



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

CHRIS CAMPBELL, On Behalf of  
Himself and All Similarly Situated  
Stockholders of ASHFORD INC., and  
Derivatively on Behalf of ASHFORD  
INC.,

Plaintiff,

v.

MONTGOMERY J. BENNETT,  
DINESH P. CHANDIRAMANI,  
DARRELL T. HAIL, J. ROBISON  
HAYS, III, JOHN MAULDIN,  
GERALD J. REIHSEN, III, BRIAN  
WHEELER, ARCHIE BENNETT, JR.,  
MARK A. SHARKEY, MJB  
INVESTMENTS GP, LLC, and  
REMINGTON HOLDINGS GP, LLC,

Defendants,

and

ASHFORD INC.,

Nominal Defendant.

C.A. No. \_\_\_\_\_ - \_\_\_\_

**VERIFIED CLASS ACTION AND DERIVATIVE COMPLAINT**

Plaintiff Chris Campbell (“Plaintiff”), on behalf of himself and all other similarly-situated public stockholders of Ashford Inc. (“Ashford” or the “Company”), and derivatively on behalf of nominal defendant Ashford, brings the following Verified Class Action and Derivative Complaint (the “Complaint”) against the members of the board of directors of Ashford (the “Ashford Board” or the “Board”) for breaching their fiduciary duties, and against Remington Holdings

GP, LLC (“Remington GP”) and the Remington Sellers (defined below) for aiding and abetting the same. The allegations of the Complaint are based on the knowledge of Plaintiff as to himself, and on information and belief, including the investigation of counsel and review of publicly available information as to all other matters.

### **NATURE OF THE ACTION**

1. This action arises out of a transfer of effectively all of the Company’s assets through an unfair related-party transaction with Remington Holdings, L.P. (“Remington”).

2. As currently proposed, Ashford will contribute substantially all of its assets to its newly-formed subsidiary Ashford Advisors, Inc. (“Newco”) in exchange for Newco common stock (the “Ashford Contribution”). At the same time, Newco will pay certain parties – including (i) Montgomery J. Bennett (“Monty Bennett”), the Chief Executive Officer (“CEO”), chairman of the board and 15.9% beneficial owner of Ashford, and (ii) Monty Bennett’s father, Archie J. Bennett, Jr. (together with Monty Bennett, the “Bennetts”) – an estimated \$331.7 million in consideration to acquire 80% of Remington, which is currently wholly-owned by the Bennetts (the “Remington Sale,” and, together with the Ashford Contribution, the “Proposed Transaction”).

3. The Proposed Transaction is in fact a veiled merger between Ashford and Remington, as the two companies' assets, directors and officers will combine into one new company that will ultimately be controlled by the Bennetts.

4. This end-stage transaction will cause Ashford stockholders to forever lose their right to obtain a future control premium and entry into the Proposed Transaction was a breach of the Board's fiduciary duties.<sup>1</sup>

5. Through this Action, Plaintiff seeks to (a) enjoin the stockholder vote on (i) the Ashford Contribution (*i.e.* "Proposal 1"), and (ii) the Share Issuances<sup>2</sup> (*i.e.*, "Proposal 2"); and (b) hold the Ashford Board accountable for its breaches of fiduciary duty, and hold Remington GP and the Remington Sellers (defined below) liable for their aiding and abetting of those breaches of fiduciary duty.

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<sup>1</sup> In addition to seeking stockholder approval of the Proposed Transaction (*i.e.*, Proposal 1), the Proxy also seeks support for Proposal 2, which entails certain issuances of Ashford common stock (the "Share Issuances") that will, *inter alia*, facilitate the Bennetts' acquisition of control over Newco and Ashford.

<sup>2</sup> Share Issuances are defined in the Proxy as the "potential issuance of shares of the Company's common stock that may occur . . . in one or more of the following events: (a) as consideration for the potential future purchase of the 20% limited partnership interest in Remington retained by the Bennetts; (b) as consideration for the potential future acquisition of the Newco common stock issued to the Bennetts; (c) as consideration for the potential future acquisition of the Newco preferred stock issued to the Remington Sellers; or (d) upon the conversion of preferred stock of the Company that potentially may be issued in exchange for the Newco preferred stock issued to the Remington Sellers."

## **THE PARTIES**

6. Plaintiff is a stockholder of Ashford and has been a stockholder of Ashford at all material times alleged in this Complaint.

7. Nominal Defendant Ashford is an asset management and advisory services company for businesses within the hospitality industry. Ashford is incorporated in the State of Delaware and has its corporate headquarters at 14185 Dallas Parkway, Suite 1100 Dallas, Texas 75254. Ashford's common stock trades on the New York Stock Exchange ("NYSE") under the ticker symbol "AINC."

8. Defendant Monty Bennett has served as the Company's CEO and Chairman of the Board since the Company's formation in November 2014. In addition, Monty Bennett presently serves in various roles in affiliated Ashford entities, including: (i) CEO of Ashford LLC since its formation in April 2013; (ii) founder, CEO and a member of the board of directors of Ashford Hospitality Trust, Inc. ("Ashford Trust") since May 2003, and chairman of its board of directors since January 2013; (iii) CEO and chairman of the board of directors of Ashford Hospitality Prime, Inc. ("Ashford Prime") since April 2013; and (iv) a member of the investment committee and chairman of Ashford Investment Management, LLC ("AIM"), an investment fund platform and an indirect subsidiary of Ashford. Moreover, Monty Bennett and his father Archie Bennett, Jr. co-founded and co-own

Remington, for which Monty Bennett serves as CEO. Monty Bennett and Archie Bennett, Jr. each beneficially own 50% of Remington.<sup>3</sup>

9. Defendant Dinesh P. Chandiramani (“Chandiramani”) has served as a member of the Ashford Board since the Company’s formation in November 2014. In addition, Chandiramani was selected as replacement chairman of the special committee of purportedly independent directors (the “Special Committee”) that was tasked with negotiating a transaction with the Bennetts after Brian Wheeler—the initial chairman of the Special Committee—was removed from that post without explanation on January 21, 2015.

10. Defendant Darrell T. Hail (“Hail”) has served as a member of the Ashford Board since the Company’s formation in November 2014.

11. Defendant J. Robison Hays, III (“Hays”) has served as Ashford’s Chief Strategy Officer and as a member of the Ashford Board since the Company’s formation in November 2014. In addition, Hays presently serves as Senior Vice President Corporate Finance & Strategy for various entities directly and/or indirectly affiliated with Ashford, including: Ashford LLC (since April 2013), Ashford Trust

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<sup>3</sup> Prior to forming Ashford Trust, Monty Bennett joined Remington Hotel Corporation—a business founded by his father—and served in several key positions there including President, Executive Vice President, Director of Information Systems, General Manager and Operations Director.

(since April 2013)<sup>4</sup> and Ashford Prime (since 2010). Hays also presently serves on the investment committee and as Chief Investment Officer of AIM, which is, in part, jointly owned by Hays and the Bennetts.

12. Defendant John Mauldin (“Mauldin”) has served as a member of the Ashford Board since the Company’s formation in November 2014.

13. Defendant Gerald J. Reihsen, III (“Reihsen”) has served as a member of the Ashford Board since the Company’s formation in November 2014. In addition, Reihsen was selected to serve as a member on the Special Committee tasked with negotiating the Bennetts’ desired related-party transaction between Ashford and Remington.

14. Defendant Brian Wheeler (“Wheeler”) has served as a member of the Ashford Board since the Company’s formation in November 2014. Wheeler’s wife owns a commercial printing company that is utilized—and is anticipated to be utilized in the future—by Ashford, Ashford Trust and Ashford Prime for their printing needs. The Wheelers have received compensation from Ashford, Ashford Trust and Ashford Prime’s utilization of Wheeler’s wife’s commercial printing company, and the Wheelers are expected to continue receiving compensation from such business dealings in the future. Despite his historical and prospective pecuniary gain from printing contracts with Ashford and its affiliated entities, Wheeler was

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<sup>4</sup> Hays has also served in various other roles within Ashford Trust since 2005.

selected to serve as an ostensibly “independent” member of the Special Committee tasked with negotiating the related-party transaction with the Bennetts. Indeed, Wheeler was initially selected as chairman of the Committee before director Chandiramani replaced him as chairman without explanation on January 21, 2015.

