

Breedlove James T
 Form 4
 February 25, 2009

FORM 4

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
 Washington, D.C. 20549**

OMB APPROVAL

OMB Number: 3235-0287
 Expires: January 31, 2005
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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
 Breedlove James T

2. Issuer Name and Ticker or Trading Symbol
 PRAXAIR INC [PX]

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

(Last) (First) (Middle)
 C/O PRAXAIR, INC., 39 OLD RIDGEBURY ROAD

3. Date of Earliest Transaction (Month/Day/Year)
 02/23/2009

____ Director _____ 10% Owner
 Officer (give title below) _____ Other (specify below)
 Senior VP, Gen. Counsel & Sec.

(Street)
 DANBURY, CT 06810-5113

4. If Amendment, Date Original Filed(Month/Day/Year)

6. Individual or Joint/Group Filing(Check Applicable Line)
 Form filed by One Reporting Person
 Form filed by More than One Reporting Person

(City) (State) (Zip)

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)			
				Code	V	Amount	(A) or (D) Price			
Common Stock	02/23/2009		P		2,000	A	\$ 59.5349	12,450	D	
							(1)			
Common Stock	02/23/2009		P		4,000	A	\$ 60.7923	16,450	D	
							(2)			
Common Stock	02/25/2009		P		4,000	A	\$ 59.0296	20,450	D	
							(3)			
Common Stock								2,282.872	I	401(k)

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Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474
(9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Security (Instr. 3 and 4)	Amount of Underlying Security
Stock Option (right to buy)	\$ 60.92	02/24/2009		A	54,120	02/24/2010 ⁽⁴⁾ 02/24/2019	Common Stock	54
Deferred Stock	\$ 0 ⁽⁵⁾	02/25/2009		A	187.9072	⁽⁶⁾ ⁽⁶⁾	Common Stock	187

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
Breedlove James T C/O PRAXAIR, INC. 39 OLD RIDGEBURY ROAD DANBURY, CT 06810-5113			Senior VP, Gen. Counsel & Sec.	

Signatures

Anthony M. Pepper,
Attorney-in-Fact
Date: 02/25/2009

⁽¹⁾Signature of Reporting Person

Date

Explanation of Responses:

* If the form is filed by more than one reporting person, see Instruction 4(b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

The \$59.5349 price reported is the weighted average purchase price. The purchase prices ranged from \$59.5292 to \$59.54 per share.

(1) Upon request of the SEC Staff, Praxair, Inc. or a security holder of Praxair, Inc., the reporting person will provide full information regarding the number of shares purchased at each separate price.

The \$60.7923 price reported is the weighted average purchase price. The purchase price ranged from \$60.6792 to \$60.85 per share. Upon

(2) request of the SEC Staff, Praxair, Inc. or a security holder of Praxair, Inc., the reporting person will provide full information regarding the number of shares purchased at each separate price.

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- The \$59.0296 price reported is the weighted average purchase price. The purchase price ranged from \$58.95 to \$59.1592 per share. Upon request of the SEC Staff, Praxair, Inc. or a security holder of Praxair, Inc., the reporting person will provide full information regarding the number of shares purchased at each separate price.
- (3) This option vests over three years in three consecutive equal annual installments beginning on February 24, 2010.
 - (4) Conversion to Praxair Common Stock is on a 1-for-1 basis.
 - (5) Deferred stock units acquired under the Praxair, Inc. Compensation Deferral Program as amended ("Deferred Program") and are to be settled in Praxair Common Stock.
 - (6)

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. >

MJB INVESTMENTS, LP

By MJB Investments GP, LLC, its general partner

By:

Monty J. Bennett, *Sole Member*

Address: 14185 Dallas Parkway, Suite 1150
Dallas, Texas 75254

Mark A. Sharkey
Address: 2725 Summit Ridge
Southlake, Texas 76092

with copies to:
Baker Botts LLP
2001 Ross Avenue
Dallas, Texas 75201
Attn: Neel Lemon
and
General Counsel
Remington Holdings, LP
14185 Dallas Parkway, Suite 1150
Dallas, Texas 75254

[Signature Page to Investor Rights Agreement]

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Annex A

A Person shall be deemed to be "*Acting in Concert*" with another Person if such Person knowingly acts (whether or not pursuant to an express agreement, arrangement or understanding) in concert or in parallel with such other Person, or towards a common goal with such other Person, relating to (a) acquiring, holding, voting or disposing of voting securities of the Company or (b) changing or influencing the control of the Company or in connection with or as a participant in any transaction having that purpose or effect, where (i) each Person is conscious of the other Person's conduct or intent and this awareness is an element in their decision-making processes and (ii) at least one additional factor indicating that such Persons intended to act in concert or in parallel, which such additional factors may include, without limitation, exchanging information, attending meetings, conducting discussions, or making or soliciting invitations to act in concert or in parallel. A Person that is Acting in Concert with another Person will also be deemed to be Acting in Concert with any third Person that is also Acting in Concert with such other Person. Notwithstanding the foregoing, no Person will be deemed to be Acting in Concert with another Person solely as a result of (x) making or receiving a solicitation of, or granting or receiving, revocable proxies or consents given in response to a public proxy or consent solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by means of a proxy or solicitation statement filed on Schedule 14A, or (y) soliciting or being solicited for, or tendering or receiving tenders of securities in a public tender or exchange offer made pursuant to, and in accordance with, Section 14(d) of the Exchange Act by means of a tender offer statement filed on Schedule TO.

A Person shall be deemed the "*Beneficial Owner*" of, shall be deemed to have "*beneficial ownership*" of and shall be deemed to "*beneficially own*" any securities:

(a) which such Person or any of such Person's Affiliates or Associates beneficially owns, directly or indirectly, within the meaning of Rule 13d-3 of the General Rules and Regulations under the Exchange Act, as in effect on the date of this Agreement;

(b) which such Person or any of such Person's Affiliates or Associates has (i) the right or the obligation to acquire (whether such right is exercisable, or such obligation is required to be performed, immediately or only after the passage of time or upon the satisfaction of conditions) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), written or otherwise, or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; provided, however, that a Person will not be deemed to be the Beneficial Owner of, or to beneficially own, (x) securities tendered pursuant to a tender or exchange offer made pursuant to, and in accordance with, the applicable rules and regulations promulgated under the Exchange Act by or on behalf of such Person or any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange, (y) securities which such Person has a right to acquire upon the exercise of rights under a shareholder rights plan under which such rights have been distributed to all holders of Company Common Stock, which rights have become exercisable prior to the time that such Person becomes a Prohibited Beneficial Owner, or (z) securities which such Person or any of such Person's Affiliates or Associates may acquire, does or do acquire or may be deemed to have the right to acquire, pursuant to any merger or other acquisition agreement between the Company and such Person (or one or more of such Person's Affiliates or Associates) pursuant to which such Person would acquire beneficial ownership of more than 50% of the outstanding voting Company Shares without any Transfer from a Covered Investor if such agreement has been approved by the Board of Directors prior to such Person's becoming a Prohibited Beneficial Owner; or (ii) the right to vote pursuant to any agreement, arrangement or understanding; provided, however, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, any security by reason of such agreement, arrangement or understanding if the agreement, arrangement or understanding to vote such security (A) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable

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rules and regulations promulgated under the Exchange Act and (B) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report);

(c) which are beneficially owned, directly or indirectly, by any other Person (or any Affiliate or Associate of such other Person) with which such first Person or any of such first Person's Affiliates or Associates or any other Person (or any Affiliate or Associate of such other Person) with whom such first Person (or any Affiliates or Associates of such first Person) is Acting in Concert, has any agreement, arrangement or understanding, whether or not in writing, for the purpose of acquiring, holding, voting or disposing of any voting securities of the Company;

(d) which are the subject of, or the reference securities for, or that underlie, any Derivative Interest of such Person or any of such Person's Affiliates or Associates, with the number of Company Shares deemed Beneficially Owned being the notional or other number of Company Shares specified in the documentation evidencing the Derivative Interest as being subject to be acquired upon the exercise or settlement of the Derivative Interest or as the basis upon which the value or settlement amount of such Derivative Interest is to be calculated in whole or in part or, if no such number of Company Shares is specified in such documentation, as determined by the Company Board to be the number of Company Shares to which the Derivative Interest relates;

Notwithstanding anything in this definition of "*Beneficial Owner*" to the contrary, the phrase "*then outstanding*," when used with reference to a Person's beneficial ownership of securities of the Company, means the number of such securities then issued and outstanding together with the number of such securities not then actually issued and outstanding which such Person would be deemed to beneficially own hereunder but the number of securities not outstanding that such Person is otherwise deemed to beneficially own for purposes of this Agreement shall not be included for the purpose of computing the percentage of the outstanding securities beneficially owned by any other Person (unless such other Person is also deemed to beneficially own for purposes of this Agreement such securities not outstanding).

"*Derivative Interest*" means any derivative securities (as defined under Rule 16a-1 under the Exchange Act, as in effect on the date of this Agreement) that increase in value as the value of the underlying equity increases, including, but not limited to, a long convertible security, a long call option and a short put option position, in each case, regardless of whether (a) such interest conveys any voting rights in such security, (b) such interest is required to be, or is capable of being, settled through delivery of such security or (c) transactions hedge the economic effect of such interest.

"*Prohibited Beneficial Owner*" means any Person that, together with all Affiliates and Associates of such Person, is or becomes the Beneficial Owner of 10% or more of the Company Common Stock then outstanding taking the Company Preferred Stock into account on an as-converted basis, but will not include: (a) Archie Bennett, Jr. or Monty J. Bennett, (b) any Person which is 100% Beneficially Owned by either Archie Bennett, Jr. or Monty J. Bennett, (c) any Person that otherwise is or would become a Prohibited Beneficial Owner as a result of an Intra-Group Transfer, (d) any Person that otherwise is or would become a Prohibited Beneficial Owner as a result of any voting agreement between Archie Bennett, Jr. and Monty J. Bennett, (e) the Company, (f) any Subsidiary of the Company, (g) any employee benefit plan of the Company or of any Subsidiary of the Company, (h) any entity or trustee holding (or acting in a fiduciary capacity in respect of) Company Shares for or pursuant to the terms of any such employee benefit plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or of any Subsidiary of the Company, or (i) any Person that, on the Closing Date, was a Beneficial Owner of 10% or more of the Company Shares then outstanding, other than a Person that is not an Affiliate or Associate of such Beneficial Owner on the Closing Date and that subsequently becomes an Affiliate or Associate of such Beneficial Owner (the Person referred to in clause (i) above, referred to herein as a "*Grandfathered Stockholder*"); provided, that if a Grandfathered Stockholder becomes, after the Closing Date, the Beneficial Owner of additional Company Shares (other than Company Shares acquired solely as a result of corporate action of the Company not caused, directly or indirectly, by such Person) at any time such that the Grandfathered Stockholder is or thereby becomes the Beneficial Owner of 10% or more of the Company Shares then

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outstanding (or such other percentage as would otherwise result in such Person becoming a Prohibited Beneficial Owner), then such Grandfathered Stockholder will be deemed a Prohibited Beneficial Owner; provided, further, that upon the first decrease of a Grandfathered Stockholder's the Beneficial Ownership below 10%, such Grandfathered Stockholder will no longer be considered a Grandfathered Stockholder and this proviso will have no further force or effect with respect to such Grandfathered Stockholder.

Notwithstanding the foregoing, no Person will become a Prohibited Beneficial Owner as the result of an acquisition of Company Shares by the Company that, by reducing the number of shares outstanding, increases the proportionate number of Company Shares Beneficially Owned by such Person to 10% or more of the then outstanding Company Shares (or such other percentage as would otherwise result in such Person becoming a Prohibited Beneficial Owner); provided, that if a Person would, but for the provisions of this paragraph, become a Prohibited Beneficial Owner by reason of an acquisition of Company Shares by the Company and, after such share purchases by the Company, becomes the Beneficial Owner of any additional Company Shares at any time such that the Person is or thereby becomes the Beneficial Owner of 10% or more of the Company Shares then outstanding (or such other percentage as would otherwise result in such Person becoming a Prohibited Beneficial Owner) (other than Company Shares acquired solely as a result of corporate action of the Company not caused, directly or indirectly, by such Person), then such Person will be deemed to be a Prohibited Beneficial Owner.

Notwithstanding the foregoing, if a Person that would otherwise be a Prohibited Beneficial Owner has become such inadvertently (including, without limitation, because (A) such Person was unaware that it Beneficially Owned that number of Company Shares that would otherwise cause such Person to be a "Prohibited Beneficial Owner" or (B) such Person was aware of the extent of its Beneficial Ownership of Company Shares but had no actual knowledge of the consequences of such Beneficial Ownership under this Agreement) and without any intention of obtaining, changing or influencing control of the Company, and such Person divests as promptly as practicable a sufficient number of Company Shares so that such Person would no longer be a Prohibited Beneficial Owner, then such Person will not be deemed to have become a Prohibited Beneficial Owner for any purposes of this Agreement. Notwithstanding the foregoing, if a bona fide swaps or derivatives dealer who would otherwise be a "Prohibited Beneficial Owner" has become so as a result of its actions in the ordinary course of its business that were taken without the intent or effect of evading or assisting any other Person to evade the purposes and intent of this Agreement, or otherwise seeking to control or influence the management or policies of the Company, then such Person shall not be deemed to be a "Prohibited Beneficial Owner" for any purposes of this Agreement.

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ANNEX E
FORM OF MERGER AND REGISTRATION RIGHTS AGREEMENT

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MERGER AND REGISTRATION RIGHTS AGREEMENT

DATED AS OF [], 2018

BY AND AMONG

ASHFORD INC.,

ASHFORD HOLDING CORP.

AND

ASHFORD MERGER SUB INC.

AND, SOLELY FOR PURPOSES OF ARTICLE V HEREOF,

ARCHIE BENNETT, JR.,

MJB INVESTMENTS, LP

AND

MARK A. SHARKEY

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THIS MERGER AND REGISTRATION RIGHTS AGREEMENT IS dated as of _____, 2018 (this "Agreement"), by and among Ashford Inc., a Maryland corporation ("AINC"), Ashford Holding Corp., a Maryland corporation ("New Holdco"), and Ashford Merger Sub Inc., a Maryland corporation ("Merger Sub" and, together with AINC and New Holdco, the "Merger Parties"), and, solely for the purposes of Article V hereof, Archie Bennett, Jr., MJB Investments, LP and Mark A. Sharkey (collectively, the "Investors").

