ALLEN R. HARTMAN, *et al.*	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
SILVER STAR PROPERTIES REIT, INC., *et al.*	*	BALTIMORE CITY
Defendants.	*	Case No.: 24-C-23-003722

* * * * * * * * * * * * *

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MAJOR MOTION *IN LIMINE*

Defendants Silver Star Properties REIT, Inc. ("Silver Star" or "Company"), Gerald W. Haddock, Jack I. Tompkins, and James S. Still (collectively, "Defendants"), by and through their undersigned counsel and in accordance with the Amendment to Scheduling Order issued August 13, 2024, hereby submit this Opposition to the Major Motion *in Limine* filed by Plaintiffs Allen R. Hartman ("Hartman") and Hartman vREIT XXI, Inc. ("XXI" and, with Hartman, "Plaintiffs").

INTRODUCTION

In their Major Motion *in Limine* ("Motion"), Plaintiffs seek to shield the Court from facts that are essential to understanding the Board of Director ("Board") actions that Plaintiffs are challenging in this lawsuit and from expert opinions bearing on the core issues requiring resolution at trial. These efforts should be rejected, and the Motion should be denied.

First, Plaintiffs ask the Court to exclude ***all*** evidence of Hartman's management of Silver Star prior to his resignation as CEO of the Company following concerning revelations about Hartman's mismanagement and improper receipt of Company funds. But the facts leading to Hartman's ouster from management are necessary to understand the context behind and reason for the Board's decisions designed to protect the Company and its shareholders from further harm by Hartman. Furthermore, Plaintiffs' misguided attempt to force a liquidation of the Company –

while not appropriate – puts at issue many historic facts that pre-date Hartman's removal from the management of the Company and, therefore, cannot be excluded. Defendants seek to introduce this evidence not to seek a finding from the Court that Hartman breached fiduciary duties or caused Silver Star shareholders damage, as those are questions being litigated by the parties in Texas. Instead, Defendants offer these critical facts to aid the Court in understanding the context behind the Board's decisions that are being challenged in this action.

Second, Plaintiffs attempt to avoid evidence relating to significant inter-company loans that were not permitted by XXI's corporate documents and were not authorized by the boards of Silver Star or XXI. But these facts too are relevant to the Board's decisions aimed at protecting the Company's shareholders from further damage by Hartman. Plaintiffs may be concerned (as they should be) about certain facts unearthed in discovery but the existence of harmful facts does not form a basis for their exclusion at trial.

Third, Plaintiffs ask the Court to exclude certain potential testimony of experts on corporate governance and securities issues on the unproven premise that this testimony will express legal opinions. But as Defendants' Expert Witness Disclosure makes clear, William Carlson will offer opinions concerning the propriety of the adoption of the Rights Agreement dated August 18, 2023 between Silver Star and Rights Agent Phoenix American Financial Services, Inc. ("Rights Plan"), and the appropriateness of the determination that a "Flip-In Event" occurred under the Rights Plan. Mr. Carlson will further opine on issues relating to an amendment of the Company's bylaws to allow for shareholder action through written consents in lieu of an annual meeting of shareholders ("Bylaw Amendment"). In addition, Stanley Keller will offer opinions that go to the heart of Plaintiffs' liquidation claim. Specifically, Mr. Keller will testify that the initial public offering was a continuous offering that terminated in March 2016, and he will address related issues

designed to assist the Court in resolving the liquidation claim. These do not constitute legal opinions; however, if they invade the province of the Court at trial, then the Court can rule on any objections to the testimony at that time.

Fourth, Plaintiffs seek to exclude opinions of Defendants' expert R. Christian Sonne relating to the pivot from an asset class primarily consisting of Class-B office buildings to institutional-grade self-storage facilities ("Pivot Plan"). The Pivot Plan is a strategic initiative that underpins the dispute between Hartman and the Executive Committee of the Board ("Executive Committee"),[1] is the subject of the shareholders' vote on directors through written consents in lieu of an annual meeting ("Consent Solicitation"), and is relevant to the Court's understanding of the circumstances under which the claims and defenses in this action arise. Mr. Sonne's opinions should not be excluded.

RELEVANT FACTUAL BACKGROUND

In this action, Plaintiffs seek to force a liquidation of the Company by invoking a provision of Silver Star's Third Amended and Restated Articles of Incorporation ("Charter") that is not applicable and, in any event, has been satisfied by the Board. Plaintiffs also seek to invalidate and/or enjoin several actions taken by the Executive Committee and validated by the full Board, including the Bylaw Amendment, the adoption of the Rights Plan in the face of a threat of a hostile takeover attempt, and the determination that a Flip-In Event had occurred when Hartman took action designed to seize control of the Company. These claims require evidence of the following historical facts, which are discussed briefly below:[2]

[1] The Executive Committee is comprised of Messrs. Haddock, Still, and Tompkins, who are referred to herein sometimes as the "Independent Directors."

[2] A full discussion of the facts relevant to the claims and defenses in this action is contained in Defendants' Memorandum of Law in Support of Their Motion for Summary Judgment filed September 16, 2024. ("Memorandum" or "Mem."). This Opposition addresses the specific facts pertinent to the Court's resolution of Plaintiffs' Major Motion *in Limine*.

1. The initial public offering was a continuous offering that required the filing of a second registration due to errors in the first registration that occurred during Hartman's management of the Company.

2. Hartman failed to cause the Company to be listed on an established public exchange. An outside advisor engaged by the Executive Committee to assist with refinancing efforts advised that Silver Star would not have access to public markets with Hartman as CEO.

3. Hartman failed to convene an annual meeting of shareholders during his entire tenure as CEO of the Company and Chairman of its Board.

4. Hartman caused the refinance of Silver Star's $259 million loan to fail, putting the Company in dire straits.

5. Hartman and/or the entities he controls accepted distribution-type payments after the Board had suspended distributions to shareholders, while representing to the public that he never took a salary.

6. Plaintiffs initiated litigation in Texas against Silver Star seeking to recover $17 million in purported loans that were unauthorized by the boards of Silver Star and XXI and were made in violation of XXI's charter.

Each of these facts is relevant to the claims and defenses in this action (including defenses of estoppel and unclean hands) and provides pertinent context to the Board's decisions that are being challenged by Plaintiffs.

1. <u>The Filing of a Second Registration of the Public Offering Due to Errors</u>

Before Silver Star's public offering, several other Hartman entities made private offerings, generally to accredited investors under Securities and Exchange Commission ("SEC") rules. In an effort to increase the size of the offerings and to expand beyond accredited investors, Hartman pursued a public offering of Silver Star's shares. The public offering began when Silver Star filed a registration statement with the SEC effective February 9, 2010 for the sale of up to 25,000,000 shares of its common stock at $10 per share ("First Registration"). *See* Mem., Ex. B at ¶ 8.

However, under Hartman's management, the Company failed to make certain post-amendment filings to update the First Registration as required by the Securities Act of 1933 ("1933

Act"). *Id.* at ¶ 9. Effective April 25, 2013, the Company determined that the First registration was no longer effective. *Id.* Instead of correcting the deficiencies in the First Registration, the Company stopped accepting subscriptions to purchase shares of its common stock as of April 25, 2013, resulting in a temporary suspension of the offering. *Id.* As of the time of suspension, 20,544,322 shares of Silver Star's common stock, or 88% of the shares from the public offering, remained unsold. *Id.* This meant the First Registration raised about $45,000,000 less than other Hartman-sponsored entities did in their private offerings. *Id.* at ¶ 11. The Company consulted with advisors about extending the offering to sell the remaining unsold shares. *Id.* at ¶ 12. However, due to the filing issues with the First Registration, SEC rules required another registration to continue the sale of the remaining shares. *Id.* Accordingly, Silver Star filed a second registration statement effective July 16, 2013 ("Second Registration") for the sale of up to 20,000,000 shares of its common stock at $10 per share. *Id.* at ¶ 13. The shares available in the Second Registration were the unsold shares offered in the First Registration. *Id.* at ¶ 14.

2. Hartman's Failure to List the Company on an Established Securities Exchange

Silver Star's public offering was part of an ongoing process to generate critical mass and list the Company's shares on a national securities exchange. Mem., Ex. B, at ¶ 18. Over the years, Hartman proposed and completed mergers with other Hartman-sponsored entities to create a larger asset base suitable to a public listing. *Id.* at ¶ 18. In the third quarter of 2020, the Company completed a merger with Hartman Short Term Income Properties XIX, Inc. and Hartman Income REIT for that purpose.[3]

[3] *See* Hartman, "Hartman Merger Positions the Company for Future Success," PRWeb (Aug. 10, 2020, 12:10 ET), https:// www.prweb.com/releases/hartman-merger-positions-the-company-for-future-success-827783496.html.

