the Lender and Receivers	8
12.	Preservation of Security	9
13.	Further assurance	12
14.	Power of Attorney	12
15.	Currency	13
16.	Discharge of Security	13
17.	Costs and expenses	13
18.	Assignment	14
19.	Disclosure of Information	14
20.	Notices	14
21.	Calculations and certificates	15
22.	Partial invalidity	15
23.	Remedies and waivers	15
24.	Amendments and Waivers	15
25.	Discharge Conditional	16
26.	Counterparts	16
27.	Governing Law and Enforcement	16
	SCHEDULE 1	17
	Assigned Contracts	17
	SCHEDULE 2	18
	Form of notice for Assigned Contract	18

THIS DEED OF ASSIGNMENT is dated

6 May 2020

BETWEEN

- (1) **ECLIPSE HOTEL CARDIFF LIMITED**, a limited liability company registered in England and Wales with registered number 04790688 whose registered office is at 6 Coda Centre, 189 Munster Road, London, England, SW6 6AW (the "**Assignor**"); and
- (2) **COUTTS & COMPANY**, registered in England and Wales with registered number 00036695, whose registered office is at 440 Strand, London, WC2R 0QS (the "**Lender**").

BACKGROUND

- (A) The Lender has made available to the Company certain facilities for the purpose of, *inter alia*, assisting in funding the purchase of the Property (as defined in the Facility Agreement (as defined below)) and the Assignor has granted guarantees and security in favour of the Lender in respect of (amongst other things) those facilities.
- (B) The Assignor, being party to the Assigned Contract (as defined below), has agreed to assign to the Lender its right, title, benefit and interest in and to the Assigned Contract by way of security, in accordance with the terms of this Deed.

TERMS AGREED

1. **Definitions and interpretation**

- 1.1 Unless otherwise provided in this Deed, terms defined in the Facility Agreement shall have the same meaning when used in this Deed.

In addition, in this Deed the following words and expressions shall have the following meanings:

Assigned Contract	means: <ol style="list-style-type: none">(a) each contract listed in Schedule 1 to this Deed (Assigned Contracts); and(b) each other contract designated as an Assigned Contract by the Lender and the Assignor in writing from time to time;
Business Day	means a day (other than a Saturday or Sunday) on which banks are open for general business in London;
Company	means Rhoose Investments Ltd;
Default Rate	means: <ol style="list-style-type: none">(a) in relation to an amount due under the Finance Documents, the rate set out in clause 8.3 (Default interest) of the Facility Agreement;

- (b) in relation to an amount due under any other facility made available to the Assignor by the Lender, the default rate specified in the relevant facility documentation; and
- (c) failing that, 6% over the Bank of England Base Rate as it may vary from time to time;

LPA	means the Law of Property Act 1925;
Facility Agreement	means the £3,325,000 sterling term loan facility agreement dated on or about the date of this Deed and made between (1) the Company and (2) the Lender;
Security Liabilities	means the liabilities of any Obligor to the Lender of any kind and in any currency (whether present or future, actual or contingent and whether incurred alone or jointly with another) together with the Lender's charges and commission interest and expenses payable by the Company;
Secured Assets	means the Assigned Contract; and
Security Period	means the period commencing on the date of this Deed and ending on the date upon which the Secured Liabilities have been irrevocably and unconditionally discharged in full and the Lender is under no actual or contingent obligation to advance or provide any credit or facilities to the Company, or any other company for which the Assignor has given any guarantee.

1.2 Construction

- (a) Unless otherwise provided in this Deed, the provisions of Clause 1.2 (*Construction*) of the Facility Agreement apply mutatis mutandis to this Deed as though they were set out in full in this Deed.
- (b) Unless a contrary intention appears, any reference in this Deed to:
 - (i) this Deed is a reference to this Deed as amended, varied, novated, supplemented and replaced from time to time;
 - (ii) the Assignor, the Lender or a Receiver includes any one or more of its assigns, transferees and successors in title (in the case of the Assignor, so far as any such is permitted); and
 - (iii) the Lender or a Receiver (except for the references in Clause 14 (*Power of Attorney*)) includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates.

1.3 **Third party rights**

- (a) The Lender and any Receiver and their respective officers, employees and agents may enforce any term of this Deed which purports to confer a benefit on that person, but no other person who is not a party to this Deed has any right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Deed.
- (b) The parties to this Deed and any Receiver may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Deed without the consent of any person who is not a party to this Deed.

1.4 **Effect as a deed**

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Lender.