R E C I T A L S:

WHEREAS, AINC is the sole stockholder of New Holdco and New Holdco is the sole stockholder of Merger Sub;

WHEREAS, in conjunction with the consummation of the transactions contemplated by the Combination Agreement, dated as of April 6, 2018, among Archie Bennett, Jr., Monty J. Bennett, Remington Holdings, L.P., Remington Holdings GP, LLC, Project Management LLC, MJB Investments, LP, Mark A. Sharkey, AINC, New Holdco and Merger Sub (the "Combination Agreement"), among other things, Merger Sub will merge with and into AINC (the "Merger"), and as a result of such Merger, each share of the common stock, par value \$0.01 per share, of AINC ("AINC Common Stock") outstanding immediately prior to the Effective Time (as defined herein) will be converted into one share of common stock, par value \$0.01 per share, of New Holdco ("New Holdco Common Stock"), each share of common stock, par value \$0.01 per share, of Merger Sub ("Merger Sub Common Stock") outstanding immediately prior to the Effective Time will be converted into one share of AINC Common Stock and the shares of New Holdco Common Stock outstanding immediately prior to the Effective Time will be cancelled;

WHEREAS, the board of directors of AINC has approved the merger of Merger Sub with and into AINC in accordance with the terms of this Agreement and the Combination Agreement, with AINC to be the surviving entity in the Merger and to become a wholly-owned subsidiary of New Holdco and the outstanding shares of AINC Common Stock to be converted into shares of New Holdco Common Stock;

WHEREAS, stockholder approval of the Merger is not required under Maryland law pursuant to Section 3-106.2 of the Corporations and Associations Articles of the Annotated Code of Maryland;

WHEREAS, in accordance with the Combination Agreement, the issuance of shares of the voting preferred stock, par value \$25.00 per share, of New Holdco (the "Series B Preferred Stock") immediately following the effectiveness of the Merger, the issuance of the shares of common stock, par value \$0.01 per share, of New Holdco into which the shares of Series B Preferred Stock will be convertible, the potential changes in control of AINC resulting from the issuance of such shares of Series B Preferred Stock and the issuance of a portion of such shares of Series B Preferred Stock to affiliates of AINC and New Holdco must be approved by the affirmative vote of the holders of a majority of the shares of AINC Common Stock present, in person or by proxy, at a meeting of the stockholders of AINC held prior to the effective time of the Merger and voting on the actions described above (collectively, the "Preferred Stock Issuance Actions"); and

WHEREAS, it is intended that, for U.S. federal income tax purposes (and, where applicable, state and local tax purposes): (i) the Merger shall qualify as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and this Agreement together with the Combination Agreement shall constitute a "plan of reorganization" within the meaning of the Code and the Treasury regulations promulgated thereunder; and (ii) the exchange of PM LLC Transferred Securities (as defined in the Combination Agreement) for Series B Preferred Stock pursuant to the PM Contribution Agreement (as defined in the Combination Agreement) and the Combination Agreement (the "PM Exchange"), together with the exchange of AINC Common Stock for New Holdco Common Stock pursuant to the Merger, qualify as an exchange under

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Section 351 of the Code, and the Combination Agreement, the PM Contribution Agreement and this Agreement will together be taken as a single plan of exchange under Section 351 of the Code.

NOW THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

THE MERGER

Section 1.1 *Merger and New Holdco Common Stock.* In accordance with the provisions of (i) this Agreement, (ii) the Articles of Merger (as defined below) and (iii) the Maryland General Corporation Law (the "MGCL"), at the Effective Time (as defined below), Merger Sub shall be merged with and into AINC, the separate existence of Merger Sub shall cease, and AINC shall continue as the surviving corporation under the laws of the State of Maryland.

Section 1.2 *Closing.* Subject to the terms and conditions of this Agreement, the closing of the Merger (the "Closing") shall take place at such time, date and place as the parties may agree, but in no event prior to the satisfaction or, to the extent permitted by applicable law, waiver of the conditions set forth in Section 3.1 hereof.

Section 1.3 *Effective Time.* Subject to the terms and conditions of this Agreement, at the Closing, the parties hereto shall cause the Articles of Merger with respect to the Merger (the "Articles of Merger") to be filed with the Maryland State Department of Assessments and Taxation in the manner provided under Section 3-109 of the MGCL. The Merger shall become effective at such time as the Articles of Merger are filed with and accepted for record by the Maryland State Department of Assessments and Taxation (the "Effective Time"). The Effective Time shall occur after the execution and delivery of the PM Contribution Agreement, but prior to the consummation of the PM Exchange. AINC, as it will exist from and after the Effective Time, is herein sometimes referred to as the "Surviving Corporation." The day on which the Effective Time occurs is hereinafter sometimes referred to as the "Effective Date."

Section 1.4 *Name of Surviving Corporation.* The name of the Surviving Corporation of the Merger shall be "Ashford Inc."

Section 1.5 *Effect of the Merger.*

(a) The Merger shall, from and after the Effective Time, have the effects provided for in the MGCL.

(b) Without limitation of paragraph (a) above, at the Effective Time, (i) all of the rights, privileges, powers and franchises and all property (real, personal and mixed) of Merger Sub shall automatically vest in the Surviving Corporation, (ii) all debts, liabilities and duties of Merger Sub shall automatically attach to and become the responsibility of the Surviving Corporation, (iii) all corporate acts, plans, policies, contracts, approvals and authorizations of Merger Sub and the sole stockholder of Merger Sub, all committees elected or appointed by the sole stockholder of Merger Sub and all officers and agents of Merger Sub, that were valid and effective immediately prior to the Effective Time shall be taken for all purposes as the acts, plans, policies, contracts, approvals and authorizations of the Surviving Corporation and shall be effective and binding on the Surviving Corporation as the same were with respect to Merger Sub, (iv) any action or proceeding, whether civil, criminal or administrative, pending by or against Merger Sub may be prosecuted as if the Merger had not taken place or the Surviving Corporation may be substituted for Merger Sub in any such action or proceeding and (v) any employees of Merger Sub at the Effective Time shall become employees of the Surviving Corporation.

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Section 1.6 *Governing Documents.* At and after the Effective Time, the articles of incorporation of AINC, as in effect immediately prior to the Effective Time (the "Charter"), shall be the charter of the Surviving Corporation unless and until amended in accordance with the MGCL and the Charter subsequently to the Effective Time. At and after the Effective Time, the bylaws of AINC, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation (the "Surviving Corporation Bylaws") unless and until amended in accordance with the MGCL and the Charter subsequent to the Effective Time.

Section 1.7 *Officers and Directors.* The persons serving as officers and directors of AINC immediately prior to the Effective Time shall be the officers and directors of the Surviving Corporation until changed in accordance with the Surviving Corporation Bylaws and applicable law subsequently to the Effective Time.

Section 1.8 *Effect on Capital Stock.* At the Effective Time, by virtue of the Merger and without any action on the part of AINC, New Holdco or Merger Sub:

(a) AINC Common Stock. Each share of AINC Common Stock issued and outstanding immediately prior to the Effective Time shall automatically convert, on a one-for-one basis, into one share of New Holdco Common Stock.

(b) Merger Sub Common Stock. Each share of Merger Sub Common Stock issued and outstanding immediately prior to the Effective Time shall automatically convert, on a one-for-one basis, into one share of AINC Common Stock.

(c) New Holdco Common Stock. Each share of New Holdco Common Stock issued and outstanding immediately prior to the Effective Time shall, by virtue of this Agreement, automatically be cancelled for no consideration and cease to be issued or outstanding.

Section 1.9 *Dissenter's Rights.* In accordance with the provisions of Section 3-602(c)(2)(ii) of the MGCL, no dissenter's rights will be available to the stockholders of AINC.

Section 1.10 *No Required Surrender of Stock Certificates.*

(a) At and after the Effective Time: (i) where no physical certificate representing the shares of AINC Common Stock has been issued in the name of a holder of shares of AINC Common Stock issued and outstanding immediately prior to the Effective Time, a "book-entry" (*i.e.*, a computerized or manual entry) shall be made in the stockholder records of New Holdco to evidence the issuance to such holder of the number of uncertificated shares of New Holdco Common Stock into which such shares of AINC Common Stock have been converted pursuant to Section 1.8 and New Holdco shall cause each stockholder holding New Holdco Common Stock in book entry form to be provided such information as shall be required by or necessary to comply with Maryland law; (ii) each certificate which, immediately prior to the Effective Time, represented outstanding shares of AINC Common Stock (an "AINC Certificate") shall be deemed for all purposes to evidence ownership of, and to represent, the number of shares of New Holdco Common Stock into which the shares of AINC Common Stock represented by such AINC Certificate immediately prior to the Effective Time have been converted pursuant to Section 1.8.

(b) The registered holder of any AINC Certificate outstanding immediately prior to the Effective Time, as such holder appears in the books and records of AINC, or of the transfer agent in respect of the shares of AINC Common Stock, immediately prior to the Effective Time, shall, until such AINC Certificate is surrendered for transfer or exchange, have and be entitled to exercise any voting and other rights with respect to, and to receive any dividends or other distributions on, the shares of New Holdco Common Stock into which the shares of AINC Common Stock represented by any such AINC Certificate have been converted pursuant to Section 1.8, subject to the provisions of the MGCL.

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(c) Within a reasonable period of time following the Effective Time, New Holdco shall mail, or shall cause to be mailed, to the persons who were registered holders of AINC Certificates immediately prior to the Effective Time, a letter of transmittal, in customary form, containing instructions for use in effecting the surrender of such AINC Certificates, if the holder so chooses, in exchange for a certificate (a "*New Holdco Certificate*"), or uncertificated shares in book-entry form, representing the number of shares of New Holdco Common Stock into which the shares of AINC Common Stock represented by such AINC Certificate have been converted pursuant to Section 1.8.

(d) If any AINC Certificate shall have been lost, stolen or destroyed, New Holdco may, in its discretion and as a condition to the issuance of any New Holdco Certificate or uncertificated shares of New Holdco Common Stock in book-entry form, require the owner of such lost, stolen or destroyed AINC Certificate to post a bond, in such reasonable and customary amount as New Holdco may direct, as indemnity against any claim that may be made against New Holdco or the Surviving Corporation with respect to such AINC Certificate.

(e) If any New Holdco Certificate is to be issued in a name other than that in which the AINC Certificate surrendered for exchange is registered, such exchange shall be conditioned upon: (i) the AINC Certificate so surrendered being properly endorsed or otherwise in proper form for transfer; and (ii) the person requesting such exchange either paying any transfer or other taxes required by reason of the issuance of the New Holdco Certificate in a name other than that of the registered holder of the AINC Certificate surrendered, or establishing to the satisfaction of New Holdco, or the transfer agent in respect of the New Holdco Common Stock, that such tax has been paid or is not applicable.

(f) Each New Holdco Certificate shall comply with all requirements set forth in New Holdco's charter or bylaws and applicable law with respect to notice of certain restrictions on ownership and transferability.

(g) AINC and New Holdco expect that the New Holdco Certificates delivered to former AINC stockholders will reflect the change of New Holdco's name to "Ashford Inc."

Section 1.11 *Dividends.* At the Effective Time and by operation of the Merger, AINC's obligations with respect to any dividends or other distributions to the stockholders of AINC that have been declared by AINC, but not paid prior to the Effective Time, will be assumed by New Holdco in accordance with the terms of the declaration.

Section 1.12 *Stock Transfer Books.* At the Effective Time, the stock transfer books of AINC shall be closed and thereafter there shall be no further registration of transfers of shares of AINC Common Stock theretofore outstanding on the records of AINC.

Section 1.13 *Plan of Reorganization and Plan of Exchange.* This Agreement, together with the Combination Agreement, is intended to constitute a "plan of reorganization" within the meaning of Treasury Regulations Section 1.368-2(g), and this Agreement, the Combination Agreement and the PM Contribution Agreement together are intended to constitute a single plan of exchange under Section 351 of the Code. Each party hereto shall use commercially reasonable efforts to cause the Merger to qualify, and will not knowingly take any actions or cause any actions to be taken which would prevent the Merger from qualifying, as a reorganization within the meaning of Section 368(a) of the Code. Each party hereto shall use commercially reasonable efforts to cause the Merger and the PM Exchange collectively to qualify, and will not knowingly take any actions or cause any actions to be taken which would prevent the Merger and the PM Exchange collectively from qualifying, as an exchange under Section 351 of the Code.

Section 1.14 *Successor Issuer.* It is the intent of the parties hereto that New Holdco be deemed a "successor issuer" of AINC in accordance with Rule 12g-3 under the Securities Exchange Act of

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1934, as amended (the "Exchange Act") solely for purposes of the Exchange Act, and in accordance with Rule 414 under the Securities Act of 1933, as amended (the "Securities Act") solely for purposes of the Securities Act. At or after the Effective Time, New Holdco shall file: (i) an appropriate report on Form 8-K describing the Merger; and (ii) appropriate amendments to any registration statements of AINC on Form S-8 in accordance with Section 2.2.