At the same time, Hartman engaged two new directors, Gerald W. Haddock and James S. Still, who were elected to the Board to help get the merged entity listed on an established securities exchange. *See* Opposition to Motion for Partial Summary Judgment ("MPSJ Opp."), Ex. A at ¶ 13. Mr. Haddock was approached by Hartman because of his extensive experience in issuing public securities and positioning companies. *Id.* at ¶ 14. Hartman sought to utilize Mr. Haddock's expertise to list Silver Star. *Id.* Mr. Haddock became an advisor, initially, to educate Hartman regarding public offerings, listing, and special purpose acquisition companies ("SPACs"). *Id.* at ¶ 15. Mr. Haddock's advisory position eventually transitioned into a full Board member position. *Id.* As Mr. Haddock took on a greater role in positioning the Company, it became apparent that Hartman did not understand SPACs or the public markets. *Id.*

Mr. Haddock furnished contact information of underwriters and worked with the Board to introduce those underwriters to the Company. *Id.* at 16. At Mr. Haddock's urging, the Board took an active role in helping the Company expand and add investment firms to its then-existing list of contacts and meet with those investment firms. *Id.* Several members of the Company's management team attended industry conferences and met with investment bankers.[4] *Id.* Those efforts were well received by Hartman and the Company, and there was momentum and support for accessing the public markets. *Id.* But as the process progressed, Hartman would not accept the underwriting discount that was standard practice in a public offering. *Id.* at ¶ 17. Hartman was fixated on securing a premium and no discount on his stock price, which is largely not possible in a public offering. *Id.* Mr. Haddock stressed the importance of getting greater access to the public markets to access public debt and pushed hard for that result, but Hartman would not accept the underwriting discount. *Id.* at ¶ 18. Eventually, Hartman shied away from the public markets,

[4] Members of Company management attended industry meetings earlier as part of an ongoing effort to list on an established securities exchange.

and the Company lost investment bank opportunities as a result. *Id.* As much as the Board wanted further access to the public markets, they could not do so with Hartman in charge. *Id.*

Later, during discussions in 2022, Hartman proposed a merger with XXI, where XXI would be the surviving entity. Mem., Ex. H, at 142:15-21. The purpose of the proposed merger with XXI was to, among other things, create a larger asset base for a public listing. The merger with XXI did not occur. Mem., Ex. B, at ¶ 25; Mem., Ex. F, at 207:1-4.

3. Hartman's Failure to Call an Annual Meeting

When Silver Star was formed, Hartman elected himself to serve as director and has never, in all the years since, stood for an election of the shareholders. Mem., Ex. F, Tr. 64:10 – 65:16 (stating that Hartman was the only shareholder to vote for the first directors, including himself); 71:2-7 (testifying the Company "could not reach a quorum" for an annual meeting after the first election of directors). Hartman served as Silver Star's CEO and Chairman of its Board for thirteen years. MPSJ Opp., Ex. A at ¶ 10. During that time, he failed to hold a single shareholder meeting. Hartman made a single attempt to hold an annual meeting when he was in a position of leadership but was unable to secure a quorum of shareholders to vote. *See* Mem., Ex. I, Tr. 52:11-17; 52:18-21. Eventually, Hartman simply stopped trying to call shareholder meetings altogether, despite it being an item on the agenda of Board meetings. *See* Mem., Ex. I, Tr. 52:11-17.

4. Hartman's Failure to Refinance Essential Loan

In 2021, most of Silver Star's assets were collateralized by a $259 million single asset single borrower (SASB) loan that needed to be refinanced. *See* Mem., Ex. J, Tr. 57:13-14. Hartman was primarily responsible for refinancing that loan. *See* Mem., Ex. F, Tr. 145:16 – 146:9; Mem., Ex. I, Tr. 59:15 – 60:2. After representing to the Board that the refinance was moving smoothly, he called a Board meeting in July 2022 stating the refinance had failed, putting the

Company in crisis. *See* Mem., Ex. L at 1; Mem., Ex. J Tr. 17:13-14. Thereafter, the Independent Directors hired an outside advisor, Raymond James, to assist the Company, including assessing its operations and management. *See* Mem., Ex. M.

5. Hartman's Receipt of Improper Payments and Resignation from Management

In August 2022, the Independent Directors identified a number of issues, including that Hartman had directed the CFO of Silver Star to keep making distribution-like payments to Hartman and/or entities he controlled, after the Board had explicitly suspended distributions to all shareholders that July. *See* Mem., Ex. N; Mem., Ex. G at 19:1 – 21:2; Mem., Ex. I at 13:21 – 14:17. Hartman confessed to those wrongful payments in September 2022 at a Board meeting. *See* Mem., Ex. N at 1. In his videotaped deposition, Hartman confirmed receiving these payments. *See* Excerpted Video Deposition of Allen R. Hartman, Aug. 14, 2024, attached as **Exhibit A**, at 13:25:23 to 13:31:24.[5] After claiming that he "didn't have a salary" as CEO of Silver Star, *id.* at 13:25:48, Hartman stated that was, in fact, not true, acknowledging that he had received regular $30,000 payments as a "stipend" that continued after the Company halted distributions to shareholders. *Id.* at 13:26:57 to 13:28:31; 13:29:42 to 13:30:26; 13:31:15 to 13:31:24. Hartman resigned as CEO on October 14, 2022, amidst the refinance failure and the revelation that he was receiving improper payments from the Company. *See* Mem., Ex. O at Ex. A.

6. Hartman's Baseless Litigation and Other Erratic Conduct Designed to Punish the Company.

After Hartman's resignation and isolation from management, the Executive Committee attempted to negotiate an orderly and fair separation between Silver Star and Hartman and his

[5] The probative value of the videorecording of Hartman's deposition on these points is far greater than the transcribed text. Accordingly, Defendants are including with this Opposition (in hard copy format only due to MDEC e-filing limitations) a video file of the relevant portions of Hartman's deposition transcript. The citations to the videorecording in this Opposition (*i.e.*, X: XX) refer to the timestamp that appears in the lower left corner of the video.

affiliates, with the expectation that Hartman would take his interests in XXI and go his own way. Mem., Ex. H, at 57:8 – 58:17. While they negotiated a preliminary Separation Agreement with Hartman and XXI, Hartman refused to sign it. *Id.* at 58:18 – 59:2. When Hartman realized that he could not extract more than his and his family's fair share of Silver Star to the detriment of the Company and its other shareholders, he began taking actions to gain leverage.

Unbeknownst to the Independent Directors, Hartman filed a lawsuit against the Company in the District Court of Harris County, Texas, *Allen R. Hartman, et al., v. Silver Star Properties REIT, Inc., et al.*, Cause No. 2023-17944 ("Texas Litigation"), while still negotiating his separation from Silver Star. *See* Mem., Ex. P. Hartman's lawsuit, purportedly on behalf of himself and XXI,[6] alleges in part that Silver Star owes more than $17 million to XXI for intercompany loans Hartman initiated in 2019—loans that, if made, were both barred by XXI's charter and never formally authorized by the boards of either company. *Id.* at 3-4; Mem., Ex. F, at 179:9-14, 180:2-7; Mem., Ex. R, at 32:11 – 33:9 (recounting XXI charter language prohibiting loans to affiliated entities), 66:9-16 (board did not authorize loan). For more than three months, Hartman continued to negotiate with the Independent Directors while the Texas Litigation was pending, but unserved. Mem., Ex. S, at 1 (referencing June 22, 2023 settlement discussions with Hartman); Mem., Ex. T.

During settlement discussions, Hartman explicitly told the Independent Directors that he was planning to oust them and install a new board. *See* Mem., Ex. H at 68:16 – 70:18 (recounting Hartman's statement at a June 22, 2023 settlement discussion that he "wanted to take over the company . . . by changing the board.") Through counsel, Hartman later communicated that he had taken substantial steps toward remaking the Board, claiming to have:

- Hired a proxy solicitor and law firm to oversee a proxy vote "to contest Silver Star's current board of directors and appoint a new slate;"

[6] In fact, Hartman did not seek approval of XXI's Board of Directors before including the company as a party to the Texas Litigation. Mem., Ex. Q, at 69:13 – 70:3; Mem., Ex. R, at 79:8-18.