2. **Assignment**

2.1 **Covenant to Pay**

The Assignor hereby covenants that it will, on demand, pay to the Lender and discharge all Secured Liabilities.

2.2 **Assignment**

The Assignor hereby assigns and agrees to assign absolutely to the Lender by way of security all of its right, title, benefit and interest in and to the Assigned Contract including, without limitation, all sums payable thereunder.

2.3 **Assignors' liability**

Notwithstanding the terms of this Deed, the Assignor shall remain liable to perform all of the obligations assumed by them in relation to the Assigned Contract and the Lender shall have no obligation or liability under the Assigned Contract by reason of this Deed to:

- (a) perform any of the obligations or duties of the Assignor;
- (b) make any payment thereunder;
- (c) present or file any claim or take any other action to collect or enforce any claim for the payment of any sum payable thereunder; or
- (d) make any enquiries as to the nature or sufficiency of any payments received by the Lender by virtue of this Deed.

3. **Nature of Security created**

The Security created under this Deed is created:

- (a) as a continuing security to secure the payment and discharge on demand of the Secured Liabilities;
- (b) in favour of the Lender; and

(c) with full title guarantee.

4. Trust

4.1 Subject to Clause 4.2, if or to the extent that the assignment of the Assigned Contract is prohibited, the Assignor holds it on trust for the Lender. If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

4.2 If the reason referred to in Clause 4.1 is that:

(a) a consent or waiver must be obtained; or

(b) a condition must be satisfied,

then:

(a) subject to limb (b), the Assignor shall apply for the consent or waiver; and

(b) the Assignor shall use its best endeavours to satisfy the condition,

in each case within 14 days of the date of this Deed.

4.3 Where the consent or waiver is not to be unreasonably withheld, the Assignor shall:

(a) use its reasonable endeavours to obtain it as soon as possible; and

(b) keep the Lender informed of the progress of the negotiations to obtain it.

4.4 On the waiver or consent being obtained, or the condition being satisfied, the Assigned Contract shall be mortgaged, charged or assigned (as appropriate) under this Clause 4 and, in relation to such Assigned Contract, the trust referred to in Clause 4.1 shall terminate.

5. Negative pledge

Other than as permitted by the Facility Agreement, the Assignor shall not create or permit to subsist any Security over the Security Assets.

6. Representations and warranties

6.1 The Assignor is the sole legal and beneficial owner of the Security Assets and such assets are free from any claims, third party rights, security or otherwise, or competing interests.

6.2 There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Assigned Contract.

6.3 There is no breach of any law or regulation that materially and adversely affects the Assigned Contract.

6.4 No Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Deed or otherwise.

- 6.5 There is no prohibition on assignment in any agreement to be assigned pursuant to this Deed, save as disclosed, and the entry into this Deed by the Assignor does not, and will not, constitute a breach of any agreement to be assigned pursuant to this Deed or any other policy, agreement, document, instrument or obligation binding on the Assignor or its assets.
- 6.6 This Deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Assignor, and is, and will continue to be, effective security over all and every part of the Assigned Contract in accordance with its terms.
- 6.7 The Assignor makes the representations and warranties set out in this Clause 6 to the Lender on the date of this Deed and they shall be deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

7. Assigned contract

7.1 Obligations

The Assignor shall:

- (a) at all times take all reasonable and practical steps to preserve and enforce its rights and pursue any claims and remedies arising under the Assigned Contract;
- (b) promptly upon demand by the Lender, give notice to the other parties to the Assigned Contract substantially in the form set out in Schedule 1 (*Form of notice for Assigned Contract*) (or such other form acceptable to the Lender) and deliver to the Lender a copy of each notice;
- (c) use reasonable endeavours to ensure that each party served with a notice under paragraph (b) above countersigns and promptly returns the same to the Lender; and
- (d) not make any amendments to the Assigned Contract of a material nature, nor shall it make any amendments to the Assigned Contract that may materially prejudice the interests of the Lender.

7.2 Exercise of rights

Until the Security created by this Deed becomes enforceable in accordance with Clause 8.1 (*When Security becomes enforceable*), the Assignor may exercise all its rights in respect of the Assigned Contract including (subject to the provisions of the Facility Agreement) receiving and exercising all rights relating to proceeds of the Assigned Contract.

8. Enforcement

8.1 When Security becomes enforceable

The Security created by this Deed shall become immediately enforceable:

- (a) an Event of Default has occurred which is continuing; or
- (b) the Assignor has failed to pay all or any of the Secured Liabilities following a demand for payment by the Lender; or

- (c) upon demand by the Lender; or
- (d) if the Lender so requires to protect his interests; or
- (e) if the Assignor so request.

