

HARTMAN COMMERCIAL PROPERTIES REIT
Form DEF 14A
April 29, 2004

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

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
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HARTMAN COMMERCIAL PROPERTIES REIT

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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(1) Title of each class of securities to which transaction applies:

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HARTMAN COMMERCIAL PROPERTIES REIT

1450 West Sam Houston Parkway North
Suite 100
Houston, Texas 77043

April 29, 2004

To the Shareholders of Hartman Commercial Properties REIT:

You are cordially invited to attend the annual meeting of shareholders of Hartman Commercial Properties REIT, a Texas business trust (the "Company"), to be held on June 4, 2004, at 2:00 p.m. local time at the Radisson Hotel Houston West, 10655 Katy Freeway, Houston, Texas 77024.

The formal business to be conducted at the meeting is described in the notice that follows this letter. At the annual meeting of shareholders you will be asked to elect the six individuals to serve on the Company's board of trust managers until the next annual meeting of shareholders and until their successors are duly elected and qualified.

At the annual meeting of shareholders, you will also be asked to consider and vote upon a proposal to reorganize the Company as a Maryland real estate investment trust pursuant to a merger of the Company directly with and into a Maryland real estate investment trust ("Hartman Maryland") formed for the sole purpose of the reorganization, and the conversion of each outstanding common share of beneficial interest of the Company into 1.42857 common shares of beneficial interest of Hartman Maryland, the surviving real estate investment trust (the "Reorganization"). Approval of the Reorganization shall constitute approval of all of the provisions set forth in the first amended and restated declaration of trust and bylaws of Hartman Maryland.

The Company is proposing the Reorganization in order to change its domicile to that of a state that is recognized by REIT analysts and investors as a domicile of choice for REITs, which we believe will result in greater market acceptance for our best-efforts public offering of securities that is being registered simultaneously with the proposed Reorganization. In addition, the Company's current declaration of trust does not comply with the Statement of Policy Regarding Real Estate Investment Trusts, adopted by the North American Securities Administrators Association, Inc. regarding charters of REITs that sell securities to the public, but which are not listed on a national securities exchange. Upon Reorganizing in Maryland, the Company's new declaration of trust is intended to be in compliance with these guidelines, as well as similar policy statements incorporated in the securities (or "blue sky") laws of individual states. The Company also believes that the Reorganization will provide greater organizational and investment flexibility. As a result, the Company's board of trust managers believes that this new structure will be in the best interest of the Company and its shareholders.

Please note that the six individuals that are elected to serve on the Company's board of trust managers at the annual meeting will also serve as the members of the board of trustees of Hartman Maryland if the Reorganization is approved by the shareholders of the Company.

We will be available to answer your questions during the meeting and afterward.

Our board of trust managers carefully considered the proposed Reorganization and the nominees for election to our board of trust managers and recommends that you vote in favor of the Reorganization, all of the nominees for election to our board of trust managers, and the other matters to be voted upon at the annual meeting. The accompanying proxy statement provides detailed information about the Reorganization and the nominees for election to our board of trust managers.

Whether or not you plan to attend the annual meeting in person, it is important that your shares be represented and voted at the meeting. Please date, sign, and return your appropriate proxy card promptly in the enclosed envelope to assure that your shares will be represented and voted at the annual meeting, even if you cannot attend. If you attend the annual meeting, you may vote your shares in person even though you have previously signed and returned your proxy card.

I look forward to seeing you on June 4, 2004, at 2:00 p.m.

Sincerely,

HARTMAN COMMERCIAL PROPERTIES REIT

/s/ Allen R. Hartman

Allen R. Hartman
President

HARTMAN COMMERCIAL PROPERTIES REIT

1450 West Sam Houston Parkway North
Suite 100
Houston, Texas 77043

April 29, 2004

Notice of Annual Meeting of Shareholders

To Be Held On Friday, June 4, 2004, at 2:00 p.m.

The annual meeting of shareholders of Hartman Commercial Properties REIT (the "Company") will be held at the Radisson Hotel Houston West, 10655 Katy Freeway, Houston, Texas 77024, on Friday, June 4, 2004, at 2:00 p.m. local time, for the following purposes:

1. To elect the six individuals to serve on the board of trust managers until the next annual meeting of shareholders and until their successors are duly elected and qualified.
2. To consider and vote upon a proposal to change our state of organization from Texas to Maryland pursuant to a merger (the "Merger") of the Company directly with and into a Maryland real estate investment trust ("Hartman Maryland") formed for the sole purpose of the reorganization, and the conversion of each outstanding common share of beneficial interest of the Company into 1.42857 common shares of beneficial interest of the surviving REIT (the "Reorganization"). Approval of the Reorganization and Merger shall constitute approval of all of the provisions set forth in the first amended and restated declaration of trust and bylaws of Hartman Maryland.
3. To transact such other business as may properly come before the meeting or any adjournments of the meeting.

The foregoing items of business are more fully described in the proxy statement accompanying this notice. Shareholders who owned common shares of beneficial interest at the close of business on April 30, 2004 are entitled to notice of, and to vote at, the meeting.

Our 2003 Annual Report, which is not a part of the proxy soliciting material, is enclosed.

All shareholders are cordially invited to attend the meeting in person. However, to assure your representation at the meeting, you are urged to vote your shares as soon as possible.

By Order of the Board of Trust Managers

/s/ Allen R. Hartman
Allen R. Hartman
Corporate Secretary

Whether or not you plan to attend the annual meeting in person, it is important that your shares be represented and voted at the meeting. Please date, sign, and return your appropriate proxy card promptly in the enclosed envelope to assure that your shares will be represented and voted at the annual meeting, even if you cannot attend. If you attend the annual meeting, you may vote your shares in person even though you have previously signed and returned your proxy card.

HARTMAN COMMERCIAL PROPERTIES REIT

1450 West Sam Houston Parkway North
Suite 100
Houston, Texas 77043

Proxy Statement

INFORMATION CONCERNING SOLICITATION AND VOTING

General

The enclosed proxy is solicited on behalf of the board of trust managers of Hartman Commercial Properties REIT, a Texas business trust, for use at our annual meeting of shareholders to be held on June 4, 2004, and at any adjournment, continuation or postponement of the meeting.

We use a number of abbreviations in this proxy statement. We refer to the Company as "Hartman Texas," "the Company," "we," "us" and "our." The term "proxy solicitation materials" includes this proxy statement, as well as the enclosed proxy card. References to "fiscal 2003" mean our 2003 fiscal year which began on January 1, 2003 and ended on December 31, 2003. The annual meeting of shareholders to be held on June 4, 2004 is simply referred to as "the annual meeting" or the "meeting." The First Amended and Restated Declaration of Trust is referred to as the "declaration of trust."

At the annual meeting of shareholders you will be asked to elect the six individuals to serve on the Company's board of trust managers until the next annual meeting of shareholders and until their successors are duly elected and qualified.

We are also proposing to change our state of organization from Texas to Maryland pursuant to a merger (the "Merger") of the Company directly with and into a Maryland real estate investment trust ("Hartman Maryland") formed for the sole purpose of the reorganization, and the conversion of each outstanding common share of beneficial interest of the Company into 1.42857 common shares of beneficial interest of Hartman Maryland, the surviving real estate investment trust (the "Reorganization"). Approval of the Reorganization and Merger shall constitute approval of all of the provisions set forth in the declaration of trust and bylaws of Hartman Maryland.

