



# BRAEMAR

## HOTELS & RESORTS

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Vinson & Elkins LLP  
The Grace Building  
1114 Avenue of the Americas, 32<sup>nd</sup> Floor  
New York, NY 10036-7708  
Attention: Christopher E. Duffy

January 9, 2024

Mr. Duffy:

We are writing to respond to your demand letter addressed to Alex Rose, the Executive Vice President, General Counsel and Secretary of Braemar Hotels & Resorts Inc. (the “Company”), dated October 21, 2023, which you indicated was written on behalf of Blackwells Capital LLC (“Blackwells”). As you know, Mr. Rose acknowledged receipt of your letter on October 26, 2023, and indicated that the Company would respond in due course.

Since receipt of your letter, the Company has undertaken a formal deliberative process to investigate and consider the demands made in your letter in order to determine if the Company should bring claims against the directors of the Company for breach of fiduciary duty as alleged in your letter, or take the other actions demanded in your letter. We, Kenneth H. Fearn, Jr. and Rebeca Odino-Johnson, are the independent members of the review committee (“Review Committee”) of the board of directors (“Board”) of the Company that was formed for that purpose. We have deep experience as investors and business operators, including in Mr. Fearn’s case with a particular focus on real estate and hospitality businesses. We are writing to describe for you some of the steps we have taken to consider the allegations in your letter and the Board’s conclusions with respect to these matters.

Specifically, as Mr. Rose previously indicated, your letter was promptly shared upon receipt with the Board. The Board promptly formed and empowered the Review Committee to review the demands made in your letter and make a recommendation to the Board with respect to how to respond, specifically authorizing the Review Committee to (1) investigate, review and analyze the facts and circumstances that are the subject of your letter, as well as any additional facts and circumstances that may arise from your letter, (2) consider and recommend to the Board whether or not the prosecution of any claims implied or asserted in your letter, or any other claims related to the facts and circumstances described in your letter, is in the best interests of the Company and its shareholders, and (3) further consider and recommend whether and, if so, what action should be taken on behalf of the Company with respect to your letter. The Review Committee was empowered, among other things, to engage legal counsel and other advisors in its discretion.

Shortly after a meeting of the Review Committee on November 14, 2023, the Review Committee engaged Holland & Knight, a nationally-recognized law firm, to advise the Review Committee with respect to various matters relating to the advisory agreement between the Company, Ashford Inc., and Ashford Inc.’s operating company Ashford Hospitality Advisors LLC. The Review Committee was also



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assisted by BofA Securities, Inc. (“BofA Securities”), a financial advisory firm, with respect to benchmarking and analyzing the performance of the Company, as further described below.

### **Advisory Agreement Matters**

At a meeting on November 22, 2023, the Review Committee instructed Holland & Knight to provide (i) a summary of the key terms of the advisory agreement, (ii) Holland & Knight’s view regarding enforceability of the advisory agreement under Texas law, (iii) a summary of the advisory agreement termination provisions, (iv) a summary of the implications of terminating the advisory agreement under certain circumstances, including when payment of a termination fee would be required, and (v) Holland & Knight’s legal recommendations regarding the Company’s alternatives under the advisory agreement.

Pursuant to these instructions, Holland & Knight, among other things, reviewed the terms of the advisory agreement and relevant considerations of Texas law, in consideration of the demand expressed in your letter that the Company terminate the advisory agreement. After its review, on December 1, 2023, Holland & Knight delivered a presentation to the Review Committee and provided the Review Committee with legal advice on the legal and binding nature of the agreement under Texas law, and on the application of the termination provisions in the agreement. With assistance from counsel, the Review Committee made a determination that the advisory agreement is a binding agreement that is enforceable according to its terms. The Review Committee further determined, with assistance from counsel, that none of the circumstances for termination under section 12.3 of the advisory agreement exist. The letter sent on behalf of Blackwells suggests that the Company should pursue termination of the advisory agreement “for cause,” without specifying the alleged grounds for termination. The Review Committee further determined, with the assistance of counsel, that any purported termination of the advisory agreement by the Company without a proper basis would likely be considered a repudiation that would subject the Company to payment of a Termination Fee, thereby causing harm to the Company and its shareholders.