15. The defendants listed in paragraphs 8 through 14 above are collectively referred to herein as the “Individual Defendants.”

16. Defendant Archie Bennett, Jr. served as chairman of Ashford Trust from its formation in 2003 until January 2013, when he assumed the role of chairman emeritus. In addition, Archie Bennett, Jr. is a 50% beneficial owner of Remington and the father of Monty Bennett, who beneficially owns the remaining 50% of Remington.

17. Defendant Mark A. Sharkey (“Sharkey”) is the President of Remington. In connection with the Proposed Transaction, Sharkey will transfer his equity ownership interest in Remington that, subject to certain terms, entitles him to up to \$3 million of the total economics in Remington to Newco, and stands to receive up to \$3 million in exchange for doing so.

18. Defendant MJB Investments GP, LLC (“MJB Investments”) is a holding company that currently holds an 80% limited partnership interest in Remington. MJB Investments is solely-owned by Monty Bennett. In connection

with the Proposed Transactions, MJB Investments will transfer to Newco its 80% limited partnership interest in Remington.

19. Defendants Monty Bennett, Archie Bennett, Jr., Sharkey and MJB Investments are collectively referred to herein as the “Remington Sellers.”

20. Defendant Remington Holdings GP, LLC is a Delaware limited-liability company and is the general partner of Remington.

### **SUBSTANTIVE ALLEGATIONS**

#### **I. BACKGROUND OF THE COMPANIES INVOLVED IN THE PROPOSED TRANSACTION**

21. Ashford is a Delaware corporation founded by Monty Bennett. The Company’s principal purpose is to provide asset management and advisory services to businesses within the hospitality industry.

22. Ashford became a public company on November 12, 2014, when Ashford Trust, a NYSE-listed real estate investment trust (“REIT”), completed a spin-off of the Company through the distribution of shares of Ashford common stock to the stockholders of Ashford Trust. At the time, Ashford Trust explained that Ashford’s business would be subject to a mutual exclusivity agreement with Remington pursuant to which Ashford would agree to use Remington for specified services in exchange for rights of first refusal with respect to specified opportunities identified by Remington.



23. Through its operating company Ashford LLC, the Company serves as advisor to both Ashford Trust<sup>5</sup> and Ashford Prime.<sup>6</sup> As advisor to Ashford Trust and Ashford Prime, the Company is responsible for implementing the investment strategies and managing the day-to-day operations of Ashford Trust and Ashford Prime. Also, the Company provides personnel and services necessary to allow each of Ashford Trust and Ashford Prime to conduct their respective businesses.

24. Remington is a Delaware limited partnership that was co-founded by the Bennetts in December 2008. Remington is a hotel property and project management company. Among other things, Remington's services include: (i) property management services for hotels; (ii) hotel design, development and project management services, including oversight, coordination, planning and execution of renovation, capital expenditure or ground-up development projects; and (iii) condominium hotel management, including on-site resort management, oversight of

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<sup>5</sup> Ashford Trust is a NYSE-listed REIT focused on investing in the hospitality industry across all segments and in all methods, including direct real estate, equity and debt related to hotels. Ashford Trust was founded by the Bennett family and has been a public company since August 2003. Immediately prior to Ashford Trust's formation, each of the executive officers of Ashford Trust were employed by another company founded by the Bennett family: Remington Hotel Corporation.

<sup>6</sup> Ashford Prime, a NYSE-listed REIT, invests primarily in luxury, upper-upscale and upscale hotels and resorts, predominately located in gateway markets. Ashford Prime became a publicly traded entity in November 2013 upon the completion of its spin-off from Ashford Trust.

condominium rental programs, management of condominium owners' associations and operation of resort facilities.

## **II. CONFLICTS OF INTEREST PERMEATING THE ASHFORD AND REMINGTON ENTITIES**

25. Monty Bennett has served as Ashford's CEO and Chairman of the Board since it became a publicly traded company in November 2014, and currently owns approximately 15.9% of Ashford's common stock when accounting for stock options and deferred compensation. Monty Bennett also serves as CEO of Ashford Hospitality Advisors LLC, a subsidiary of Ashford, and as CEO and chairman of two other Ashford affiliates: Ashford Trust and Ashford Prime. As of November 13, 2015, Monty Bennett owned 6.4% and 5.5% of the outstanding common stock of Ashford Trust and Ashford Prime, respectively. He is also a 50% (direct and indirect) owner and the CEO of Remington.

26. Monty Bennett's father—Archie Bennett, Jr.—owns roughly 4.2% of Ashford's common stock. Archie Bennett, Jr. served as chairman of Ashford Trust since its formation in 2003 until January 2013. In January 2013, Archie Bennett, Jr. retired from Ashford Trust, assumed the role of chairman emeritus and was replaced by his son, Monty Bennett. As of November 13, 2015, Archie Bennett, Jr. owned 4.5% and 3.8% of the outstanding common stock of Ashford Trust and Ashford Prime, respectively. Archie Bennett, Jr. is the chairman of Remington Hotel

Corporation, and beneficially owns the 50% of Remington that does not belong to his son, Monty Bennett.

27. The Bennetts' founding of—and combined roles within—the various Ashford entities provide them with broad control and authority over those entities, and the Company, its management and its directors afford them significant deference with respect to matters that come before the Board. Indeed, Ashford concedes through its public filings the importance of its relationship with the Bennetts. For example, on June 25, 2015, Monty Bennett filed a Schedule 13D (the “Schedule 13D”) that provided, in part, that because he serves as CEO and Chairman of the Board of Ashford, he “effects a measure of control over the [Company].”

28. Ashford is also forthright about the length to which the Company would go to maintain its relationship with the Bennett family even if doing so meant subordinating the interests of the Company—and therefore its unaffiliated stockholders—in favor of the Bennetts. For example, within Ashford's Preliminary Proxy Statement filed on Form 14A on November 13, 2015 (the “Proxy”) in connection with the Proposed Transaction, Ashford discloses that:

If the [Bennetts] breach any of the representations, warranties or covenants made by them in the Acquisition Agreement or the other Transaction Documents, we may choose not to enforce, or to enforce less vigorously, our rights *because of our desire to maintain our ongoing relationship with the Bennetts*. (Emphasis added).

29. In other words, if the Company were forced to choose between protecting the rights of its public stockholders or maintaining its relationship with the Bennetts, the Company concedes that it would likely choose the latter.

30. The Bennetts' influence at Ashford is amplified by the fact that they selected and appointed each of the directors currently sitting on Ashford's Board. Following the November 2014 spin-off from Ashford Trust and subsequent distribution of shares that made Ashford a standalone entity, Monty Bennett, as chairman of Ashford Trust, was responsible for the selection of the initial directors that would constitute the Company's Board.

31. Further, because Ashford's Board is staggered, at the 2015 Ashford annual meeting (the "Annual Meeting"), stockholders were only able to vote on two of the seven directors chosen by Monty Bennett to serve on the Company's Board, such that five of the seven directors have never actually been elected by the Company's stockholders.<sup>7</sup>

32. Further, a majority of Ashford's senior management is conflicted due to their employment with the Bennetts and/or their close connections to Remington.

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<sup>7</sup> On May 13, 2015, Ashford held its annual meeting of stockholders. Among other things, the stockholders reelected directors Reihisen and Mauldin to serve one-year terms until the next stockholder meeting.

Of Ashford's six current officers, five<sup>8</sup> previously worked directly for Remington and/or Remington Hotel Corporation—entities founded and/or wholly-owned by the Bennetts—for more than a decade. Indeed, Ashford concedes that its management is conflicted:

*Our Executive Officers' Duties to Monty Bennett*

*All of our executive officers* report to Monty Bennett and may be considered to be affiliated with the Bennetts. As a result, those officers *may have different interests than the Company as a whole*. These potential conflicts would not exist in the case of a transaction negotiated with unaffiliated third parties. (Emphasis added).

**III. THE PROPOSED TRANSACTION EMERGES FROM A FATALLY FLAWED PROCESS**

33. Sometime before December 15, 2014, the Bennetts approached the Company to ask it to purchase all or a controlling portion of the assets or equity interests of Remington.