The six individuals that are elected to serve on the Company's board of trust managers at the annual meeting will also serve as the members of the board of trustees of Hartman Maryland if the Reorganization and Merger are approved by the shareholders of the Company.

Our principal executive office is located at 1450 West San Houston Parkway N., Suite 100, Houston, Texas 77043. Our principal executive office telephone number is (713) 467-2222 and our fax number is (713) 973-8912.

These proxy solicitation materials are being sent or given to all shareholders entitled to vote at the annual meeting of shareholders mailed on or about April 30, 2004.

Record Date and Shares Outstanding

Shareholders who owned our common shares of beneficial interest at the close of business on April 30, 2004, referred to in this proxy statement as the record date, are entitled to notice of, and to vote at, the annual meeting. At the record date, we had 4,907,107.16 common shares of beneficial interest issued and outstanding. Each common share of beneficial interest is entitled to one vote.

Revoking Your Proxy

You may revoke your proxy at any time prior to the date of the annual meeting by: (1) submitting a later-dated vote in person at the annual meeting, or (2) delivering instructions to the attention of the

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Corporate Secretary at Hartman's principal executive office, 1450 West San Houston Parkway N., Suite 100, Houston, Texas 77043. Any notice of revocation sent to us must include the shareholder's name and must be received prior to the meeting to be effective.

How Your Proxy Will Be Voted

All shares represented by properly executed proxies received in time for the meeting will be voted at the meeting in accordance with the instructions marked thereon or otherwise as provided therein, unless such proxies have previously been revoked. Unless instructions to the contrary are marked, or if no instructions are specified, shares represented by proxies will be voted:

FOR the election of all of the following nominees to the Company's board of trust managers: Allen R. Hartman, Robert W. Engel, Samuel C. Hathorn, Jack L. Mahaffey, Chris A. Minton, and Chand Vyas.

FOR the proposal to reorganize the Company in Maryland pursuant to a merger (the "Merger") of the Company directly with and into a Maryland real estate investment trust ("Hartman Maryland") formed for the sole purpose of the reorganization, and the conversion of each outstanding common share of beneficial interest of the Company into 1.42857 common shares of beneficial interest of Hartman Maryland, the surviving real estate investment trust (the "Reorganization"). Approval of the Reorganization and Merger shall constitute approval of all of the provisions set forth in the declaration of trust and bylaws of Hartman Maryland.

In addition, if any other matters properly come before the annual meeting, it is the intention of the persons named in the enclosed proxy card to vote the shares they represent as directed by the board of trust managers. We have not received notice of any other matters that may properly be presented at the annual meeting. If the annual meeting is postponed or adjourned for any reason, at any subsequent reconvening (within 11 months from the date of this proxy statement) of the annual meeting, all proxies will be voted in the same manner as such proxies would have been voted at the original convening of the annual meeting (except for any proxies that have theretofore effectively been revoked or withdrawn).

Quorum

Each common share of beneficial interest outstanding on the record date is entitled to one vote. Cumulative voting is not permitted. A quorum, which is a majority of the outstanding shares as of the record date, must be present in order to hold the meeting and to conduct business. Your shares will be counted as being present at the meeting if you appear in person at the meeting or if you submit a properly executed proxy card. Votes against the proposal will be counted both to determine the presence or absence of a quorum and to determine whether the requisite number of voting shares has been obtained.

Voting

Tabulation/Required Vote

If a quorum is present, the vote of a majority of the shares represented at the annual meeting in person or by proxy is required for the election of the trust managers. Withheld votes will have the same effect as a vote against the respective nominee.

If a quorum is present, the affirmative vote of at least two-thirds of the common shares of beneficial interest entitled to vote at the annual meeting is required to approve the proposal to reorganize the Company in Maryland. Abstentions will have the same effect as a vote against the Reorganization.

Votes cast by proxy or in person at the meeting will be counted by the persons appointed by us to act as inspectors of election for the meeting. Abstentions, broker non-votes (which are explained below) and shares as to which authority to vote on any proposal is withheld, are each included in the determination of the number of shares present and voting at the meeting for purposes of obtaining a quorum. Each will be tabulated separately.

Broker Non-Votes

In the absence of controlling precedent to the contrary, we intend to treat abstentions and broker non-votes in the following manner. A broker "non-vote" occurs when a nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have the discretionary voting power with respect to that item and has not received instructions from the beneficial owner. Broker "non-votes" and shares as to which proxy authority has been withheld with respect to any matter are not deemed to be entitled to vote for purposes of determining whether shareholder approval of that matter has been obtained. With respect to the election of trust managers and the Reorganization, broker "non-votes" have the same effect as a vote against the nominee or the proposal, as the case may be.

Solicitation of Proxies

This solicitation is being made by mail on behalf of our board of trust managers, but may also be made without additional remuneration by our officers or employees by telephone, telegraph, facsimile transmission, e-mail or personal interview. We will bear the expense of the preparation, printing and mailing of the enclosed form of proxy, notice of trust managers meeting and this proxy statement and any additional material relating to the meeting that may be furnished to our shareholders by our board subsequent to the furnishing of this proxy statement. We will reimburse banks and brokers who hold shares in their name or custody, or in the name of nominees for others, for their out-of-pocket expenses incurred in forwarding copies of the proxy materials to those persons for whom they hold such shares. To obtain the necessary representation of shareholders at the meeting, supplementary solicitations may be made by mail, telephone or interview by our officers or employees, without additional compensation, or selected securities dealers.

PROPOSAL NO. 1

ELECTION OF TRUST MANAGERS

The board of trust managers currently consists of six members, four of whom (Samuel C. Hathorn, Jack L. Mahaffey, Chris A. Minton, and Chand Vyas) have been determined by the board of trust managers to be "independent" as that term is defined under the rules set by the Securities and Exchange Commission ("SEC"). The board of trust managers has proposed the following nominees for election as trust managers, each to serve for a term ending at the 2005 Annual Meeting of Shareholders: Allen R. Hartman, Robert W. Engel, Samuel C. Hathorn, Jack L. Mahaffey, Chris A. Minton, and Chand Vyas. Each nominee elected as a trust manager will continue in office until his successor has been elected and qualified, or until his earlier death, resignation or retirement. The persons named in the enclosed proxy intend to vote the proxy for the election of each of the six nominees, unless you indicate on the proxy card that your vote should be withheld from any or all of the nominees.

We expect each nominee for election as a trust manager to be able to serve if elected. If any nominee is not able to serve, proxies will be voted in favor of the remainder of those nominated and may be voted for substitute nominees, unless the board chooses to reduce the number of trust managers serving on the board.

The principal occupation and certain other information about the nominees are set forth below.

The board of trust managers unanimously recommends a vote FOR the election of these nominees as trust managers.

Allen R. Hartman has been our president, secretary and a member of our board of trust managers since our formation in 1998. He is also the sole limited partner of our advisor and property manager, Hartman Management, L.P., as well as the president, secretary, sole trustee and sole shareholder of the general partner of Hartman Management. Since 1984, Mr. Hartman, as an individual general partner, has been the sponsor of 17 private limited and general partnerships that have invested in commercial real estate in Houston, Texas. Mr. Hartman has over 30 years of experience in the commercial real estate industry. From 1978 to 1983, Mr. Hartman owned and operated residential rental properties. From 1972 to 1978, Mr. Hartman worked as an independent contractor in the real estate construction industry. In 1978, Mr. Hartman formed Hartman Investment Properties (a Texas sole proprietorship) to develop, acquire, manage, and lease commercial real estate ventures.