8.2 Powers on enforcement

At any time after the Security created by the Assignor under this Deed has become enforceable, the Lender may (without prejudice to any other of its rights and remedies and without notice to the Assignor) do all or any of the following:

- (a) exercise all the powers and rights conferred on mortgagees by the LPA, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the LPA;
- (b) sell all or any of the Security Assets and apply the net proceeds of such sale in or towards satisfaction of the Secured Obligations; and
- (c) subject to Clause 9.1 (*Method of appointment and removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Security Assets,

at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

8.3 Disposal of the Security Assets

In exercising the powers referred to in Clause 8.2 (*Powers on enforcement*), the Lender or any Receiver may sell or dispose of all or any of the Security Assets at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

8.4 Application of moneys

The Lender or any Receiver shall apply moneys received by them under this Deed after the Security created under this Deed has become enforceable in the following order:

- (a) **first**, in or towards the payment pro rata of, or the provision pro rata for, any unpaid costs and expenses of the Lender and any Receiver under this Deed or which are incidental to any Receiver's appointment, together with interest at the Default Rate (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full;
- (b) **secondly**, in or towards the payment pro rata of, or the provision pro rata for, any unpaid fees, commission or remuneration of the Lender and any Receiver;
- (c) **thirdly**, in or towards payment of or provision for the Secured Liabilities in any order and manner that the Lender determines; and
- (d) **fourthly**, in the payment of any surplus to the relevant Assignor or other person entitled to it,

and section 109(8) of the LPA shall not apply.

- 8.5 Clause 8.4 will override any appropriation made by the Assignor.
- 8.6 Neither the Lender nor any Receiver shall be bound to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

9. Appointment and powers of Receivers

9.1 Method of appointment and removal

- (a) The Lender may not appoint a Receiver by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986 except with the leave of the court.
- (b) Every appointment or removal of a Receiver, of any delegate or of any other person by the Lender pursuant to this Deed may be made in writing under the hand of any officer or manager of the Lender (subject to any requirement for a court order in the removal of an administrative receiver).
- (c) The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receiver), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.
- (d) The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of the Assigned Contract.
- (e) A Receiver may be appointed on the request of the Assignor.

9.2 Powers of Receiver

Every Receiver shall have all the powers:

- (a) of the Lender under this Deed;
- (b) conferred by the LPA on mortgagees in possession and on receivers appointed under the LPA;
- (c) in relation to, and to the extent applicable to, the Security Assets or any of them, the powers specified in Schedule 1 of the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver within the meaning of that Act); and
- (d) in relation to any Security Asset, which he would have if he were its only beneficial owner.

9.3 Joint or several

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each

of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

9.4 Receiver as agent

Every Receiver shall be the agent of the Assignor who shall be solely responsible for his acts and defaults and for the payment of his remuneration.

9.5 Receiver's remuneration

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Lender, and the maximum rate specified in section 109(6) of the LPA shall not apply.

10. Protection of purchasers

No purchaser or other person dealing with the Lender or any Receiver shall be bound or concerned:

- (a) to see or enquire whether the right of the Lender or any Receiver to exercise any of the powers conferred by this Deed has arisen or not;
- (b) with the propriety of the exercise or purported exercise of those powers; or
- (c) with the application of any moneys paid to the Lender, to any Receiver or to any other person.

11. Protection of the Lender and Receivers

11.1 Exclusion of liability

Neither of the Lender or any Receiver or any of their respective officers or employees shall have any responsibility or liability:

- (a) for any action taken, or any failure to take any action, in relation to all or any of the Security Assets;
- (b) to account as mortgagee in possession or for any loss upon realisation of any Security Asset;
- (c) for any loss resulting from any fluctuation in exchange rates in connection with any purchase of currencies under Clause 15 (*Currency*); or
- (d) for any other default or omission in relation to all or any of the Security Assets for which a mortgagee in possession might be liable,
- (e) except in the case of gross negligence, fraud or wilful misconduct on the part of that person.