In considering the terms of the advisory agreement, the Review Committee further reviewed the history of the execution and amendment of the advisory agreement. In particular, the Review Committee noted that the advisory agreement was originally entered into between Ashford Hospitality Trust, Inc. (“AHT”) and Ashford Hospitality Prime, Inc. (which later changed its name to Braemar Hotels & Resorts Inc.), in connection with AHT spinning off its high RevPAR full-service and urban select-service hotels and resorts business (then known as Ashford Hospitality Prime) to its shareholders. The Review Committee further noted that, like any agreement, the terms of that advisory agreement contained various provisions, some of which were relatively more favorable to one party and some of which were relatively more favorable to the other party – but that then-shareholders of AHT were on both sides of the terms of the advisory agreement in accordance with the nature of the spin-off.



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The Review Committee further noted that the terms of the Fourth Amended and Restated Advisory Agreement, which contains the material terms of the current advisory agreement, (i) was negotiated on the Company's behalf by a special committee of the Board comprised solely of independent directors and (ii) did not become effective until the shareholders of the Company had approved the terms thereof at the Company's 2017 annual meeting of shareholders. The proxy statement for that meeting disclosed the terms of the amended advisory agreement and reasons for entering into the terms thereof.<sup>1</sup> The Review Committee noted that over 95% of the shares voted approved the terms of the advisory agreement.<sup>2</sup>

### **Performance and Management Matters**

Since early 2017, the management team, with the endorsement of the Board, has been executing on a specific strategy to enhance shareholder value and maximize share price. The strategy initially adopted included various components, including (i) pursuing a focused portfolio by pivoting to the ownership of primarily luxury hotels, (ii) increasing the common dividend, (iii) implementing a deleveraging strategy to focus on 45% net debt to gross assets (which was subsequently revised to 35%), and (iv) instituting specific liquidity metrics to protect the Company in the event of a severe downturn. In implementing this strategy, the Company proceeded to sell two non-core properties, upbrand two properties and acquired seven more luxury hotels. Along the way, the Company raised accretively priced capital in various forms, while successfully navigating the COVID-19 crisis without needing to raise rescue capital or losing any assets to foreclosure.

In order to assess the effectiveness of management's efforts, the Review Committee was assisted by BofA Securities. At a meeting on December 13, 2023, BofA Securities made a presentation to the Review Committee with respect to various matters relating to the performance and management of the Company, including an analysis of the Company's (i) historic performance within the REIT sector, (ii) operational metric performance, (iii) asset acquisition performance, and (iv) liability management activities. After its review, BofA Securities concluded and advised the Review Committee that in terms of operational metrics, asset acquisition matters and liability management matters (as described below), the Company is being managed at least as well as or better than many of its peers. A summary of BofA Securities' analysis is set forth below.

#### ***REIT Sector***

In its presentation, BofA Securities noted that lodging REITs as a sector have underperformed most other REIT sectors during the last five years. BofA Securities provided information showing that as a whole, the lodging REITs have experienced negative FFO/share growth over the past five years and that the Green Street implied capitalization rates for the sector have increased more than most other REIT

<sup>1</sup> Proxy Statement on Schedule 14A filed by Ashford Hospitality Prime, Inc. on April 28, 2017.

<sup>2</sup> Current Report on Form 8-K filed by Ashford Hospitality Prime, Inc. on June 15, 2017.



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sectors since the Great Financial Crisis. BofA Securities further explained that REITs with small equity market capitalizations have, as a group, delivered negative price performance over the past five years. BofA Securities reviewed the TEV/Current NTM EBITDA multiples for the eight publicly-traded full-service lodging REITs<sup>3</sup> and pointed out that in each case, the respective companies currently trade below their respective historical TEV/NTM EBITDA averages over the last five years. As part of this discussion, BofA Securities also noted that the Company is closer to its five-year average trading multiple than any other full-service lodging REIT in the analysis.

### *Operational Metrics*

BofA Securities calculated numerous operational metrics for each of the eight publicly-traded full-service lodging REITs. Among the metrics benchmarked were hotel EBITDA margin and hotel EBITDA/key over four different periods. BofA Securities noted that the Company had above-average hotel EBITDA margins during three of the periods, and above-average hotel EBITDA/key in each of the three most recent periods. BofA Securities further advised the Review Committee that the amount by which the Company's hotel EBITDA/key exceeds the competitive set average increased sequentially for the three periods.

