

Date: February \_\_, 2024

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**Re: Confidentiality Agreement**

This Confidentiality Agreement (this "Agreement") is entered into by \_\_\_\_\_  
[Counterparty name] for the benefit of KRE HIP Wood Cary Owner LLC (the "Seller" or the  
"Company"). Seller is the owner of Homewood Suites by Hilton Raleigh/Cary located at 100  
Macalysen Ct, Cary, NC 27511.

In connection with the potential participation by you with the Company in a potential financing and/or investment transaction involving the Property, and such transaction, a "**Potential Transaction**", the Company is prepared to make available to you and your Representatives (as defined below) certain confidential and proprietary information relating to the Company, the Potential Transaction and/or the Company's or one or more of its affiliates' business. As a condition to such information being furnished to you and your Representatives, you agree that you will, and will cause your Representatives to, treat the Evaluation Material (as defined below) in accordance with the provisions of this agreement and take or abstain from taking certain other actions as set forth herein. The term "**Representatives**" shall include the members, directors, officers, employees, agents, affiliates and advisors (including, without limitation, attorneys, accountants and consultants) of a party. The term "**person**" as used in this agreement shall be broadly interpreted to include, without limitation, any corporation, company, partnership, limited liability company or other entity or any natural person, or any group of such entities or natural persons.

**1 Evaluation Material**

The term "**Evaluation Material**" shall mean (a) all documents, materials and information relating, directly or indirectly, to (i) a Potential Transaction or (ii) the Company, its parent entities, its subsidiaries and their respective businesses, products, markets, conditions (financial or other), operations, assets, liabilities, results of operations, cash flows, plans and prospects, including, without limitation, technical, commercial, financial, accounting, legal and administrative information, in each case, which has been or will be furnished to you or any of your Representatives, in any format, in writing or orally, by or on behalf of the Company or any of its Representatives in connection with a Potential Transaction, together with all notes, analyses, compilations, studies, reports, forecasts, interpretations or other documents and materials prepared by or for you or any of your Representatives or by or for the Company or its subsidiaries or any of their respective Representatives and which is delivered, disclosed or furnished to you or any of your Representatives by or on behalf of the Company or any of its Representatives in connection with a Potential Transaction, and (b) (i) the fact that an evaluation of a Potential Transaction is occurring or has occurred, (ii) the fact that any Evaluation Material is being or has been made available to you and (iii) the existence of (x) any discussions, negotiations or agreements among any of you, the Company, its subsidiaries or any other person, in relation to a Potential Transaction, or (y) any of the terms, conditions or other facts

with respect to a Potential Transaction, including the substance or status of any such discussions, negotiations or agreements.

Notwithstanding any other provision hereof, the term "Evaluation Material" shall not include information which (i) is or becomes generally available to the public other than as a result of a disclosure by you or your Representatives in violation hereof or any other obligation of confidentiality to which you or they are bound, (ii) prior to disclosure to you by or on behalf of the Company, was already in your or your Representatives' possession (as demonstrated by your written records) lawfully and on a non-confidential basis, (iii) after disclosure to you by or on behalf of the Company, is disclosed to you or your Representatives (as demonstrated by your written records) from a source (other than the Company, any of its subsidiaries or their respective Representatives) that, to your knowledge after reasonable inquiry, is not bound by any duty of confidentiality to the Company, any of its subsidiaries or their respective Representatives in respect of such information, or (iv) is the subject of a written consent to disclose provided by the Company.

## **2 Use and Disclosure of Evaluation Material**

You recognize and acknowledge the competitive value and confidential nature of the Evaluation Material and the irreparable damage that could result to the Company if any information contained therein is disclosed to any person in violation hereof. You hereby covenant and agree with the Company that you and your Representatives shall use the Evaluation Material solely for the purpose of evaluating a Potential Transaction and for no other purpose, that the Evaluation Material will not be used in competition with or in any other way detrimental to the Company or its affiliates, that you will keep the Evaluation Material strictly confidential and that you and your Representatives will not disclose any of the Evaluation Material in any manner whatsoever to any person in violation hereof. You agree to undertake reasonable precautions to safeguard and protect the confidentiality of the Evaluation Material, not to reproduce any of the Evaluation Material in any form (except as reasonably required for any disclosure permitted hereby). You agree to be responsible for any breach of this agreement by any of your Representatives. All Evaluation Material (including all copies thereof) shall remain the property of the Company.