11.2 **General indemnity**

- (a) The Assignor shall indemnify the Lender or any Receiver and their respective officers and employees against all actions, proceedings, demands, claims, costs, expenses, and other liabilities incurred by them in respect of all or any of the following:
 - (i) any act or omission by any of them in relation to all or any of the Security Assets;
 - (ii) any payment relating to or in respect of all or any of the Security Assets which is made at any time by any of them;
 - (iii) any stamp, registration or similar Tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Deed;
 - (iv) carrying out or purporting to carry out any of the rights, powers and discretions conferred on them by or permitted under this Deed; and
 - (v) any breach by the Assignor of any of its covenants or other obligations to the Lender,
 - (vi) except in the case of gross negligence, fraud or wilful misconduct on the part of that person.
- (b) The Assignor shall pay interest at the Default Rate on the sums payable under this Clause 11.2 from the date on which the liability was incurred to the date of actual payment (both before and after judgment).

11.3 **Indemnity out of the Security Assets**

The Lender or any Receiver and their respective officers and employees shall be entitled to be indemnified out of the Security Assets in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 11.2 (*General indemnity*).

12. **Preservation of Security**

12.1 **Reinstatement**

If any payment by the Assignor or discharge given by the Lender is avoided or reduced as a result of insolvency, liquidation, administration or any similar event:

- (a) the liability of the Assignor and the Security created by the Assignor under this Deed shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Lender shall be entitled to recover the value or amount of that Security or payment from the Assignor, as if the payment, discharge, avoidance or reduction had not occurred.

12.2 **Waiver of defences**

Neither the Security created by this Deed nor the obligations of the Assignor under this Deed will be affected by an act, omission, matter or thing which, but for this Clause 12.2, would reduce, release or prejudice that Security or any of those obligations (whether or not known to it or the Lender) including:

- (a) any time, waiver or consent granted to, or composition with, the Assignor or any other person;
- (b) the release of the Assignor or any other person under the terms of any composition or arrangement with any person;
- (c) the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of the Assignor or any other person or 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;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Assignor or any other person;
- (e) any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of any document evidencing, relating to or securing any facilities provided to the Assignor or any other person or company who has granted security or guarantees in respect of the same, or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of, or any security created by, any person under any document evidencing, relating to or securing any facilities provided to the Assignor or any other person or company who has granted security or guarantees in respect of the same, or any other document; or
- (g) any insolvency, liquidation, administration or similar procedure.

12.3 **Immediate recourse**

The Assignor waive any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any other person before claiming from the Assignor under this Deed.

12.4 **Assignor intent**

Without prejudice to the generality of Clause 12.2 (*Waiver of defences*), the Assignor expressly confirms that it intends that this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Facility Agreement.

12.5 Appropriations

During the Security Period the Lender may:

- (a) refrain from applying or enforcing any moneys, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or, subject to Clause 8.4 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Assignor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Assignor or on account of the Secured Liabilities.

12.6 Deferral of Assignor's rights

During the Security Period and unless the Lender otherwise directs, the Assignor shall not exercise any rights which it may have by reason of performance by it of its obligations under this Deed or the enforcement of the Security created by this Deed:

- (a) to receive or claim payment from, or be indemnified by any other person;
- (b) to claim any contribution from any guarantor of, or provider of security in respect of, any other person's obligations under any document evidencing, relating to or securing any facilities provided to the Assignor or any other person or company who has granted security or guarantees in respect of the same;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the any document evidencing, relating to or securing any facilities provided to the Assignor or any other person or company who has granted security or guarantees in respect of the same;
- (d) to exercise any right of set-off against any other person; and/or
- (e) to claim or prove as a creditor of any other person in competition with the Lender.

12.7 Additional Security

This Deed is in addition to, is not in any way prejudiced by and shall not merge with any contractual right or remedy or other Security now or in the future held by or available to the Lender.

12.8 New accounts

If the Lender receives notice (actual or otherwise) of any subsequent Security over or affecting all or any of the Security Assets it may open a new account or accounts with the Assignor and, if it does not do so, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that subsequent Security, and as from that time all payments made by the Assignor:

- (a) shall be credited or be treated as having been credited to the new account of the Assignor; and

- (b) shall not operate to reduce the Secured Liabilities at the time when the recipient received or was deemed to have received such notice.

13. **Further assurance**

13.1 **Further action**

The Assignor shall, at its own expense, promptly take any action and sign or execute any further documents which the Lender may require in order to:

- (a) give effect to the requirements of this Deed;
- (b) protect, preserve and perfect the Security intended to be created by or pursuant to this Deed;
- (c) protect and preserve the ranking of the Security intended to be created by or pursuant to this Deed with any other Security over any assets of the Assignor; or
- (d) when the Security created by this Deed is enforceable, facilitate the realisation of all or any of the Security Assets or the exercise of any rights, powers and discretions conferred on the Lender, any Receiver or any administrator in connection with all or any of the Security Assets,

and any such document may disapply section 93 of the LPA in any manner required by the Lender.