- Selected an alternative slate of directors, who had agreed to run;
- Spoken with the top 10 shareholders, who had expressed support for the new slate;
- Prepared to start calling the top 100 shareholders; and
- Prepared to install the new slate with an eye toward liquidating the Company.

See Mem., Ex. Y. Hartman later admitted in a sworn statement to a federal judge in the District of Maryland that he had not actually done any of these things. *See* Affidavit of Allen R. Hartman dated November 10, 2023, attached as **Exhibit B**, at ¶¶ 10-14. However, at his deposition in this action, Hartman found himself caught as to whether he had, in fact, been talking to the top ten stockholders in advance of a proxy solicitation. Shockingly, Hartman testified that the statements in his affidavit to the federal court may have been untrue. *See* Ex. A, at 14:54:30 to 15:04:28.

This chaotic behavior of Hartman, including making misrepresentations and outright false statements, stands as evidence to the Independent Directors that Hartman would stop at nothing to retake control of Silver Star, and poses a serious threat to shareholder value and the Company as a whole.

* * *

When it became apparent that Hartman was designing a plan to remove the Independent Directors who had unveiled his improper actions as CEO, the Executive Committee members considered their options, including defensive measures. *See* Mem., Ex. S, at 1; *see also* Mem., Ex. H, at 68:16 – 70:18 Mem. Ex. V at 1. The Executive Committee also recognized the need to hold an annual election of directors by the shareholders, because Hartman had never caused that to happen. Mem., Ex. EE, at 15:01-03. The Executive Committee took two actions to address these issues. First, the Executive Committee determined that it would be best to conduct an election of

directors through written consents in lieu of an annual meeting of shareholders. Mem. Ex. H, at 136:02-05; 124:8-11; 134:14-20. That process was authorized by the Charter and the Bylaw Amendment, which was later ratified by the Board. Mem., Ex. A, at § 8.5. Second, the Executive Committee approved the Rights Plan. Mem., Ex. V.

In exploring these two options, the Executive Committee considered not just recent conduct of Hartman, which included bad-faith settlement negotiations, soliciting shareholders in anticipation of a proxy fight, filing frivolous *lis pendens* designed to destroy the Company, and initiating litigation to recover improper loan payments, but the broader context of Hartman's actions over his 13-year tenure as CEO. Those facts are highly relevant to this action.

LEGAL STANDARD

"[T]he admissibility of expert testimony is a matter largely within the discretion of the trial court." *Rochkind v. Stevenson*, 471 Md. 1, 10 (2020) (citation omitted); *see also Levitas v. Christian*, 454 Md. 233, 243 (2017) (citation omitted) ("[D]ecisions to admit or exclude expert testimony fall squarely within the discretion of the trial court."). In a bench trial, "judges are afforded broad discretion in the conduct of trials in such areas as the reception of evidence." *Kelly v. State*, 392 Md. 511, 530 (2006) (internal quotations omitted). Trial judges are likewise trusted in bench trials "to assess, in their gatekeeping role, whether potentially unfairly prejudicial evidence should be admitted or excluded." *Lopez v. State*, 231 Md. App. 457, 487 (2017), *aff'd*, 458 Md. 164 (2018). The court's role is considering the admissibility of expert testimony is often similarly described as that of a "gatekeeping" function. *See Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 142 (1997); *see also Daubert v. Merrell Dow Pharma., Inc.*, 509 U.S. 579, 589 (1993).

ARGUMENT

I. EVIDENCE RELATING TO HARTMAN'S PRIOR ACTIONS AND HISTORIC MANAGEMENT OF THE COMPANY IS RELEVANT TO THE CLAIMS AND DEFENSES IN THIS ACTION AND SHOULD NOT BE EXCLUDED

Context is critical in evaluating the Board decisions challenged in this action. Defendants are not offering evidence of Hartman's past acts and historic management of Silver Star for this Court to determine whether Hartman breached his fiduciary duties to shareholders or to establish damages caused by such conduct. As Plaintiffs note, that is the subject of the Texas Litigation. Rather, details about Hartman's management of the Company are being offered to identify the facts and broader context that informed the Executive Committee's decision-making and to present evidence supporting Defendants' defenses to Plaintiffs' claims.

Under Maryland law, it is appropriate (and, in this case, necessary) for courts to examine background facts and historical context when evaluating a board of directors' decisions. *See, e.g.*, *Mona v. Mona Elec. Group, Inc.*, 176 Md. App. 672, 703 (2007) (examining former CEO's past behavior, including influencing board of director decisions by appointing friends and family to the board, to determine if the board of directors acted in good faith in setting the compensation of a new CEO). For instance, in a remarkably similar case involving a board of director's decision to prevent Hartman from taking action to regain control of the company, a Texas federal district court thoroughly examined Hartman's prior actions. *Hartman Commercial Prop. REIT v. Hartman et al*, No. 4:06-cv-03897, 2007 WL 9751970 (S.D. Tx. Apr. 06, 2007).

In that action, Hartman filed a consent solicitation statement with the SEC seeking to install a new slate of directors through written consents in lieu of an annual meeting, pursuant to charter and bylaw provisions substantially similar to the ones at issue in this proceeding. The board of Hartman Commercial Properties REIT (n/k/a Whitestone REIT) responded by seeking to enjoin the consent solicitation on the basis that the bylaw provision allowing consent solicitations had

been repealed. The Texas federal district court concluded that the Whitestone Board's actions were proper, and the United States Court of Appeals for the Fifth Circuit affirmed. *Whitestone REIT v. Hartman et al*, 252 Fed. App'x 631, 635 (5th Cir. 2007). The Fifth Circuit's opinion began by focusing on the events giving rise to the Board's action:

> Plaintiff–Appellant Whitestone REIT was formed originally as Hartman Commercial Properties REIT. On October 2, 2006, the Board removed Hartman as Chairman and CEO, citing a series of misdeeds, conflicts of interest, and disclosure failures. When Hartman refused to relinquish control of the REIT, the Board filed a claim of breach of fiduciary duty and contractual obligations against Hartman in Texas state court. That court granted multiple injunctions against Hartman, effectively forcing him to surrender control of the REIT. Hartman resigned from the Board on October 27, 2006.
>
> One month later, Hartman attempted to solicit the consent of a majority of the REIT's shareholders to remove the Trustees and replace them with his own slate.

Id. at 632–33 (emphasis added). Ultimately, the Fifth Circuit concluded that the defensive measures adopted by the board to ward off a hostile takeover by Hartman, given his history of harming the company during his tenure as CEO, were taken in good faith. *Id.* at 635. On that point, the Fifth Circuit stated:

> The Board's defensive actions under these circumstances would satisfy any standard by which boards are judged. Hartman had allegedly done harm to the REIT during his tenure at its helm. The Board did not disenfranchise the shareholders; rather, in a legitimate effort to save the REIT from a ruinous sequel, the Board simply eliminated one alternative method for shareholders to exercise their voting rights.

Id.

In cases involving challenges to shareholder rights plans – one of the issues in this case – courts have allowed the parties to present evidence of all facts and circumstances relating to the adoption of the plan. *See, e.g., Selectica, Inc. v. Versata Enterprises, Inc.*, No. 4241-VCN, 2010 WL 703062, at *22–25 (Del. Ch. Ct. February 26, 2010) (finding corporation's adoption of poison pill was valid when considering a potential takeover threat, the consideration of legal and financial

options and retributions of adopting and activating such a pill, and the proportionality of the poison pill to the takeover threat); *Williams Companies Stockholder Litig.*, No. 2020-0707-KSJM, 2021 WL 754593, at *2–9 (Del. Ch. Ct. February 26, 2021) (considering background facts and context in determining propriety of poison pill adoption). The actions taken by Hartman prior to October 2022 bear on all of the claims and defenses raised in this action.