ARTICLE II

ACTIONS TO BE TAKEN IN CONNECTION WITH THE MERGER

Section 2.1 *Assumption of AINC Plan and Outstanding Stock Options and Obligations under the AINC Plan.* At the Effective Time, New Holdco shall assume the rights and obligations of AINC under the Ashford Inc. 2014 Incentive Plan (including all amendments or modifications thereto, the "AINC Plan") and the rights and obligations of AINC under: (i) all unexercised and unexpired options to purchase shares of AINC Common Stock ("AINC Options") that are then outstanding under the AINC Plan immediately prior to the Effective Time; (ii) all obligations to issue shares of AINC Common Stock under the deferred compensation obligations assumed by AINC in connection with its spin-off from Ashford Hospitality Trust, Inc. in 2014 (the "AINC Deferred Compensation Obligations"); and (iii) the remaining unallocated reserve of shares of AINC Common Stock issuable under the AINC Plan. At the Effective Time, the reserve of shares of AINC Common Stock under the AINC Plan, whether allocated to existing AINC Options or existing AINC Deferred Compensation Obligations or unallocated at that time, shall be converted on a one-share-for-one-share basis into a reserve of shares of New Holdco Common Stock, and each AINC Option and each AINC Deferred Compensation Obligation assumed by New Holdco shall continue to have, and be subject to, the same terms and conditions as set forth in the AINC Plan, the AINC Options and the AINC Deferred Compensation Obligations and the agreement(s) evidencing each of the AINC Options and the AINC Deferred Compensation Obligations as in effect immediately prior to the Effective Time (including, without limitation, the vesting schedule and applicable issuance dates (without acceleration thereof by virtue of the Merger and the transactions contemplated hereby or by the Combination Agreement), the per share exercise price of the AINC Options, the expiration date of the AINC Options and other applicable termination provisions and the tax withholding procedures), except that from and after the Effective Time: (i) each AINC Option will be exercisable (or will become exercisable in accordance with its terms) for that number of shares of New Holdco Common Stock equal to the number of shares of AINC Common Stock that were subject to each such AINC Option immediately prior to the Effective Time and any applicable exercise price shall be payable to New Holdco; and (ii) each AINC Deferred Compensation Obligation may be settled for that number of shares of New Holdco Common Stock equal to the number of shares of AINC Common Stock for which such AINC Deferred Compensation Obligation could be settled.

Section 2.2 *Assignment and Assumption of Agreements.* Effective as of the Effective Time, AINC hereby assigns and delegates to New Holdco, and New Holdco hereby assumes and agrees to perform, all rights and obligations of AINC pursuant to the AINC Plan, under each option agreement relating to AINC Stock Options outstanding under the AINC Plan immediately prior to the Effective Time and under each AINC Deferred Compensation Obligation outstanding immediately prior to the Effective Time. Effective as of the Effective Time, New Holdco shall become the successor issuer of securities under the AINC Plan in accordance with Rule 12g-3 under the Exchange Act solely for purposes of the Exchange Act and in accordance with Rule 414 under the Securities Act solely for purposes of the Securities Act and shall, as soon as practicable following the Effective Time, file a post-effective amendment to each existing registration statement on Form S-8 covering the AINC Plan, pursuant to which New Holdco as successor to AINC shall expressly adopt such registration statements on Form S-8 as its own in accordance with Rule 414 under the Securities Act.

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Section 2.3 *Reservation of Shares.* On or prior to the Effective Time, New Holdco shall reserve sufficient shares of New Holdco Common Stock to provide for the issuance of New Holdco Common Stock upon the exercise or other settlement of all AINC Options and AINC Deferred Compensation Obligations and to cover any additional shares of New Holdco Common Stock that may become issuable under future awards made with respect to the remaining share reserve under the assumed AINC Plan that is, in accordance with the foregoing provisions of this Agreement, converted into a reserve of shares of New Holdco Common Stock.

Section 2.4 *Registration Statement; Prospectus/Proxy Statement.* In connection with the Stockholders' Meeting (as defined below), New Holdco has prepared and filed with the Securities and Exchange Commission (the "SEC") a registration statement on Form S-4 (together with all amendments thereto, the "Registration Statement") in connection with the registration under the Securities Act of the shares of New Holdco Common Stock to be issued to the stockholders of AINC pursuant to the Merger. The Registration Statement shall, at such time as it is declared effective by order of the SEC, include: (i) a prospectus for the issuance of shares of New Holdco Common Stock in the Merger; and (ii) a proxy statement relating to the Stockholders' Meeting (such prospectus and proxy statement collectively, together with any amendments or supplements thereto, the "Prospectus/Proxy Statement"). Each of New Holdco and AINC shall use its reasonable best efforts to cause the Registration Statement to become effective and the Prospectus/Proxy Statement to be cleared by the SEC as promptly as practicable, and, prior to the effective date of the Registration Statement, New Holdco shall take all actions reasonably required under any applicable federal securities laws or state blue sky laws in connection with the issuance of shares of New Holdco Common Stock pursuant to the Merger. As promptly as reasonably practicable after the Registration Statement shall have become effective and the Prospectus/Proxy Statement shall have been cleared by the SEC, AINC shall mail or cause to be mailed or otherwise make available in accordance with the Securities Act and the Exchange Act, the Prospectus/Proxy Statement to its stockholders; provided, however, that the parties shall consult and cooperate with each other in determining the appropriate time for mailing or otherwise making available to AINC's stockholders the Prospectus/Proxy Statement in light of the date set for the Stockholders' Meeting.

Section 2.5 *Meeting of AINC Stockholders; Board Recommendation.* AINC shall take all action necessary in accordance with the MGCL and its governing documents to call, hold and convene a meeting of its stockholders to consider the approval of the Preferred Stock Issuance Actions (the "Stockholders' Meeting"). AINC shall use its reasonable best efforts to solicit from its stockholders proxies in favor of the approval of the Preferred Stock Issuance Actions. AINC may adjourn or postpone the Stockholders' Meeting: (i) to the extent necessary to ensure that any necessary supplement or amendment to the Prospectus/Proxy Statement is provided to its stockholders in advance of any vote on the Preferred Stock Issuance Actions or (ii) if as of the time for which the Stockholders' Meeting is originally scheduled (as set forth in the Prospectus/Proxy Statement) insufficient shares of AINC Common Stock are voting in favor of the approval of the Preferred Stock Issuance Actions or represented (either in person or by proxy) to constitute a quorum necessary to conduct the business of such Stockholders' Meeting.

Section 2.6 *Listing of New Holdco Common Stock.* AINC and New Holdco shall use their reasonable best efforts to obtain, at or before the Effective Time, confirmation of listing on the NYSE American LLC stock exchange (the "NYSE American") of the New Holdco Common Stock issuable pursuant to the Merger.

Section 2.7 *Section 16 Matters.* Prior to the Effective Time, the Boards of Directors of AINC and New Holdco or an appropriate committee of non-employee directors (as such term is defined for purposes of Rule 16b-3 promulgated under the Exchange Act) shall adopt resolutions consistent with the interpretive guidance of the SEC so that the disposition by any officer or director of AINC or New Holdco who is a covered person for purposes of Section 16(a) of the Exchange Act of shares of AINC Common Stock (or derivative securities) and the receipt of shares of New Holdco Common Stock (or derivative securities) in exchange therefor by virtue of this Agreement and the Merger will be an exempt transaction for purposes of Section 16(b) of the Exchange Act.

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Section 2.8 *[Other Employee Benefit Plans and Arrangements.* Effective as of the Effective Time: (i) AINC transfers, assigns and delegates to New Holdco, and New Holdco hereby assumes, each of AINC's other employee benefit plans and arrangements and all rights and obligations of AINC thereunder designated in writing by AINC to New Holdco prior to the Effective Time; and (ii) New Holdco hereby assumes and agrees to perform the obligations of AINC thereunder upon the same terms and conditions as set forth in each such designated plan and arrangement as in effect at the Effective Time.]

ARTICLE III

CONDITIONS TO CLOSING

Section 3.1 *Conditions to Obligations of Merger Sub.* The obligations of Merger Sub to perform this Agreement are subject to the satisfaction or waiver, prior to the proposed Effective Time, of each of the following conditions:

(a) AINC shall have performed all agreements, covenants and obligations required to be performed, complied with or discharged by it under this Agreement and the Combination Agreement prior to or as of the Effective Time.

(b) All actions necessary to authorize the execution, delivery and performance of this Agreement and the Combination Agreement by AINC and the enforceability of this Agreement and the Combination Agreement against AINC shall have been duly and validly taken.

Section 3.2 *Conditions to Obligations of New Holdco.* The obligations of New Holdco to perform this Agreement are subject to the satisfaction or waiver, prior to the proposed Effective Time, of the following conditions:

(a) Each of AINC and Merger Sub shall have performed all agreements, covenants and obligations required to be performed, complied with or discharged by it under this Agreement and the Combination Agreement prior to or as of the Effective Time.

(b) All actions necessary to authorize the execution, delivery and performance of this Agreement and the Combination Agreement by each of AINC and Merger Sub and the enforceability of this Agreement and the Combination Agreement against each of AINC and Merger Sub shall have been duly and validly taken.

(c) The Preferred Stock Issuance Actions shall have been approved by the affirmative vote of the holders of a majority of the shares of AINC Common Stock present, in person or by proxy, at the Stockholders' Meeting and voting on the Preferred Stock Issuance Actions at the Stockholders' Meeting.

(d) Immediately prior to the Effective Time, the shares of New Holdco Common Stock to be issued in the Merger shall be approved to be listed for trading on the NYSE American upon issuance.

Section 3.3 *Conditions to Obligations of AINC.* The obligations of AINC to perform this Agreement are subject to the satisfaction or waiver, prior to the proposed Effective Time, of the following conditions:

(a) Each of New Holdco and Merger Sub shall have performed all agreements, covenants and obligations required to be performed, complied with or discharged by it under this Agreement and the Combination Agreement prior to or as of the Effective Time.

(b) All actions necessary to authorize the execution, delivery and performance of this Agreement and the Combination Agreement by Merger Sub and the enforceability of this

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Agreement and the Combination Agreement against Merger Sub shall have been duly and validly taken.

(c) The Preferred Stock Issuance Actions shall have been approved by the affirmative vote of the holders of a majority of the shares of AINC Common Stock present, in person or by proxy, at the Stockholders' Meeting and voting on the Preferred Stock Issuance Actions at the Stockholders' Meeting.

(d) Immediately prior to the Effective Time, the shares of New Holdco Common Stock to be issued in the Merger shall be approved to be listed for trading on the NYSE American upon issuance.

ARTICLE IV

ADDITIONAL COVENANTS

Section 4.1 *Expenses.* AINC and New Holdco shall pay all of their own expenses in connection with the transactions contemplated by this Agreement.

Section 4.2 *Activities of New Holdco and Merger Sub.* Prior to the Effective Time, New Holdco and Merger Sub shall not conduct any business activities and shall not conduct any other activities except in connection with the transactions contemplated by this Agreement, the Transaction Documents (as defined in the Combination Agreement) or the Combination Agreement.

ARTICLE V

REGISTRATION RIGHTS

Section 5.1 *Resale Registration.* No later than 120 days following the Effective Time, New Holdco shall prepare and file a registration statement under the Securities Act to permit the public resale of Registrable Securities (as defined below) then outstanding from time to time as permitted by Rule 415 of the Securities Act with respect to all of the Registrable Securities (the "*Resale Registration Statement*"). The Resale Registration Statement filed pursuant to this Agreement shall be on such appropriate registration form of the SEC as shall be selected by New Holdco so long as it permits the continuous offering of the Registrable Securities pursuant to Rule 415 of the Securities Act or such other rule as is then applicable. New Holdco shall use its commercially reasonable efforts to cause the Resale Registration Statement to become effective on or as soon as practicable after the filing thereof. Any Resale Registration Statement shall provide for the resale pursuant to any method or combination of methods legally available to, and requested by, the Holders (as defined below) of any and all Registrable Securities covered by such Resale Registration Statement. New Holdco shall use its commercially reasonable efforts to cause the Resale Registration Statement filed pursuant to this Agreement to be effective, supplemented and amended to the extent necessary to ensure that it is available for the resale of all Registrable Securities by the Holders until all Registrable Securities covered by such Resale Registration Statement have ceased to be Registrable Securities (the "*Effectiveness Period*"). The Resale Registration Statement when effective (including the documents incorporated therein by reference) will comply as to form in all material respects with all applicable requirements of the Securities Act and the Exchange Act and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of any prospectus contained in such Resale Registration Statement, in the light of the circumstances /under which a statement is made).

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Section 5.2 *Obligations of New Holdco.* Whenever required under this Article V to effect the registration of any Registrable Securities, New Holdco will, as expeditiously as possible:

- (a) prepare and file with the SEC such amendments and supplements to the Resale Registration Statement and the prospectus used in connection with such Resale Registration Statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by the Resale Registration Statement;
- (b) furnish to the Holders such numbers of copies of a prospectus including a preliminary prospectus, in conformity with the requirements of the Securities Act with respect to the disposition of all securities covered by the Resale Registration Statement;
- (c) use its best efforts to register and qualify the Registrable Securities covered by the Resale Registration Statement under such other securities or Blue Sky laws of such jurisdictions as reasonably requested by the Holders of Registrable Securities; provided that New Holdco will not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless New Holdco is already subject to service in such jurisdiction and except as may be required by the Securities Act;
- (d) cause the Registrable Securities registered for resale to be listed on a national securities exchange or trading system and each securities exchange and trading system on which similar securities issued by AINC are then listed;
- (e) provide a transfer agent and a registrar for all such Registrable Securities, in each case not later than the effective date of such registration;
- (f) if requested by the Holders of a majority of the Registrable Securities, retain one or more nationally-recognized investment banking firms to act as underwriter for the offering, and enter into such customary agreements (including underwriting and lock-up agreements in customary form) and take all such customary actions as the Holders of a majority of the Registrable Securities or the managing underwriter of such offering request in order to expedite or facilitate the disposition of the all such Registrable Securities (including, without limitation, making appropriate officers of New Holdco available to participate in "road show" and other customary marketing activities (including one-on-one meetings with prospective purchasers of the Registrable Securities)); and
- (g) use its best efforts to furnish, on the date on which such Registrable Securities are sold to any underwriter: (i) an opinion, dated such date, of the counsel representing New Holdco for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any; and (ii) a "comfort letter" dated such date, from the independent certified public accountants of New Holdco, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any.

Section 5.3 *Delay Rights.* Notwithstanding anything to the contrary contained herein, New Holdco may, upon written notice to all Holders whose Registrable Securities are included in the Resale Registration Statement, suspend such Holder's use of any prospectus which is a part of the Resale Registration Statement (a "*Blackout Period*") (in which event the Holder shall discontinue sales of the Registrable Securities pursuant to the Resale Registration Statement) if New Holdco is contemplating or has experienced a material non-public event, the disclosure of which at such time, in the good faith judgment of New Holdco, would materially adversely affect New Holdco or, as to each Holder that is subject to the securities trading policies of New Holdco applicable to insiders of New Holdco, during any period in which insiders of New Holdco are not permitted to trade in securities of New Holdco under the securities trading policies of New Holdco applicable to insiders of New Holdco. Upon disclosure of such information or the termination of the condition or expiration of such period

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described above, New Holdco shall provide prompt notice to the Holders whose Registrable Securities are included in the Resale Registration Statement, and shall promptly terminate any suspension of sales it has put into effect. Any such Blackout Period will be no longer than 60 days in the aggregate in any 365-day period and New Holdco will not utilize this right more than once in any twelve -month period.