13.2 **Deposit of documents**

The Assignor covenants that, on the date of this Deed and at all times during the Security Period as soon as it receives them (and in any event as soon as the Lender so requests), it shall deposit with the Lender, in respect of or in connection with the Security Assets, any other documents which the Lender may from time to time require for perfecting its title, or the title of any purchaser all of which will be held by the Lender at the expense and risk of the Assignor.

14. **Power of Attorney**

The Assignor irrevocably and by way of security appoints each of:

- (a) the Lender;
- (b) any delegate or sub-delegate of, or other person nominated in writing by, an officer of the Lender; and
- (c) any Receiver,

jointly and severally as the Assignor's attorney, in the Assignor's name, on its behalf and in such manner as the attorney may in its or his absolute discretion think fit following the failure by the Assignor to comply with a request from the Lender within a reasonable period of time (in the Lender's sole discretion), to take any action and sign or execute any further documents which the Assignor is required to take, sign or execute in accordance with this Deed. The Assignor agrees, promptly on the request of the Lender or any Receiver, to ratify and confirm all such actions taken and documents signed or executed.

15. **Currency**

15.1 **The Spot Rate**

In this Clause 15, the "**Spot Rate**" means, in relation to the Lender, the spot rate of exchange for the purchase of any currency with any other currency in the London foreign exchange market.

15.2 **Conversion of moneys received**

The Lender may convert any moneys received, recovered or realised in any currency under this Deed (including the proceeds of any previous conversion under this Clause 15.2) from their existing currency into any other currency, by purchasing that other currency at the Spot Rate.

15.3 **Hedging**

If the Assignor fails to pay any sum under this Deed on the due date, the Lender may, without notice to the Assignor, purchase at the Spot Rate any currency which the Lender considers necessary or desirable to cover the liabilities of the Assignor to pay that sum.

16. **Discharge of Security**

Upon the expiry of the Security Period the Lender shall, or shall procure that its appointees will promptly, upon the request and cost of the Assignor:

- (a) release the Security Assets from this Deed; and
- (b) re-assign to the Assignor those Security Assets that have been assigned to the Lender under Clause 3 (*Nature of Security created*).

Section 93 of the LPA shall not apply to this Deed.

17. **Costs and expenses**

17.1 **Transaction expenses**

The Assignor shall promptly on demand pay the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing and execution of this Deed.

17.2 **Amendment costs**

If the Assignor requests an amendment, waiver, consent or release of or in relation to this Deed, the Assignor shall, within three Business Days of written demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by it in responding to, evaluating, negotiating or complying with that request or requirement.

17.3 **Enforcement costs**

The Assignor shall, within three Business Days of written demand, pay to the Lender or any Receiver the amount of all costs and expenses (including legal fees) incurred by the Lender or

any Receiver in connection with the enforcement of, or the preservation of any rights under, this Deed.

18. **Assignment**

The Lender may assign any of its rights under this Deed to any person to whom it assigns or transfers any of its rights or obligations under the Facility Agreement.

19. **Disclosure of Information**

The Lender may disclose to any assignee, transferee or proposed assignee or transferee any information it thinks fit in relation to the Assignor and the Finance Documents.

20. **Notices**

20.1 **Communications in writing**

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

20.2 **Addresses**

(a) The address (and the department or officer, if any, for whose attention the communication is to be made) of each party to this Deed for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below or any substitute address, fax number or department or officer as either party may notify to the other by not less than five Business Days' notice.

(b) The addresses referred to in Clause 20.2 are as follows:

(i) **Assignor:**

Address: 6 Coda Centre, 189 Munster Road, Fulham, London SW6 6AW

Attention: Principal Correspondent Mr. Sameer Damji

(ii) **The Lender:**

Address: Coutts & Company, 440 Strand, London, WC2R 0QS

Attention: Mehmet Hassan

20.3 **Delivery**

(a) Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

(i) if by way of fax, when received in legible form; or

(ii) if by way of letter, (i) when it has been left at the relevant address or (ii) two Business Days (or, in the case of airmail, five Business Days) after being deposited in the post postage prepaid (or, as the case may be, airmail postage prepaid), in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 20.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified in Clause 20.2(b) (or any substitute department or officer as the Lender shall specify for this purpose).