A. Hartman's Prior Conduct Is Relevant to the Defense of the Liquidation Claim

Hartman's liquidation claim is predicated on an argument that the Company was not listed on an established securities exchange before April 25, 2023 and, therefore, it must be immediately liquidated. As established in the Memorandum, Plaintiffs' assertion that a listing must have occurred by April 25, 2023 is incorrect, insofar as the initial public offering did not terminate until March 31, 2016 due to Hartman's failure to make certain post-amendment filings to update the First Registration as required by the 1933 Act.[7] Mem. Ex. B, at ¶ 9. However, to the extent that the 2016 termination date is not dispositive of the liquidation issue as a matter of law (which it should be), then Defendants should be entitled to introduce evidence of Hartman's pre-October 2022 conduct to demonstrate additional reasons why the liquidation claim fails.[8]

Defendants will prove at trial that the liquidation claim is barred by the doctrines of equitable estoppel and unclean hands. Evidence pertinent to those defenses includes, but is not limited to:

- Hartman was the Company's CEO and Executive Chairman of its Board until seven months before April 25, 2023, and spent his time in leadership looking for ways to defer liquidation. MPSJ Opp., Ex. A at ¶ 10. Facts

[7] To the extent that Plaintiffs are attempting to exclude evidence relating to the initial public offering during the period 2010 to 2016, that effort should be summarily rejected, insofar as Plaintiffs themselves have put those facts squarely at issue in this case.

[8] Among other things, the undisputed evidence will show that, before any liquidation can occur, there must be a vote of shareholders on liquidation. Mem., Ex. F, at 114:11-19; 116:15-19; 87:1-11. For this additional reason, Plaintiffs' claim seeking an immediate liquidation of Silver Star cannot stand.

relating to Hartman's efforts to avoid a liquidation event are relevant to the relief he now seeks – a 180-degree shift from his objective while CEO prior to October 2022.

- The Company under Hartman's leadership made public statements interpreting the Charter in a manner that does not impose an automatic liquidation; but rather, provided numerous alternatives to liquidation that Hartman seeks to ignore in this litigation, such as a merger, a Board vote on an alternative strategy, and a shareholder vote on liquidation. MPSJ Opp., Ex. F at 3; MPSJ Opp., Ex. H at 21, 27, 85, 91. In construing the meaning of Section 15.2 of the Charter, the Court needs the broader context of statements made and actions taken prior to 2022.

- Hartman proposed a merger of Silver Star with and into XXI. Mem. Ex. H, at 142:15-21. One of the reasons for doing so was to defer liquidation by taking advantage of a termination provision in the XXI charter that would extend the time for satisfying the charter provisions. These facts are relevant to the defense of estoppel.

- Hartman impeded efforts to list the Company's common stock on an established securities exchange during his tenure as CEO of Silver Star. While significant progress was made to achieve a public listing, ultimately Hartman refused to accept a standard underwriters' discount, thereby thwarting efforts to list the Company's stock on a national exchange, which would have satisfied the provisions of Section 15.2 of the Charter well before the 10-year period expires. MPSJ Opp., Ex. A at ¶ 16–18. This is relevant to the defense of estoppel.

The above facts, among others relating to circumstances prior to October 2022, are not only relevant but are essential for the Court to consider in resolving the liquidation claim. MD. RULE 5-401 ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). Accordingly, such facts should not be excluded.

B. Hartman's 13-Year Failure to Hold an Annual Meeting of Shareholders Is Relevant to Plaintiffs' Claim for an Annual Meeting

Plaintiffs acknowledge in their Motion that Hartman failed to hold an annual meeting of stockholders during his entire tenure as CEO and Chairman of Silver Star's Board. Yet, they ask the Court to exclude from trial any facts relating to that issue. That should not be allowed.

Plaintiffs accuse the Independent Directors of refusing to hold an annual meeting in an effort to entrench themselves as directors. But the only entrenched director is Hartman. The evidence will show that Hartman not only failed to secure a quorum of shareholders to hold a meeting in the early 2010s, but that he eventually stopped making efforts to hold a meeting. Hartman's past practice of disregarding any requirements to hold an annual meeting is, at a minimum, relevant to the resolution of the annual meeting claim in this action (and the defenses thereto) and should not be precluded from introduction at trial.

C. Evidence of Hartman's Past Conduct Is Probative to the Board's Decision to Amend the Bylaws to Allow for a Director Election by Written Consents

In seeking to invalidate the Bylaw Amendment and permanently enjoin the Consent Solicitation, Plaintiffs brazenly claim that the amendment was done in bad faith. There is no evidence of any bad faith. But there is ample evidence establishing that the Bylaws were amended for legitimate purposes, namely to ensure a more orderly and less expensive process for allowing shareholders to elect directors and to avoid the chaos of an in-person meeting that would give Hartman a forum to sow additional dissent and harm the Company. The evidence considered by the Executive Committee and germane to the decision to amend the Bylaws is as follows:

- In 2006, Hartman was involved in litigation that arose from his efforts to commence an election of directors to remove the board members who ousted him as CEO due to his improper conduct. *Hartman Commercial Prop. REIT v. Hartman et al*, No. 4:06-cv-03897, 2007 WL 9751970 (S.D. Tx. Apr. 06, 2007), *affirmed by Whitestone REIT v. Hartman et al*, 252 Fed. App'x 631, 635 (5th Cir. 2007). Hartman did so through invocation of a bylaw provision substantially similar to the Bylaw Amendment at issue in this action. *Hartman Commercial Prop. REIT*, 2007 WL 9751970, at *2; *see also* Mem. at 16, n.13. Such facts are highly relevant.

- The concept of amending the Bylaws to allow shareholder action by written consent in lieu of an annual meeting was originally discussed in 2020, when Hartman was still CEO of the Company. Mem., Ex. H, at 125:7-18.

- As stated above, from 2009 through 2022 Hartman was unable to secure a quorum of shareholders entitled to vote in connection with efforts to hold an annual shareholder meeting. Mem., Ex. F, at 71:2-7; Mem., Ex. I, at 52:18-21. The Executive Committee believed that a quorum could be obtained through written consents, which it was. Mem., Ex. I, at 58:16 – 59:14; Mem., Ex. H, at 12:10-12.

- The Independent Directors had significant concerns about Hartman's efforts to regain control of the Company through an annual meeting. Mem., Ex. H, at 135:21 – 136:8; 136:02-05. This was not only a reaction to the more recent erratic and harmful conduct of Hartman but was borne out of Hartman's actions that led to his termination as CEO of the Company. Mem., Ex. N; Ex. G, at 19:1 – 21:2; Ex. I, at 13:21 – 14:17. The reasons for his resignation are highly relevant to the Board's desire to protect the shareholders from further harm at the hands of Hartman and are essential to understanding why the Bylaw Amendment was justified under the circumstances.

All of the above evidence bears on the issue of whether the Executive Committee acted in bad faith when allowing written consents in lieu of an annual meeting of shareholders (it did not). Plaintiffs' efforts to shield the Court from this evidence because the facts are damaging to their case does not warrant the exclusion of such evidence from trial.

D. Hartman's Prior Acts Are Relevant to the Decision to Adopt a Shareholder Rights Plan to Protect Shareholders from Further Harm by Hartman

The Rights Plan was not adopted in a vacuum. To the contrary, its adoption was informed by years of conduct by Hartman that put the Company at risk of insolvency, locked up shareholder investments for 13 years, and generally diminished shareholder value. To understand the Executive Committee's careful consideration and methodical process for adopting the Rights Plan, the Court must be presented with all of the facts and circumstances, not just those that immediately preceded the decision as Plaintiffs request.

The evidence at trial will show that the Rights Plan was adopted to, among other things, avoid a hostile takeover by Hartman. The reason for excluding Hartman from any type of control position within the Company was his prior mismanagement that involved gross failures to execute

on operational work, conflicts of interest, and improper payments, which resulted in nearly driving the Company into insolvency and which caused the stock value to plummet. Facts detailing this important context include the following:

- Hartman's failure to refinance a critical $259 loan, putting the Company into a crisis.
- His inability to list Silver Star's stock on an established securities exchange, which Raymond James, an outside advisor to the Executive Committee, stated could not occur with Hartman in leadership.
- Hartman directing the Company's CFO to continue making distribution-type payments to Hartman and/or entities he controlled after distributions had been suspended to all shareholders following the refinance debacle. Independent Director Jack Tompkins characterized Hartman's acceptance of such payments as "theft."
- Hartman's prior ouster in 2006 by another Maryland REIT for misconduct.

The need for and propriety of the Executive Committee's decision to adopt the Rights Plan cannot be understood without the presentation of the full facts and circumstances, which necessarily include Hartman's neglect and conduct that predated the Rights Plan adoption in August 2023. This evidence must not be excluded, and the Motion should be denied.