Section 5.4 *Cooperation by Holders.* New Holdco shall have no obligation to include in the Resale Registration Statement Registrable Securities of a Holder who has failed to timely furnish upon written request timely delivered to such Holder such information that New Holdco determines, after consultation with counsel, is reasonably required in order for the registration statement or prospectus supplement, as applicable, to comply with the Securities Act.

Section 5.5 *Expenses.* New Holdco will pay all reasonable expenses incurred pursuant to this Article V with respect to the registration of the Registrable Securities as determined in good faith; provided that New Holdco shall not be responsible for legal fees incurred by Holders in connection with the exercise of such Holders' rights under this this Article V.

Section 5.6 *Termination of Purchaser's Rights.* A Holder's rights under this Agreement shall terminate upon the termination of the Effectiveness Period.

Section 5.7 *Certain Definitions.* For purposes of this Article V, the following capitalized terms have the definitions set forth below:

(a) "Converted Common Stock" means shares of New Holdco Common Stock issuable upon conversion of the Series B Preferred Stock.

(b) "Holder" means any "Covered Investor" as such term is defined in that certain Investor Rights Agreement, dated as of [•], 2018, by and among New Holdco, Archie Bennett, Jr., MJB Investments, LP and Mark A. Sharkey.

(c) "Registrable Securities" means: (i) the Series B Preferred Stock; (ii) any Converted Common Stock; and (iii) any shares of capital stock issued in respect of the Series B Preferred Stock or any Converted Common Stock in the event of any recapitalization, reclassification, merger, consolidation or similar transaction or event; provided that any such Registrable Security will cease to be a Registrable Security when (a) a registration statement covering such Registrable Security becomes or has been declared effective by the SEC and such Registrable Security has been sold or disposed of pursuant to such effective registration statement; (b) such Registrable Security has been disposed of pursuant to any section of Rule 144 under the Securities Act ("Rule 144") (or any similar provision then in force) under the Securities Act; (c) such Registrable Security is held by New Holdco or one of its subsidiaries or Affiliates (other than the Investors); or (d) such Registrable Security becomes eligible for resale in accordance with Rule 144 without volume or holding period limitations and, in the event New Holdco is not in compliance with the requirements of Rule 144(c) promulgated under the Securities Act, without the need for current public information.

ARTICLE VI

AMENDMENT AND TERMINATION

Section 6.1 *Amendment.* This Agreement may be amended or supplemented in any manner and from time to time prior to the Effective Time by a written instrument duly executed and delivered by all of the parties hereto.

Section 6.2 *Termination.* This Agreement may be terminated and the Merger abandoned at any time prior to the Effective Time by action taken by the Board of Directors of AINC or the sole stockholder of Merger Sub for any reason whatsoever, such termination to be effected by giving written notice to the other parties hereto. In the event of the termination and abandonment of this Agreement,

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this Agreement shall become void and have no effect, without any liability on the part of any party or its directors, managers, officers, stockholders, members or partners.

ARTICLE VII

MISCELLANEOUS

Section 7.1 *Descriptive Headings.* Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

Section 7.2 *Counterparts.* For the convenience of the parties, any number of counterparts of this Agreement may be executed by one or more parties hereto and each such executed counterpart shall be, and shall be deemed to be, an original instrument.

Section 7.3 *Successors and Assigns.* This Agreement may not be assigned by a party without the written consent of the other parties hereto. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the successors and assigns of the parties hereto.

Section 7.4 *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 7.5 *Applicable Law.* This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland.

Section 7.6 *Third Party Beneficiaries.* Any Holder, even if not a party to this Agreement, shall be deemed an express third party beneficiary of the provisions contained in Article V hereof with full rights to enforce and access such obligations directly in their own respective name and on their own respective behalf.

(Remainder of the page intentionally left blank)

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed all as of the day and year first above written.

ASHFORD INC.,
a Maryland corporation

By: _____

Name:
Title:

ASHFORD MERGER SUB INC.
a Maryland corporation

By: _____

Name:
Title:

ASHFORD HOLDING CORP.
a Maryland corporation

By: _____

Name:
Title:

Solely for the purposes of Article V hereof:

Archie Bennett, Jr.

MJB INVESTMENTS, LP
By: MJB Investments GP, LLC, its general partner

By: _____

Name: Monty J. Bennett
Title: *Sole Member*

Mark A. Sharkey

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**ANNEX F
FORM OF AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF ASHFORD HOLDING CORP.**

F-1

AMENDED AND RESTATED ARTICLES OF INCORPORATION

(Effective as of _____).

Ashford Holding Corp., a Maryland corporation (the "*Corporation*"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

FIRST: The Corporation desires to amend and restate its Articles of Incorporation as currently in effect and as hereinafter amended.

SECOND: The following provisions are all the provisions of the Charter currently in effect and as hereinafter amended:

ARTICLE I

FORMATION

The Corporation is a corporation under the Maryland General Corporation Law ("*MGCL*").

ARTICLE II

NAME AND LIFE

Section 2.1 *Name.* The name of the Corporation is Ashford Holding Corp.

Section 2.2 *Life.* The Corporation shall have a perpetual existence.

ARTICLE III

PRINCIPAL OFFICE AND REGISTERED AGENT

The address of the principal office of the Corporation within the State of Maryland, is c/o CSC Lawyers Incorporating Service Company, 7 St. Paul Street, Suite 1660, Baltimore, Maryland 21202. The Corporation may have such other offices and places of business within or outside the State of Maryland as the Board of Directors of the Corporation (the "*Board*") may from time to time determine. The name of the resident agent of the Corporation within the State of Maryland is CSC-Lawyers Incorporating Service Company, and the address of such agent is 7 St. Paul Street, Suite 1660, Baltimore, Maryland 21202.

ARTICLE IV

PURPOSE

The purpose for which the Corporation is organized is to engage in any lawful act or activity for which corporations may be organized under the MGCL.

ARTICLE V

CAPITAL STOCK

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Section 5.1 *Authorized Capital Stock*. The aggregate number of shares of capital stock which the Corporation shall have authority to issue is two hundred million (200,000,000) shares of capital stock ("*Capital Stock*"), consisting of (i) one hundred million (100,000,000) shares of common stock, par value one cent (\$0.01) per share ("*Common Stock*"), (ii) fifty million (50,000,000) shares of blank check common stock, par value one cent (\$0.01) per share ("*Blank Check Common Stock*") and (iii) fifty million (50,000,000) shares of preferred stock, par value one cent (\$0.01) per share ("*Preferred Stock*"), of which two million (2,000,000) shares of Preferred Stock have been designated as "Series A Preferred"

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Stock," the preferences, rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption of which are set forth in *Section 5.5* hereto. Forty-eight million (48,000,000) shares of Preferred Stock remain undesignated.

Section 5.2 Common Stock. The powers, preferences and rights, and the qualifications, limitations and restrictions, of the Common Stock are as follows:

(a) *Voting.* Except as otherwise expressly provided herein or required by Law or the relevant Preferred Stock Designation (as defined in *Section 5.4(a)*) of any series of Preferred Stock or the relevant Blank Check Common Stock Designation (as defined in *Section 5.3(a)*) of any series of Blank Check Common Stock, each holder of record of shares of Common Stock shall have the exclusive right to vote for the election of directors and shall be entitled to vote on all other matters requiring stockholder action, each share being entitled to one vote.

(b) *Dividends.* Subject to applicable Law and the preferential rights, if any, as to dividends of the holders of any shares of Preferred Stock at the time outstanding and to the rights, if any, as to dividends of any shares of Blank Check Common Stock at the time outstanding, the holders of shares of Common Stock shall be entitled to receive, when, as and if declared by the Board, out of assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board.

(c) *Liquidation.* In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary (a "*Liquidation Event*"), the holders of shares of Common Stock shall be entitled to receive, subject to the preferential rights as to distributions upon such Liquidation Event of each of the creditors of the Corporation and the holders of any shares of Preferred Stock at the time outstanding and to the rights of any shares of Blank Check Common Stock at the time outstanding, their ratable and proportionate share of the remaining assets of the Corporation. A Liquidation Event shall not be deemed to be occasioned by or to include any voluntary consolidation or merger of the Corporation with or into any other corporation or entity or other corporations or entities or a sale, lease, or conveyance of all or substantially all of the Corporation's assets.

(d) *No Cumulative Voting Rights.* No holder of shares of Common Stock shall have cumulative voting rights.

(e) *Other Rights.* No holder of shares of Common Stock shall be entitled to preference, conversion, exchange, sinking fund, redemption or preemptive rights.

Section 5.3 Blank Check Common Stock.

(a) The Board is hereby expressly authorized to provide for the issuance of all or any shares of the Blank Check Common Stock in one or more series, by filing articles supplementary pursuant to Section 2-208 of the MGCL (hereinafter referred to as a "*Blank Check Common Stock Designation*"), to establish from time to time the number of shares to be included in each such series, and to fix for each such series, such voting powers, full or limited, or no voting powers, and, such designations, preferences and relative, participating, optional or other special rights and such restrictions, limitations and qualifications thereof, as shall be authorized by the Board and stated in the applicable Blank Check Common Stock Designation, providing for the issuance of such series, including, without limitation, the authority to provide that any such series may be (i) subject to redemption at such time or times and at such price or prices; (ii) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, including without limitation a condition that relates to the performance of specified assets or a specified line or lines of business, and at such times, and payable in such relation to, the dividends payable on any other class or classes or any other series; (iii) entitled to such rights upon the dissolution of, or upon any distribution of all or specified assets of, or a specified line of business of the Corporation; or

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(iv) convertible into, or exchangeable for, shares of any other class or classes of stock, or of any other series of the same or any other class or classes of stock, of the Corporation at such price or prices or at such rates of exchange and with such adjustments; all as may be stated in such Blank Check Common Stock Designation.

(b) The rights, powers and privileges of the Blank Check Common Stock shall be subject to the express terms of any series of Preferred Stock. Except as required by a Blank Check Common Stock Designation or applicable Law, holders of Blank Check Common Stock shall not be entitled to vote at or receive notice of any meeting of stockholders.

Section 5.4 *Preferred Stock.*

(a) The Board is hereby expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more series, by filing articles supplementary pursuant to Section 2-208 of the MGCL (hereinafter referred to as a "*Preferred Stock Designation*"), to establish from time to time the number of shares to be included in each such series, and to fix for each such series such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights and such restrictions, limitations and qualifications thereof, as shall be authorized by the Board and stated in the applicable Preferred Stock Designation, providing for the issuance of such series, including, without limitation, the authority to provide that any such series may be (i) subject to redemption at such time or times and at such price or prices; (ii) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series; (iii) entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the Corporation; or (iv) convertible into, or exchangeable for, shares of any other class or classes of stock, or of any other series of the same or any other class or classes of stock, of the Corporation at such price or prices or at such rates of exchange and with such adjustments; all as may be stated in such Preferred Stock Designation.

(b) The rights, powers and privileges of the Common Stock shall be subject to the express terms of any series of Preferred Stock. Except as required by a Preferred Stock Designation or applicable Law, holders of Preferred Stock shall not be entitled to vote at or receive notice of any meeting of stockholders.

(c) Except as otherwise provided by a Preferred Stock Designation, the number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote generally in the election of directors.

Section 5.5 *Series A Preferred Stock.*

(a) *Designation and Amount.* The shares of this series shall be designated as Series A Preferred Stock (the "*Series A Preferred Stock*"), and the number of shares constituting the Series A Preferred Stock shall be two million (2,000,000). Such number of shares may be increased or decreased by resolution of the Board; *provided*, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series A Preferred Stock.

(b) *Dividends and Distributions.*

(i) Subject to the rights of the holders of any shares of any class or series of Preferred Stock (or any other stock of the Corporation) ranking prior and superior to the shares of

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Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock, in preference to the holders of shares of any class or series of stock of the Corporation ranking junior to the Series A Preferred Stock in respect thereof, shall be entitled to receive, when, as and if declared by the Board out of funds legally available for the purpose, quarterly dividends payable in cash on the last day of March, June, September and December in each year (each such date a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount (if any) per share (rounded to the nearest cent), subject to the provision for adjustment hereinafter set forth, equal to 1,000 multiplied by the aggregate per share amount of all cash dividends, and 1,000 multiplied by the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise) declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(ii) The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in *Section 5.5(b)(i)* immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock).

(iii) Dividends due pursuant to *Section 5.5(b)(i)* shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

(c) *Voting Rights.* The holders of shares of Series A Preferred Stock shall have the following voting rights:

(i) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time

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declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(ii) Except as otherwise provided in the Charter, including any other Articles Supplementary creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock and any other Capital Stock having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(iii) Except as set forth herein, or as otherwise required by law, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

(d) *Certain Restrictions.*

(i) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in *Section 5.5(b)* are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(A) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding-up) to the Series A Preferred Stock;

(B) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding-up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled; or

(C) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding-up) to the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (as to dividends and upon dissolution, liquidation or winding-up) to the Series A Preferred Stock.

(ii) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (a) of this *Section 5.5(d)*, purchase or otherwise acquire such shares at such time and in such manner.

(e) *Reacquired Shares.* Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall automatically and without further Board action become authorized but unissued shares of Preferred Stock that may be reissued as part of a new

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series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein or in the Charter, including any Articles Supplementary creating a series of Preferred Stock or any similar stock, or as otherwise required by law.

(f) *Liquidation, Dissolution or Winding-Up.*

(i) Upon any liquidation, dissolution or winding-up of the Corporation, voluntary or otherwise, no distribution shall be made to the holders of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding-up) to the Series A Preferred Stock unless, prior thereto, the holders of Series A Preferred Stock shall have received an amount per share (the "*Series A Liquidation Preference*") equal to an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 multiplied by the aggregate amount to be distributed per share to holders of shares of Common Stock plus an amount equal to any accrued and unpaid dividends. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(ii) If there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other classes and series of stock of the Corporation, if any, that rank on a parity with the Series A Preferred Stock in respect thereof, then the assets available for such distribution shall be distributed ratably to the holders of the Series A Preferred Stock and the holders of such parity shares in proportion to their respective liquidation preferences.