Robert W. Engel has been our Chief Financial Officer and a member of our board of trust managers since 2000, and is the controller of Hartman Management. Mr. Engel is a graduate from the University of Texas with a BBA with highest honors with a major in Accounting. Mr. Engel is a CPA and holds memberships in the American Institute of Certified Public Accountants, and the Texas Society of Certified Public Accountants. Mr. Engel is also a CPM, with membership in the Institute of Real Estate Management, and a CCIM as a member of the CCIM Institute. He is a licensed real estate broker in the State of Texas. From 1991 to 1999, Mr. Engel served as vice president and controller for Reignquest/Fred Rizk Construction Company.

Chand Vyas has been a member of our board of trust managers since 2002. Mr. Vyas is the Chairman and Chief Executive Officer of EPS Technology, a global information technology and business process outsourcing company that he founded in 2000. From 1982 until 1998, Mr. Vyas served as Chief Executive Officer of Ziegler Coal Holding Company, where he led a buyout of Ziegler from its parent company, Houston Natural Gas, in 1985. In subsequent years, under Mr. Vyas' leadership, Ziegler grew many fold through acquisitions including the purchase of Old Ben Coal from British Petroleum as well as Shell Mining Company from Shell Oil. Ziegler Coal Holding Company went public in 1994 with the largest initial public offering underwritten during that year's third quarter.

Jack L. Mahaffey has been a member of our board of trust managers since 2000. Mr. Mahaffey served as the President of Shell Mining Co. from 1984 until 1991. Since his retirement in 1991, Mr. Mahaffey has managed his personal investments. Mr. Mahaffey graduated from Ohio State University with a B.S. and M.S. in Petroleum Engineering and served in the United States Air Force. He is a former board member of the National Coal Association and the National Coal Council.

Samuel C. Hathorn has been a member of our board of trust managers since 2000. Mr. Hathorn has been in the home building and land development business for over thirty years. He has held both divisional and senior management positions with three different large publicly held home builders/developers during his real estate career. For the last twenty-one years, Mr. Hathorn has been a senior executive with Weyerhaeuser Real Estate Company (WRECO), a wholly owned subsidiary of Weyerhaeuser Company (NYSE). Since 1984, Mr. Hathorn has been President and Chief Executive Officer of Trendmaker Homes, the Houston, Texas based home building and land development subsidiary of WRECO. Mr. Hathorn is a licensed C.P.A. in the State of California and holds a Bachelor of Science degree in accounting. He currently serves as a director of National Beverage Corp. (AMEX).

Chris A. Minton has been a member of our board of trust managers since 2000. Mr. Minton was employed by Lockheed Martin for 35 years and was a Vice-President of Lockheed's Technology Services Group from 1993 until 1995. While employed at Lockheed, he supervised the business operations of six operating companies that employed over 30,000 people. Since his retirement from Lockheed in 1995, Mr. Minton has managed his personal investments and served as a consultant to a privately held aircraft mechanics school and to a Lockheed Martin subsidiary company. Mr. Minton graduated from Villanova University with a Bachelors Degree, and he is a licensed C.P.A. (retired status) in the State of Texas. He has been awarded the Gold Knight of Management award for achievements as a professional manager by the National Management Association.

Board of Trust Managers Meetings and Committees

During the fiscal year ended December 31, 2003, the board of trust managers met five times and took action by unanimous written consent four times. A quorum of trust managers attended the meetings of the board of trust managers held during 2003. Our entire board considers all major decisions concerning our business, including any property acquisitions. However, our board has established committees so that certain functions can be addressed in more depth than may be possible at a full board meeting. The board of trust managers has established two permanent committees, each composed solely of independent directors: the Audit Committee and the Conflicts Committee.

Audit Committee. The Audit Committee consists of Chris A. Minton, Samuel C. Hathorn, and Chand Vyas. Our board of trust managers has determined that Chris A. Minton, chairman and certified public accountant, is the "audit committee financial expert," as defined by the rules of the SEC. The audit committee's primary functions are to assist the board of trust managers in fulfilling its oversight responsibilities by reviewing the financial information to be provided to the shareholders and others, the system of internal controls which management has established, and the audit and financial reporting process. The Audit Committee has adopted a written charter approved by the board of trust managers, which can be found on our website at www.hartmanmgmt.com. The Audit Committee charter is also attached to this proxy statement as *Appendix A*. Each of the members of the Audit Committee is "independent" under the rules set by the SEC. During the fiscal year ended December 31, 2003, the Audit Committee met five times and took action by unanimous written consent five times.

Nominating Committee. Our board of trust managers does not currently have a nominating committee. Rather, each member of our board of trust managers participates in the process of identifying and considering individuals for board membership. Our board of trust managers believes its current process is effective because the current members of the board of trust managers are seasoned

executives from a variety of backgrounds. Each member of our board of trust managers satisfies the SEC's independence requirements, other than Mr. Hartman and Mr. Engel. The board of trust managers will consider for recommendation to the board nominations made by shareholders that comply with the procedures described below under the caption "Shareholder Proposals."

Once our board of trust managers has identified a possible nominee (whether through a recommendation from a shareholder or otherwise), the independent members of the board of trust managers make an initial determination as to whether to conduct a full evaluation of the candidate. This initial determination is based on the information provided to the board of trust managers when the candidate is recommended, the board's own knowledge of the prospective candidate and information, if any, obtained by the board's inquiries. The preliminary determination is based primarily on the need for additional board members to fill vacancies, expand the size of the board of trust managers or obtain representation in market areas without board representation and the likelihood that the candidate can satisfy the evaluation factors described below. If the independent members of the board of trust managers determines that additional consideration is warranted, the board of trust managers may gather additional information about the candidate's background and experience. The independent members of the board of trust managers then evaluate the prospective nominee against the following standards and qualifications:

achievement, experience and independence;

wisdom, integrity and judgment;

understanding of the business environment; and

willingness to devote adequate time to board duties.

The independent members of the board of trust managers also consider such other relevant factors as they deem appropriate, including the current composition of the board, the need for specific expertise, and the evaluations of other candidates. In connection with this evaluation, the independent members of the board of trust managers determine whether to interview the candidate. If the independent members of the board of trust managers decide that an interview is warranted, one or more of those members, and others as appropriate, interview the candidate in person or by telephone. After completing this evaluation and interview, the independent members of the board of trust managers make a recommendation to the full board of trust managers as to the persons who should be nominated by the board, and the board determines the nominees after considering the recommendation and report of the independent members of the board of trust managers.

Conflicts Committee. The Conflicts Committee consists of Jack L. Mahaffey and Chand Vyas. The conflicts committee's primary functions are to review specific matters that the board believes may involve conflicts of interest. The conflicts committee also determines if the resolution of the conflict of interest is fair and reasonable to us. The members of the conflicts committee may not be officers or employees of us or any of our affiliates (including Hartman Management). Each of the members of the Conflicts Committee is "independent" under the rules set by the SEC. During the fiscal year ended December 31, 2003, the Conflicts Committee met three times and took action by unanimous written consent three times.

Code of Ethics

Our board of trust managers has adopted a Code of Business Conduct Policy that is applicable to all members of our board of trust managers, our executive officers and our employees. We have posted the policy on our website, at www.hartmanmgmt.com. If, in the future, we amend, modify or waive a provision in the Code of Business Conduct Policy, we may, rather than filing a Current Report on Form 8-K, satisfy the disclosure requirement by posting such information on our website as necessary.