34. In response to that unsolicited request, on December 15, 2014, the Board formed the Special Committee to purportedly evaluate and negotiate a potential deal with Remington. The Board selected Defendants Chandiramani, Wheeler and Reihsen to serve on the Special Committee, with Wheeler initially

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<sup>8</sup> The five Ashford officers who previously worked for Remington include: (i) Monty Bennett (CEO of Ashford), (ii) Douglas A. Kessler (President of Ashford), (iii) David A. Brooks (Chief Operating Officer, General Counsel and Secretary of Ashford), (iv) Jeremy Welter (Executive Vice President, Asset Management of Ashford) and (v) Mark L. Nunnley (Chief Accounting Officer of Ashford).

chairing the Committee. The Special Committee subsequently engaged Norton Rose Fulbright US LLP (“NRF”) to serve as its legal counsel.

35. On February 2, 2015, Robert W. Baird & Co. (“Baird”), financial advisor to the Bennetts, submitted a formal proposal to the Special Committee regarding a potential acquisition of the partnership interests of Remington by the Company (the “Initial Remington Proposal”).

36. The Initial Remington Proposal contemplated an acquisition by the Company of 100% of the partnership interests in Remington for a purported price of \$500 million, paid in the form of: (i) \$250 million in cash; (ii) \$125 million in subordinated notes with a ten-year term and an annual interest rate of 8.0%; (iii) \$125 million in a proposed new series of Class A stock to be issued by the Company, paying at least \$9.0 million in annual dividends; and (iv) 50,000 shares of a proposed new series of Class B stock to be issued by the Company with 50-to-1 voting rights that would be convertible on a one-for-one basis into Class A stock.<sup>9</sup>

37. The next day, the Special Committee formally engaged BMO Capital Markets Corp. (“BMO”) to serve as its financial advisor.

38. On February 20, 2015, Wheeler raised with Monty Bennett the Special Committee’s desire that as a condition to consummating any transaction, a majority

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<sup>9</sup> Unexplained in the Proxy, however, is how 50,000 shares of a new series of Class B stock could be valued at zero considering (i) through (iii) above totals \$500 million.

of the voting power of the Company's stockholders *other than* the Bennetts and their affiliates should approve the transaction (the "Unaffiliated Stockholder Approval").

39. On March 18, 2015, and at the instruction of the Special Committee, BMO delivered to Baird a non-binding preliminary term sheet setting forth the terms of the Special Committee's counteroffer for the acquisition of all of the ownership interests of Remington by the Company based upon a valuation of Remington of \$310 million.<sup>10</sup>

40. On April 2, 2015, Monty Bennett made a presentation to the Special Committee purportedly supporting a *\$500 million* valuation for Remington. This valuation of Remington amounted to roughly two-thirds more than the Special Committee's/BMO's \$310 million valuation.

41. Essentially all of Remington's business flows through Ashford; Monty Bennett has acknowledged that only two or three of the roughly 90 properties that Remington manages are *not* Ashford Prime or Ashford Hospitality properties. As such, Remington has limited value beyond the business that it derives from the Ashford entities. Given that Ashford accounts for essentially all of Remington's business, it is questionable how Monty Bennett was able to convince the Special Committee that Ashford's initial valuation of Remington was understated by almost \$200 million.

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<sup>10</sup> Defendants fail to disclose the terms of the March 18, 2015 offer.

42. During his presentation to the Special Committee, Monty Bennett also touted hypothetical Ashford Trust transactions that would positively impact the valuation of Remington. Monty Bennett then told the Special Committee that the Bennetts would only consider a transaction that: (i) permitted the Bennetts to maintain a 20% partnership interest in Remington; (ii) was tax-free to the Bennetts; and (iii) would either include a significant cash payment to the Bennetts or would involve transaction consideration that would provide a minimum level of annual cash flow to the Bennetts from the equity consideration that they would receive.

43. The Special Committee was free to, but did not, abandon a transaction with Remington. An acquisition of Remington was not the Company's initiative, and the Company had not put itself in play or disclosed confidential information to a competitor. Further, the Company already had the exclusive services of Remington, and had no need for a massive acquisition roughly one year after its IPO. Nonetheless, the Special Committee continued to engage with Monty Bennett and make undue concessions until a deal was reached.

44. In resisting the Special Committee's initial request to subject any deal to Unaffiliated Stockholder Approval, on April 10, 2015, Monty Bennett presented to the Special Committee the strained rationale for not considering Ashford Trust's substantial holdings in the Company as "affiliated" for the purpose of any Ashford stockholder vote. Monty Bennett stated that by a resolution of the board of directors



of Ashford Trust, the directors of Ashford Trust that had been deemed “independent” under applicable stock exchange rules would determine how to vote the shares of the Company’s common stock held by Ashford Trust. Thus, because these “independent” directors would ostensibly decide how Ashford Trust would vote its shares of the Company’s common stock, Monty Bennett argued that Ashford Trust should be deemed a stockholder not affiliated with the Bennetts for the purposes of the Unaffiliated Stockholder Approval. He also discussed the potential for establishing special committees at both Ashford Trust and Ashford Prime to enable both companies to vote their Company shares as stockholders unaffiliated with the Bennetts for the purposes of the Unaffiliated Stockholder Approval. But ultimately, based upon the information disclosed within the Proxy, these measures were never implemented.

45. On April 28, 2015, the Special Committee, NRF and BMO discussed BMO’s financial analysis of Remington, including an overview of financial projections prepared *by Remington itself*. BMO’s further analysis, “taking into account the additional information provided by Remington, supported an increased preliminary valuation of Remington in the range of approximately \$400 to \$420 million.”<sup>11</sup> Aside from the financial projections prepared by Remington, the driver

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<sup>11</sup> Proxy at 42.

for this roughly one-third increase in Remington's valuation by BMO is unexplained in the Proxy.

46. The drastic jump in BMO's valuation of Remington prompted an April 29, 2015 Special Committee offer to the Bennetts to negotiate for the acquisition of 80% of the limited partnership interests in Remington and the general partnership interests in Remington by the Company on a tax-free basis based upon a \$408 million valuation of Remington.

47. On May 1, 2015, the Bennetts again suggested to the Special Committee that Ashford Trust and Ashford Prime should be included as stockholders unaffiliated with the Bennetts for purposes of any Unaffiliated Stockholder Approval.

48. On May 6, 2015, Remington submitted a term sheet to the Special Committee setting forth the structure and terms of a proposed transaction (the "May 6, 2015 Proposal") whereby the Company would acquire an 80% limited partnership interest in Remington and 100% of the general partnership interests in Remington GP in exchange for consideration of approximately \$342 million. The May 6, 2015 Proposal was predicated upon a \$428 million valuation of Remington.

49. The proposed structure under the May 6, 2015 Proposal introduced the utilization of a newly-formed subsidiary of the Company (*i.e.*, Newco) and a wholly-owned subsidiary of Newco (*i.e.*, Newco Sub). This proposal contemplated the

following consideration: (i) a \$10 million promissory note paid over four years; (ii) the issuance by Newco of \$250 million in convertible preferred stock paying dividends at a rate of 8.0% per annum; and (iii) \$80 million in common stock issued by Newco. The proposal also contemplated that the Company would contribute substantially all of its business to Newco and Newco would, in turn, contribute the acquired Remington limited partnership interests to Newco Sub, which would then acquire the general partnership interest in Remington directly.

50. The complex structure contemplated by the May 6, 2015 Proposal was driven by the parameters imposed by Monty Bennett on April 2, 2015, including (i) the Bennetts' retention of a 20% partnership interest in Remington; (ii) a transaction structure that would ensure that the acquisition was tax-free to the Bennetts; and (iii) either a significant cash payment to the Bennetts or transaction consideration that would provide a minimum level of annual cash flow to the Bennetts from the equity consideration that they would receive.

51. On May 20, 2015, the Special Committee sent a revised term sheet to Remington which called for the acquisition by the Company of an 80% limited partnership interest in Remington and 100% of the general partnership interests in Remington GP for approximately \$334 million in consideration, based upon an approximately \$418 million valuation of Remington (the "May 20, 2015 Proposal"). The terms of the May 20, 2015 Proposal included preferred stock as part of the

consideration in the amount of \$160 million with a dividend of 6.5% per annum. Inexplicably, this proposal did not include the Unaffiliated Stockholder Approval as a condition to the consummation of the transaction.