(iii) Neither the merger or consolidation of the Corporation into or with another entity nor the merger or consolidation of any other entity into or with the Corporation shall be deemed to be a liquidation, dissolution or winding-up of the Corporation within the meaning of this *Section 5.5(f)*.

(g) *Consolidation, Merger, Etc.* If the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series A Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 multiplied by the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

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(h) *Amendment.* At any time that any shares of Series A Preferred Stock are outstanding, the Charter shall not be amended in any manner, including in a merger, consolidation or otherwise, which would alter, change or repeal the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock, voting separately a single class.

(i) *Rank.* The Series A Preferred Stock shall rank, with respect to the payment of dividends and upon liquidation, dissolution and winding-up, junior to all other series of Preferred Stock, unless the terms of any such series shall provide otherwise, and shall rank senior to the Common Stock as to such matters.

Section 5.6 *Preemptive Rights.* Except as may be provided by the Board in setting the terms of any stock Preferred Stock or Blank Check Common Stock designated in accordance with this Article V or as may otherwise be provided by a contract approved by the Board, no holders of shares of Capital Stock shall, as such holder, have any preemptive right to purchase or subscribe for any additional shares of Capital Stock or any other security of the Corporation which it may issue or sell.

Section 5.7 *Approval of Extraordinary Actions.* Notwithstanding any provision of law permitting or requiring any action to be taken or approved by the affirmative vote of the holders of shares entitled to cast a greater proportion of votes, any such action shall be effective and valid if declared advisable by a majority of the Board and taken or approved by the affirmative vote of holders of shares entitled to cast a majority of all of the votes entitled to be cast on the matter.

ARTICLE VI

BOARD OF DIRECTORS

Section 6.1 *Number.* The Board shall consist of not less than one or more than fifteen members, the exact number of which shall be fixed from time to time by resolution adopted by the affirmative vote of a majority of the Board.

Section 6.2 *Classes.* The directors of the Board shall not be divided into classes. The directors shall be elected at the annual meeting of the stockholders and each director shall be elected to serve for a term of one year and until his successor shall be elected and shall qualify or until his earlier resignation or removal.

Section 6.3 *Removal.* Except as otherwise required by applicable Law and subject to any Preferred Stock Designation or any Blank Check Common Stock Designation, any director may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least 80% of the voting power of the then issued and outstanding shares of Capital Stock entitled to vote in the election of directors. The vacancy or vacancies in the Board caused by any such removal may be filled by the Board as provided in *Section 6.5*.

Section 6.4 *Term of Office.* A director shall hold office until the annual meeting for the year in which his or her term expires and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office.

Section 6.5 *Vacancies and Newly Created Directorships.* Unless otherwise required by Law, and subject to any Preferred Stock Designation or any Blank Check Common Stock Designation, any vacancy on the Board that results from an increase in the number of directors may be filled by a majority of the Board then in office, provided that a quorum is present, and any other vacancy occurring on the Board may be filled by a majority of the Board then in office, even if less than a quorum, or by a sole remaining director. Any director elected by the Board to fill any vacancy shall

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serve until the next annual meeting of stockholders and until his or her successor is elected and qualifies.

Section 6.6 *Voting*. At all meetings of the Board or of any committee thereof at which a quorum is present, except as otherwise provided for by Law, these Articles or the Bylaws of the Corporation (the "*Bylaws*"), any action required or permitted to be taken by the Board shall be approved by the affirmative vote of a majority of the directors then present; *provided, however*, that a majority of the disinterested directors shall be required to approve any transaction or agreement involving the Corporation, its wholly-owned subsidiaries or Ashford Hospitality Advisors LLC and a director or officer of the Corporation or an Affiliate of any director or officer of the Corporation or an entity in which a director or officer is a director or an officer or has a financial interest. The proviso in the preceding sentence, however, shall not apply to the fixing by the Board of reasonable compensation for a director.

Section 6.7 *Powers*. In addition to the powers and authority expressly conferred upon the directors herein or by applicable Law, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation which are not reserved to the stockholders pursuant to applicable Law, these Articles or the Bylaws.

Section 6.8 *Special Meetings of Stockholders*. Special meetings of the stockholders, for any purpose or purposes (i) may be called by the Chairman of the Board, the CEO and (ii) shall be called by the CEO or Secretary at the request in writing of a majority of the members of the Board or upon the written request of the holders of at least a majority of the voting power of the then issued and outstanding shares of Capital Stock, and may not be called by any other Person or Persons. Such request of the Board or the stockholders shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting shall be limited to the purpose or purposes stated in the notice.

Section 6.9 *Agreements*. The Board may authorize the execution and performance by the Corporation of one or more agreements with any person, corporation, association, company, trust, partnership (limited or general) or other organization (including, without limitation, any one or more Affiliates of the Corporation and the Corporation's directors) whereby, subject to the supervision and control of the Board, any such other person, corporation, association, company, trust, partnership (limited or general) or other organization (including, without limitation, any one or more Affiliates of the Corporation and/the Corporation's directors) shall render or make available to the Corporation managerial, operational, investment, either or both advisory and related services, office space and other services and facilities (including, if deemed advisable by the Board, the management or supervision of the operations of the Corporation and its subsidiaries) upon such terms and conditions as may be provided in such agreement or agreements (including, if deemed fair and equitable by the Board, the compensation payable thereunder by the Corporation).

Section 6.10 *Personal Liability of Directors*. To the maximum extent that Maryland law in effect from time to time permits limitation of the liability of directors and officers of a corporation, no director or officer of the Corporation shall be liable to the Corporation or its stockholders for money damages. Neither the amendment nor repeal of this *Section 6.10*, nor the adoption or amendment of any other provision of these Articles or the Bylaws inconsistent with this *Section 6.10* shall apply to or affect in any respect the applicability of the preceding sentence with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

Section 6.11 *No Written Ballot Required for Director Elections*. Unless and except to the extent that the Bylaws shall so require, the election of directors of the Corporation need not be by written ballot.

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ARTICLE VII

INDEMNIFICATION

The Corporation shall indemnify and hold harmless to the fullest extent authorized or permitted by Maryland Law, as now or hereafter in effect, any person (a "*Covered Person*") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "*proceeding*"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Such rights to indemnification and advancement of expenses (as provided for in this Article VII) shall continue as to a Covered Person who has ceased to be a director, officer, employee or agent of the Corporation and shall inure to the benefit of such Covered Person's heirs, executors, and personal and legal representatives; *provided, however*, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any Covered Person (or such Covered Person's heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such Covered Person unless such proceeding (or part thereof) was authorized or consented to by the Board. In addition, the Corporation shall, to the fullest extent not prohibited by applicable Law, provide for the advancement of expenses (including attorneys' fees) incurred in defending or otherwise participating in any proceeding in advance of its final disposition upon receipt by the Corporation of a written affirmation by the Covered Person of such Covered Person's good faith belief that the standard of conduct necessary for indemnification under this Article VII has been met and a written undertaking by or on behalf of the Covered Person requesting advancement to repay the amount advanced if it shall ultimately be determined that such Covered Person is not entitled to be indemnified by the Corporation under this Article VII.

The Corporation may, to the extent authorized from time to time by the Board, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VII to the Covered Persons.

The rights to indemnification and to the advancement of expenses conferred in this Article VII shall not be exclusive of any other right which any person may have or hereafter acquire under the Certificate of Incorporation (as it may be amended and restated from time to time), the Bylaws (as they may be amended and restated from time to time), any statute, agreement, vote of stockholders or disinterested directors or otherwise.

The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was or has agreed to become a director, officer, employee or agent of the Corporation against any liability asserted against him or her and incurred by him or her or on his or her behalf in such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability.

Any repeal or modification of this Article VII shall not adversely affect any rights to indemnification and to the advancement of expenses of a Covered Person existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

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ARTICLE VIII

CONSENT OF STOCKHOLDERS IN LIEU OF MEETING

Any action required or permitted to be taken by the stockholders of the Corporation may be taken without a meeting if a consent or consents in writing, setting forth the action so taken, is signed by the holders of all of the outstanding Capital Stock entitled to vote on the matter.

ARTICLE IX

MEETINGS OF STOCKHOLDERS

Meetings of stockholders may be held within or without the State of Maryland, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the MGCL) outside the State of Maryland at such place or places as may be designated from time to time by the Board or in the Bylaws.

ARTICLE X

BYLAWS

Section 10.1 The Bylaws may establish procedures regulating the submission by stockholders of nominations, proposals and other business for consideration at meetings of stockholders of the Corporation.

Section 10.2 The Bylaws of the Corporation may be altered, amended or repealed, and new bylaws adopted in the manner provided for in the Bylaws.

ARTICLE XI

MISCELLANEOUS

Section 11.1 *Definitions.* The following definitions are used herein:

"*Affiliate*" means, with respect to a given Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with, such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") as applied to any Person, means the possession, directly or indirectly, of Beneficial Ownership of, or the power to vote, ten percent (10%) or more of the securities having voting power for the election of directors (or other Persons acting in similar capacities) of such Person or the power otherwise to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"*Beneficial Ownership*" means ownership of shares of Common Stock by a Person, whether the interest in the shares of Common Stock is held directly or indirectly (including by a nominee), and shall include (in addition to direct ownership and indirect ownership through a nominee or similar arrangement) interests that would be treated as owned through the application of Rules 13d-3 and 13d-5 under the Exchange Act. The terms "Beneficial Owner," "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended.

"*Governmental Entity*" means any national, state, provincial, municipal, local or foreign government, any court, arbitral tribunal, administrative agency or commission, or other governmental or regulatory authority, commission, or agency, or any non-governmental, self-regulatory authority, commission, or agency.

"*Law*" means any statute, law, code, ordinance, rule, or regulation of any Governmental Entity.

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"Person" means an individual, corporation, partnership, estate, trust, association, private foundation, joint stock company, limited liability company, or other entity and also includes a group as that term is used for purposes of Section 13(d)(3) of the Exchange Act.

Section 11.2 *Potential Business Opportunity*. If a director or officer of the Corporation who is also a director or officer of Ashford Hospitality Trust, Inc., Ashford Hospitality Prime, Inc. or their respective Affiliates or successors (such person, an "Overlap Person" and such entity, an "Other Entity") is presented or offered, or otherwise acquires knowledge of, a potential transaction or matter that may constitute or present a business opportunity for the Corporation or any of its subsidiaries, in which the Corporation or any of its subsidiaries could have an interest or expectancy (any such transaction or matter, and any such actual or potential business opportunity, a "Potential Business Opportunity"):

(i) such director or officer will, to the fullest extent permitted by Law, have no duty or obligation to refrain from referring such Potential Business Opportunity to any Other Entity and, if such Overlap Person refers such Potential Business Opportunity to any Other Entity, such Overlap Person, to the fullest extent permitted by Law, shall have no duty or obligation to refer such Potential Business Opportunity to the Corporation or to any of its subsidiaries or to give any notice to the Corporation or to any of its subsidiaries regarding such Potential Business Opportunity (or any matter related thereto);

(ii) if such Overlap Person refers such Potential Business Opportunity to any Other Entity, such Overlap Person, to the fullest extent permitted by Law, will not be liable to the Corporation or to any of its subsidiaries, as a director, officer, stockholder or otherwise, for any failure to refer such Potential Business Opportunity to the Corporation, or for referring such Potential Business Opportunity to any Other Entity, or for any failure to give any notice to the Corporation regarding such Potential Business Opportunity or any matter relating thereto;

(iii) any Other Entity may participate, engage or invest in any such Potential Business Opportunity notwithstanding that such Potential Business Opportunity may have been referred to such entity by an Overlap Person; and

(iv) if a director or officer who is an Overlap Person refers a Potential Business Opportunity to any Other Entity, then, as between the Corporation and/or its subsidiaries, on the one hand, and such Other Entity, on the other hand, the Corporation and its subsidiaries, to the fullest extent permitted by Law, shall be deemed to have renounced any interest, expectancy or right in or to such Potential Business Opportunity or to receive any income or proceeds derived therefrom solely as a result of such Overlap Person having been presented or offered, or otherwise acquiring knowledge of such Potential Business Opportunity; unless in each case referred to in clauses (i), (ii), (iii) or (iv) above, the opportunity was offered to such Overlap Person exclusively in his or her capacity as a director or officer of the Corporation (an opportunity meeting all of such conditions, a "Restricted Potential Business Opportunity"). To the fullest extent permitted by Law, the Corporation shall be deemed to have renounced any interest or expectancy in any Potential Business Opportunity that is not a Restricted Potential Business Opportunity. In the event that the Board declines to pursue a Potential Business Opportunity, the Overlap Persons are free to refer such Potential Business Opportunity to any Other Entity.

Section 11.3 *Ambiguity*. For the avoidance of doubt and in furtherance of the foregoing, nothing contained in this Article XI amends or modifies, or will amend or modify, in any respect, any written contractual arrangement between Ashford Inc. or any of its Affiliates and each of Ashford Hospitality Trust, Inc., Ashford Hospitality Prime, Inc. and any of their respective Affiliates.

Section 11.4 *Application of Provision*. This Article XI shall apply as set forth above except as otherwise provided by Law. It is the intention of this Article XI to take full advantage of statutory amendments, the effect of which may be to specifically authorize or approve provisions such as this

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Article XI. No alteration, amendment, termination, expiration or repeal of this Article XI nor the adoption of any provision of these Articles inconsistent with this Article XI shall eliminate, reduce, apply to or have any effect on the protections afforded hereby to any director, officer, employee or stockholder of Ashford Hospitality Trust, Inc., Ashford Hospitality Prime, Inc. or any of their respective Affiliates for or with respect to any investments, activities or opportunities of which such director, officer, employee or stockholder becomes aware prior to such alteration, amendment, termination, expiration, repeal or adoption, or any matters occurring, or any cause of action, suit or claim that, but for this Article XI, would accrue or arise, prior to such alteration, amendment, termination, expiration, repeal or adoption.

Section 11.5 *Deemed Notice.* Any Person purchasing or otherwise acquiring any interest in any shares of the Capital Stock shall be deemed to have notice of and to have consented to the provisions of this Article XI.