Communication with Trust Managers

We have established procedures for shareholders or other interested parties to communicate directly with our board of trust managers. Such parties can contact the board by mail at: Chairperson of the Hartman Commercial Properties REIT Audit Committee, 1450 West San Houston Parkway N., Suite 100, Houston, Texas 77043. The Chairman of the Audit Committee will receive all communications made by this means.

Directors' Compensation

We pay our independent trust managers an annual fee of \$5,000, \$1,000 for each meeting attended, \$1,000 per quarter for attendance at board committee meetings, and \$1,000 per year for attendance at meetings of the independent board members, payable in either cash or by issuing such trust managers common shares of beneficial interest. Although we have not granted any awards under our equity compensation plans to any of our trust managers, we may also grant options to purchase common shares or other incentive awards to members of the board. All trust managers are reimbursed for reasonable out-of-pocket expenses incurred in connection with attendance at meetings of the board of trust managers. If a trust manager is also an officer of Hartman Management, we do not pay separate compensation for services rendered as a trust manager.

Executive Officers

Allen R. Hartman and Robert W. Engel currently serve as our executive officers. Mr. Hartman currently serves as our President and Secretary, while Mr. Engel currently serves as our Chief Financial Officer. For more information regarding Mr. Hartman and Mr. Engel, please see their biographies above.

Executive Compensation

We have no employees. Our operations are conducted by Hartman Management, L.P. and its affiliates. A description of the fees and compensation that we pay to Hartman Management, L.P. and its affiliates is found in the "Certain Transactions" section below.

Incentive Share Plan

We adopted an Incentive Share Plan to:

- furnish incentives to individuals chosen to receive share-based awards because they are considered capable of improving operations and increasing profit;
- encourage selected persons to accept or continue employment with Hartman Management, L.P.; and
- increase the interest of our trust managers in our welfare through their participation in the growth in the value of our common shares.

The total number of common shares that may be issued under the Incentive Share Plan is currently 5,000,000 common shares. As of the date hereof, no options or awards to purchase common shares have been granted under the Incentive Share Plan.

The Incentive Share Plan provides for the award to our full-time employees and trust managers, and certain of our consultants, of a broad variety of equity-based compensation alternatives such as nonqualified share options, incentive share options, restricted shares appreciation rights, and dividend equivalent rights. All awards under the Incentive Share Plan are subject to the ownership limits contained in our declaration of trust.

Options entitle the holder to purchase common shares for a specified exercise price during a specified period. Under the Incentive Share Plan, we may grant options that are intended to be incentive stock options within the meaning of Section 422 of the Internal Revenue Code ("incentive stock options") or options that are not incentive stock options ("nonqualified stock options"). Incentive stock options and nonqualified stock options generally may not have an exercise price less than 100% of the fair market value of the common shares on the date of grant and will expire, with certain exceptions, ten years after such date. Under the Incentive Share Plan, any option or portion thereof that has not vested on or before the termination of employment of an optionee expires on the date of such termination.

Restricted share awards entitle the recipient to purchase common shares from us in consideration of a specified exercise price under terms that provide for vesting over a specified period of time. Such awards would typically be forfeited with respect to the unvested shares upon the termination of the recipient's employment or other relationship with us. Restricted shares may not be issued to non-employee trust managers. Restricted shares may not, in general, be sold or otherwise transferred until restrictions are removed and the shares have vested. Holders of restricted shares may receive distributions prior to the time when the restrictions lapse.

Share appreciation rights entitle the recipient to receive from us (at the time of exercise) a per share amount equal to the excess of the fair market value at the date of exercise of a common share over a price specified at the time of grant, which cannot be less than the fair market value of the common shares on the grant date. Share appreciation rights may not be issued to non-employee trust managers.

Dividend equivalent rights entitle the recipient to receive, for a specified period, a payment equal to the quarterly dividend declared and paid by us on one common share. Dividend equivalent rights may not be granted to non-employee trust managers and are forfeited to us upon the termination of the recipient's employment or other relationship with us.

The Incentive Share Plan will be administered by the board of trust managers. The board will determine:

the eligible persons to whom awards will be granted;

the time or times at which awards will be granted;

the number of shares to be subject to such awards and the terms and conditions thereof; and

administrative and interpretive rules and regulations relating to the plan and any modifications and revisions of such rules and regulations.

Limited Liability and Indemnification of Trust Managers, Officers, Employees and Other Agents

Our declaration of trust provides that none of our trust managers or officers will be liable to us for any act, omission, loss, damage or expense arising from the performance of his or her duties as a trust manager and/or officer, except for his or her own willful misfeasance, willful malfeasance or gross negligence. We also maintain a directors and officers liability insurance policy.

Subject to limited exceptions, our declaration of trust and bylaws provide that we will indemnify each of our trust managers, officers, employees and agents to the fullest extent allowed by the Texas Real Estate Investment Trust Act. The Texas Real Estate Investment Trust Act generally allows trust managers and officers to be indemnified against all judgments, penalties (including taxes), fines, amounts paid in settlement and reasonable expenses incurred in connection with any proceeding unless:

the trust manager or officer is found liable to us on the basis that such trust manager or officer improperly received a personal benefit; or

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the trust manager or officer is found liable for willful or intentional misconduct in the performance of his or her duty to us.

In spite of the above provisions of Texas law, our declaration of trust provides that our trust managers and officers will be indemnified by us for losses arising from our operation only if all of the following conditions are met:

the indemnified person determined, in good faith, that the course of conduct which caused the loss or liability was in our best interests;

the indemnified person was acting on our behalf or performing services for us;

in the case of affiliated trust managers and officers, the liability or loss was not the result of negligence or misconduct by the party seeking indemnification; and

in the case of independent trust managers, the liability or loss was not the result of gross negligence or willful misconduct by the party seeking indemnification.

Any indemnification is recoverable only out of our assets and not from our shareholders. Indemnification could reduce the legal remedies available to us and our shareholders against the indemnified individuals. These rights do not limit a shareholder's ability to obtain injunctive relief or other equitable remedies for a violation of a trust manager's or an officer's duties to us, although the equitable remedies may not be an effective remedy in some circumstances. The general effect to investors of any arrangement under which any of our trust managers, officers, employees or agents are indemnified against liability is a potential reduction in distributions resulting from such obligations or from our payment of premiums associated with any insurance we may obtain in relation to these obligations.

The Securities and Exchange Commission takes the position that indemnification against liabilities arising under the Securities Act of 1933 is against public policy and unenforceable. Indemnification of trust managers or officers will not be allowed for liabilities arising from or out of a violation of state or federal securities laws, unless one or more of the following conditions are met:

there has been a successful adjudication on the merits of each count involving alleged securities law violations;

such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction; or

a court of competent jurisdiction approves a settlement of the claims against the indemnitee and finds that indemnification of the settlement and the related costs should be made, and the court considering the request for indemnification has been advised of the position of the Securities and Exchange Commission and of the published position of any state securities regulatory authority in which the securities were offered as to indemnification for violations of securities laws.

Indemnification will be allowed for settlements and related expenses of lawsuits alleging securities laws violations and for expenses incurred in successfully defending any lawsuits, provided that a court either:

approves the settlement and finds that indemnification of the settlement and related costs should be made; or

dismisses with prejudice or there is a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee and a court approves the indemnification.