20.4 English Language

- (a) Any notice given under or in connection with this Deed must be in English.
- (b) All other documents provided under or in connection with this Deed must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

21. Calculations and certificates

21.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with this Deed, the entries made in the accounts maintained by the Lender are prima facie evidence of the matters to which they relate.

21.2 Certificates and determinations

Any certification or determination by the Lender of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

22. Partial invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

23. Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under this Deed shall operate as a waiver, nor shall 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 Deed are cumulative and not exclusive of any rights or remedies provided by law.

24. Amendments and Waivers

Any term of this Deed may be amended or waived only with the written consent of the Assignor and the Lender.

25. **Discharge Conditional**

Any release, discharge or settlement between the Assignor and the Lender shall be deemed conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) the Lender or its nominee may retain this Deed and the security created by or under it, including all certificates and documents relating to the Assigned Contract, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and
- (b) the Lender may recover the value or amount of such security or payment from the Assignor subsequently as if the release, discharge or settlement had not occurred.

26. **Counterparts**

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

27. **Governing Law and Enforcement**

27.1 **Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it is governed by English law.

27.2 **Jurisdiction**

- (a) Without prejudice to the rights of the Lender to take proceedings relating to a Dispute (as defined below) in any court with jurisdiction as provided in Clause 27.2(c) below, the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) or any non-contractual obligations arising out of or in connection with this Deed (a "**Dispute**").
- (b) The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- (c) This Clause 27.2 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

EXECUTED as a deed and delivered on the date appearing at the beginning of this Deed.

SCHEDULE 1

Assigned Contracts

A franchise agreement dated 1 July 2019, as supplemented by a side letter also dated 1 July 2019 and made between (i) the Assignor (as **licensee**) and (ii) IHG Hotels Limited (as **licensor**).

SCHEDULE 2

Form of notice for Assigned Contract

To: IHG Hotels Limited
Broadwater Park
Denham
Buckingham
UB9 5HR

Attention: Legal Department

Date: [●] March 2020

Dear Sirs

Notice of assignment

1. We refer to the [details of contract] dated [●] between us and you (the **"Agreement"**).
2. We notify you that:
 - (a) under a Deed dated [●] between us and Coutts & Company (the **"Lender"**) we have assigned to the Lender all our right, title and interest in and to, and all benefits accruing under, the Agreement as security for certain obligations owed to the Lender;
 - (b) we may not agree to amend or terminate the Agreement without the prior written consent of the Lender;
 - (c) until you receive written notice to the contrary from the Lender, you may continue to deal with us in relation to the Agreement. Following receipt by you of such notice we will cease to have any right to deal with you in relation to the Agreement and from that time you should deal only with the Lender; and
 - (d) you are authorised to disclose information relating to the Agreement to the Lender on request.
3. Please sign and return the enclosed copy of this notice to the Lender (with a copy to us) to confirm that you:
 - (a) have not received notice that we have assigned our rights under the Agreement to a third party or created any other interest (whether by way of security or otherwise) in the Agreement in favour of a third party; and

- (b) at the date of this letter, have not claimed or exercised, against us, any right of set-off or counter-claim or other right relating to the Agreement.
4. The provisions of this notice and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with English law.

Yours faithfully

for and on behalf of
Eclipse Hotels Cardiff Limited

Copy to: Lender

[On acknowledgement copy]

To: Coutts & Company

Copy to: Eclipse Hotels Cardiff Limited

We acknowledge receipt of the above notice and confirm the matters set out in paragraph 3.

Yours faithfully

for and on behalf of
IHG Hotels Limited

Date: [●] March 2020

EXECUTION PAGES

The Assignor

EXECUTED (but not delivered until the date hereof) as a **DEED** by **ECLIPSE HOTEL CARDIFF LIMITED** acting by a director, in the presence of:

.....
DIRECTOR

WITNESS

Signature:

Name: MUDASIR AHMED

Address:

Occupation:

The Lender

SIGNED (but not delivered until the date hereof) as a **DEED** by
_____, as duly
authorized attorney of **COUTTS &
COMPANY**

.....
AUTHORISED ATTORNEY

EXECUTION PAGES

The Assignor

EXECUTED (but not delivered until the date hereof) as a **DEED** by **ECLIPSE HOTEL CARDIFF LIMITED** acting by a director, in the presence of:

.....
DIRECTOR

WITNESS

Signature:

Name:

Address:

.....

.....

Occupation:

The Lender

SIGNED (but not delivered until the date hereof) as a **DEED** by NOEL MARTIN SMYTH as duly authorized attorney of **COUTTS & COMPANY**

.....
AUTHORISED ATTORNEY