Section 11.6 *Severability.* If this Article XI or any portion hereof shall be invalidated or held to be unenforceable on any ground by any court of competent jurisdiction, the decision of which shall not have been reversed on appeal, this Article XI shall be deemed to be modified to the minimum extent necessary to avoid a violation of Law and, as so modified, this Article XI and the remaining provisions hereof shall remain valid and enforceable in accordance with their terms to the fullest extent permitted by Law.

Neither the alteration, amendment or repeal of this Article XI nor the adoption of any provision of these Articles inconsistent with this Article XI shall eliminate or reduce the effect of this Article XI in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article XI, would accrue or arise, prior to such alteration, amendment, repeal or adoption. Following the expiration of this Article XI, any contract, agreement, arrangement or transaction involving a Potential Business Opportunity shall not by reason thereof result in any breach of any duty or standard of conduct of any director or officer of the Corporation or derivation of any improper benefit or personal economic gain, but shall be governed by the other provisions of these Articles, the Bylaws, the MGCL and other applicable Law.

ARTICLE XII

AMENDMENTS AND REPEAL

The Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in these Articles, including any amendment, alteration, change or repeal which alters the contract rights, as expressly set forth in the charter of the Corporation, and substantially and adversely affects the stockholders' rights, and other provisions authorized by the laws of the State of Maryland at the time in force may be added or inserted in the manner now or hereafter prescribed in these Articles, the Bylaws or the MGCL, and all rights, preferences and privileges herein conferred upon stockholders, directors or any other Person by and pursuant to these Articles in its present form or as hereafter amended are granted subject to such reservation.

ARTICLE XIII

FORUM

Unless the Corporation consents in writing to the selection of an alternative forum and to the fullest extent permitted by law, the Circuit Court for Baltimore City, Maryland, or, if that Court does not have jurisdiction because the action asserts a federal claim, the United States District Court for the District of Maryland, Baltimore Division, shall be the sole and exclusive forum for (i) any derivative action or proceeding brought in the right of the Corporation, (ii) any action asserting a claim of breach of a duty owed by any director, officer or employee of the Corporation to the Corporation or the

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Corporation's stockholders or any breach of a standard of conduct of directors, (iii) any action asserting a claim against the Corporation, or any director, officer, employee or agent of the Corporation, arising pursuant to any provision of the MGCL, these Articles or the Bylaws or (iv) any other action asserting a claim against the Corporation, or any director, officer, employee or agent of the Corporation, governed by the internal affairs doctrine. Any Person or entity purchasing or otherwise acquiring or holding any interest in shares of Capital Stock shall be deemed to have notice of and consented to the provisions of this ARTICLE XIII. In the event that any action or proceeding described in the preceding sentence is pending in the Circuit Court for Baltimore City, Maryland, any stockholder that is party to such action, proceeding or claim shall cooperate in seeking to have the action or proceeding assigned to the Business & Technology Case Management Program of that court.

THIRD: The foregoing amendment and restatement of the Articles was duly advised by the Board, and approved by the stockholders of the Corporation as required by law. The stockholders approved these Articles of Amendment and Restatement by the unanimous written consent of the stockholders.

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IN WITNESS WHEREOF, on this day of , 2018, the Corporation has caused these Articles of Amendment and Restatement to be executed and acknowledged in its name and on its behalf by its and attested to by its ; and the acknowledges that these Articles of Amendment and Restatement are the act of the Corporation, and the further acknowledges that, as to all matters or facts set forth herein that are required to be verified under oath, such matters and facts are true in all material respects to the best of his knowledge, information and belief, and that this statement is made under the penalties for perjury.

By: _____
Name:
Title:

ATTEST:

By: _____
Name:
Title:

[Signature Page to Amended and Restated Articles of Incorporation]

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**ANNEX G
FORM OF AMENDED AND RESTATED BYLAWS OF ASHFORD HOLDING CORP.**

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ASHFORD HOLDING CORP.

AMENDED AND RESTATED BYLAWS

Effective as of _____, 2018

ARTICLE I

STOCKHOLDERS

Section 1. *Place.* All meetings of stockholders shall be held at the principal executive office of Ashford Holding Corp. (the "Corporation") or at such other place as shall be set by the Corporation's Board of Directors (the "Board") in accordance with these Bylaws and stated in the notice of the meeting.

Section 2. *Annual Meeting.* An annual meeting of stockholders for the election of directors and the transaction of any other proper business shall be held on the date and at the time set by the Board.

Section 3. *Special Meetings.* Special meetings of the stockholders, for any purpose or purposes (i) may be called by the Chairman of the Board or the CEO and (ii) shall be called by the CEO or Secretary at the request in writing of a majority of the members of the Board or upon the written request of the holders of at least a majority of the voting power of the then issued and outstanding shares of capital stock of the Corporation, and may not be called by any other Person or Persons. Such request of the Board or the stockholders shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting shall be limited to the purpose or purposes stated in the notice.

Section 4. *Notice.* Notice of all meetings of stockholders stating the hour, date and place of such annual meetings and, to the extent required by the General Corporation Law of the State of Maryland (the "MGCL"), the purpose for which the meeting has been called shall be given by the Secretary or an Assistant Secretary (or other person authorized by these Bylaws or by law) not less than 10 days nor more than 90 days before the meeting, unless any provisions of the MGCL prescribe a different period of notice, to each stockholder entitled to vote at such meeting and to each stockholder who, under the Corporation's Articles of Incorporation, as amended or restated from time to time (the "Charter") or under these Bylaws, is entitled to such notice, by delivering such notice, by mailing it, postage prepaid, addressed to such stockholder at the address of such stockholder as it appears on the Corporation's stock transfer books, by electronic transmission or by any other means permitted by Maryland law. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the stockholder at the stockholder's address as it appears on the records of the Corporation, with postage thereon prepaid. If transmitted electronically, such notice shall be deemed to be given when transmitted to the stockholder by a form of electronic transmission consented to by the stockholders and directed to the address or number of the stockholder at which the stockholder consented to receive such electronic transmission. The Corporation may give a single notice to all stockholders who share an address if consented to by the stockholders at that address to whom such notice is given.

The Board may postpone, reschedule or cancel a meeting of stockholders previously scheduled.

Section 5. *Organization and Conduct.* Every meeting of stockholders shall be conducted by the Chairman of the Board or, in the case of a vacancy in the office or absence of the Chairman of the Board, by one of the following officers present at the meeting in the following order: the Vice Chairman of the Board, if there is one, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Chief Strategy Officer, the Executive Vice President of Asset Management, the Vice Presidents in their order of rank and seniority, the Secretary, or, in the absence of such officers, a chairman chosen by a majority of the members of the Board in attendance at the

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meeting or if none, a chairman chosen by the stockholders by the vote of a majority of the votes cast by stockholders present in person or by proxy at the meeting. The Secretary, or, in the Secretary's absence, an Assistant Secretary, or, in the absence of both the Secretary and Assistant Secretaries, an individual appointed by the Board or, in the absence of such appointment, an individual appointed by the chairman of the meeting shall act as secretary of the meeting. In the event that the Secretary presides at a meeting of stockholders, an Assistant Secretary, or, in the absence of all Assistant Secretaries, an individual appointed by the Board or the chairman of the meeting, shall record the minutes of the meeting. The order of business and all other matters of procedure at any meeting of stockholders shall be determined by the chairman of the meeting. The chairman of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of the chairman and without any action by the stockholders, are appropriate for the proper conduct of the meeting, including, without limitation, (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance at the meeting to stockholders of record of the Corporation, their duly authorized proxies and such other individuals as the chairman of the meeting may determine; (c) limiting participation at the meeting on any matter to stockholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies and other such individuals as the chairman of the meeting may determine; (d) limiting the time allotted to questions or comments; (e) determining when and for how long the polls should be opened and when the polls should be closed; (f) maintaining order and security at the meeting; (g) removing any stockholder or any other individual who refuses to comply with meeting procedures, rules or guidelines as set forth by the chairman of the meeting; (h) convening a meeting or (for any or no reason) recessing or adjourning the meeting to a later date and time and at a place announced at the meeting; and (i) complying with any state and local laws and regulations concerning safety and security. The chairman of the meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such chairman should so determine, such chairman shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless otherwise determined by the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 6. *Quorum.* Except as otherwise provided by law, the Charter or these Bylaws, at each meeting of stockholders, the presence in person or by proxy of the holders of a majority in voting power of the outstanding shares of stock entitled to vote at such meeting shall constitute a quorum. If such quorum is not established at any meeting of the stockholders, the chairman of the meeting or the stockholders so present by a majority of voting power thereof may adjourn the meeting until a quorum shall attend. A meeting of stockholders convened on the date for which it was called may be adjourned from time to time without further notice to a date not more than 120 days after the original record date. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the original meeting.

The stockholders present either in person or by proxy, at a meeting which has been duly called and at which a quorum has been established, may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough stockholders to leave fewer than would be required to establish a quorum.

Section 7. *Voting.* A plurality of all the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to elect a director. Each share may be voted for as many individuals as there are directors to be elected and for whose election the share is entitled to be voted. Cumulative voting is not permitted. A majority of the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to approve any other matter which may properly come before the meeting, unless more than a majority of the votes cast is required by the

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Charter, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities. Except as otherwise provided by law, abstentions and broker non-votes shall not be counted as votes cast for purposes of determining the outcome of any vote. Unless otherwise provided by statute or by the Charter, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power on the matter in question. Voting on any question or in any election may be *viva voce* unless the chairman of the meeting shall order that voting be by ballot or otherwise.

Section 8. *Proxies.* A holder of record of shares of stock of the Corporation may cast votes in person or by proxy executed by the stockholder or by the stockholder's duly authorized agent in any manner permitted by law. Such proxy or evidence of authorization of such proxy shall be filed with the Secretary before or at the meeting. No proxy shall be valid more than 11 months after its date unless a longer period is otherwise provided in the proxy.

Section 9. *Voting of Stock by Certain Holders.* Stock of the Corporation registered in the name of a corporation, partnership, trust, limited liability company or other entity, if entitled to be voted, may be voted by the president or a vice president, general partner, trustee or managing member thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such stock pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such stock. Any director or fiduciary may vote stock registered in the name of such person in the capacity of such director or fiduciary, either in person or by proxy.

Shares of stock of the Corporation directly or indirectly owned by it shall not be voted at any meeting and shall not be counted for purposes of determining the presence of a quorum, unless such shares are held by the Corporation in a fiduciary capacity, in which case they may be voted and shall be counted in determining the presence of a quorum.

Section 10. *Inspectors.* The Corporation shall appoint, before any meeting of stockholders, one or more inspectors to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace an inspector who fails to act. In the event that no inspector so appointed or designated is able to act at the meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall (i) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (ii) determine the number of shares of stock represented at the meeting, in person or by proxy, and the validity of proxies and ballots, (iii) tabulate all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certificate and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

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Section 11. *Advance Notice of Stockholder Nominees for Director and Other Stockholder Proposals.*

(a) *Annual Meetings of Stockholders.*

(1) Nominations of individuals for election to the Board and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the Corporation's notice of meeting (or any supplement thereto), (ii) by or at the direction of the Board or any committee thereof or (iii) by any stockholder of the Corporation who: (a) has beneficially owned at least 1% of the outstanding shares of common stock of the Corporation (the "Required Shares") continuously for at least one year both at the time of giving of notice by the stockholder as provided for in this Section 11(a) and through and including the time of the annual meeting (including any adjournment or postponement thereof) (b) who is a stockholder of record of the Corporation both at the time of giving notice as provided for in this Section 11(a) and as of the time of the annual meeting (including any adjournment or postponement thereof), and (c) is entitled to vote at the meeting in the election of each individual so nominated or on any such other business and who has complied with this Section 11(a).

(2) For any nomination or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a)(1) of this Section 11, the stockholder must have given timely notice thereof in writing to the Secretary and any such other business must otherwise be a proper matter for action by the stockholders. To be timely, a stockholder's notice shall set forth all information required under this Section 11 and shall be delivered to the Secretary at the principal executive office of the Corporation not earlier than the 120th day nor later than 5:00 p.m., Eastern Time, on the 90th day prior to the first anniversary of the date of the proxy statement (as defined in Section 11(c)(3) of this Article I) for the preceding year's annual meeting of stockholders; provided, however, that in the event that the date of the annual meeting is advanced or delayed by more than 30 days from the first anniversary of the date of the preceding year's annual meeting, in order for notice by the stockholder to be timely, such notice must be so delivered not earlier than the 120th day prior to the date of such annual meeting and not later than 5:00 p.m., Eastern Time, on the later of the 90th day prior to the date of such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by the Corporation. The postponement or adjournment of an annual meeting, or the public announcement thereof, shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(3) Such stockholder's notice shall set forth:

(i) as to each individual whom the stockholder proposes to nominate for election or reelection as a director (each, a "Proposed Nominee"), all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Securities Exchange Act of 1934, as amended (the "Exchange Act");

(ii) as to any other business that the stockholder proposes to bring before the meeting, a description of such business, the text of the proposal or business, the stockholder's reasons for proposing such business at the meeting and any material interest in such business of such stockholder or any Stockholder Associated Person (as defined below), individually or in the aggregate, including any anticipated benefit to the stockholder or the Stockholder Associated Person therefrom;

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(iii) as to the stockholder giving the notice, any Proposed Nominee and any Stockholder Associated Person:

(A) the class, series and number of all shares of stock or other securities of the Corporation or any affiliate thereof (collectively, the "*Company Securities*"), if any, which are owned (beneficially or of record) by such stockholder, Proposed Nominee or Stockholder Associated Person, the date on which each such Company Security was acquired and the investment intent of such acquisition, any short interest (including any opportunity to profit or share in any benefit from any decrease in the price of such stock or other security) in any Company Securities of any such person and a representation that such stockholder intends to maintain qualifying ownership of the Required Shares through the date of the annual meeting (including any adjournment or postponement thereof) to which the notice relates,

(B) the nominee holder for, and number of, any Company Securities owned beneficially but not of record by such stockholder, Proposed Nominee or Stockholder Associated Person,

(C) whether and the extent to which such stockholder, Proposed Nominee or Stockholder Associated Person, directly or indirectly (through brokers, nominees or otherwise), is subject to or during the last six months has engaged in any hedging, derivative or other transaction or series of transactions or entered into any other agreement, arrangement or understanding (including any short interest, any borrowing or lending of securities or any proxy or voting agreement), the effect or intent of which is to (I) manage risk or benefit from changes in the price of Company Securities for such stockholder, Proposed Nominee or Stockholder Associated Person or (II) increase or decrease the voting power of such stockholder, Proposed Nominee or Stockholder Associated Person in the Corporation or any affiliate thereof disproportionately to such person's economic interest in the Company Securities, and

(D) any substantial interest, direct or indirect (including, without limitation, any existing or prospective commercial, business or contractual relationship with the Corporation), by security holdings or otherwise, of such stockholder, Proposed Nominee or Stockholder Associated Person, in the Corporation or any affiliate thereof, other than an interest arising from the ownership of Company Securities where such stockholder, Proposed Nominee or Stockholder Associated Person receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class or series;

(iv) as to the stockholder giving the notice, any Stockholder Associated Person with an interest or ownership referred to in clauses (ii) or (iii) of this paragraph (3) of this Section 11(a) and any Proposed Nominee:

(A) the name and address of such stockholder of record, as they appear on the Corporation's stock ledger, and the name and address of each such Stockholder Associated Person and any Proposed Nominee and

(B) the investment strategy or objective, if any, of such stockholder and each such Stockholder Associated Person who is not an individual and a copy of the prospectus, offering memorandum or similar document, if any, provided to investors or potential investors in such stockholder and each such Stockholder Associated Person;

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(v) the name and address of any person who contacted or was contacted by the stockholder giving the notice or any Stockholder Associated Person about the Proposed Nominee or other business proposal prior to the date of such stockholder's notice;

(vi) a representation whether the stockholder or any Stockholder Associated Person intends or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (b) otherwise to solicit proxies or votes from stockholders in support of such proposal or nomination;

(vii) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination;

(viii) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder; and

(ix) to the extent known by the stockholder giving the notice, the name and address of any other stockholder supporting the nominee for election or reelection as a director or the proposal of other business on the date of such stockholder's notice.

(4) Such stockholder's notice shall, with respect to any Proposed Nominee, be accompanied by a certificate executed by the Proposed Nominee (i) (a) certifying that such Proposed Nominee is not, and will not become, a party to any agreement, arrangement or understanding with any person or entity other than the Corporation in connection with service or action as a director that has not been disclosed to the Corporation and (b) consenting to be named in the proxy statement as a nominee and serving as a director of the Corporation if elected; and (ii) attaching a completed Proposed Nominee questionnaire (which questionnaire shall be provided by the Corporation, upon request, to the stockholder providing the notice and shall include all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act and the rules thereunder, or would be required pursuant to the rules of any national securities exchange on which any securities of the Corporation are listed or over-the-counter market on which any securities of the Corporation are traded). The foregoing notice requirements of this Section 11 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting. The Corporation may require any proposed nominee to furnish such other information as the Corporation may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.

(5) Notwithstanding anything in this subsection (a) of this Section 11 to the contrary, in the event that the number of directors to be elected to the Board at the annual meeting is increased after the time period for which nominations would otherwise by due under

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paragraph (a)(2) of this Section 11, and there is no public announcement by the Corporation naming the nominees for the additional directorships at least 130 days prior to the first anniversary of the date of the proxy statement (as defined in Section 11(c)(3) of this Article I) for the preceding year's annual meeting, a stockholder's notice required by this Section 11(a) shall also be considered timely, but only with respect to nominees for the additional directorships created by such increase, if it shall be delivered to the Secretary at the principal executive office of the Corporation not later than 5:00 p.m., Eastern Time, on the tenth day following the day on which such public announcement is first made by the Corporation.

(6) For purposes of this Section 11, "*Stockholder Associated Person*" of any stockholder shall mean (i) any person acting in concert with such stockholder, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder (other than a stockholder that is a depository) and (iii) any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such stockholder or such Stockholder Associated Person.

(b) *Special Meetings of Stockholders.* Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of individuals for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting only (i) by or at the direction of the Board or any committee thereof or (ii) provided that the special meeting has been called in accordance with Section 3 of this Article I for the purpose of electing directors, by any stockholder of the Corporation who is a stockholder of record both at the time of giving of notice provided for in this Section 11 and at the time of the special meeting, who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the notice procedures set forth in this Section 11. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more individuals to the Board, any such stockholder may nominate an individual or individuals (as the case may be) for election as a director as specified in the Corporation's notice of meeting, if the stockholder's notice, containing the information required by paragraphs (a)(3) and (4) of this Section 11, is delivered to the Secretary at the principal executive office of the Corporation not earlier than the 120th day prior to such special meeting and not later than 5:00 p.m., Eastern Time, on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made by the Corporation of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. The public announcement of a postponement or adjournment of a special meeting shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) *General.*

(1) If information submitted pursuant to this Section 11 by any stockholder proposing a nominee for election as a director or any proposal for other business at a meeting of stockholders shall be inaccurate in any material respect, such information may be deemed not to have been provided in accordance with this Section 11. Any stockholder proposing a nominee for election as a director or any proposal of other business at a meeting of stockholders shall notify the Corporation of any inaccuracy or change in such stockholder's notice (within two Business Days (as defined below) of becoming aware of such inaccuracy or change). Upon written request by the Secretary or the Board, any such stockholder shall provide, within five Business Days of delivery of such request (or such other period as may be specified in such request), (A) written verification, satisfactory, in the discretion of the Board or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 11, and (B) a written update of any

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information (including, if requested by the Corporation, written confirmation by such stockholder that it continues to intend to bring such nomination or other business proposal before the meeting) submitted by the stockholder pursuant to this Section 11 as of an earlier date. If a stockholder fails to provide such written verification or written update within such period, the information as to which written verification or a written update was requested may be deemed not to have been provided in accordance with this Section 11. For purposes of these Bylaws, "*Business Day*" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

(2) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, only such individuals who are nominated in accordance with this Section 11 shall be eligible for election by stockholders as directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with this Section 11. Except as otherwise required by law, the chairman of the meeting shall have the power and duty (a) to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with this Section 11 (including whether the stockholder or any Stockholder Associated Person solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (a)(3)(vi) of this Section 11) and (b) if any proposed nomination or business was not made or proposed in compliance with this Section 11, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 11, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 11, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(3) For purposes of this Section 11, "the date of the proxy statement" shall have the same meaning as "the date of the company's proxy statement released to shareholders" as used in Rule 14a-8(e) promulgated under the Exchange Act, as interpreted by the Securities and Exchange Commission from time to time. "Public announcement" shall mean disclosure (A) in a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or other widely circulated news or wire service or (B) in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to the Exchange Act.

(4) Notwithstanding the foregoing provisions of this Section 11, a stockholder shall also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 11. Nothing in this Section 11 shall be deemed to affect any right of a stockholder to request inclusion of a proposal in, or the right of the Corporation to omit a proposal from, the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act. Nothing in this Section 11 shall require disclosure of revocable proxies received by the

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stockholder or Stockholder Associated Person pursuant to a solicitation of proxies after the filing of an effective Schedule 14A by such stockholder or Stockholder Associated Person under Section 14(a) of the Exchange Act.

ARTICLE II

DIRECTORS

Section 1. *Powers.* All of the powers of the Corporation shall be exercised by or under the direction of the Board except as otherwise provided by the Charter or required by law.

Section 2. *Terms.* The terms of the members of the Board shall be as set forth in Article VI of the Charter.

Section 3. *Director Independence.*

(a) *Independence.* The Board shall nominate candidates for election or re-election to the Board (or recommend the election or re-election of such candidates as nominated by others) such that, and shall take such other corporate actions as may be reasonably required to provide that, to the best knowledge of the Board, if such candidates are elected by the stockholders, at least a majority of the members of the Board shall be Independent Directors (as defined below). The Board shall only elect any person to fill a vacancy on the Board if, to the best knowledge of the Board, after such person's election at least a majority of the members of the Board shall be Independent Directors. The foregoing provisions of this paragraph shall not cause a director who, upon commencing such director's service as a member of the Board was determined by the Board to be an Independent Director but did not in fact qualify as such, or who by reason of any change in circumstances ceases to qualify as an Independent Director, from serving the remainder of the term as a director for which such director was selected. Notwithstanding the foregoing provisions of this paragraph and unless otherwise provided by law, no action of the Board shall be invalid by reason of the failure at any time of a majority of the members of the Board to be Independent Directors.

(b) *Independent Director.* The term "*Independent Director*" means a director who (i) qualifies as an "independent director" within the meaning of the corporate governance listing standards from time to time adopted by the NYSE American LLC (or, if at any time the Corporation's common stock is not listed on the NYSE American LLC and is listed on a securities exchange other than the NYSE American LLC, the applicable corporate governance listing standards of such other securities exchange) with respect to the composition of the board of directors of a listed company (without regard to any independence criteria applicable under such standards only to the members of a committee of the board of directors) and (ii) also satisfies the minimum requirements of director independence of Rule 10A-3(b)(1) under the Exchange Act (as from time to time in effect), whether or not such director is a member of the Audit Committee of the Board.

Section 4. *Qualification.* No Director need be a stockholder of the Corporation. Unless waived by the Board, no individual may serve as a director of the Corporation if he or she has reached the age of 70 years at the time of election. Upon attaining the age of 70, a director shall tender a letter of resignation from the Board, effective upon the expiration of the calendar year in which such director attains the age of 70. Such director shall also tender a letter of resignation effective upon the expiration of each term served by the director after attaining the age of 70. Additionally, upon any change in employment of a director or a change in the duties of such director in connection with his or her employment, such director shall tender a letter of resignation effective upon the expiration of the calendar year in which such change occurs. Any such resignation shall be contingent upon acceptance

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by the Board, and the Board shall determine whether, in light of all the circumstances, it should accept such resignation.

Section 5. *Vacancies.* Any vacancy occurring on the Board, including any vacancy created by reason of an increase in the number of directors, shall be filled in the manner provided in Article VI, Section 6.5 of the Charter.

Section 6. *Resignation.* Any Director may resign at any time by giving notice to the Board. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

Section 7. *Regular Meetings.* The regular annual meeting of the Board shall be held, without other notice than this Bylaw, on the same date and at the same place as the annual meeting of stockholders following the close of such meeting of stockholders. Other regular meetings of the Board may be held at such hour, date and place as the Board may by resolution from time to time determine without other notice than such resolution.

Section 8. *Executive Sessions.* To ensure free and open discussion and communication among the non-management directors, the non-management directors shall meet in executive session at least twice a year with no members of management present.

Section 9. *Special Meetings.* Special meetings of the Board may be called by a majority of the members of the Board, the Chairman of the Board, if one is elected, the Lead Director, if one is elected, or the Chief Executive Officer. The person calling any such special meeting of the Board may fix the hour, date and place thereof.

Section 10. *Notice of Meetings.* Notice of the hour, date and place of all special meetings of the Board shall be given to each director by the Secretary or an Assistant Secretary, or in case of the death, absence, incapacity or refusal of such persons, by the Chairman of the Board, if one is elected, or the Chief Executive Officer or such other officer designated by the Chairman of the Board, if one is elected, or the Chief Executive Officer. Notice of any special meeting of the Board shall be given to each director in person or by telephone, electronic mail, facsimile transmission or by telegram sent to his or her business or home address at least 24 hours in advance of the meeting, or by written notice mailed to his or her business or home address at least 48 hours in advance of the meeting. Such notice shall be deemed to be delivered when hand delivered to such address, when read to such Director by telephone, when deposited in the mail so addressed with postage thereon prepaid, upon transmission of the message by electronic mail, upon completion of transmission of a facsimile message and receipt of a completed answer back indicating receipt or when delivered to the telegraph company if sent by telegram.

A waiver of notice executed before or after a meeting by a director and filed with the records of the meeting shall be deemed to be equivalent to an effective notice of the meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting solely for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened and does not further participate in the meeting. Except as otherwise required by law, by the Charter or by these Bylaws, neither the business to be transacted at, nor the purpose of, any meeting of the Board need be specified in the notice or waiver of notice of such meeting.

Section 11. *Quorum.* At any meeting of the Board, a majority of the directors then in office shall constitute a quorum for the transaction of business, but if less than a quorum is present at a meeting, a majority of the directors present may adjourn the meeting from time to time. Any business which might have been transacted at the meeting as originally noticed may be transacted at such adjourned meeting at which a quorum is present.

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Section 12. *Action at Meeting.* At any meeting of the Board at which a quorum is present and subject to Section 6.6 of Article VI of the Charter, a majority of the directors present may take any action on behalf of the Board, unless otherwise required by law, by the Charter or these Bylaws.

Section 13. *Action by Consent.* Any action required or permitted to be taken by the stockholders of the Corporation may be taken without a meeting if a consent or consents in writing, setting forth the action so taken, is signed by the holders of all of the outstanding stock entitled to vote on the matter.

Section 14. *Manner of Participation.* Members of the Board or of any committee designated by the Board pursuant to Section 15 of this Article II may participate in meetings thereof by means of telephone conference or similar communications equipment by means of which all directors participating in the meeting can hear each other at the same time, and participation in a meeting in accordance herewith shall constitute presence in person at such meeting for purposes of these Bylaws.

Section 15. *Committees.* The Board may designate one or more committees, including an Audit Committee, a Compensation Committee and a Nominating/Corporate Governance Committee, to consist of one or more of the members of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Except as the Board may otherwise determine or as required by law, by the Charter or by these Bylaws, any such committee may make rules for conduct of its business, but unless otherwise provided by the Board or in such rules, its business shall be conducted so far as possible in the same manner as is provided by the Charter and by these Bylaws for the Board. Any committee to which the Board delegates any of its powers or duties shall keep records of its meetings and shall report its action to the Board.

Section 16. *Compensation of Directors.* Directors shall receive compensation for their service as a director as shall be determined by a majority of the members of the Board, *provided* that directors who are serving the Corporation as officers or employees and who receive compensation for their services as such ("*Employee Directors*") shall not receive any salary or other compensation for their services as directors of the Corporation; *provided, however*, that such Employee Directors may be paid their reasonable expenses incurred as a director.

ARTICLE III

OFFICERS

Section 1. *Enumeration.* The officers of the Corporation shall consist of a Chief Executive Officer, a President, a Secretary and a Treasurer and such other officers, including without limitation a Chairman of the Board, a Chief Operating Officer, a General Counsel, a Chief Financial Officer, a Chief Accounting Officer, one or more Vice Presidents (including Executive Vice Presidents or Senior Vice Presidents), Assistant Vice Presidents, Assistant Treasurers and Assistant Secretaries, as the Board may determine.