Please note that if the Reorganization is approved and completed, the limitation of liability and the indemnification of our trustees, officers, employees and other agents shall be governed by Maryland

law and our First Amended and Restated Declaration of Trust, in substantially the form attached hereto as *Appendix B*. For further information regarding the differences between Maryland law and Texas law, please see the summary presented in Proposal No. 2 in this proxy statement, under the heading "What are the Material Differences Between the Rights of a Shareholder Under Texas and Maryland Laws?".

Interlocks and Insider Participation

None of our executive officers serves as a member of a board of trust managers, board of directors or compensation committee of any entity that has one or more executive officers serving as a member of our board of trust managers.

Securities Ownership of Officers and Directors

As of March 31, 2004, to our knowledge, no member of our board of trust managers, nominee for election to the board of trust managers, nor any of our executive officers, or any person or "group" (as that term is used in the Securities Exchange Act of 1934, as amended) is a "beneficial owner" of more than 5% of our outstanding common shares of beneficial interest.

Audit and Non-Audit Fees

The following table presents fees for professional audit services rendered by Pannell Kerr Forster of Texas, P.C., our independent auditors, for the audit of our financial statements during the years ended December 31, 2003 and December 31, 2002 and fees billed for other services rendered by Pannell Kerr Forster of Texas, P.C. during those periods:

	<u>2003</u>	<u>2002</u>
Audit Fees(1)	\$ 195,788	\$ 83,829
Audit-Related Fees(2)	142,791	
Tax Fees(3)	21,661	
All Other Fees		
TOTAL FEES	\$ 360,240	\$ 83,829

- (1) Audit fees consisted of professional services performed in connection with the audit of our annual financial statements and review of financial statements included in our Form 10-Qs and Form 10-Ks.
- (2) Audit-related fees for 2003 consisted of professional services performed in connection with a review of our financial statements and other financial data, which were included in our registration statements on Form 10 and Form S-11.
- (3) Tax fees consisted principally of assistance with matters related to tax compliance, tax planning and tax advice.

The Audit Committee considers the provision of these services to be compatible with maintaining the independence of Pannell Kerr Forster of Texas, P.C.

PROPOSAL NO. 2

**REORGANIZATION OF THE COMPANY
FROM TEXAS TO MARYLAND AND
RELATED CHANGES TO THE RIGHTS OF SHAREHOLDERS**

Our board of trust managers has unanimously approved the proposal to change the Company's state of organization from Texas to Maryland and, for the reasons discussed below, believes that changing the Company's state of organization to Maryland is in the best interests of the Company and its shareholders. The effect of the Reorganization will be to change the law applicable to our business affairs from Texas law to Maryland law. Following the Reorganization:

Our corporate name will continue to be Hartman Commercial Properties REIT.

Our corporate office will continue to be located in Houston, Texas. We will not establish any offices or operations in Maryland as a result of the Reorganization.

Our business, trust managers and management will continue to be the same as immediately before the Reorganization.

Our fiscal year, assets, liabilities and dividend policies will be the same as immediately before the Reorganization.

The Company is proposing the Reorganization in order to change its domicile to Maryland, which is generally recognized by REIT analysts and investors as a domicile of choice for real estate investment trusts ("REITs"), which we believe will result in greater market acceptance for our best-efforts public offering of securities that is being registered simultaneously with the proposed Reorganization. Our board of trust managers believes that because of Maryland's more comprehensive laws governing REITs and the number of REITs domiciled in that state, Maryland courts have developed a greater expertise than Texas courts in dealing with REITs and REIT issues and thus have developed a greater body of relevant case law. Our board of trust managers believes that the comprehensive Maryland statutes, Maryland's policies with respect to REITs and the established body of relevant case law are more conducive to the operations of a REIT than the laws and policies of Texas and they provide the trust managers and management of a REIT with greater certainty and predictability in managing the affairs of the Company. In addition, the Company's current declaration of trust does not comply with the Statement of Policy Regarding Real Estate Investment Trusts, adopted by the North American Securities Administrators Association regarding charters of REITs that sell securities to the public, but which are not listed on a national securities exchange. Upon Reorganizing in Maryland, the Company's new declaration of trust is intended to be in compliance with these guidelines, as well as similar policy statements incorporated in the securities (or "blue sky") laws of individual states.

As a result of the above, our board of trust managers believes that being organized in Maryland and being governed by Maryland law, like the majority of REITs in our peer group, would be in the best interest of the Company.

How Will the Reorganization be Accomplished?

We will change our state of organization from Texas to Maryland pursuant to a merger (the "Merger") of the Company directly with and into a Maryland real estate investment trust ("Hartman Maryland") formed for the sole purpose of the reorganization, and the conversion of each outstanding common share of beneficial interest of the Company into 1.42857 common shares of beneficial interest of Hartman Maryland, the surviving REIT (the "Reorganization") pursuant to an Agreement and Plan of Merger. Approval of the Reorganization shall constitute approval of all of the provisions set forth in

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the declaration of trust and bylaws of Hartman Maryland. The form of Agreement and Plan of Merger is attached to this proxy statement as *Appendix C*.

Following approval by our shareholders, the Reorganization will become effective when articles of merger are filed with and accepted for record by the State Department of Assessments and Taxation of the State of Maryland and with the Harris County, Texas county clerk. We anticipate that this filing will be made as soon as possible after the annual meeting. At the effective time of the merger:

Hartman will be merged with and into its Maryland subsidiary, which will be the surviving trust in the Merger;

Hartman will cease to exist as a Texas business trust and, as a Maryland real estate investment trust, the Company will be governed by Maryland law instead of Texas law;

Following the Merger, the Company will be governed by the Maryland declaration of trust and Maryland bylaws in substantially the forms attached to this proxy statement as *Appendix B* and *Appendix D*, respectively;

Each common share of beneficial interest of Hartman Texas will be converted into 1.42857 common shares of beneficial interest of Hartman Maryland;

Following the effective time of the Merger, all share certificates representing our common shares immediately prior to the Merger will be deemed to represent 1.42857 common shares of beneficial interest of Hartman Maryland for each of our common shares reflected by such certificate without any action on the part of the holder; and

All options, rights or warrants to purchase our common shares of beneficial interest immediately prior to the Merger will thereafter entitle the holder to purchase 1.42857 common shares of beneficial interest of Hartman Maryland for each of our common shares of beneficial interest that the holder was entitled to purchase pursuant to such options, rights or warrants, with the exercise price adjusted accordingly, on the same terms without any action on the part of the holder.

The Reorganization is subject to conditions, including approval by at least two-thirds of the votes entitled to be cast at the annual meeting.

Why am I Receiving More Than One Common Share of Beneficial Interest in Hartman Maryland?

The Company is currently valued at approximately \$14 per common share of beneficial interest. Our common shares of beneficial interest currently are not registered under the Securities Act of 1933, as amended (the "Securities Act"), however, we are in the process of registering our common shares of beneficial interest under the Securities Act in a best-efforts public offering in which the shares will not be listed on a national securities exchange. Typically, REITs that offer their stock for sale to the public in such non-listed best efforts public offerings offer such shares at \$10 per share. Therefore, in connection with the Reorganization, we are making each common share of beneficial interest equal to \$10 per share. To do so, each current common share of beneficial interest will be exchanged for 1.42857 common shares of beneficial interest, par value \$0.001 per share, of Hartman Maryland. After the Reorganization, you will own more shares of Hartman Maryland than you currently do in the Company, however, each of those shares in Hartman Maryland will have a value that is proportionately less than the value of your shares in the Company. Similarly, your rights to receive common shares of beneficial interest, by exercise, conversion or otherwise, will be proportionately adjusted to reflect this exchange ratio. Each common share of beneficial interest of Hartman Maryland outstanding after the effective time of the Reorganization will entitle the holder thereof to voting rights (except as provided below), dividend rights and liquidations rights equivalent to the rights of a holder of common shares of

beneficial interest of Hartman Texas. Ultimately, after the Reorganization, you will have the same ownership percentage in Hartman Maryland as you currently have in the Company.