BofA Securities also presented benchmarking information on RevPAR and total RevPAR for four different periods. The Company exceeded the competitive set average for each period, and BofA Securities noted that the amount above the respective averages increased sequentially. The total RevPAR information showed that during the initial period the Company's total RevPAR fell below the average, but exceeded the average for the remaining three periods. BofA Securities furthermore described that during the most recent three periods, the amount by which the Company's total RevPAR exceeded the competitive set average grew sequentially. As part of the benchmarking analysis, BofA Securities also reviewed comparisons of the RevPAR and total RevPAR FY2022 compared to the respective data from three earlier periods. In each case, the percentage increase delivered by the Company was the largest percentage increase within the group of full-service lodging REITs.

BofA Securities also presented benchmarking information on the two component parts of RevPAR, ADR and occupancy. The Company had the highest or second highest ADR during each of the four periods. Even with the high ADR, the Company delivered occupancy within 1% of the industry average during each of the periods. BofA Securities also presented to the Review Committee a comparison of the corporate EBITDA yields on gross assets among the eight publicly-traded full-service REITs, and noted that the Company's yield was above the competitive set average. BofA Securities also noted that the various Company hotels have outperformed in most of their respective sub-markets, with an average portfolio RevPAR index of 121 for the full year 2022.

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<sup>3</sup> Ryman Hospitality Properties, Inc., Pebblebrook Hotel Trust, Sunstone Hotel Investors, Inc., DiamondRock Hospitality Company, Xenia Hotels & Resorts, Inc., Host Hotels & Resorts, Inc., Park Hotels & Resorts Inc., and the Company.



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### *Asset Acquisition Matters*

As part of the presentation, BofA Securities compared the asset acquisition activity undertaken by each of the eight publicly-traded full-service lodging REITs since 2019. It was shown that each of the REITs acquired at least one property during the five year period. The number of properties acquired by the Company since 2019 and the aggregate purchase price paid places the Company in the middle of the peer set. Measured as a percentage of the Company's total enterprise value as of December 31, 2018, the Company's acquisitions aggregate to more than a 50% increase from the marking date. BofA Securities noted that on a percentage basis, no other full-service lodging REIT was nearly as acquisitive.

BofA Securities also described that the Company has a long history of making acquisitions that deliver attractive yields on cost. Since 2014, the Company acquired 11 properties for a total purchase price of \$1.4 billion. On a trailing twelve month basis as of June 30, the yield on cost is 9.4%. BofA Securities noted that the Company publicly reports TTM yield on cost for each of its acquisitions, which the other REITs in the competitive set do not fully disclose.

### *Liability Management Matters*

BofA Securities also commented on the Company's liability management activities. BofA Securities explained that the Company's existing mortgage loans in aggregate have a mark-to-market value below their book value. This means that the mortgage loans are on terms more attractive than would be available in current market conditions.

BofA Securities also described that since year end 2019, the Company deleveraged its balance sheet more than any other publicly-traded full-service lodging REIT as measured by net debt to total enterprise value. BofA Securities noted that the non-traded preferred equity issuances the Company has undertaken beginning in 2021 replaced term debt with a perpetual instrument and that the preferred securities also provide the Company with the flexibility of redemption with cash or common stock. BofA Securities also explained that Braemar's balance sheet had liquidity of \$150 million in cash as of the third quarter of this year. Based upon the BofA Securities review, the Review Committee believes the objectives set in action by management, under the direction of the Board, have been well executed and to the benefit of the Company's shareholders.

### **Recommendation**

In total, the Review Committee met five times between November 14, 2023 and December 21, 2023 to consider the above matters. After its review and consideration, among other things, of the presentations by Holland & Knight and BofA Securities, the Review Committee determined to recommend to the Board that the Company not pursue the derivative litigation demanded by your letter. The Board as a whole, which consists of a majority of disinterested and independent directors, met on January 9, 2024 to further consider the steps taken by the Review Committee and to consider the Review Committee's



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recommendation. As a result, at the meeting of the Board on January 9, 2024, the Board resolved to refuse Blackwells' demand to take the actions set forth in your October 21, 2023 letter.

The Company and the Board highly value the views and input of its shareholders. The Board and management are very committed to increasing value and improving stock price performance and are focused on developing additional strategies to drive that result. As the Company has previously disclosed, the Company believes that the underlying portfolio outlook is good and that a lower interest rate market should improve the bottom line. The Company would be pleased to meet with you in person to discuss the Company's business, its plans and future initiatives, all of which are aimed, as always, at increasing shareholder value.

Sincerely,

**Kenneth H. Fearn, Jr., Chair and Member of the Review Committee**  
**Rebeca Odino-Johnson, Member of the Review Committee**