52. On June 10, 2015, without receiving a counterproposal from the Bennetts on its May 20, 2015 proposal, the Special Committee nevertheless provided a further revised, more generous proposal to the Bennetts (the “June 10, 2015 Proposal”). The June 10, 2015 Proposal reflected aggregate consideration in the amount of \$334 million for an 80% limited partnership interest in Remington and 100% of the general partnership interests in Remington, which would be paid with (i) a \$10 million promissory note, (ii) \$200 million in Newco preferred stock with a 7.25% dividend per annum, and (iii) \$124 million in Newco non-voting common stock.

53. The June 10, 2015 Proposal also contemplated that as consideration for the contribution of all of its assets to Newco, the Company would receive Newco voting common stock equal in number to the shares of Company common stock issued and outstanding. The offer further contemplated that the Bennetts would have control rights with respect to certain aspects of Newco, Newco Sub and Remington by virtue of the rights inherent in the preferred stock to be issued to them and the 20% limited partnership interest in Remington to be retained by them, as well as contractual rights set forth in an investor rights agreement. For some unexplained

reason, “Per the instructions of the Special Committee, the draft transaction documents did not require the Unaffiliated Stockholder Approval.”

54. The same day that the Special Committee delivered its June 10, 2015 Proposal to the Bennetts, Monty Bennett caused the Company to amend its advisory agreements with Ashford Trust and Ashford Prime (the “Advisory Agreement Amendments”), making the contracts less valuable to the Company and making the Company less attractive to potential suitors. Among other things, the Advisory Agreement Amendments: (i) eliminated Ashford’s previously exclusive advisory arrangements with Ashford Trust and Ashford Prime by allowing the latter two companies to engage an asset manager *other than* Ashford LLC with respect to any new properties acquired by them; (ii) obligated Ashford LLC to provide so-called “key money investments” to facilitate Ashford Trust’s and Ashford Prime’s acquisition of properties under certain conditions, a requirement that has cost Ashford LLC approximately \$6 million to date; (iii) reduced the base fee payable to Ashford LLC; and (iv) removed a termination fee payable to Ashford in the event that Ashford Prime or Ashford Trust were to terminate their advisory agreements with Ashford pursuant to an Ashford change in control event.

55. The reduction in the termination fee provisions within the advisory agreements was particularly problematic given the Company’s purported exploration of strategic alternatives. The termination fees would give Ashford’s

potential third-party suitors comfort that if they entered into a transaction with Ashford, they would either receive the benefits of the advisory agreements or some just compensation if the agreements were terminated. By eliminating some of this protection, Monty Bennett and the Ashford Board made the Company a less attractive acquisition target for third-party suitors, thereby helping to insulate the Proposed Transaction from superior third-party proposals.

56. The Advisory Agreement Amendments were not, but should have been, subject to independent director review and evaluated in the context of Ashford's exploration of strategic alternatives. Instead, the Board rubber-stamped the Amendments, which harmed Ashford and its stockholders by helping to insulate the Company from transactions with third parties, thereby increasing the likelihood that the Bennetts could impose their preferred series of transactions on the Company.

57. Moreover, on June 26, 2015, Ashford Trust announced that it would commence a process to list for sale a portfolio of approximately 23-select-service hotels "that are mostly brand-managed and will take an opportunistic approach to selling the remaining select-service hotels in the future." It appears that the Bennetts never informed the Special Committee that Ashford Trust was contemplating such a sale, and that if such a sale occurred, Remington's projected earnings would be materially affected moving forward. If the Bennetts did inform the Special

Committee of this material development, the Special Committee and BMO ignored, or failed to revisit, the valuation of Remington.

58. Further, throughout June and July of 2015, the Bennetts sought a number of concessions from the Special Committee that would increase the Bennetts' control over Newco and the Company, while simultaneously insulating them from risk. For example, the Bennetts sought a 5% termination fee payable by Ashford to Remington if the Company were to terminate the Proposed Transaction in favor of a superior proposal, despite the fact that the Company never even indicated to the market that it would be open to a sale of its assets.

59. On September 14, 2015, the Special Committee approved the Proposed Transaction and determined to recommend that the Board and stockholders approve it.

60. On September 17, 2015, the Board—other than Monty Bennett and Defendant Hays, each of whom recused himself—approved the Proposed Transaction, which was announced the next day, on September 18, 2015.

#### **IV. THE PROPOSED TRANSACTION IS UNFAIR TO ASHFORD AND ITS UNAFFILIATED STOCKHOLDERS**

61. On September 17, 2015, the Company entered into an Acquisition Agreement (the “Acquisition Agreement”) to acquire 80% of Remington for total consideration of \$331.7 million (as defined above, the “Remington Sale”). In addition, under the Acquisition Agreement, Ashford's existing business will also be

contributed to a new subsidiary of Ashford, *i.e.*, Newco (as defined above, the “Ashford Contribution,” and, with the Remington Sale, the “Proposed Transaction”). The consideration to Remington will consist of (i) 916,500 shares of Newco Class B non-voting common stock, representing a 29.4% initial ownership stake in Newco that carries an estimated fair value of approximately \$91.7 million; (ii) 9,200,000 shares of Newco 6.625% non-voting convertible preferred stock with an estimated fair value of approximately \$230.0 million (the “Newco Preferred Stock”);<sup>12</sup> and (iii) a \$10.0 million zero coupon Newco note payable, with an estimated fair value of approximately \$9.0 million.

62. After consummation of the Proposed Transaction, the Company and the Bennetts will initially own 70.6% and 29.4% of the combined voting and non-voting common stock in Newco, respectively. If the preferred stock of Newco owned by the Remington Sellers is fully converted into non-voting common stock of Newco in the future pursuant to its terms, the Company will own 43.8% of Newco common

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<sup>12</sup> The Newco convertible stock will carry a liquidation value of \$25 per share and be convertible to non-voting common stock of Newco at a conversion ratio equal to the liquidation value of \$25 per share divided by \$120. In the event Newco fails to pay a dividend at the rate of 6.625% per annum for two consecutive quarterly periods, then, until such arrearage is paid in cash in full, (i) the dividend rate on the Newco Preferred Stock will increase to 10% per annum; (ii) no dividends may be declared and paid, and no other distributions or redemptions may be made, on the Newco common stock; and (iii) the Newco board of directors and the Company Board will be increased by two seats and the holders of Newco Preferred Stock will be entitled to designate two individuals to fill the newly-created seats.



stock and the Remington Sellers will own 56.2% of Newco common stock. Thus, if and when any voting restrictions fall away, then the Bennetts will control Newco and the Company will be left with a minority interest. For their part, unaffiliated Ashford stockholders will ultimately hold an interest in a company that has a minority interest in what is now Ashford's business.

63. Since the announcement of the Proposed Transaction, Ashford's stock price has fallen more than 13%.

64. The roughly \$414 million valuation assigned to Remington in the Proposed Transaction far exceeded any reasonable amount that would be paid in an arm's-length transaction. At the time the Company entered into the Acquisition Agreement, its entire market capitalization was *less than half* the purported value of Remington.

65. One of the only questions Monty Bennett received during a September 18, 2015 investor conference call about the Ashford-Remington "combination" was "[W]ill you be disclosing any of the filings or anything what the historical EBITDA numbers for Remington was?" Monty Bennett replied "Yes. In our proxy filings we will be disclosing all of that information." Contrary to Monty Bennett's representation, Remington's historical EBITDA has not been disclosed to Ashford stockholders, thereby cloaking Remington's valuation and inhibiting the ability of Ashford stockholders to determine the fairness of the Proposed Transaction.

66. Following the Proposed Transaction Ashford's unaffiliated stockholders will hold their Ashford stock in name only. Ashford will simply be a stockholder of Newco, and essentially all the consideration the Company will receive for essentially all of its assets will rank junior to (i) all of Newco's indebtedness, whenever incurred; (ii) the Newco Preferred Stock; and (iii) all equity interests of Newco's subsidiaries in the event of their respective liquidation or dissolution. Thus, the rights of Ashford stockholders to participate in any liquidation or dissolution would be subordinated to the claims of Newco's creditors and to all equity interests of Newco, including those held by the Bennetts. Relatedly, in the event of Ashford's bankruptcy, dissolution or liquidation, the holders of Newco Preferred Stock must be satisfied before any distributions can be made to the holders of Newco's common stock – *i.e.*, the Company.