You may disclose the Evaluation Material to your Representatives who need to know such information for the purpose of evaluating a Potential Transaction and who are provided with a copy hereof and agree to comply with the confidentiality provisions hereof. If you or any of your Representatives becomes legally compelled (by deposition, interrogatory, request for information or documents, subpoena, civil investigative demand, governmental agency action or similar legal, regulatory or judicial process) or otherwise is required pursuant to law or regulation or the rules of any securities exchange or pursuant to an audit or examination by a regulator, bank examiner or self-regulatory organization to disclose any Evaluation Material to a person or persons not otherwise permitted to receive such information, then, to the extent legally permissible, you or such Representative shall provide the Company with prompt written notice of such requirement and shall cooperate with the Company in seeking a protective order or other appropriate remedy. If such protective order or other remedy is not obtained or reasonably

obtainable, or if the Company waives compliance with the provisions hereof, then you or such Representative may disclose only that portion of the Evaluation Material that you or such Representative is advised by legal counsel is legally required to be disclosed and shall exercise your or its reasonable commercial efforts to ensure that all information so disclosed will be accorded confidential treatment.

### **3 Return and Destruction of Evaluation Material**

At any time upon the request of the Company, you and your Representatives that have received any Evaluation Material, at your expense, shall (x) promptly return or destroy to the Company all written Evaluation Material (including any copies or reproductions thereof in whatever form or medium, including electronic copies, as well as any notes, analyses, compilations, studies, reports, forecasts, interpretations or other documents and materials prepared by or for you or any of your Representatives or by or for the Company or its subsidiaries or any of their respective Representatives) that was delivered, disclosed or furnished to you or such Representative by or on behalf of the Company, and (y) except as otherwise required by applicable law or regulation, or for compliance with your document retention policies, destroy (or delete or expunge from any electronic storage device, to the extent reasonably practicable) all other Evaluation Material in your or such Representative's possession. Notwithstanding the return or destruction of any Evaluation Material, you and your Representatives that have received any Evaluation Material shall continue to be bound by your and their obligations herein.

### **4 No Representations or Warranties**

You and your Representatives that have received any Evaluation Material acknowledge and agree that none of the Company, its subsidiaries or any of their respective Representatives makes any representation or warranty, express or implied, as to the accuracy or completeness of the Evaluation Material or makes any commitment to correct, update or supplement any of the Evaluation Material. You and your Representatives agree that the Evaluation Material is for discussion purposes only and that none of the Company, its subsidiaries or any of their respective Representatives shall have any liability to you or any of your Representatives relating to or resulting from the use of the Evaluation Material or any errors therein or omissions therefrom. Notwithstanding any other provision hereof, the Company reserves the right in its sole discretion not to make available to you or any of your Representatives any information. Moreover, the Company and its Representatives may have access to additional information pertaining to the Company, its affiliates and each of their respective businesses, which may be material and does not form part of the Evaluation Material.

### **5 Inquiries**

All inquiries for information about the Company or its affiliates and communications with the Company or its affiliates shall be made through the Company. Neither you nor any of your Representatives will contact any third party with whom the Company or any of its subsidiaries has a business or other relationship (including, without limitation, any director, officer, employee or stockholder of the Company or any of its subsidiaries) or any competitor of the Company or

any of its subsidiaries or in connection with a Potential Transaction without the Company's prior written consent.

## **6 Material Non-Public Information**

You acknowledge and agree that you are aware (and that your Representatives are aware or, upon receipt of any Evaluation Material, will be advised by you) that (a) the Evaluation Material being furnished to you or your Representatives may contain material, non-public information regarding the Company or its affiliate the securities of which are publicly traded and (b) the United States securities laws and regulations and comparable laws and regulations in other jurisdictions prohibit any persons who have material, non-public information from purchasing or selling securities of an issuer or from communicating such information to any person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities in reliance upon such information. You and your Representatives that have received any Evaluation Material agree to comply with such laws and regulations.

## **7 Indemnity**

You agree to indemnify the Company and its respective affiliates and Representatives against, and hold such persons harmless from, any liabilities, damages, losses, obligations, claims of any kind, interest or expenses (including reasonable attorneys' fees and expenses) arising from, connected with or relating to any breach of this Agreement on your part or on the part of your Representatives, or your access to and use of, or any of your Representatives' access to and use of, any Evaluation Material. You agree that, to the extent you have entered into, or will enter into, access letters, release letters, non-reliance letters or other similar agreements with Representatives of the Company where you have agreed or will agree, respectively, to release or indemnification provisions in favor of such Representatives, the Company shall be the beneficiary of such provisions to the same extent as if the Company were named as the beneficiary in such provisions, which are incorporated by reference herein to the extent necessary to effectuate the foregoing for the benefit of the Company.

## **8 No Circumvention**

You agree that neither you nor any of your Representatives or Affiliates shall, whether using the Evaluation Material or otherwise, attempt to circumvent the Company or any of its Affiliates with respect to the Potential Transaction (or any part of it), or any opportunity or asset related thereto, nor shall any of you enter into any transaction with any third party identified to you as a potential participant in the Potential Transaction (or any part of it) or as having any interest therein or in any opportunity or asset related thereto, without the prior written consent of the Company.