Section 2. *Election and Appointment.* At the regular annual meeting of the Board following the annual meeting of stockholders, the Board shall elect the Chief Executive Officer, the President, the Treasurer and the Secretary. Other officers may be appointed by the Board at such regular annual

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meeting of the Board or at any other regular or special meeting of the Board, or such other officers may be appointed by the Chief Executive Officer.

Section 3. *Qualification.* No officer need be a stockholder or a director of the Corporation. Any person may occupy more than one office of the Corporation at any time except the offices of President and Vice President. Any officer may be required by the Board to give bond for the faithful performance of his or her duties in such amount and with such sureties as the Board may determine.

Section 4. *Tenure.* Except as otherwise provided by the Charter or by these Bylaws, each of the officers of the Corporation shall hold office until the regular annual meeting of the Board following the next annual meeting of stockholders and until his or her successor is elected and qualified or until his or her earlier resignation or removal. Election or appointment of an officer shall not of itself create contract rights. The Board may, however, authorize the Corporation to enter into an employment contract with any officer in accordance with law, but no such contract right shall prohibit the right of the Board to remove any officer at any time in accordance with Section 6 of this Article III.

Section 5. *Resignation.* Any officer may resign at any time by delivering his or her written resignation to the Corporation addressed to the Chief Executive Officer or the Secretary, and such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

Section 6. *Removal.* The Board may remove any officer with or without cause at any time.

Section 7. *Absence or Disability.* In the event of the absence or disability of any officer, the Board may designate another officer to act temporarily in place of such absent or disabled officer.

Section 8. *Vacancies.* Any vacancy in any office may be filled for the unexpired portion of the term by the Board.

Section 9. *Chief Executive Officer.* The President may be the Chief Executive Officer or the Board may elect another person to be the Chief Executive Officer. In the absence of the Chairman of the Board, the Chief Executive Officer shall preside, when present, at all meetings of the Board. The Chief Executive Officer shall, subject to the direction of the Board, have general supervision and control of the Corporation's business.

Section 10. *Chairman of the Board.* The Chairman of the Board shall preside at all meetings of the Board and at all meetings of stockholders. The Chairman of the Board shall have such other powers and shall perform such other duties as the Board may from time to time designate.

Section 11. *President.* If the President is not the Chief Executive Officer, he or she shall have such powers and perform such duties as the Board or the Chief Executive Officer may from time to time designate.

Section 12. *Chief Operating Officer, General Counsel, Chief Financial Officer and Chief Accounting Officer.* Any Chief Operating Officer, General Counsel, Chief Financial Officer or Chief Accounting Officer shall have such powers and shall perform such duties as the Board or the Chief Executive Officer may from time to time designate.

Section 13. *Vice Presidents and Assistant Vice Presidents.* Any Vice President (including any Executive Vice President or Senior Vice President) and Assistant Vice President shall have such powers and shall perform such duties as the Board or the Chief Executive Officer may from time to time designate.

Section 14. *Treasurer and Assistant Treasurers.* The Chief Financial Officer shall be the Treasurer, unless the Board shall elect another officer to be the Treasurer. The Treasurer shall, subject to the direction of the Board and except as the Board or the Chief Executive Officer may otherwise provide, have general charge of the financial affairs of the Corporation and shall cause to be kept accurate

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books of account. He or she shall have custody of all funds, securities and valuable documents of the Corporation. He or she shall have such other duties and powers as may be designated from time to time by the Board or the Chief Executive Officer. In the absence of a Chief Financial Officer, the Treasurer shall be the Chief Financial Officer of the Corporation and whenever the signature of the Chief Financial Officer is required on any document or instrument, by the laws of the United States or any state, or elsewhere in the Bylaws, to the extent permitted by law, the Treasurer shall have authority to affix his or her signature in such capacity.

The Chief Accounting Officer shall be an Assistant Treasurer of the Corporation and whenever the signature of an Assistant Treasurer is required on any document or instrument, by the laws of the United States or any state, or elsewhere in these Bylaws, to the extent permitted by law, the Chief Accounting Officer shall have authority to affix his or her signature in such capacity. Any Treasurer or Assistant Treasurer shall have such powers and perform such duties as the Board or the Chief Executive Officer may from time to time designate.

Section 15. *Secretary and Assistant Secretaries.* The Secretary shall record all the proceedings of the meetings of the stockholders and the Board (including committees of the Board) in books kept for that purpose. In the absence of the Secretary from any such meeting, a temporary secretary chosen at the meeting shall record the proceedings thereof. The Secretary shall have charge of the stock ledger (which may, however, be kept by any transfer or other agent of the Corporation). The Secretary shall have custody of the seal of the Corporation, and the Secretary, or an Assistant Secretary, shall have authority to affix it to any instrument requiring it, and, when so affixed, the seal may be attested by the signature of the Secretary or an Assistant Secretary. The Secretary shall have such other duties and powers as may be designated from time to time by the Board or the Chief Executive Officer. In the absence of the Secretary, any Assistant Secretary may perform the duties and responsibilities of the Secretary.

Any Assistant Secretary shall have such powers and perform such duties as the Board or the Chief Executive Officer may from time to time designate.

Section 16. *Other Powers and Duties.* Subject to these Bylaws and to such limitations as the Board may from time to time prescribe, the officers of the Corporation shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as from time to time may be conferred by the Board or the Chief Executive Officer.

ARTICLE IV

STOCK

Section 1. *Certificates of Stock.* The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by certificate until such certificate is surrendered to the Corporation. Each holder of stock represented by certificates shall be entitled to a certificate of the stock of the Corporation in such form as may from time to time be prescribed by the Board. Such certificate shall bear the seal of the Corporation, if one has been adopted, and shall be signed by or in the name of the Corporation by the Chairman of the Board or the Vice Chairman of the Board, or the President or a Vice President, and countersigned by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary. Any and all signatures on the certificate may be a facsimile, including those of any transfer agent or registrar. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on such certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the time of its issue. Every certificate for shares of stock which are subject to any restriction on transfer and every certificate issued when the Corporation is

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authorized to issue more than one class or series of stock shall contain such legend with respect thereto as is required by law.

Section 2. *Transfers.* Subject to any restrictions on transfer and unless otherwise provided by the Board, shares of stock may be transferred only on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate therefor properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, and with such proof of the authenticity of signature as the Corporation or its transfer agent may reasonably require.

Section 3. *Dividends.* Dividends upon the capital stock of the Corporation, subject to the requirements of the MGCL and the provisions of the Charter, if any, may be declared by the Board at any regular or special meeting of the Board (or any action by written consent in lieu thereof in accordance with Section 13 of Article II hereof), and may be paid in cash, in property, or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board may modify or abolish any such reserve.

Section 4. *Record Holders.* Except as may otherwise be required by law, by the Charter or by these Bylaws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect thereto, regardless of any transfer, pledge or other disposition of such stock, until the shares have been transferred on the books of the Corporation in accordance with the requirements of applicable law and these Bylaws.

It shall be the duty of each stockholder to notify the Corporation or its transfer agent of his or her post office address and any changes thereto.

Section 5. *Record Date.* In order that the Corporation may determine the stockholders entitled to receive notice of or to vote at any meeting of stockholders or any adjournments thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which shall not be more than 90 days nor less than 10 days before the date of such meeting, nor more than 90 days prior to any other action. In such case, only stockholders of record on such record date shall be so entitled, notwithstanding any transfer of stock on the stock transfer books of the Corporation after the record date.

If no record date is fixed:

(a) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders is the later of (i) the close of business on the day on which notice of the meeting is mailed, or (ii) the thirtieth day before the meeting; and

(b) the record date for determining stockholders entitled to receive payment of a dividend or an allotment of any rights is the close of business on the day on which the resolution of the Board declaring the dividend or allotment of rights is adopted, but the payment or allotment may not be made more than 60 days after the date on which the resolution is adopted.

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Section 6. *Replacement of Certificates.* The Corporation may issue a new certificate of stock in place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any certificate or the issuance of such new certificate.

Section 7. *Transfer Agents and Registrars.* The Corporation may serve as the transfer agent and registrar of the shares of stock of the Corporation, or the Board may, in its discretion, appoint one or more responsible bank, trust company or other entity as the Board may deem advisable, from time to time, to act as transfer agent and registrar of shares of stock.

Section 8. *Stockholders' Addresses.* Every stockholder or transferee shall furnish the Secretary or a transfer agent with the address to which notice of meetings and all other notices may be served upon or mailed to such stockholder or transferee.

Section 9. *Repurchase of Shares of Stock.* Subject to the requirements of applicable law, the Corporation may purchase shares of its own stock and invest its assets in its own shares of stock, provided that in each case the consent of the Board shall have been obtained.

ARTICLE V

INDEMNIFICATION

Section 1. *Right to Indemnification.* The Corporation shall, to the maximum extent permitted by the MGCL in effect from time to time, indemnify, and, without a preliminary determination of the ultimate entitlement to indemnification, pay or reimburse reasonable expenses in advance of final disposition of a proceeding (upon receipt by the Corporation of an affirmation by the person of the person's good faith belief that the standard of conduct necessary for indemnification by the Corporation has been met and an undertaking by or on behalf of the person requesting advancement to repay the amount advanced if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation) to (a) any individual who is a present or former director or officer of the Corporation or (b) any individual who, while a director or officer of the Corporation and at the request of the Corporation, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or any other enterprise as a director, officer, partner or trustee and, in each case, shall indemnify such person from and against any claim or liability to which such person may become subject or which such person may incur by reason of his or her status as a present or former director or officer of the Corporation or director, officer, partner or trustee of such other entity (each, an "*Indemnitee*"). The Corporation shall, to the maximum extent permitted by the MGCL in effect from time to time, provide such indemnification and advancement of expenses to a person who served a predecessor of the Corporation in any of the capacities described above (any such person shall also be deemed to be an "*Indemnitee*").

Section 2. *Indemnification of Employees and Agents of the Corporation.* With the approval of the Board, the Corporation shall, to the maximum extent permitted by the MGCL in effect from time to time, and to such further extent as it shall deem appropriate under the circumstances, provide such indemnification and advancement of expenses as described in Section 1 above, to any employee or agent of the Corporation or a predecessor of the Corporation (each such person shall also be deemed to be an "*Indemnitee*").

Section 3. *Right of Indemnitee to Bring Suit.* If a claim under this Article V is not paid in full by the Corporation within 60 days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the

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unpaid amount of the claim. If the Indemnitee is successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Indemnitee shall also be entitled to be paid the expense of prosecuting or defending such suit. In any suit brought by an Indemnitee who is a present or former director to enforce a right to indemnification hereunder (but not in a suit brought by the Indemnitee to enforce a right to an advancement of expenses), it shall be a defense that such Indemnitee has not met the applicable standard of conduct set forth in the MGCL. In addition, in any suit by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the Indemnitee who is a present or former director has not met the applicable standard of conduct set forth in the MGCL. Neither the failure of the Corporation (including its Board, independent legal counsel, or stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in the MGCL, nor an actual determination by the Corporation (including its Board, independent legal counsel or stockholders) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article V or otherwise shall be on the Corporation.

Section 4. *Non-Exclusivity of Rights.* The rights to indemnification and to advancement of expenses conferred in this Article V shall not be exclusive of any other right that any person may have or hereafter acquire under these Bylaws, the Charter or any statute, agreement, vote of stockholders or disinterested directors or otherwise.

Section 5. *Insurance.* The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or any director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the MGCL.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 1. *Fiscal Year.* The fiscal year of the Corporation shall end on December 31 of each year or on such other date as may be fixed by the Board.

Section 2. *Seal.* The seal of the Corporation shall be in the form of a circle and shall have inscribed thereon the name of the Corporation and the year of its organization. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced.

Section 3. *Execution of Instruments.* All deeds, leases, transfers, contracts, bonds, notes and other obligations to be entered into by the Corporation in the ordinary course of its business without action by the Board may be executed on behalf of the Corporation by the Chairman of the Board, if one is elected, the Chief Executive Officer, the President or the Treasurer or any other officer, employee or agent of the Corporation as the Board may authorize.

Section 4. *Voting of Securities.* Unless the Board otherwise provides by resolution, the Chairman of the Board, if one is elected, the Chief Executive Officer, the President or the Treasurer may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation or other entity, any of whose stock or other

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securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporation or other entity, or to consent in writing, in the name of the corporation as such holder, to any action by such other corporation or other entity, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consents, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper. Any of the rights set forth in this Section 4 of Article VI which may be delegated to an attorney or agent may also be exercised directly by the Chairman of the Board, the Chief Executive Officer, the President or the Treasurer.

Section 5. *Registered Agent.* The Corporation shall have and maintain a registered agent in the State of Maryland upon whom legal process may be served in any action or proceeding against the Corporation.

Section 6. *Corporate Records.* The original or attested copies of the Charter, Bylaws and records of all meetings of the incorporators, stockholders and the Board and the stock transfer books, which shall contain the names of all stockholders, their record addresses and the amount of stock held by each, may be kept outside the State of Maryland and shall be kept at the principal office of the Corporation, at the office of its counsel or at an office of its transfer agent.

Section 7. *Amendments.* These Bylaws may be altered, amended or repealed, and new bylaws adopted, by (a) the vote of a majority of the entire Board, or (b) the vote of a majority of the voting power of the outstanding capital stock of the Corporation.

Section 8. *Offices.* The registered office of the Corporation within the State of Maryland shall be located at such place as the Board may designate. The Corporation may have additional offices, including a principal executive office, at such place or places both within and without the State of Maryland as the Board may from time to time determine or the business of the Corporation may require.

Section 9. *Control Share Acquisitions.* Title 3, Subtitle 7 of the MGCL shall not apply to any control share acquisitions, as defined in Subtitle 7, by (i) Archie Bennett, (ii) Monty J. Bennett, (iii) any present or future affiliate or associate of Archie Bennett or Monty J. Bennett, (iv) Ashford Hospitality Trust, Inc., (v) Ashford Hospitably Prime, Inc., or (vi) any other entity that is advised by the Corporation or its controlled affiliates through an advisory agreement.

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