67. Because the Board never subjected the Company to an active—or even passive—market check, there is no objective indication that the terms of the Proposed Transaction are fair to the Company or its unaffiliated stockholders, let alone that they fairly and adequately maximize stockholder value.

68. Also, the Proposed Transaction adds unnecessary complexity to the structure of a neophyte public company. Following its consummation, the Company will be a holding company owning shares of Newco and will conduct no material activities other than activities incidental to holding those shares. As a result, Ashford

will be substantially dependent on the ability of Newco and its subsidiaries to fund the Company's cash needs. If Newco is unable to make cash distributions, Ashford may be unable to fund its cash obligations, and if Newco is less profitable than anticipated by Ashford, the Company may not be able to fund its operating expenses.

69. Further, the Proposed Transaction will change the entire business profile of the Company, and because the Company will be structured as a non-operating holding company, a decrease in the Company's relative ownership of Newco may require the Company to register as an investment company under the Investment Company Act.

70. The terms of the Acquisition Agreement are also so one-sided that they cannot possibly be the product of sound business judgment.

71. The Acquisition Agreement contains termination rights for both the Company and Remington, including the right of either party to terminate the Acquisition Agreement if the transactions are not consummated before June 30, 2016. Pursuant to the terms of the Acquisition Agreement, termination of it by Ashford obligates the Company to pay the Remington Sellers a termination fee of \$6.7 million plus the costs and expenses incurred by them. However, there is no reverse termination fee payable by the Remington Sellers to the Company if the Remington Sellers are unable to consummate the merger or act to terminate the Acquisition Agreement.

72. Further, the Acquisition Agreement contains “no-shop” restrictions on the Company’s ability to solicit acquisition proposals from third parties and to provide information to, and participate in discussions and engage in negotiations with, third parties regarding alternative acquisition proposals. Despite never having indicated to the market or any third parties that it would be open to sale of all or substantially all of its assets, the Company was nonetheless bound by a restrictive “no-shop” clause typically found in a merger agreement *for the protection of the acquirer*.

73. In connection with the Acquisition Agreement, the parties intend to enter into an investor rights agreement (the “Investor Rights Agreement”) that will provide for, among other things, governance rights, operating agreements, noncompetition agreements, transfer restrictions, put and call rights and obligations of the parties with respect to the Company and its subsidiaries, including Remington. The Investor Rights Agreement carries a five-year term.

74. The Investor Rights Agreement provides that the Newco board of directors will, at all times until the occurrence of Newco’s initial public offering, consist of the same individuals serving on the Company Board, including the Remington Sellers’ nominee. Thus, the Newco Board, like the Company’s Board, will be beholden and loyal to the Bennetts, and by extension their preferred transactions.

75. The Investor Rights Agreement also provides that so long as the Remington Sellers beneficially own no less than 20% of the issued and outstanding shares of the common stock of Newco (taking into account Newco Preferred Stock on an as-converted basis), the Company, Newco and Newco Sub are prohibited, without the prior written consent of a majority in interest of the holder group investors, from, among other actions: (i) conducting the property and project management business conducted by Remington in entities other than Newco Sub, Remington GP and Remington; (ii) permitting Newco Sub, Remington GP and Remington to acquire or operate any material assets, business or operations, other than those used in or related to the conduct of the property and project management business conducted by Remington; and (iii) taking any action to cause any of the material business operations of the Company to be conducted through entities other than Newco or its wholly-owned subsidiaries.

76. The Investor Rights Agreement provides that, as soon as practicable after the second anniversary of the closing of the Proposed Transaction but in any event no later than the third anniversary of the Proposed Transaction, Newco would take steps to conduct an initial public offering of Newco common stock (the “Newco IPO”). Because Newco’s certificate of incorporation provides that any shares of non-voting Newco common stock will automatically convert into an equivalent number of shares of Newco voting common stock upon the consummation of the

Newco IPO, it is likely that sometime in the foreseeable future the Bennetts will obtain voting control over Newco.<sup>13</sup>

77. Also under the Investor Rights Agreement, after the fifth anniversary of the Proposed Transaction, Newco will have the option to purchase all or any portion of the Newco Preferred Stock in \$25,000,000 increments on a pro rata basis among all “Covered Investors”<sup>14</sup> (the “Preferred Call Option”) at a price per share equal to the sum of (i) not more than \$25.125, plus (ii) all accrued but unpaid dividends. The purchase price is payable only in cash. The notice of exercise of the Preferred Call Option does not limit or restrict any Covered Investor’s right to convert the Newco Preferred Stock into shares of Newco common stock prior to the closing of the Preferred Call Option.

78. Further, the terms of the Proposed Transaction will cause an additional conflict of interest between the Company and the Bennetts. Because the Remington Sellers will receive Newco Preferred Stock and Remington GP will receive the Promissory Note, the Remington Sellers may be incentivized by this consideration

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<sup>13</sup> Assuming the full conversion of the Newco Preferred Stock to be issued to the Remington Sellers, the Remington Sellers will own 56.2% of the combined voting and non-voting common stock in Newco. Thus, when the Remington Sellers’ non-voting stock converts to voting stock, the Remington Sellers, and not the Company, will control Newco.

<sup>14</sup> The “Covered Investors” are defined as Monty Bennett, Archie Bennett, Jr., MJB Investments, Sharkey and their permitted transferees.

to maximize the cash flow of the Company and its subsidiaries. As such, the Bennetts will have an additional conflict of interest in making management decisions that might be detrimental to the Company's long-term strategy and success, but which would offer the Bennetts the greatest return on the Newco Preferred Stock and the Promissory Note.<sup>15</sup>

79. The Proposed Transaction was also structured to ensure that Newco or the Company would bear the majority—if not all—of the costs incurred by Remington and the Remington Sellers. Indeed, if the Proposed Transaction closes, Newco will assume and pay all transaction costs incurred by the Bennetts and Remington in connection with the Acquisition Agreement, plus all bonuses and other payments made to Remington employees up to \$2,750,000 in the aggregate.

80. For all of the reasons stated above, the terms of the Proposed Transaction, including the Preferred Call Option and the other transactions contemplated under the Investor Rights Agreement, are unfairly favorable to the Bennetts and the Remington Sellers, while materially depreciating the equity interests of the Company's unaffiliated stockholders.

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<sup>15</sup> Each share of Newco Preferred Stock has a cumulative dividend rate of 6.625% per annum, which dividends are payable in cash quarterly in arrears, and the Newco Sub Promissory Note is payable in sixteen consecutive and equal quarterly installments.

## V. THE SPECIAL COMMITTEE THAT APPROVED THE PROPOSED TRANSACTION WAS ILL-INFORMED

81. Prior to agreeing to sell substantially all of Ashford's assets, the members of the Special Committee failed to fully inform themselves as to whether, among other things, a non-affiliated third party would be interested in acquiring the Ashford assets for an amount greater than what the Company will receive in connection with the Proposed Transaction.

82. Attempting to excuse this failure, the Special Committee relied on a materially false and misleading Schedule 13D filed with the SEC by Monty Bennett on June 25, 2015 to assert that non-affiliated third parties were on notice that the Special Committee was exploring strategic alternatives and that "no third party approached the Company, any member of the Special Committee or the Special Committee's advisors regarding a potential transaction." However, the Schedule 13D upon which the Special Committee relied in making that assertion never disclosed that the Ashford Board had formed a Special Committee to explore strategic alternatives or a sale of substantially all of Ashford's assets. Rather, the Schedule 13D merely provided that:

Remington Holdings, LP ("Remington"), an entity owned 50% by [Monty Bennett], *has proposed to [Ashford]* (the "Remington Proposal") *the potential sale of a significant and controlling portion of the outstanding equity interests of Remington to [Ashford] or its affiliates.* (Emphasis added).



Thus, Monty Bennett disclosed in the Schedule 13D that Remington was considering a potential sale of *its* assets *to Ashford*, not that Ashford was considering a sale of substantially all of its assets. Thus, the market was unaware that the Company was “in play,” and certainly did not know that the Bennetts were in discussions with the Special Committee over an end-stage transaction that would effectively result in a delayed change of control of Ashford. In fact, the Schedule 13D explicitly stated that Monty Bennett did not have any “[P]lans or proposals that would result in . . . a sale or transfer of a material amount of assets of [Ashford] or any of its subsidiaries.” The Schedule 13D also stated that Monty Bennett did not have any “[P]lans or proposals that would result in . . . an extraordinary corporate transaction, such as a merger, . . . any other material change in the Issuer’s business or corporate structure.” Thus, the Schedule 13D actually represented to the world that the Company was *not* exploring anything other than an unsolicited offer to acquire some or all of Remington. Reliance on this Schedule 13D as some form of passive market check highlights the Special Committee’s failure to engage in any reasonable decision making process designed to protect the interests of the Company or its unaffiliated stockholders.

83. Indeed, the Proxy makes clear that when the June 25, 2015 13D was disseminated, the Company had already proposed the transaction structure in which the Company’s assets would be contributed to Newco. Nevertheless, the 13D

misleadingly omitted any reference to the potential disposition of *Ashford's* assets. Nor did the Company ever comply with its SEC obligation to amend the 13D in order to provide the information that it omitted.<sup>16</sup> As such, third-party investors had no indication that Ashford was “in play” until it was already too late.

## **VI. THE MATERIALLY FALSE AND/OR MISLEADING PROXY**

84. Compounding the unfairness of the process and the inadequacy of the consideration to be received by the Company—and, indirectly, its stockholders—in connection with the Proposed Transaction, on November 13, 2015, the Company filed a materially false and/or misleading Proxy with the SEC.

### **A. The Proxy Contains Materially False and/or Misleading Statements**

85. Several of the disclosures made by the Company and the Individual Defendants in the Proxy are false and will cause irreparable harm to Ashford stockholders if they are not remedied prior to the stockholder vote on the Proposed Transaction.

86. For example, the Proxy states on page 10 that:

“[t]he Transaction Documents *permanently limit the voting power of the Remington Sellers* and their controlled affiliates at Newco, with respect to shares of Newco common stock acquired in the transactions (which amount may be increased by post-closing

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<sup>16</sup> At this point, Monty Bennett should have, but did not, file an amended 13D beneficial ownership statement revealing that he indeed planned a transaction that involved the sale of all or substantially all of Ashford's assets.

acquisitions of Newco voting common stock acquired from non-Newco affiliates) to no more than 25%.” (Emphasis added).

At best, this statement is highly misleading given that the ability of the Remington Sellers and the Bennetts to increase their 25% control over Newco following the Newco IPO<sup>17</sup> renders the 25% cap illusory. Moreover, in the interim, the Bennetts may increase their voting power in Newco above 25% by acquiring shares of Newco through various means permitted by a comprehensive carve-out (the “Newco Stock Carve-Out”) negotiated between the Bennetts and the ostensibly independent Special Committee.

87. Pursuant to the Newco Stock Carve-Out, the Bennetts may acquire Newco common stock through: (i) open market purchases, (ii) privately negotiated transactions with Ashford Trust and/or Ashford Prime, and/or (iii) distributions by either Ashford Trust or Ashford Prime. Thus, the Proxy’s disclosure that the Transaction Documents will “permanently” limit the Bennetts’ voting power in Newco to 25% is highly misleading. In reality, the Proposed Transaction has been structured in a manner that will allow the Bennetts to obtain control over the Company, its assets and its business operations without paying a change-of-control premium.

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<sup>17</sup> According to the Proxy, “[a]s soon as practicable following the second anniversary of the Closing Date [of the Proposed Transaction], . . . Newco will use its best efforts to prepare and file with the SEC a Registration Statement” and commence an IPO of “Newco[’s] Voting Common Stock.”

88. Next, the Proxy states at page 55 that a rationale of the Special Committee in approving the Ashford Contribution was Delaware General Corporation Law §203 (“DGCL §203”). The Proxy explains that DGCL §203 “provides restrictions on business combinations with a person other than the Bennetts who has acquired ownership of 15% or more of the Company’s common stock.” This quoted language misleadingly suggests to stockholders that DGCL §203 precluded *any* transaction with a third party, even a bargained-for transaction more favorable to stockholders than the related-party Proposed Transaction. The Proxy fails to disclose to Ashford stockholders that DGCL §203—which was enacted as a defense against hostile takeovers—in no way precludes the Board and/or the Special Committee from negotiating an arm’s-length sale of the Company or substantially all of its assets to a non-affiliated third party.

89. In addition, a second rationale the Special Committee offers for supporting the Ashford Contribution is:

the Company’s charter documents and shareholder rights plan, which impacts unsolicited offers to acquire significant portions of the outstanding shares of the Company’s common stock, that, together and separately, [made] it unlikely that a third party could acquire control of the Company without the support of the Bennetts.

However, the Proxy fails to disclose that the Ashford Board exempted the Bennett family from the shareholder rights plan (the “Rights Plan”),<sup>18</sup> and that a non-affiliated third party interested in acquiring a significant portion of the outstanding shares of the Company’s common stock could similarly seek such an exemption. This false rationale further misled Ashford stockholders into believing that the Special Committee was inhibited from negotiating a third-party transaction.

90. The Proxy is also false and/or misleading in its description of the Initial Remington Proposal. The Initial Remington Proposal contemplated acquisition by the Company of 100% of the partnership interests in Remington for a purported price of \$500 million, paid in the form of: (i) \$250 million in cash; (ii) \$125 million in subordinated notes with a ten-year term and an annual interest rate of 8.0%; (iii) \$125 million in a proposed new series of Class A stock to be issued by the Company, paying at least \$9.0 million in annual dividends; and (iv) 50,000 shares of a proposed new series of Class B stock to be issued by the Company with 50-to-1 voting rights that would be convertible on a one-for-one basis into Class A stock. Because consideration buckets (i) through (iii) above amount to \$500 million, the \$500 million purchase price disclosed in the Proxy implies zero value for consideration bucket (iv) (*i.e.*, the proposed 50,000 shares of Class B stock).

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<sup>18</sup> The Rights Plan permits Monty Bennett and certain of his affiliates and associates to acquire no more than 20% of the Company’s common stock.

**B. The Proxy Omits Material Information Essential to the Ability of Stockholders to Cast an Informed Vote**

91. In addition to the false and/or misleading statements discussed above, the Proxy also fails to disclose material information without which Ashford stockholders cannot cast a fully-informed vote on Proposal 1 (*i.e.*, the Ashford Contribution) or Proposal 2 (the Share Issuances) in the Proxy.

92. For example, despite Monty Bennett's explicit assurance to investors that Remington's historical EBITDA would be disclosed in the Proxy, it has not been. That undisclosed information is essential in order to, *inter alia*, determine the multiple to be paid by the Company for 80% of Remington, which in turn informs what Ashford stockholders would receive in exchange for contribution of all of the Company's assets.

93. Among other things, the Proxy also fails to disclose:

- a. a fair summary of the terms of the Special Committee's March 18, 2015 counter-offer for the acquisition of all of the ownership interests of Remington;
- b. Ashford and Remington's financial projection inputs from fiscal year 2016 through fiscal year 2019, including: Adjusted EBITDA, CAPEX, Effective Tax Rate, Changes in Net Working Capital, and Unlevered Free Cash Flows;
- c. a fair summary of the amendments and/or changes made by Ashford management to the projected financial information purportedly considered by the Special Committee in connection with the Proposed Transaction, Monty Bennett's role, if any, in such amendments and/or changes to the projected information, and the impetus for such amendments and/or changes;

- d. a fair summary of the topics and information discussed between Monty Bennett, the Committee and its advisors on April 2, 2015 that led BMO to amend its valuation of Remington from \$310 million to between \$400 and \$420 million;
- e. the total amount of shares being sought in Proposal 2, a fair summary of the dilutive impact on Ashford stockholders as a result of the Share Issuances, and that as a result of Proposal 2 the Bennetts may become controllers over Ashford; and
- f. whether a special committee of independent directors has been formed by Ashford Trust and/or Ashford Prime to vote their beneficially-owned shares of Ashford for or against the Proposed Transaction.