Does Anything Change With Regard To My Investment in Hartman Shares?

Other than as described above under "Why am I Receiving More Than One Common Share of Beneficial Interest in Hartman Maryland?", no. After the Reorganization, each outstanding share of Hartman Maryland will entitle the holder thereof to voting rights (except as provided under Maryland law as discussed below), dividend rights and liquidation rights equivalent to the rights of holders of our common shares prior to the Reorganization. However, see below for a discussion of the differences between Texas law and Maryland law, which could affect some of your rights as a shareholder in the Company.

If the Reorganization is approved and the Merger completed, we will take necessary action to provide that all rights of participants in our incentive share plan prior to the Merger will be substantially identical to their rights following the Merger, other than the number of shares, and any related adjustment to the exercise price, as discussed above under "Why am I Receiving More Than One Common Share of Beneficial interest in Hartman Maryland?". Accordingly, the participants' new rights will be on substantially identical terms and conditions contained in our existing plan. A vote to approve the Reorganization will also be deemed a vote to approve the necessary amendments to the existing incentive share plan.

What are the Benefits of the Reorganization?

Our board of trust managers believes that the Company will benefit in several ways by changing its state of organization from Texas to Maryland:

the Company will be governed by Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland (the "Maryland REIT Law"), which contains provisions conducive to the operations of a REIT;

being governed by Maryland law will allow for greater market acceptance for the securities being registered by the Company simultaneously with this proxy statement for a best-efforts public offering; and

being governed by Maryland law will bring the Company's governance more in line with that of other REITs.

The number of REITs that have organized or reorganized in Maryland may be attributable to the fact that for many years Maryland has followed a policy of encouraging REITs to establish their legal domicile in that state. In furtherance of that policy, Maryland has adopted comprehensive, modern and flexible laws that are periodically updated and revised to meet changing business needs. Maryland has a comprehensive body of law specific to REITs and a pro-REIT state tax structure, including:

provisions permitting charter restrictions on the transferability of shares, which are necessary to satisfy REIT tax requirements; and

provisions which permit the issuance of shares to holders for the specific purpose of satisfying REIT tax requirements on share ownership.

The Maryland REIT Law specifically governs REITs that are organized as a trust, such as the Company, which many believe helps provide greater certainty with respect to the treatment of a REIT under state law.

What are the Disadvantages of the Reorganization?

While our board of trust managers believes the Reorganization is in the best interests of the Company and its shareholders, Texas and Maryland law differ in some respects. It is possible that one or more of these differences may be considered disadvantageous to any given shareholder. The rights of shareholders and the powers of management under Maryland and Texas law are discussed in more detail below.

What are the Material Federal Income Tax Consequences of the Reorganization?

The Reorganization is intended to be treated for federal income tax purposes as a "reorganization" within the meaning of Section 368(a) of the Code. Based on the intended qualification of the Reorganization as a "reorganization," no gain or loss will be recognized by the Company as a result of the Reorganization, and no gain or loss will be recognized by any shareholder of the Company who receives common shares of beneficial interest of the new Maryland real estate investment trust in exchange for our current common shares of beneficial interest. Each former holder of the Company's common shares of beneficial interest will have the same tax basis in the Maryland common shares of beneficial interest received by such holder pursuant to the Reorganization as such holder has in the shares of the Company's common shares of beneficial interest. The Company has not obtained, and does not intend to obtain, a ruling from the Internal Revenue Service with respect to the tax consequences of the Reorganization. The foregoing is only a summary of certain federal income tax consequences. State, local or foreign income tax consequences to shareholders may vary from the federal tax consequences described above, and shareholders should consult their own tax advisors as to the effect of the Reorganization under applicable tax laws.

Will the Company's Business Change After the Reorganization?

No, the Reorganization will not result in any change in our name, business, trust managers, management, fiscal year, assets or liabilities, dividend policies or the location of our principal executive offices.

How Do the Rights of Shareholders and the Corporate Governance of the Company Compare Before and After the Reorganization?

Hartman is currently organized as a business trust under the laws of the State of Texas. As a Texas business trust, Hartman is governed by:

the Texas Real Estate Investment Trust Act, which we refer to as the "Texas Law;"

the Company's amended declaration of trust; and

the Company's amended and restated bylaws.

As a Maryland real estate investment trust, Hartman will be governed by:

The Maryland REIT Law;

certain provisions of the Maryland General Corporation law, which we refer to as the "MGLC;"

the Maryland declaration of trust in the form attached hereto as *Appendix B*, as further amended from time to time; and

the Maryland bylaws attached hereto as *Appendix D*, as further amended from time to time.

What are the Material Differences Between the Rights of a Shareholder Under Texas and Maryland Laws?

The following is a summary of the material differences between the rights of Hartman Maryland and Hartman Texas shareholders. As a Maryland REIT, Hartman Maryland is subject to the Maryland REIT Law, or "MRL." As a Texas real estate investment trust, Hartman Texas is subject to the Texas Real Estate Investment Trust Act, or the "Texas REIT Act."

The following discussion is not intended to be complete and is qualified by reference to the declaration of trust and bylaws of Hartman Maryland and Hartman Texas and the applicable state law. The declaration of trust and bylaws of Hartman Maryland and Hartman Texas are incorporated by reference in this proxy statement. The Hartman Maryland form of declaration of trust and bylaws are attached to this proxy statement as *Appendix B* and *Appendix D*, respectively. The Hartman Texas declaration of trust and bylaws will be sent to shareholders of Hartman Texas upon request. See "Where You Can Find More Information" herein.

Rights of Hartman Maryland Shareholders

Rights of Hartman Texas Shareholders

Authorized Shares

Hartman Maryland is authorized to issue 450,000,000 shares of beneficial interest, consisting of 400,000,000 common shares, \$0.001 par value per share, and 50,000,000 preferred shares, \$0.001 par value per share.

Hartman Texas is authorized to issue 450,000,000 shares of beneficial interest, consisting of 400,000,000 common shares, \$0.001 par value per share, and 50,000,000 preferred shares, \$0.001 par value per share.

Pursuant to the Hartman Maryland declaration of trust, the board of trustees may amend the declaration of trust to increase or decrease the aggregate number of shares or the number of shares of any class or series without shareholder approval. In addition, the Hartman Maryland declaration of trust authorizes the board of trustees to classify or reclassify any unissued common shares or preferred shares without shareholder approval.

Except as otherwise specifically provided in any resolution of the Trust Managers providing for the issue of any particular series of preferred shares, the number of shares of any such series may be increased or decreased (but not below the number of shares of such series then outstanding) by a resolution adopted by the trust managers.

On December 31, 2003, there were no common shares and no preferred shares issued and outstanding.

On December 31, 2003, there were 4,907,107.16 common shares and no preferred shares issued and outstanding.

Number of Trustees/Trust Managers

A majority of the entire board of trustees may establish, increase or decrease the number of trustees, provided that the number of trustees will never be less than three nor more than 15.

The number of trust managers may be fixed from time to time by resolution of the trust managers, provided that the number of trust managers will never be less than three nor more than ten.