II. EVIDENCE OF INTERCOMPANY LOANS BETWEEN XX AND XXI IS RELEVANT TO THE DECISION TO PREVENT A HOSTILE TAKEOVER BY HARTMAN

Facts relating to Plaintiffs' filing of the Texas Litigation seeking to recover unauthorized intercompany loans between XX and XXI is necessary to show Hartman's history of acting in his own self-interest to the detriment of Silver Star's shareholders. Evidence that Hartman initiated these loans when he was CEO without approval from the boards of Silver Star and XXI and in contravention of XXI's charter highlights the risk Hartman poses to the Company and the need to protect shareholders against his efforts to seize control of Silver Star. The purpose of introducing this evidence is not to ask the Court to issue a ruling based on Hartman's actions, but rather to help

establish the facts that the Independent Directors considered when deciding whether to adopt defensive measures to protect shareholders against Hartman. For these reasons, Defendants should be permitted to present evidence of the unauthorized intercompany loans.

III. THE ANTICIPATED TESTIMONY OF EXPERT WILLIAM CARLSON ON CORPORATE MATTERS SHOULD NOT BE LIMITED

Defendants have designated William E. Carlson, the President of Shapiro Sher Guinot & Sandler, as an expert on matters of corporate governance. Mr. Carlson is being offered to present helpful testimony on matters relating to the Bylaw Amendment and the Rights Plan. Plaintiffs do not seek to exclude Mr. Carlson as an expert in this action. Instead, they seek to exclude any potential testimony of Mr. Carlson that constitutes "legal opinion testimony." Plaintiffs' exclusion request should be denied.

Expert attorney testimony is not a new phenomenon. When there are complex matters at issue, Maryland courts have allowed attorneys to testify as experts. *See, e.g.*, *Attorney Grievance Comm'n of Maryland v. Sperling*, 472 Md. 561, 588-89 (2001) (finding when matters of high complexity are in front of a judge, attorneys can testify as experts in their field). Delaware law is also instructive.[9] Delaware Chancery Courts have permitted attorneys to testify on issues of corporate law, including issues relating to the adoption of a shareholders right's agreement. *See Williams*, 2021 WL 754593, at *11 (allowing attorneys to testify as experts in the field of corporate matters, to include the history and purpose of adopting poison pills, and opining on the appropriateness of adoption in specific instances); *Selectica*, 2010 WL 703062, at *21 (finding attorney expert useful in establishing the background facts of the case and the reasonableness of adopting a shareholder rights plan in comparison to other corporations who had done the same).

[9] Maryland courts may look to Delaware law for guidance on issues of corporate law. *Oliveria v. Sugarman*, 451 Md. 208, 221 n.4 (2017).

On this point, the Whitestone REIT litigation, discussed *supra* at 12–13, again proves instructive. *Hartman*, 2007 WL 9751970. There, Whitestone REIT called James Hanks, Jr., "an expert on Maryland Corporation Law, [who] was involved in the drafting of [the Maryland Unsolicited Takeover Act ("MUTA")], prior to its enactment." 2007 WL 9751970, at *10. As the Texas federal district court explained:

> Hanks opined that there are legitimate business reasons for opting-in to MUTA, such as promoting stability and continuity for the entity. Hanks also testified that several provisions of MUTA, such as classified boards and a majority requirement in order to call a special meeting, are commonly used mechanisms throughout corporate America which have the ability to create more informed shareholders and slow down a bidder's attempt to take over the entity without the board's consent.
>
> Hanks also confirmed that MUTA allows a board to opt-in to its provisions, even over existing provisions of the Declaration of Trust which state to the contrary. Hanks acknowledged that while MUTA's provisions have the side effect of moderately entrenching management, this may also be a benefit that inures to shareholders because the entity retains experienced board members from year to year through the classified board structure. Lastly and perhaps most importantly, Mr. Hanks emphasized that Md. Code Corps & Ass'ns § 2-405.1(d), prohibits inquiry into why a board elected to opt-in to MUTA.
>
> Upon considering MUTA's text and its related provisions, the Court concludes that, consistent with the findings of the *Goldstein* [v. *Lincoln Nat. Convertible Sec. Fund*, 140 F. Supp. 2d 424, 437-38 (E.D. Pa. 2001)] court and Hanks' testimony, judicial review into the Board's election to opt-in to MUTA is indeed foreclosed by the express language of the statute. Md. Code Corps & Ass'ns §§ 2-405.1(d), 3-802. As such, the Court may not go any further into assessing the propriety of the Board's decision to opt-in to MUTA. The Court acknowledges that MUTA is not a paragon of statutory construction, but nonetheless, the Maryland's legislature's intent is clear enough – to empower directors and trustees with the authority to adopt strong defensive measures which make an unsolicited takeover attempt substantially more difficult, and to concurrently protect a board's decision to opt-in to MUTA from being attacked after-the-fact.

2007 WL 9751970, at *10–11. Mr. Hanks—an expert on corporate law in Maryland, having first published Maryland Corporation Law in 1990—has testified regarding corporate matters arising in other cases on other corporate law topics. *See, e.g.*, *Recreational Indus., Inc. v. Council of Unit Owners of the WISP Condominium, Inc.*, No. 278 (Dec. 31, 1997), as discussed in Brief of

Appellees/Cross-Appellants, available at 1997 WL 34631584, 22 n.41 ("At trial, RI presented Mr. Hanks as an expert on corporation law.").

Like the corporate attorneys in *Williams* and *Selectica*, it is anticipated that Mr. Carlson, an undeniable expert on corporate governance, will testify regarding the Rights Plan at issue in this case. Furthermore, Mr. Carlson has been designated to rebut the opinions of Plaintiffs' proffered expert, Larry Hamermesh, a law professor at the Widener University Delaware Law School. Professor Hamermesh is being offered to testify regarding the Rights Plan, including "precedent in the custom or practice associated with shareholder rights plan . . . ." *See* Plaintiffs' Expert Disclosure, attached as **Exhibit C** at 2, ¶2. It stands to reason that if Plaintiffs are planning on having a ***Delaware law professor*** testify on Maryland corporate matters, there is nothing improper about rebuttal testimony from a ***Maryland corporate attorney*** on the same subject.

It is also anticipated that Mr. Carlson will offer testimony regarding the custom and practice in Maryland for corporations to allow shareholder action by written consents in lieu of an annual meeting. Specifically, Mr. Carlson will testify, based on his experience advising boards concerning the mechanics of written consents in practice and the propriety of the approval of the Bylaw Amendment here. Mr. Carlson chairs the Maryland State Bar Association Business Law Section's Committee on Corporation Law, which proposes amendments to the Maryland General Corporation Law for consideration by Maryland's General Assembly. Accordingly, like Mr. Hanks, Mr. Carlson has a role in the drafting of corporate law. Mr. Carlson's anticipated testimony on custom and practice reflect appropriate expert witness opinion and should be permitted.

In the event that the Court determines in the course of trial that Mr. Carlson's testimony gravitates toward legal opinion rather than custom and practice, then Plaintiffs' counsel will have the opportunity to object, and the Court can sustain that objection if it finds it meritorious. Courts

have wide discretion to allow expert testimony. *Rochkind*, 471 Md. at 10; *Levitas*, 454 Md. at 243. Affording the Court in this bench trial an opportunity to hear the testimony and then determine whether it invades the province of the Court on an issue of law instead of preemptively excluding ***potential*** testimony is the better way to address Plaintiffs' perceived future concerns. Indeed, "[v]igorous cross-examination [and] presentation of contrary evidence" are but two of "the traditional and appropriate means" challenging admissible expert testimony. *Rochkind*, 471 Md. at 38 (quoting *Daubert*, 509 U.S. at 596). The Court is more than equipped to draw lines where appropriate and give evidence the appropriate weight. *Hendrix v. State*, 200 Md. 380, 387 (1952) ("Objections that proposed testimony states only a conclusion are sometimes pushed to extremes. Very often the simplest method is to leave such a question to the practical discretion of the trial court."). For these reasons, Mr. Carlson should be permitted to testify unencumbered by a pretrial limitation and Plaintiffs' Motion on that point should be denied.

IV. THE ANTICIPATED TESTIMONY OF SECURITIES EXPERT STANLEY KELLER SHOULD NOT BE LIMITED

Defendants intend to also offer Stanley Keller, a nationally recognized expert on securities maters, to testify regarding the date on which the Silver Star initial public offering terminated. Plaintiffs do not seek to exclude Mr. Keller as an expert witness; but rather, they request an order precluding Mr. Keller from offering his opinion on the meaning of the term "initial public offering" in Section 15.2(a) of the Charter. Mr. Keller's testimony should be permitted without limitation.