## **9 Exclusivity**

You agree that, without the prior written consent of the Company, you and any of your Representatives shall not, directly or indirectly, (a) take any action or enter into any agreement, arrangement or any other understanding, whether written or oral, that may limit, restrict, restrain or otherwise impair in any manner, directly or indirectly, any source of debt or equity financing,

co-purchaser, joint bidder or co-bidder from providing financing (debt, equity or otherwise) with the Company with respect to the Potential Transaction or any transaction that is substantially similar to, or an alternative to, the Potential Transaction, or (b) enter into, directly or indirectly, any discussions, agreements, arrangements, negotiations or understandings, whether written or oral, with any person (other than any of your Representatives or the Company and its Representatives) with respect to the Potential Transaction or that would otherwise affect such person's decisions or actions with respect to a Potential Transaction.

**10 No Other Obligations**

Each party hereto agrees that neither party will be under any legal obligation of any kind whatsoever with respect to a Potential Transaction (or any part of it) by virtue of this agreement, except for the matters specifically agreed to herein. Without limiting the generality of the foregoing, the parties acknowledge and agree that this agreement shall not be construed to constitute an agreement (or proposal) to act together, form, join or in any way participate in a "group" (within the meaning of Rule 13d-5 under the 1934 Act) or otherwise to act in concert in respect of the Company or any of its securities.

**11 No Fiduciary or Advisory Relationship**

You and your Representatives acknowledge and agree that the Company is not responsible as a fiduciary and is not acting as an adviser (as to financial, legal, accounting, regulatory, tax or any other matters) to you or any of your Representatives in connection with any part of a Potential Transaction or the process in connection therewith (irrespective of whether the Company has advised or is currently advising you or any of your Representatives on other matters). You and your Representatives acknowledge and agree that you are each responsible for making an independent judgment in relation to a Potential Transaction (and each part of it) and the process in connection therewith and for obtaining all necessary financial, legal, accounting, regulatory, tax and other advice that you deem necessary or appropriate.

**12 No License**

Nothing herein shall be deemed to grant a license, whether directly or by implication, estoppel or otherwise, to any Evaluation Material disclosed pursuant to this agreement.

**13 No Modification**

No provision in this agreement can be waived, modified or amended, except by written consent signed by you and the Company, which consent shall specifically refer to the provision to be waived, modified or amended and shall explicitly make such waiver, modification or amendment; provided that no consent shall be required for the Company to assign any or all of its rights and delegate any or all of its obligations hereunder to the Company or one or more of its subsidiaries.

**14 No Waiver of Rights**

It is understood and agreed that no failure or delay by the Company in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial

exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

**15 Entire Agreement; Prior Agreements**

This agreement contains the entire agreement between the parties regarding its subject matter and supersedes all prior agreements, understandings, arrangements and discussions between the parties regarding such subject matter.

**16 Remedies**

You agree and acknowledge that irreparable damage could occur to the Company and its respective affiliates and Representatives in the event of any disclosure of any Evaluation Material in breach of this agreement and that money damages would not be a sufficient remedy for any breach of any provision of this agreement. Accordingly, the Company and its respective affiliates and Representatives shall be entitled to seek in any Chosen Court (defined below) the remedies of specific performance, injunctive relief or other equitable remedies, in addition to any other remedy to which the Company and its respective affiliates and Representatives may be entitled, at law or in equity.

**17 Term**

Except as set forth in paragraph 7 herein, these provisions shall expire two (2) years from the date hereof.

**18 Severability**

If at any time subsequent to the date hereof, any provision of this agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force and effect, but the illegality or unenforceability of such provision shall have no effect upon and shall not impair the enforceability of any other provision of this agreement.

**19 Successors**

This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**20 Governing Law**

This agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts executed in and to be performed in that State. The parties hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of New York located in New York County and of the United States of America located in the Southern District of New York (the "**Chosen Courts**"), and irrevocably and unconditionally waive any objection that they may now or hereafter have to the laying of venue in the Chosen Courts for any actions, suits or proceedings arising out of or relating to this agreement and the transactions contemplated hereby (and agree not to commence any action, suit or proceeding relating thereto except in such courts, and each party hereto further agrees that service of any process, summons, notice or document by U.S. registered mail to the address

of such party set forth herein shall be effective service of process for any action, suit or proceeding brought against such party in any such court).

**21 Counterparts**

This agreement may be signed by facsimile or electronic delivery in .pdf format and may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

Please confirm your agreement with the foregoing by having a duly authorized officer of your organization sign and return one copy of this letter to the undersigned, whereupon this agreement shall become a binding agreement among you and the Company.

Accepted and agreed  
as of the date first written above:

**[ COUNTERPARTY ]**

By: \_\_\_\_\_

Name:

Title: