

# CLEARY GOTTlieb STEEN & HAMILTON LLP

One Liberty Plaza  
New York, NY 10006-1470

T: +1 212 225 2000

F: +1 212 225 3999

clearygottlieb.com

WASHINGTON, D.C. • PARIS • BRUSSELS • LONDON • MOSCOW  
FRANKFURT • COLOGNE • ROME • MILAN • HONG KONG  
BEIJING • BUENOS AIRES • SÃO PAULO • ABU DHABI • SEOUL

D: +1 212 225 2416  
soneal@cgsh.com

THOMAS J. MOLONEY  
RICHARD S. LINDER  
JAMES A. DUNCAN  
STEVEN M. LOEB  
CRAIG B. BROD  
NICOLAS GRABAR  
CHRISTOPHER E. AUSTIN  
HOWARD S. ZELBO  
DAVID E. BRODSKY  
ARTHUR H. KOHN  
RICHARD J. COOPER  
JEFFREYS S. LEWIS  
PAUL J. SHIM  
STEVEN L. WILNER  
ANDRES DE LA CRUZ  
DAVID C. LOPEZ  
MICHAEL A. GERSTENZANG  
LEV L. DASSIN  
NEIL Q. WHORISKEY  
JORGE U. JUANTORENA  
MICHAEL D. WEINBERGER  
DAVID LEINWAND  
DIANA L. WOLLMAN  
JEFFREY A. ROSENTHAL  
MICHAEL D. DAYAN  
CARMINE D. BOCCUZZI, JR.  
JEFFREY D. KARPFF  
KIMBERLY BROWN BLACKLOW  
ROBERT J. RAYMOND  
SUNG K. KANG  
SANDRA L. FLOW  
FRANCISCO L. CESTERO  
FRANCESCA L. ODELL  
WILLIAM J. MCRAE  
JASON FACTOR  
JOON H. KIM

MARGARET S. PEONIS  
LISA M. SCHWEITZER  
JUAN G. GIRÁLDEZ  
DUANE MCLAUGHLIN  
BREON S. PEACE  
CHANTALE E. KORDULA  
BENET J. O'REILLY  
ADAM E. FLEISHER  
SEAN A. O'NEAL  
GLENN P. MCGRORY  
MATTHEW P. SALERNO  
MICHAEL J. ALBANO  
VICTOR L. HOU  
ROGER A. COOPER  
AMY R. SHAPIRO  
JENNIFER KENNEDY PARK  
ELIZABETH LENAS  
LUKE A. BAREFOOT  
JONATHAN S. KOLODNER  
DANIEL ILAN  
MEYER H. FEDIDA  
ADRIAN R. LEIPSIC  
ELIZABETH VICENS  
ADAM J. BRENNEMAN  
ARI D. MACKINNON  
JAMES E. LANGSTON  
JARED GERBER  
COLIN D. LLOYD  
COREY M. GOODMAN  
RISHI ZUTSHI  
JANE VANLARE  
DAVID H. HERRINGTON  
KIMBERLY R. SPOERRI  
AARON J. MEYERS  
DANIEL C. REYNOLDS  
ABENA A. MAINOO

HUGH C. CONROY, JR.  
JOSEPH LANZKRON  
MAURICE R. GINDI  
KATHERINE R. REAVES  
RAHUL MUKHI  
ELANA S. BRONSON  
MANUEL SILVA  
KYLE A. HARRIS  
LINA BENSMAN  
ARON M. ZUCKERMAN  
RESIDENT PARTNERS  
SANDRA M. ROCKS  
JUDITH KASSEL  
PENELOPE L. CHRISTOPHOROU  
BOAZ S. MORAG  
MARY E. ALCOCK  
HEIDE H. ILGENFRITZ  
KATHLEEN M. EMBERGER  
AVRAM E. LUFT  
ANDREW WEAVER  
HELENA K. GRANNIS  
JOHN V. HARRISON  
CAROLINE F. HAYDAY  
NEIL R. MARKEL  
KENNETH S. BLAZEJEWSKI  
LAURA BAGARELLA  
SHIRLEY M. LO  
JONATHAN D.W. GIFFORD  
SUSANNA E. PARKER  
DAVID W.S. YUDIN  
RESIDENT COUNSEL  
LOUISE M. PARENT  
OF COUNSEL

April 11, 2020

## VIA FEDEX

Members of the Board of Directors  
Ashford Hospitality Trust, Inc.  
7 St. Paul Street  
Suite 820  
Baltimore, MD 21202

14185 Dallas Parkway  
Suite 1100  
Dallas, TX 75854

RE: Fraudulent Transfers Made to Ashford Hospitality Trust, Inc.  
(the “**Controlling Parent**”)

---

Members of the Board:

We represent BFEF V Series B LLC (the “**Lender**”), under (1) the Senior Mezzanine Loan Agreement dated as of April 9, 2018 (the “**Senior Loan Agreement**”) in the original principal amount of \$98,100,000 (the “**Senior Mezzanine Loan**”), by and among Bank of America, N.A. (“**BoA**”), Barclays Bank PLC (“**Barclays**”), Morgan Stanley Bank, N.A. (“**MS**”) and the entities listed on **Schedule I** attached hereto (collectively, “**Senior Mezzanine Borrower**”) and (2) the Junior Mezzanine Loan Agreement dated as of April 9, 2018 (the “**Junior Loan Agreement**”, together with the Senior Loan Agreement, the “**Loan Agreements**”) in the original principal amount of \$98,100,000 (the “**Junior Mezzanine Loan**” together with the Senior Mezzanine Loan, the “**Mezzanine Loans**”), by and among BoA, Barclays, MS and the entities listed on **Schedule I** attached hereto (collectively, “**Junior Mezzanine Borrower**”, together with Senior Mezzanine Borrower, the “**Borrowers**”). Capitalized terms used herein shall have the meaning set forth in the Loan Agreements.

As you know, the Mezzanine Loans matured on April 9, 2020 (the “**Maturity Date**”). As of the date hereof, the Borrowers have not repaid the outstanding principal or the accrued interest under the Loan Agreements. Accordingly, as of April 9, 2020, an Event of Default has occurred pursuant to Section 11.1(a) of the Loan Agreements (the “**Event of Default**”).

Based on the information provided to us by the Borrowers, we understand that Borrowers transferred at least \$15,316,805.25 of cash (the “**Funds**”) to the Controlling Parent in the time period leading up to the occurrence of the Event of Default. The timeline and circumstances surrounding the transfer of these Funds to the Controlling Parent leave no doubt that the transfer was an actual fraudulent conveyance, made with the intent to hinder, defraud or delay the Lender and its rights and remedies under the Loan Agreements.

Specifically, based on the information that we have received to date, in the second week of March as the Maturity Date loomed, the Borrowers transferred the Funds to the Controlling Parent.<sup>1</sup> That same week, the Controlling Parent disclosed that there was a “substantial risk of imminent payment default” on certain of its mortgage loans.<sup>2</sup> Shortly thereafter, on March 17, 2020, recognizing it would not repay the Mezzanine Loans at maturity, the Borrowers requested the Lender agree to a forbearance period of 18 months due to the impact of COVID-19 and predictions of “a severe decrease in revenue that will negatively impact cash flow.”<sup>3</sup> Then on March 30, 2020, the Borrowers requested the Lender release to the Borrowers the current balance in the FF&E reserves to be applied toward operating shortfalls of any of the hotels encumbered by the Mezzanine Loans “[i]n response to the economic shutdown in the hotel industry caused by COVID-19.”<sup>4</sup> And finally, on April 9, 2020, the Borrowers failed to pay the Mezzanine Loans on the Maturity Date.

The transfer was made shortly before the Maturity Date, after the Controlling Parent disclosed that as of February 2020 COVID-19 had already led to a decline in hotel revenue and would continue to adversely impact the future cash flow of the Borrowers and their abilities to satisfy their obligations to the Lender.<sup>5</sup> These facts make clear that the Borrowers’ transfer of the Funds to the Controlling Parent constitutes a fraudulent transfer under applicable state law. There can be no doubt that the Borrowers intended to remove the Funds from the reach of the Lender in an attempt to hinder, delay and frustrate its ability to collect them. To the extent that the members of the Board of Directors are complicit in this fraudulent scheme, they are aiding and abetting a fraud, exposing themselves to personal liability.

---

<sup>1</sup> These facts were confirmed to us in a telephone conversation between me and Chris Peckham, Controlling Parent’s Associate General Counsel on April 10, 2020.

<sup>2</sup> March 12, 2020 Ashford Hospitality Trust, Inc. Form 10-K at 49.

<sup>3</sup> *Letter from HH Mezz Borrower A-2 LLC et al to BREF V Series B LLC*, March 17, 2020; *Letter from HH Swap A LLC et al to BREF V Series B LLC*, March 17, 2020.

<sup>4</sup> *Letter from HH Mezz Borrower A-2 LLC et al to BREF V Series B LLC*, March 30, 2020; *Letter from HH Swap A LLC et al to BREF V Series B LLC*, March 30, 2020.

<sup>5</sup> March 12, 2020 Ashford Hospitality Trust, Inc. Form 10-K at 49.

Making matters worse, while the Lender is being asked to forbear and stand by silently, the Controlling Parent has declared preferred dividends to be paid out on April 15, 2020 to holders of certain series of its preferred stock.<sup>6</sup> Although Borrowers' representatives have informed us that the Funds being held at the Controlling Parent (1) will not be used to pay such dividends; and (2) were not necessary for the declaration of such dividends,<sup>7</sup> we have no assurance that the Funds will be used for the benefit of the Borrowers. Instead, the Controlling Parent seems intent on using the Funds for its own purposes, including providing liquidity to support its payment of a dividend to preferred stockholders, making it clear that the removal of the Funds from the Borrowers is part of a coordinated campaign to prefer the Controlling Parent and its preferred stockholders at the expense of the Lender.

The Borrowers' wrongful conduct, obstructionism and favoritism to insiders does not end with the fraudulent conveyance. To date, the Lender has made repeated requests for information necessary to consider Borrowers' forbearance and FF&E reserve modification requests; however, the Borrowers responses to the request have been slow and incomplete. Moreover, the transfer of the Funds and the payment of dividends are part of a pattern of suspect insider transactions (often called "badges of fraud") designed to accelerate or disproportionately benefit insiders even as creditors are not being paid. Other examples include the recent entry into an amendment with affiliate Remington Lodging & Hospitality, LLC to effectively accelerate the outflow of payments to Remington, making them weekly rather than monthly, and the recent entry into a consulting agreement with Lismore Capital.<sup>8</sup>

In light of the foregoing, the Lender requires the following from the Controlling Parent:

(1) the Funds be promptly returned to the Borrowers or held in a segregated account in accordance with terms acceptable to the Lender; and

(2) confirm in writing that the Funds (a) will not be used to pay dividends; and (b) were not necessary for the declaration of dividends.

We request that you respond by 12:00 pm (Prevailing Eastern Time) on April 13, 2020 and provide the above assurances. We hereby reserve all rights with respect to the matters set forth herein, including but not limited to claims for subsequent fraudulent transfers, claims of aiding and abetting fraud against the members of the Board of Directors, and actions for a temporary restraining order or other injunctive relief.

---

<sup>6</sup> To the extent members of the board, senior management or other insiders are holders of preferred stock and scheduled to receive dividends, we expect that the decision to declare dividends was made in accordance with appropriate corporate governance procedures, including, but not limited to, their recusal from the relevant board decisions, the appointment of an independent committee and guidance from independent counsel.

<sup>7</sup> These facts were confirmed to us in a telephone conversation between me and Chris Peckham, Controlling Parent's Associate General Counsel on April 10, 2020.

<sup>8</sup> March 13, 2020 Ashford Hospitality Trust, Inc. Form 8-K at 2.

Sincerely,



Sean A. O'Neal

cc: Cynthia Nelson, Esq. (via email: [cbnelson@jw.com](mailto:cbnelson@jw.com))

Chris Peckham, Esq. (via email: [cpeckham@ashfordinc.com](mailto:cpeckham@ashfordinc.com))

HH Swap A LLC, a Delaware limited liability company  
251 Little Falls Drive  
Wilmington, DE 19808

HH Swap G LLC, a Delaware limited liability company  
251 Little Falls Drive  
Wilmington, DE 19808

HH Mezz Borrower A-2 LLC, a Delaware limited liability company  
251 Little Falls Drive  
Wilmington, DE 19808

HH Mezz Borrower G-2 LLC, a Delaware limited liability company  
251 Little Falls Drive  
Wilmington, DE 19808

## **SCHEDULE I**

### **LIST OF BORROWERS**

#### **Senior Mezzanine Borrowers**

1. HH Swap A LLC, a Delaware limited liability company
2. HH Swap G LLC, a Delaware limited liability company

#### **Junior Mezzanine Borrowers**

1. HH Mezz Borrower A-2 LLC, a Delaware limited liability company
2. HH Mezz Borrower G-2 LLC, a Delaware limited liability company