Before the Court is the question of when the Company's initial public offering concluded. The uniform testimony among the witnesses deposed on that subject is that it terminated on March 31, 2016. *See* Mem. at 16–17. Nevertheless, to the extent that the Court determined that there is a factual question as to the termination date, Mr. Keller will testify, based on his decades of experience in securities work, regarding the termination of the public offering based on the specific

circumstances of this case. Such testimony is entirely appropriate. *See In re: Loral Space and Comms. Inc. Consol. Litig.*, C.A. No. 2808-VCS, 2008 WL 4293781, *29 (Del. Ch. Ct. Sept. 19, 2008) (relying on Mr. Keller's expert testimony on valuation of investment to find that investment was not beneficial to all shareholders).

Plaintiffs cite *Impac Mortgage Holdings, Inc. v. Timm* for the proposition that when contract language is plain and unambiguous, it should be interpreted to mean "what a reasonable person in the position of the parties would have thought it meant." 474 Md. 495, 506-07 (2021). Tellingly, in that case, the trial court allowed the securities attorney to testify, which is how this Court should treat Mr. Keller. Mr. Keller is being offered to shed light on what is customarily meant by an initial public offering and to aid the Court in the event that such term in the Charter is ambiguous. The Court will give the weight to that testimony as it sees fit, but there is no basis to exclude the testimony at this juncture.

Moreover, Mr. Keller is being offered, in part, to rebut the testimony of Professor Hamermesh, who Plaintiffs are offering to testify as to the date on which the public offering terminated. Defendants should have an opportunity to rebut the testimony of Plaintiffs' expert on the same subject matter. And, if the Court finds that the testimony of either party's expert is not necessary or helpful, then the Court can give the respective expert's testimony the weight it deems appropriate. However, Defendants should have the opportunity to offer Mr. Keller as an expert first and Plaintiffs' request otherwise should be denied.

V. THE ANTICIPATED TESTIMONY OF EXPERT CHRIS SONNE IS RELEVANT TO CORE ISSUES RELATING TO THE COMPANY'S OPERATIONS AND SHOULD BE PERMITTED

Finally, Defendants plan to offer the testimony of R. Christian Sonne, an expert on valuations in the self-storage industry. It is anticipated that Mr. Sonne will testify regarding the

Pivot Plan and the anticipated value to Silver Star shareholders resulting therefrom. Plaintiffs' contention that the testimony of Mr. Sonne is not relevant to this case is without merit.

The issue underpinning all of the claims in this matter is whether the decision of the Executive Committee to embark on the Pivot Plan is in the best interests of the shareholders. As stated in the Fourth Amended Complaint, Hartman is challenging the Pivot Plan:

- "The individual defendants have embarked on a plan of action for Silver Star to sell its current assets comprised of commercial real estate in Texas at too low a value and to embark on an unwise strategy of investing in self-storage facilities." *See* Compl. at ¶ 12.

- "Notwithstanding the requirement that Silver Star be liquidated, the individual defendants and Silver Star improperly continue to acquire real estate assets in their attempt to have Silver Star pivot into the self-storage facility business." *See* Compl. at ¶ 26.

Defendants are offering Mr. Sonne's testimony to demonstrate that the Executive Committee acted appropriately in developing a strategic initiative aimed at enhancing shareholder value. This evidence bears directly on Plaintiffs' demand for an immediate liquidation of assets, which would yield little value to Silver Star stockholders. Mr. Sonne's testimony will also support Defendants' view that the Pivot Plan is an appropriate path towards a public listing, which will provide shareholders with the liquidity that they have sought for years and have not been provided by Hartman's outdated focus on Class-B office buildings. This testimony will also tend to show why the Executive Committee believes it is necessary to protect its shareholders from a takeover attempt by Hartman.

Accordingly, Mr. Sonne's testimony is appropriate, relevant to the issues in this case, and should not be excluded.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiffs' Major Motion *in Limine* in its entirety.

Respectfully submitted,

Dated: October 1, 2024

/s/ Geoffrey M. Gamble
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Counsel for Defendants

REQUEST FOR HEARING

Defendants, by and through their undersigned counsel and pursuant to Maryland Rule 2-311(f), hereby request a hearing on their Opposition to Plaintiffs' Major Motion *in Limine*.

Respectfully submitted,

Dated: October 1, 2024

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Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 1st day of October, 2024, a copy of Defendants' Opposition to Plaintiffs' Major Motion *in Limine* and proposed Order was served through the MDEC system on the following registered users entitled to such service:

Jerrold A. Thrope
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Counsel for Plaintiffs

/s/ Geoffrey M. Gamble
Geoffrey M. Gamble (AIS #0812160296)

EXHIBIT A

Excerpted Video Deposition of
Allen Hartman (Produced in Native Format)

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SILVER STAR PROPERTIES REIT, INC., a Maryland corporation,	*	
Plaintiff,	*	Civil Action No.: 1:23-cv-02720-ELH
vs.	*	
HARTMAN VREIT XXI, INC. *et al.*,	*	
Defendants.	*	

* *

AFFIDAVIT OF ALLEN R. HARTMAN

I, Allen R. Hartman, on personal knowledge, state as follows:

1. I am 71 years old and reside in Houston, Texas. I have been in the commercial real estate business in Texas since 1981.

2. I founded Hartman Income REIT Management, Inc., a leader in commercial real estate throughout Texas. As of December 31, 2022, the Hartman companies owned and operated 60 commercial properties with approximately 8,000,000 square feet throughout Houston, San Antonio, and Dallas, Texas.

3. I am the founder of Silver Star Properties REIT, Inc. (F/K/A Hartman Short Term Income Properties XX, Inc.) ("Silver Star" or the "REIT"), a Maryland corporation taxed as a real estate investment trust company which historically concentrated on owning Texas commercial real estate. I am also the founder of Hartman vREIT XXI, Inc. ("Hartman vREIT"), also a Maryland corporation taxed as a real estate investment trust, which owns shares of Silver Star's common stock. Together, Hartman vREIT and I own more than 5% of the outstanding common stock of Silver Star and have been such record owners for at least six months.

4. Gerald W. Haddock, Jack I. Thompkins, and James S. Still are Directors of Silver Star and comprise its Executive Committee through which Silver Star purports to operate.

5. I formerly served on the Executive Committee for Silver Star, but on or about October 15, 2022, I was removed due to conflicts with other directors on the committee. Although I am nominally still a director of Silver Star, I have been ostracized from participation in Silver Star's affairs.

6. In my view, Silver Star's Executive Committee has taken the wrong path by abandoning Silver Star's historical concentration on Texas commercial real estate and instead investing nationwide in self-storage facilities. I believe and have communicated to the Executive Committee that maximizing stockholder value would involve the orderly sale of Silver Star's properties and distribution of the proceeds to its stockholders and that the self-storage facility strategy is too risky. The entrenched Executive Committee disagrees with me.

7. Through counsel, I have sought the ability afforded to me under relevant law and Silver Star's Charter and Bylaws to vote for directors at a duly called annual meeting of stockholders. Silver Star has refused to schedule an annual meeting, forcing me to file a lawsuit to compel such a meeting in the Circuit Court for Baltimore City, case captioned *Hartman v. Silver Star Properties REIT, Inc. (F/K/A Hartman Short Term Income Properties XX, Inc..)*, Case No. 24-C-23-003722 (the "Baltimore City Case"). The history of my attempts asking Silver Star to schedule an annual meeting in 2023 are fully set forth in the complaint filed in Baltimore City Case which is being submitted as an exhibit to the opposition.

8. In an apparent attempt to avoid an annual meeting and to further entrench themselves as directors of Silver Star, on or about August 28, 2023, just three days after its receipt of the complaint in the Baltimore City Case, Silver Star's Executive Committee purported to

amend Silver Star's Bylaws to permit stockholders to elect directors "without a meeting, if a consent in writing or by electronic transmission to such action is given by a quorum of the stockholders." The Executive Committee plainly took this action to squelch any discussion of, and dissent from, its plan to alter Silver Star's business model, and to prevent a normal director election at an annual meeting. An Amended Complaint has been filed in the Baltimore City Case seeking to prevent the Executive Committee from conducting the annual election by consent only, a copy of which is submitted as an exhibit to the opposition.