Removal of Trustees/Trust Managers

Subject to the rights of any preferred shares to vote for trustees, a trustee may be removed from office with or without cause by the affirmative vote of the holders of not less than a majority of shares then outstanding and entitled to vote generally in the election of trustees.

A trust manager may be removed from office with or without cause by the affirmative vote of the holders of not less than two-thirds of the shares then outstanding and entitled to vote thereon.

Rights of Hartman Maryland Shareholders

Rights of Hartman Texas Shareholders

Vacancies

Any vacancy may be filled only by the affirmative vote of a majority of the remaining trustees in office, even if the remaining trustees do not constitute a quorum, and any trustee elected to fill a vacancy will serve for the remainder of the full term of the trusteeship in which the vacancy occurred. Independent trustees must nominate replacements for vacancies among the independent trustees' positions.

Any vacancies will be filled by the affirmative vote of a majority of the remaining trust managers, even though less than a quorum. Independent Trust Managers must nominate replacements for vacancies in the Independent trust manager positions. An "Independent Trust Manager" is a trust manager who is not, and within the last two years has not been, directly or indirectly associated with the advisor of Hartman Texas by virtue of (i) ownership of an interest of the advisor, (ii) employment by the advisor or its affiliates, (iii) service as an officer, trust manager, or director of the advisor or its affiliates, (iv) performance of services, other than as a trust manager, for Hartman Texas, (v) service as a director, trust manager or trustee of more than three real estate investment trusts advised by the advisor, or (vi) maintenance of a material business or professional relationship with the advisor or any of its affiliates.

Limitation of Trustee/Trust Manager and Officer Liability

The MRL permits a Maryland REIT to include in its declaration of trust a provision limiting the liability of trustees and officers to the trust and its shareholders for money damages, except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgment and which is material to the cause of action. The Hartman Maryland declaration of trust contains a provision which eliminates trustees' and officers' liability to the maximum extent permitted by Maryland law.

The Hartman Texas declaration of trust provides that no Trust manager or officer of Hartman Texas will be liable to Hartman Texas for any act, omission, loss, damage or expense arising from the performance of his or her duties to Hartman Texas save only for his or her own willful misfeasance or malfeasance or negligence. The Texas REIT Act and the Hartman Texas bylaws both permit trust managers and officers of Hartman Texas to rely upon expert advice in making their decisions.

Rights of Hartman Maryland Shareholders

Rights of Hartman Texas Shareholders

Indemnification

The MRL permits a Maryland REIT to indemnify and advance expenses to its trustees, officers, employees and agents to the same extent as permitted for directors and officers of Maryland corporations. The Maryland General Corporation Law, or MGCL, permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service in those or other capacities unless it is established that:

the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty,

the director or officer actually received an improper personal benefit in money, property or services or

in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

However, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses.

The Texas REIT Act permits a Texas REIT to indemnify a person who was, is, or is threatened to be, made a named defendant or respondent in a threatened, pending or completed action, suit or proceeding because the person is or was a trust manager only if it is determined that the person:

conducted himself or herself in good faith;

reasonably believed in the case of conduct in his or her official capacity as a trust manager of the REIT, that his or her conduct was in the REIT's best interest, and in all other cases, that his or her conduct was at least not opposed to the REIT's best interests; and

in the case of a criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

The Texas REIT Act, with limited exceptions, forbids the indemnification of a trust manager in respect of a proceeding in which the trust manager is found liable on the basis that personal benefit was improperly received by him or her, whether or not the benefit resulted from an action taken in the trust manager's official capacity or in which the person is found liable to the REIT.

The Hartman Texas declaration of trust provides that Hartman Texas will indemnify (a) any present or former trust manager or officer of Hartman Texas, (b) any person who while serving as a trust manager or officer of Hartman Texas, served at Hartman

Rights of Hartman Maryland Shareholders

The Hartman Maryland declaration of trust provides that Hartman Maryland will indemnify and hold harmless a trustee, officer, employee or agent against any and all losses or liabilities reasonably incurred by such trustee, officer, employee or agent in connection with or by reason of any act or omission performed or omitted to be performed on Hartman Maryland's behalf in such capacity.

However, the Hartman Maryland declaration of trust limits Hartman Maryland's ability to indemnify its trustees, officers, employees or agents for losses arising from its operation by requiring that the following additional conditions are met:

the trustees, officers, employees or agents have determined, in good faith, that the course of conduct that caused the loss or liability was in Hartman Maryland's best interests;

in the case of non-independent trustees, the liability or loss was not the result of negligence or misconduct by the non-independent trustee;

in the case of independent trustees, the liability or loss was not the result of gross negligence or willful misconduct by the independent trustee; and

the indemnification or agreement to hold harmless is recoverable only out of Hartman Maryland's net assets and not from the shareholders.

Indemnification of Hartman Maryland's trustees, officers, employees

Rights of Hartman Texas Shareholders

Texas's request as a trust manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another entity and (c) any person nominated or designated by the trust managers or any committee thereof to serve in any of the above capacities.

However, the Hartman Texas declaration of trust limits Hartman Texas's ability to indemnify its trust managers and officers and the other persons mentioned above for losses arising from its operations by requiring that the following additional conditions are met:

the person seeking indemnification has determined, in good faith, that the course of conduct that caused the loss or liability was in Hartman Texas's best interests;

in the case of a person seeking indemnification who is not an Independent Trust Manager, the liability or loss was not the result of negligence or misconduct by such person;

in the case of an Independent Trust Manager, the liability or loss was not the result of gross negligence or willful misconduct by the Independent Trust Manager; and

the indemnification or agreement to hold harmless is recoverable only out of Hartman Texas's net assets and not from its shareholders.

Indemnification of Hartman Texas's trust managers, officers or employees

Rights of Hartman Maryland Shareholders

or agents will not be allowed for liabilities arising from or out of a violation of state or federal securities laws, unless one or more of the following conditions are met:

there has been a successful adjudication on the merits of each count involving alleged securities law violations;

such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction; or

a court of competent jurisdiction approves a settlement of the claims against the indemnitee and finds that indemnification of the settlement and the related costs should be made, and the court considering the request for indemnification has been advised of the position of the Securities and Exchange Commission and of the published position of any state securities regulatory authority in which Hartman Maryland's securities were offered as to indemnification for violations of securities laws.

Hartman Maryland's declaration of trust provides that the advancement of funds to trustees, officers, employees or agents for legal expenses and other costs incurred as a result of any legal action for which indemnification is being sought is permissible only if all of the following conditions are satisfied:

the legal action relates to acts or omissions with respect to the performance of duties or services on behalf of Hartman Maryland;

Rights of Hartman Texas Shareholders

will not be allowed for liabilities arising from or out of a violation of state or federal securities laws, unless one or more of the following conditions are met:

there has been a successful adjudication on the merits of each count involving alleged securities law violations as to the person requesting indemnification;

such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the person requesting indemnification; or

a court of competent jurisdiction approves a settlement of the claims against the indemnitee and finds that indemnification of the settlement and the related costs should be made, and the court considering the request for indemnification has been advised of the position of the Securities and Exchange Commission and of the published position of any state securities regulatory authority in which Hartman Texas's securities were offered as to indemnification for violations of securities laws.