94. The disclosure deficiencies described in the preceding paragraphs 85 through 93 are material and must be disclosed prior to any stockholder vote due to, *inter alia*, (a) the related-party nature of the Proposed Transaction and the Share Issuances; (b) the Bennetts' significant influence over the Company and the Ashford Board; (c) the disproportionate benefits that Monty Bennett – and the Remington Sellers – will receive through the Proposed Transaction and the Share Issuances by virtue of their ownership of Remington; (d) the exceedingly generous terms negotiated by Monty Bennett for himself and the Remington Sellers against the ill-informed and beholden Special Committee; (e) the delayed change-of-control effect on Ashford's assets; and (f) the potential for massive dilution from the perspective of Ashford stockholders.

95. Accordingly, Plaintiff seeks injunctive relief to enjoin consummation of the Proposed Transaction unless and until the Board (i) commences a process reasonably designed to maximize the value of Ashford equity and Ashford's assets, and (ii) discloses all material information necessary to allow Ashford stockholders to cast fully-informed votes on the Proposed Transaction (*i.e.*, Proposal 1) and the Share Issuances (*i.e.*, Proposal 2).

### **CLASS ACTION ALLEGATIONS**

96. Plaintiff brings this action pursuant to Rule 23 of the Rules of the Delaware Court of Chancery, individually and on behalf of all other holders of Ashford common stock (except Defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors in interest) who are or will be threatened with injury arising from Defendants' wrongful actions, as more fully described herein (the "Class").

97. This action is properly maintainable as a class action.

98. The Class is so numerous that joinder of all members is impracticable. The Company has thousands of stockholders who are scattered throughout the United States. As of November 13, 2015, Ashford had 2,010,104 shares of common stock outstanding.

99. There are questions of law and fact common to the Class including, *inter alia*, whether:



- a. The Individual Defendants breached their fiduciary duties and other common law duties by agreeing to the Proposed Transaction and the Share Issuances proposed in the Proxy;
- b. The Individual Defendants breached their fiduciary duties by failing to maximize stockholder value before agreeing to a sale of substantially all of Ashford's assets to Newco pursuant to DGCL §271;
- c. The Individual Defendants breached their fiduciary duties by disclosing false and/or materially misleading information, and omitting material information relating to the Proposed Transaction and the Share Issuances;
- d. Remington GP and the Remington Sellers aided and abetted the Individual Defendants' breaches of fiduciary duty.
- e. Plaintiff and the other members of the Class are being—and will continue to be—injured by the wrongful conduct alleged herein and, if so, what is the proper remedy and/or measure of rescissory damages; and
- f. Plaintiff and the other members of the Class will be damaged irreparably by Defendants' conduct.

100. Plaintiff is committed to prosecuting the action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class, and Plaintiff has the same interests as the other members of the Class. Plaintiff is an adequate representative of the Class.

101. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to

individual members of the Class that would establish incompatible standards of conduct for Defendants or adjudications with respect to individual members of the Class that would as a practical matter be disjunctive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

102. Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, preliminary and final injunctive relief on behalf of the Class, as a whole, is appropriate.

## COUNT I

### **DIRECT CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE INDIVIDUAL DEFENDANTS**

103. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

104. The Individual Defendants, as Ashford directors and/or officers, owe the Class the utmost fiduciary duties of due care, good faith, loyalty and candor. By virtue of their positions as directors and/or officers of Ashford and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Individual Defendants have, and at all relevant times had, the power to control and influence and did control and influence and cause the Company to engage in the practices complained of herein. Each of the Individual Defendants was required to, *inter alia*: (a) use their ability to control and manage Ashford in a fair, just and

equitable manner; (b) act in the furtherance of the best interests of Ashford and its stockholders; and (c) fully disclose all material information concerning Proposal 1 and Proposal 2 in the Proxy.

105. The Individual Defendants failed to fulfill their fiduciary duties in connection with the Ashford Contribution by, *inter alia*, (a) failing to adequately explore the Company's strategic alternatives before agreeing to a sale of essentially all of the Company's assets, (b) failing to subject the Proposed Transaction to the Unaffiliated Stockholder Vote, (c) agreeing to an unfair valuation of Remington, (d) improperly relying on the June 25, 2015 Schedule 13D, and (e) disseminating a materially false and/or misleading Proxy to the Company's stockholders in connection with the scheduled vote on the Proposed Transaction and the Share Issuances.

106. As a result of the Individual Defendants' breaches of fiduciary duty, the Class will be harmed by being deprived of their rights to (a) obtain maximum value for Ashford's assets and business operations, including a control premium for the sale of substantially all of Ashford's assets to Newco, and (b) cast a fully-informed vote on Proposal 1 and Proposal 2.

107. Also as a result of the Individual Defendants' breaches of fiduciary duty, Plaintiff and the Class have and will be harmed by, *inter alia*, (i) depreciation

in the value of their Ashford shares and (ii) a detrimental change in the complexion of their investment in the Company.

108. Plaintiff and the Class have no adequate remedy at law.

## COUNT II

### **DIRECT CLAIM AGAINST REMINGTON GP AND THE REMINGTON SELLERS FOR AIDING AND ABETTING THE INDIVIDUAL DEFENDANTS' BREACHES OF FIDUCIARY DUTY**

109. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

110. Defendants Remington GP and the Remington Sellers knew or should have known that the Individual Defendants owe the Company's stockholders the utmost fiduciary duties of due care, good faith and loyalty. Remington GP and the Remington Sellers knowingly participated in the Individual Defendants' breaches of fiduciary duty by negotiating an acquisition of all or substantially of Ashford's assets pursuant to terms that were grossly unfair to the Company and its stockholders.

111. As a result of this conduct by Remington GP and the Remington Sellers, Plaintiff and the other members of the Class have been and will be damaged by virtue of: (a) being deprived of their opportunity to obtain the maximum value for Ashford's assets and business operations, including any future control premium; (b) being deprived of their fundamental right to receive all material information before casting their vote on Proposal 1 and Proposal 2; and (c) the unfair and improper

dilution and depreciation of their voting rights in the Company as a result of the Proposed Transaction.

### **DERIVATIVE ALLEGATIONS**

112. Plaintiff brings this action derivatively to redress injuries suffered by the Company as a direct result of breaches of fiduciary duties by the Bennetts and the Ashford Board.

113. Plaintiff currently owns Ashford common stock and has owned Ashford common stock continuously during the relevant time period.

114. Plaintiff will adequately and fairly represent the interests of Ashford and its stockholders in enforcing and prosecuting their rights, and have retained counsel competent and experienced in stockholder derivative litigation.

### **DEMAND ON THE ASHFORD BOARD IS EXCUSED AS FUTILE**

115. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

116. Plaintiff has not made any demand on the Board to institute this action against the Defendants. Such demand would be futile and useless because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this Action.

117. The current Ashford Board consists of seven directors, only two of whom have ever stood for election, and all of whom are incapable of disinterestedly

and independently considering a demand to investigate, commence or vigorously prosecute this action.

118. Such demand would be futile and useless, and is thereby excused, for at least two independent reasons: (i) a majority of the Ashford Board was comprised of individuals who were either interested in the Proposed Transaction or not independent of the Bennetts (who were interested in the Proposed Transaction); and (ii) the Proposed Transaction was not the product of a valid exercise of business judgment.

**I. A MAJORITY OF THE SEVEN-MEMBER ASHFORD DEMAND BOARD WAS INTERESTED IN THE PROPOSED TRANSACTION AND/OR NOT INDEPENDENT OF THE BENNETTS**

119. *Defendant Monty Bennett*, as the owner of 50% of Remington, is directly interested in the Proposed Transaction. It would be antithetical to his economic interests to initiate and pursue derivative claims challenging the Proposed Transaction, which is unfairly beneficial to Remington (and therefore himself). Thus, Monty Bennett cannot objectively and disinterestedly determine whether to investigate, initiate and prosecute claims relating to the Proposed Transaction.

120. *Defendant J. Robison Hays, III* has been Ashford's Chief Strategy Officer since November 2014. Hays has also been Senior Vice President Corporate Finance & Strategy for Ashford Prime since April 2013, and has served in that capacity for Ashford Trust since 2010. Further, Hays has been employed by Ashford

Trust in some capacity since April 2005. Thus, he is both interested in the Proposed Transaction through his employ at Ashford Trust and Ashford Prime, and loyal to the Bennetts, for whom he has worked for many years in a variety of executive capacities across the multiple Ashford entities that they control. Hays also presently serves on the investment committee and as Chief Investment Officer of AIM, which is, in part, jointly owned by Hays and the Bennetts. As such, Hays and Monty Bennett share a close, expansive and lucrative professional and personal relationship that would neuter Hays' ability to independently and objectively evaluate a demand for action that would run counter to Monty Bennett's interests. Finally, Hays recused himself from the Board decision on the Proposed Transaction, conceding his lack of independence. For all of these reasons, Hays cannot objectively and disinterestedly determine whether to investigate, initiate and prosecute claims relating to the Proposed Transaction.