9. On August 25, 2023, I requested through counsel a copy of Silver Star's stock ledger which I am entitled to under Maryland law because together with vReit I have been the owner of more than 5% of Silver Star's outstanding common stock for more than six months. Silver Star denied my request based on law from the District of Columbia, not Maryland. In the Amended Complaint I am seeking an Oder in the Baltimore City Case requiring Silver Star to comply with my demand for a stockholder ledger.

10. On or about August 28, 2023, my Texas counsel, Tom Lightsey, Esquire (who is not involved in this case), sent an email (drafted by me) to the Executive Committee as part of my efforts to resolve our respective disagreements regarding the direction of Silver Star. That email was a settlement communication sent expressly pursuant to Rule 4068 of the Texas Rules of Evidence. In that email, I stated that "I have hired a proxy solicitor and a law firm to oversee a proxy vote to contest Silver Star's board of directors and appoint a new slate." At the time of the sending of the email, I had not in fact hired a proxy solicitor or a law firm to oversee a proxy vote for Silver Star. This communication was sent in a moment of frustration with the Executive Committee as part of an attempt, albeit in retrospect an unwise attempt, to reach a settlement with the Executive Committee.

11. On or about November 1, 2023, I hired a law firm to advise me on a proxy contest.

12. I made other statements in the August 28, 2023 email that in fact were not true out of frustration with the Executive Committee. For instance, contrary to the statements in the email, I have not personally spoken with the top ten stockholders, I have not solicited their proxies, and they have not informed me that they will grant me their proxies with respect to anything, much less with respect to the election of directors.

13. I have not called any of the top 100 stockholders regarding a proxy contest. Broker-dealers have not informed me that they are unanimously in favor of a new slate of directors.

14. I have spoken with three persons about their interest in becoming directors. I have not yet made up my mind about who I would nominate to be directors of Silver Star.

15. Silver Star has alleged that I have made false and/or misleading statements to stockholders regarding Silver Star's NAV per share price and the Silver Star Properties REIT, Inc. and Hartman XX Limited Partnership 2023 Incentive Plan (the "Plan"). I have not had such discussions with Silver Star stockholders as I claim in the August 28, 2023 email.

16. Nevertheless, the statements in the email to the Executive Committee regarding these matters are not false or misleading. I believe that the valuation of Silver Star resulting in a NAV of $6.25 per share does not appropriately value Silver Star's assets, and that they are in fact worth considerably more. I disagree with the methodology used to reach that value.

17. Regarding the awards under the Plan, Silver Star's SEC filing stated the performance units that the Executive Committee awarded to its members were convertible into the REIT's common stock on a 1:1 ratio, which if true make the units worth over $19,000,000 based on the NAV used by the REIT. The fact that the units do not presently have a value for accounting purposes as alleged does not mean that they will not be valuable in the future. It now appears from

a later SEC filing that the performance units may not be convertible into common stock and may not have the value that appeared to be the case from Silver Star's prior SEC filing.

18. On or about June 22, 2023, my daughter, Margaret Hartman, who works with me, and I met with Mr. Haddock and Mr. Tompkins at the Post Oak Grill Restaurant in Houston. We did not discuss at that meeting the value of the performance units that the Executive Committee awarded to its members.

19. I am married to Lisa Hartman who lives in Texas with me. Lisa Hartman is not involved in the business. Lisa and I are co-trustees of a trust that owns shares of Silver Star common stock.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the foregoing is true and correct.

Date: 11/10/23

Allen R. Hartman

EXHIBIT C

ALLEN R. HARTMAN, et. al.,	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
SILVER STAR PROPERTIES REIT, INC. (F/K/A HARTMAN SHORT TERM INCOME PROPERTIES XX, INC.), *et al.*,	*	BALTIMORE CITY
	*	Case No.: 24-C-23-003722
Defendants.	*	

* *

PLAINTIFFS' EXPERT DISCLOSURE

Plaintiff intends to call Professor Lawrence A. Hamermesh in the trial of this case.

Professor Hamermesh is expected to testify on the following subjects relating to the Rights Agreement between Silver Star Properties REIT, Inc. ("Silver Star") and Phoenix American Financial Services, Inc. as Rights Agent, dated as of August 18, 2023 (the "Rights Agreement"):

1. The structure and operation of shareholder rights plans.

2. Historical evolution of the forms, purposes, and limitations of shareholder rights plans.

3. Application of the foregoing matters to:

   a. The basis, if any, in the Rights Agreement for concluding that a Flip-In Event, as defined the Rights Agreement, occurred; and

   b. The determination by the Board of Directors of Silver Star on January 13, 2024 that a Flip-In Event had occurred and Allen R. Hartman and certain of his affiliates and family members had become Acquiring Persons as defined in the Rights Agreement.

Professor Hamermesh will express the following opinions:

1. Under the terms of the Rights Agreement, no Flip-In Event occurred, because neither Allen R. Hartman nor any his affiliates or family members acquired Beneficial Ownership of any common stock of Silver Star after the first public announcement of the adoption of the Rights Agreement.

2. There is no precedent in the custom or practice associated with shareholder rights plans for inflicting the dilution contemplated by such plans upon a shareholder or group of shareholders solely for seeking a judicial determination of their rights as shareholders under the corporation's governing articles of incorporation, and Silver Star's Board of Directors' determination to inflict that dilution upon Allen R. Hartman and certain of his affiliates and family members was not supported by any rational, good faith identification of any threat to the interests of Silver Star and its shareholders.

On a separate matter, Professor Hamermesh may also testify regarding Silver Star's recent contention first made in opposing the plaintiff's motion for liquidation that the first offering of Silver Star did not terminate in April, 2013. This testimony is likely in rebuttal to any contention made in the defendants' case. The first offering was terminated in April, 2013 to enable the company to offer more shares to the public without the shares being subject to a claim of rescission. In a May 23, 2013 letter from the company to the SEC (https://www.sec.gov/Archives/edgar/data/1446687/000144668713000051/filename1.htm), after the SEC had questioned whether the company violated Section 5 of the 1933 Act in the initial offering, the company acknowledged that it had violated that section. In order to offer additional shares to the public without the shares being subject to rescission based on that violation, the company needed to terminate the (defective) old offering and start a new one.

Professor Hamermesh reserves the right to amend or supplement the foregoing opinions based on information adduced in further discovery in this matter, including the recent depositions of the members of Silver Star's Executive Committee and recently produced minutes of the Executive Committee.

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EDUCATION AND CAREER HISTORY:

Admitted to the Delaware Bar, 1976; United States Supreme Court, 1999

Professor Emeritus (formerly Ruby R. Vale Professor of Corporate and Business Law), Widener University School of Law

- Teaching areas: business organizations, corporate finance, securities regulation, mergers and acquisitions, professional responsibility, equity/equitable remedies
- Director, Widener Law School Institute of Delaware Corporate and Business Law, 2000-2017
- Adviser, Delaware Journal of Corporate Law

Executive Director, University of Pennsylvania Law School Institute for Law and Economics, 2016-2023

Senior Special Counsel, Office of Chief Counsel of the Division of Corporation Finance of the U.S. Securities and Exchange Commission, Washington, D.C., January 2010 to June 2011

- Advising the Staff of the Commission on matters of state corporate law pertinent to the regulatory functions of the Commission

Visiting Professor, University of Michigan Law School, Winter 2002
Visiting Professor, University of Pennsylvania Law School, Spring 2004, 2006, 2014
Adjunct Professor of Law, New York University Law School, Fall 2008

Morris, Nichols, Arsht & Tunnell, Wilmington, Delaware

- Associate, 1976-1984
- Partner, 1985-1994

Yale Law School – J.D., 1976

Haverford College – B.A., 1973

Other Professional Qualifications and Background Information:

Member, American Law Institute (elected 1999)
Adviser, Restatement of the Law, Corporate Governance (appointed March 2019)

Member, Council of the Corporation Law Section of the Delaware State Bar Association, 1995-2022; Vice Chair, 2000-2002; Chair, 2002-2004

American Bar Association Business Law Section:

Member, Section Council, 2009 – 2012

Corporate Laws Committee: Reporter, 2013 – 2020; Associate Reporter, 2011-2012; member, 2001-2007

Editorial Advisory Board, The Business Lawyer (2005-2017)

Chair, Corporate Documents and Process Committee, 2007-2010

Reporter, ABA Task Force on Corporate Responsibility (2002-2003)