Hartman Texas's declaration of trust provides that reasonable expenses incurred by a trust manager, an officer or one of the other persons eligible for indemnification, who was or is a witness in a legal action or was, is, or is threatened to be, made a named defendant or respondent in a legal action will be paid or reimbursed by Hartman Texas at reasonable intervals in advance of final disposition of the proceeding after Hartman Texas

Rights of Hartman Maryland Shareholders

the trustees, officers, employees or agents provide Hartman Maryland with written affirmation of their good faith belief that they have met the standard of conduct necessary for indemnification;

the legal action is initiated by a third party who is not a shareholder or, if the legal action is initiated by a shareholder acting in his or her capacity as such, a court of competent jurisdiction specifically approves such advancement; and

the trustees, officers, employees or agents agree in writing to repay the advanced funds to Hartman Maryland together with the applicable legal rate of interest thereon, in cases in which such trustees, officers, employees or agents are found not to be entitled to indemnification.

Rights of Hartman Texas Shareholders

receives a written undertaking by or on behalf of the proposed indemnitee to repay the amount paid or reimbursed by Hartman Texas, together with the applicable legal rate of interest, if it is ultimately determined that he or she is not entitled to indemnification, provided that:

the legal action relates to acts or omissions with respect to the performance of duties or services on behalf of Hartman Texas; and

the legal action is initiated by a third party who is not a shareholder or, if the legal action is initiated by a shareholder acting in his or her capacity as such, a court of competent jurisdiction specifically approves such advancement.

Statutory Takeover Provisions

The MRL and the MGCL provide protection for Maryland REITs against unsolicited takeovers by protecting the board of trustees with regard to actions taken in a takeover context. The MRL and the MGCL provide that the duties of trustees will not require them to:

accept, recommend or respond to any proposal by a person seeking to acquire control;

make a determination under the Maryland Business

The Texas REIT Act does not contain any provisions regarding unsolicited takeovers.

Rights of Hartman Maryland Shareholders

Rights of Hartman Texas Shareholders

Combination Act or the Maryland Control Share Acquisition Act, as described below;

elect to be subject to any or all of the "elective provisions" described below; or

act or fail to act solely because of (i) the effect the act or failure to act may have on an acquisition or potential acquisition of control or (ii) the amount or type of consideration that may be offered or paid to shareholders in an acquisition.

The MRL and the MGCL also establish a presumption that the act of a trustee satisfies the required standard of care. In addition, an act of a trustee relating to or affecting an acquisition or a potential acquisition of control is not subject under the MRL and the MGCL to a higher duty or greater scrutiny than is applied to any other act of a trustee. This provision creates a Maryland rule which is less exacting than case law in many other jurisdictions which imposes an enhanced level of scrutiny when a board implements anti-takeover measures in a change of control context and shifts the burden of proof to the board to show that the defensive mechanism adopted by a board is reasonable in relation to the threat posed.

Subtitle 8 of Title 3 of the MGCL allows publicly held Maryland REITs to elect to be governed by all or any part of Maryland law provisions relating to extraordinary actions and unsolicited takeovers. The election to be governed by one or

Rights of Hartman Maryland Shareholders

Rights of Hartman Texas Shareholders

more of these provisions can be made by a Maryland REIT in its declaration of trust or bylaws or by resolution adopted by the board of trustees so long as the REIT has at least three trustees who, at the time of electing to be subject to the provisions, are not:

officers or employees of the REIT;

persons seeking to acquire control of the REIT;

trustees, officers, affiliates or associates of any person seeking to acquire control; or

nominated or designated as trustees by a person seeking to acquire control.

Articles supplementary must be filed with the Maryland State Department of Assessments and Taxation if a Maryland REIT elects to be subject to any or all of the provisions by board resolution or bylaw amendment. Shareholder approval is not required for the filing of articles supplementary.

Subtitle 8 provides that a REIT can elect to be subject to all or any portion of the following provisions notwithstanding any contrary provisions contained in its existing declaration of trust or bylaws:

a classified board;

two-thirds vote requirement for removing a trustee;

a requirement that the number of trustees be fixed only by vote of the trustees;

Rights of Hartman Maryland Shareholders

a requirement that a vacancy on the board be filled only by the remaining trustees and for the remainder of the full term of the trusteeship in which the vacancy occurred; and

a majority requirement for the calling of a special meeting of shareholders.

Pursuant to Subtitle 8, Hartman Maryland has elected to provide that vacancies on its board of trustees may be filled only by the remaining trustees and for the remainder of the full term of the trusteeship in which the vacancy occurred. Through provisions in its declaration of trust and bylaws unrelated to Subtitle 8, Hartman Maryland already vests in its board of trustees the exclusive power to fix the number of trusteeships.

Call of Special Shareholders Meetings

Special meetings of shareholders may be called by the president, by a majority of trustees or by a majority of independent trustees and must be called by an officer of Hartman Maryland upon the written request of shareholders holding in the aggregate ten percent or more of the outstanding shares entitled to vote on any matter to be considered at the meeting.

Rights of Hartman Texas Shareholders

The Hartman Texas declaration of trust provides that special meetings of shareholders may be called by the president or by a majority of trust managers and must be called by an officer of Hartman Texas upon the written request of shareholders holding in the aggregate ten percent or more of the outstanding shares entitled to vote on any matter to be considered at the meeting. In addition, the Hartman Texas bylaws provide that a special meeting of shareholders may be called by the trust managers, any officer of Hartman Texas or the holders of at least five percent of all shares entitled to vote at the meeting.

Advance Notice of Trustee/Trust Manager Nominations and New Business

The Hartman Maryland bylaws require advance written notice for shareholders to nominate a trustee or bring other business before a meeting of shareholders. For an annual meeting, a

The Hartman Texas bylaws require advance written notice for shareholders to nominate a trust manager or bring other business before a meeting of shareholders. For an annual meeting, a

Rights of Hartman Maryland Shareholders

shareholder must deliver notice to the secretary of Hartman Maryland not earlier than the 120th day and not later than 5:00 p.m., Central Time, on the 90th day prior to the first anniversary of the date of mailing of the notice for the previous year's annual meeting. However, if the date of the annual meeting is advanced or delayed by more than 30 days from the first anniversary of the date of mailing of the notice for the previous year's annual meeting, notice by the shareholder must be given not earlier than the 120th day prior to the date of mailing of the notice for the meeting and not later than 5:00 p.m., Central Time, on the later of the 90th day prior to the date of mailing of the notice for the meeting or the tenth day following the day on which public announcement of the date of mailing of the notice for the meeting is made. For a special meeting at which trustees are to be elected, a shareholder must deliver notice to the secretary of Hartman Maryland not earlier than the 120th day prior to the meeting and not later than 5:00 p.m., Central Time, on the later of the 90th day prior to the meeting or the tenth day following the day on which public announcement of the date of the meeting is made.

The Hartman Maryland bylaws contain detailed requirements for the contents of shareholder notices of trustee nominations and new business.

The Hartman Maryland declaration of trust may be amended only if approved by the board of trustees and by the affirmative vote of a majority of all votes entitled to be cast on the matter, including (a) any amendment that would adversely affect the rights, preferences and

Rights of Hartman Texas Shareholders

shareholder must deliver notice to the secretary of Hartman Texas not less than 60 days nor more than 90 days before the meeting. If less than 70 days notice of an annual meeting is given, a shareholder must deliver notice no later than the tenth day following the day on which notice of the meeting is given.

The Hartman Texas bylaws contain detailed requirements for the contents of shareholder notices of trust manager nominations and new business.

The Hartman Texas declaration of trust provides that it may generally be amended, without the necessity for concurrence by the trust managers, by the affirmative vot

Amendment of Declaration of Trust