121. *Defendant Dinesh P. Chandiramani* has served on the Ashford Board since November 2014 and has served as the CEO and president of Hyphen Construction Group. Hyphen Construction Group is a national general contracting firm specializing in the hospitality industry – with clients such as the Ashford entities. Chandiramani was handpicked by the Bennetts to sit on the Ashford Board when Ashford Trust spun off the Company in November 2014. He has never stood for election. For all of these reasons, he cannot objectively and disinterestedly

determine whether to investigate, initiate and prosecute claims relating to the Proposed Transaction.

122. ***Defendant Darrell T. Hail*** is an insurance salesman who used to own a golf shop in Texas. His appointment to the Board is owed entirely to his relationship with the Bennetts, and his Board compensation of over \$56,000 for two months service in 2014 was material to him. In addition to future annual director compensation, Hail stands to receive additional \$50,000 grants of fully-vested Ashford common stock on the date of the first meeting of the Board following each annual meeting of stockholders at which he is re-elected. Hail would jeopardize his position on the Board by pursuing claims against the Company.

123. ***Defendant Brian Wheeler*** was selected by the Bennetts to serve on the Ashford Board of directors beginning in November 2014, when Ashford Trust spun off the Company. Wheeler, who has never stood for re-election, owes his appointment to the Board to his relationship with the Bennetts, and his Board compensation of over \$58,000 for two months of service as a director in 2014 was material to him. In addition to future annual director compensation, Wheeler stands to receive additional \$50,000 grants of fully vested Ashford common stock on the date of the first meeting of the Board following each annual meeting of stockholders at which he is re-elected. In addition, Wheeler's wife owns a commercial printing company that is utilized by the Company, Ashford Trust and Ashford Prime for



printing needs. In 2014 alone, Wheeler and his wife received total fees of \$87,284 from Bennett-controlled Ashford entities through the printing company. They expect to receive a similar amount in 2015, and to continue receiving income through this additional channel into the future. Wheeler will not jeopardize his position on the Board and the related revenue streams for himself and his family by pursuing claims against the Company's Chairman who controls roughly 54.7% of the Ashford stockholder vote.

124. Thus, a majority of the seven-member Board is incapable of objectively and disinterestedly considering a demand to investigate or prosecute the derivative claims alleged herein, and demand on the Board is excused as futile.

## **II. THE PROPOSED TRANSACTION WAS NOT THE PRODUCT OF A VALID EXERCISE OF BUSINESS JUDGMENT**

125. As detailed herein, the processes leading to the Proposed Transaction were heavily conflicted, fatally flawed and did not adequately protect the Company and its minority stockholders from an abuse of power by the Bennetts. Among other things, (a) the valuation ultimately assigned to Remington was highly speculative, unreasonably high and at least partially predicated on upward adjustments based on information provided by Remington itself; (b) the Special Committee was ill-informed, and it improperly, unreasonably or carelessly relied on Monty Bennett's patently misleading June 25, 2015 13D filing as a substitute for a market check for the Proposed Transaction; (c) the Special Committee did not participate in the

negotiation of—or determination to enter into—the Advisory Agreement Amendments, and (d) the Special Committee did not secure an unaffiliated vote of Ashford’s stockholders, or even a concession that the Bennetts would not participate in the decision on how Ashford Prime and Ashford Trust would vote their Company stock at the special meeting, such that the stockholder vote was an illusory and ineffective check on the Bennetts’ abuse of power in orchestrating the Proposed Transaction. In light of these circumstances and others, neither the Bennetts’ conduct nor that of the Ashford Board warrants the protections of the business judgment rule.

126. Moreover, the Proposed Transaction is so one-sidedly in favor of the Bennetts and Remington that it is beyond the bounds of reasonable judgment and is inexplicable on any grounds other than bad faith. For example, Remington, which relies almost entirely on Ashford for its business, was purportedly valued at \$414 million, more than twice Ashford’s entire market capitalization at the time the Company entered into the Acquisition Agreement.

127. Thus, demand on the Demand Board is excused as futile for this additional reason.

### COUNT III

#### **DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE INDIVIDUAL DEFENDANTS**

128. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

129. The Individual Defendants, as Ashford directors, owe the Company the utmost fiduciary duties of due care, good faith and loyalty. By virtue of their positions as directors of Ashford and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Individual Defendants have, and at all relevant times had, the power to control and influence and did control and influence and cause the Company to engage in the practices complained of herein. Each of the Individual Defendants was required to (a) use their ability to control and manage Ashford in a fair, just and equitable manner; and (b) act in furtherance of the best interests of Ashford and its stockholders and not their own.

130. The Individual Defendants breached their fiduciary duties owed to the Company by, *inter alia*, engaging in an unfair process with Remington and the Bennetts, including the Advisory Agreement Amendments, which resulted in Remington and the Bennetts receiving unfairly favorable terms at the expense of the Company and its unaffiliated stockholders.

131. Among other things, the individual members of the Board: (a) allowed the Bennetts' relationship with the Company and personal pecuniary interests to

pervade the negotiations relating to the Proposed Transactions to the detriment of the Company and its stockholders; (b) agreed to vastly overpay for an 80% limited partnership interest in Remington and a 100% interest in Remington GP, forfeiting the leverage the Company had as Remington's principle source of business; and (c) did not subject the Proposed Transaction and the Share Issuances to an unaffiliated vote of Ashford stockholders;

132. The Company has been harmed in the amount of the overpayment to Remington and the Bennetts, and by the dilutive impact that the Proposed Transaction and the Share Issuances will have on the Company and its stockholders. The Company is therefore due restitution for these breaches of fiduciary duty.

#### **COUNT IV**

#### **DERIVATIVE CLAIM AGAINST REMINGTON GP AND THE REMINGTON SELLERS FOR AIDING AND ABETTING THE INDIVIDUAL DEFENDANTS' BREACHES OF FIDUCIARY DUTY**

133. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

134. Defendants Remington GP and the Remington Sellers knew or should have known that the Individual Defendants owe the Company's stockholders the utmost fiduciary duties of due care, good faith and loyalty. Remington GP and the Remington Sellers knowingly participated in the Individual Defendants' breaches of fiduciary duty by negotiating an acquisition of all or substantially all of Ashford's

assets pursuant to terms that were grossly unfair to the Company and its stockholders.

135. As a result of this conduct by Remington GP and the Remington Sellers, Plaintiff and the other members of the Class, as well as the Company, have been and will be damaged by virtue of: (a) the Company's overpayment for an 80% limited partnership interest in Remington and 100% of the general partnership interests in Remington GP, (b) the Company's contribution of substantially all of Ashford's assets and business operations to Newco in exchange for inadequate consideration, and (c) the unfair and improper dilution that the Company and its stockholders will suffer as a result of the Proposed Transaction and the Share Issuances.

### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiff demands judgment as follows:

- A. Finding the Ashford Board liable for breaching their fiduciary duties owed to the Class and the Company;
- B. Finding Remington GP and the Remington Sellers liable for aiding and abetting the Individual Defendants' breaches of fiduciary duty;
- C. Finding that demand on the Ashford Board is excused as futile;
- D. Enjoining any stockholder vote on the Proposed Transaction and the Share Issuances until the Individual Defendants (i) initiate a process to maximize the value to be received by the Company in the disposal of substantially all of Ashford's

assets, and (ii) disclose all material information necessary to allow Ashford stockholders to cast fully-informed votes on the Proposed Transaction (*i.e.*, Proposal 1) and the Share Issuances (*i.e.*, Proposal 2).

E. Certifying the proposed Class, and granting rescission of the Proposed Transaction and the Share Issuances, or in the alternative awarding the Class members rescissory damages, together with pre- and post-judgment interest;

F. Awarding Plaintiff the costs and disbursements of this Action, including attorneys', accountants', and experts' fees; and

G. Awarding such other and further relief as is just and equitable.

Dated: December 11, 2015

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