2004 Daniel L. Herrmann Professional Conduct Award, Delaware State Bar Association

2006 and 2013 Douglas E. Ray Excellence in Faculty Scholarship Award

Secretary, Delaware Board of Bar Examiners, 1983-1987

Treasurer, Delaware Volunteer Legal Services, Inc., 1991-2000
Chairman, Lawyer Referral Service Committee of the Delaware State Bar Association, 1993-1998

PUBLISHED WRITINGS (partial list, including all publications within the last 10 years as of July 2023)

Decoupling and Motivation: Re-Calibrating Standards of Fiduciary Review, Rethinking "Disinterested" Shareholder Decisions, and Deconstructing "De-SPACs" (with Henry T.C. Hu), 78 Business Lawyer 999 (2023)

Optimizing the World's Leading Corporate Law: A 20-Year Retrospective and Look Ahead (with Jack B. Jacobs & Leo E. Strine, Jr.), 77 Business Lawyer 321 (2022)

A Babe in the Woods: An Essay on Kirby Lumber *and the Evolution of Corporate Law*, 45 Delaware Journal of Corporate Law 125 (2020)

Delaware Corporate Fiduciary Law: Searching for the Optimal Balance, in EVAN J. CRIDDLE, PAUL B. MILLER, AND ROBERT H. SITKOFF, EDS., OXFORD HANDBOOK OF FIDUCIARY LAW (Oxford Univ. Press 2019) (with Leo E. Strine, Jr.)

The Role of Directors in M&A Transactions: A Governance Handbook for Directors, Management and Advisors, American Bar Association Business Law Section, published April 2019 (co-editor)

Finding the Right Balance in Appraisal Litigation: Deal Price, Deal Process, and Synergies (with Michael Wachter), 73 Business Lawyer 961 (2018)

Forum Shopping in the Bargain Aisle: Wal-Mart and the Role of Adequacy of Representation, in RESEARCH HANDBOOK ON REPRESENTATIVE SHAREHOLDER LITIGATION, SEAN GRIFFITH, JESSICA ERICKSON, DAVID H. WEBBER, AND VERITY WINSHIP, EDS. (Edward Elgar 2018) (with Jacob J. Fedechko)

Lyman Johnson's Invaluable Contribution to Delaware Corporate Jurisprudence, 74 Washington & Lee Law Review 909 (2017) (with Jack B. Jacobs)

The Importance of Being Dismissive: The Efficiency Role of Pleading Stage Evaluation of Shareholder Litigation, 42 Journal of Corporation Law 597 (2017) (with Michael Wachter)

A Most Adequate Response to Excessive Shareholder Litigation, 45 Hofstra Law Review 147 (2016)

Consent in Corporate Law, 70 Business Lawyer 161 (Winter 2014/2015)

How Long Do We Have to Play the "Great Game?," 100 Iowa Law Review Bulletin 31 (2015)

M&A Under Delaware's Public Benefit Corporation Statute: A Hypothetical Tour, 4 Harvard Business Law Review 255 (2014) (with Frederick Alexander, Frank Martin and Norman Monhait)

Director Nominations, 39 Delaware Journal of Corporate Law 117 (2014)

Putting Stockholders First, Not the First-Filed Complaint, 69 Business Lawyer 1 (2013) (with Leo E. Strine, Jr. and Matthew Jennejohn)

Who Let You Into the House?, 2012 Wisconsin Law Review 359 (2012)

Delaware Corporate Law and the Model Business Corporation Act: A Study in Symbiosis, 74 Duke Journal of Law and Contemporary Problems 107 (2011) (with Leo E. Strine, Jr. and Jeffrey M. Gorris)

Loyalty's Core Demand: The Defining Role of Good Faith in Corporation Law, 98 Georgetown Law Journal 629 (2010) (with Leo E. Strine, Jr., R. Franklin Balotti, and Jeffrey M. Gorris)

Rationalizing Appraisal Standards in Compulsory Buyouts, 50 Boston College Law Review 1021 (2009) (with Michael Wachter)

The Short and Puzzling Life of the "Implicit Minority Discount" in Delaware Appraisal Law, 156 University of Pennsylvania Law Review 1 (with Michael Wachter) (2007)

The Policy Foundations of Delaware Corporate Law, 106 Columbia Law Review 1749 (2006)

The Fair Value of Cornfields in Delaware Appraisal Law, 31 Journal of Corporation Law 101 (2006) (with Michael Wachter)

Twenty Years After Smith v. Van Gorkom*: An Essay On The Limits Of Civil Liability Of Corporate Directors And The Role Of Shareholder Inspection Rights*, 45 Washburn Law Review 301 (2006)

Ruby R. Vale and a Definition of Legal Scholarship, 31 Delaware Journal of Corporation Law 253 (2006)

Corporate Officers and the Business Judgment Rule: A Reply to Professor Johnson, 60 Business Lawyer 865 (2005) (with A. Gilchrist Sparks III)

Premiums in Stock for Stock Mergers and Some Consequences in the Law of Director Fiduciary Duties, 152 University of Pennsylvania Law Review 881 (2003)

The ABA Task Force on Professional Responsibility and the 2003 Changes to the Model Rules of Professional Conduct, 17 Georgetown Journal of Legal Ethics 35 (2003)

A Kinder, Gentler Critique of Van Gorkom *and its Less Celebrated Legacies*, 96 Northwestern Law Review 595 (2002)

Why I Do Not Teach Van Gorkom*,* 34 Georgia Law Review 477 (2000)

Corporate Democracy and Stockholder-Adopted By-Laws: Taking Back the Street?, 73 Tulane Law Review 409 (December 1998)

Calling Off the Lynch *Mob: The Corporate Director's Fiduciary Disclosure Duty*, 49 Vanderbilt Law Review 1087 (October 1996)

Common Law Duties of Non-Director Corporate Officers (with A. Gilchrist Sparks, III), 48 Business Lawyer 215 (1992)

"Appraisal Rights," chapter 36 of Drexler, Black and Sparks, DELAWARE CORPORATION LAW AND PRACTICE

EXPERT WITNESS, *AMICUS CURIAE* AND APPOINTMENTS (partial list)

In re Request of the Governor, 722 A.2d 307 (Del. 1998) (appointed by the Court *pro bono publico* to advocate on appointments clause of the State Constitution)

Goodrich v. E.F. Hutton Group, Inc., 681 A.2d 1039 (Del. 1996) (appointed by the Court to advocate on class action attorneys' fee award)

California Public Employees Retirement System v. Felzen, et al., 119 S.Ct. 720, 142 L.Ed.2d 766 (1999) (*amicus curiae* in support of petitioner on issue of appellate standing in stockholder derivative actions)

Onti, Inc. v. Integra Bank, 751 A.2d 904, 931-32 (Del. Ch. 1999) (expert witness on valuation of contingent claims including shareholder derivative claims)

In the Matter of Banc of America Capital Management, LLC, et al. and *In the Matter of Columbia Management Advisors, Inc.* (Securities and Exchange Commission, 2005-2009) (independent distribution consultant in connection with mutual fund settlements)

In the Matter of the Proposed Acquisition of Royal Indemnity Company, et al., in the Insurance Department of the State of Delaware (hearing officer in contested application for acquisition of control of Delaware property/casualty subsidiaries of Royal SunAlliance Insurance Group plc).

OTHER AFFILIATIONS

Music School of Delaware, director (2014 – 2020, 2021-present); Board Chair (2018 - 2020), Treasurer (2021 - 2022)
ACLU Delaware, Inc., director (1985-2015; President, 1996-2003); representative to the National Board of Directors (2004 –2009)
Wilmington Community Orchestra, violin
Ardensingers Orchestra, violin
Beth Israel Music Appreciation Society (BIMAS), Media, Pennsylvania

ALLEN R. HARTMAN, *et al*.	*	IN THE
Plaintiff,	*	CIRCUIT COURT
v.	*	FOR
SILVER STAR PROPERTIES REIT, INC., *et al*.	*	BALTIMORE CITY
Defendants.	*	Case No.: 24-c-23-003722

* * * * * * * * * * * * *

[PROPOSED] ORDER

UPON CONSIDERATION of Plaintiffs' Major Motion *in Limine*, Defendants' Opposition thereto, Plaintiffs' reply thereon, and the argument of counsel, if any, it is this ____ day of _____, 2024, by the Circuit Court for Baltimore City,

ORDERED, that Plaintiffs' Major Motion *in Limine* be, and the same hereby is, **DENIED**.

_____
Anthony F. Vittoria, Associate Judge
Circuit Court for Baltimore City