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ARTHUR MAGOWSKI, as custodian of his IRA, on behalf of himself and all others similarly situated, c/o Brower Piven, A Professional Corporation, 3704 North Charles Street, #1301, Baltimore, MD 21218,

Plaintiff,

v.

THE PARKING REIT, INC.,

Serve on: Resident Agent
CSC-Lawyers Incorporating Service Company
7 St. Paul Street, Suite 820
Baltimore, MD 21202,

MVP REALTY ADVISORS, LLC D/B/A THE PARKING REIT ADVISORS,

Serve on: Resident Agent
National Registered Agents, Inc.
160 Green Tree Drive, Suite 101
Dover, DE 19904,

VESTIN REALTY MORTGAGE I, INC.,

Serve on: Resident Agent
The Corporation Trust, Inc.
2405 York Road, Suite 201
Lutherville, MD 21903,

VESTIN REALTY MORTGAGE II, INC.,

Serve on: Resident Agent
The Corporation Trust, Inc.
2405 York Road, Suite 201
Lutherville, MD 21903,

MICHAEL V. SHUSTEK, DAVID CHAVEZ, JOHN DAWSON, ROBERT J. AALBERTS, NICHOLAS NILSEN, SHAWN NELSON, AND WILLIAM WELLS,

IN THE CIRCUIT COURT

2019 MAY 31 P

CIVIL DIVISION

FOR

BALTIMORE CITY

Case No._____________

JURY TRIAL DEMANDED

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BALTIMORE CITY

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CIVIL DIVISION

Serve on: Resident Agent
CSC-Lawyers Incorporating Service Company
7 St. Paul Street, Suite 820
Baltimore, MD 21202,

Defendants.

CLASS ACTION COMPLAINT

Plaintiff Arthur Magowski ("Magowski" or "Plaintiff"), on behalf of himself and all others similarly situated, by and through his undersigned counsel, upon knowledge as to himself, and as to all other matters upon information and belief and investigation of counsel, including a review of documents filed by The Parking REIT, Inc. f/k/a MVP REIT II, Inc. ("The Parking REIT" or "Company") with the United States Securities and Exchange Commission ("SEC"), alleges as follows:

PRELIMINARY STATEMENT

1. The Parking REIT is a non-traded real estate investment trust ("REIT") that is organized as a Maryland corporation. Through this action, Plaintiff asserts direct claims on behalf of himself and common stockholders of The Parking REIT ("Stockholders"). Plaintiff also intends to make a demand ("Demand") upon The Parking REIT's board of directors ("Board") to investigate and to take appropriate action with respect to certain claims belonging to the Company.

2. Defendant Michael V. Shustek ("Shustek") has been a director ("Director") of the Company since its inception. As set forth in detail *infra,* Shustek exercises domination and control over the Company's entire Board and therefore effectively controls the Company.

3. The Company was formed by a "sponsor," MVP Capital Partners II, LLC ("Sponsor") on or about May 4, 2015. Shustek controls the Sponsor and owns a significant majority of the Sponsor's manager, Vestin Mortgage, LLC ("Vestin Manager").

4. Shustek also owns and controls MVP American Securities, LLC ("MVP Securities") which was a broker-dealer firm registered with the Financial Industry Regulatory Authority ("FINRA")[1]. MVP Securities was the affiliated selling agent for the Company's securities offering prior to the termination of the offering.

5. The Company did not have any employees prior to April 1, 2019. Instead, the Company had an external "advisor" that ran its day-to-day business. Like the Company's Sponsor, Shustek controls the Company's advisor, MVP Realty Advisors, LLC d/b/a The Parking REIT Advisors ("Advisor"). Shustek is the president and chief executive officer of the Advisor. The Advisor was also the external advisor of MVP REIT, Inc. ("MVP REIT I") prior to its merger with the Company which was consummated on December 15, 2017. Shustek also controls the two entities that own the Advisor and Sponsor.

6. Until December 2013, Shustek owned 60% of the Advisor through MVP Capital Partners, LLC ("MVP Capital"). The remaining 40% was owned by Defendant Vestin Realty Mortgage II, Inc. ("VRM II") which made a $1,000 capital contribution to the Advisor in April 2012 in consideration for its ownership interest. In December 2013, Shustek caused Defendants Vestin Realty Mortgage I, Inc. ("VRM I") and VRM II to enter into membership interest transfer agreements with MVP Capital pursuant to which VRM I acquired a 40% ownership interest in the Advisor from MVP Capital and VRM II acquired an additional 20% ownership interest from MVP Capital. Neither VRM I nor VRM II paid any consideration to MVP Capital or made any

[1] MVP Securities' registration with FINRA was terminated in April 2018.

capital contribution to the Advisor in connection with the membership transfer agreements. The Advisor is presently owned 40% by VRM I and 60% by VRM II. At the time of the Company's formation, and as of December 31, 2018, the Sponsor was owned 40% by VRM I and 60% by VRM II.

7. Pursuant to the operating agreement of the Advisor ("Advisor Operating Agreement"), VRM I and VRM II are responsible for the Advisor's expenses in proportion to their respective ownership interests in the Advisor. Further, pursuant to the Advisor Operating Agreement, Shustek is entitled to 40% of the Advisor's net profits after VRM I and VRM II have been repaid for any capital contribution made to the Advisor and after they have received a 7.5% annualized return on their capital investments in the Advisor. VRM I's and VRM II's SEC filings describe Shustek's purported entitlement to 40% of the Advisor's profits as a "recognition of [MVP Capital's] substantial investment in [the Advisor] for which [MVP Capital] received no up-front consideration." VRM I's and VRM II's SEC filings further disclose that: MVP Capital had contributed $1,500 to the Advisor for its 60% ownership interest; as of June 30, 2013, MVP Capital had loaned the Advisor $1.2 million; and, MVP Capital decided to forgive the $1.2 million loan on June 30, 2013.

8. Shustek is a director and chief executive officer of both VRM I and VRM II which were managed by Vestin Manager – an entity controlled by Shustek and of which Shustek owns a significant majority – until January 2018 at which time Vestin Manager was "internalized[2]." Shustek is in fact the sole executive officer of VRM II and is one of two directors of this entity.

[2] Upon information and belief, VRM I and/or VRM II received Vestin Manager's assets and assumed its liabilities in connection with the internalization.

Upon information and belief, Shustek is also the sole executive officer of VRM I. As of May 7, 2019, Shustek beneficially owned 18.25% of VRM I and 33.56% of VRM II.

9. Further, through VRM I and VRM II, Shustek beneficially owns and controls a significant amount of the Parking REIT's stock[3]. As of December 31, 2018, prior to the transactions complained of herein, VRM I owned 136,824 shares of common stock of the Company and VRM II owned 364,960 shares. Shustek has sole voting and dispositive power with respect to the Company's stock held by VRM I and VRM II. In addition, as of December 31, 2018, the Company's Sponsor owned 13,629 shares.

10. On March 29, 2019, the Company entered into an agreement, the "Contribution Agreement," with the Advisor, VRM I, VRM II, and Shustek through which the Company "internalized the Advisor's management function," and through which the Company's advisory agreement with the Advisor was terminated. The Company's entry into the Contribution Agreement was preceded by the "noisy" resignations of two of the Company's independent Directors. The resignation letter of one of these Directors (*see infra*) detailed Shustek's control of the Board and self-dealing, and the resignation letter of the other Director implies that the Board served Shustek's interest rather than the Company's. The Company's entry into the Contribution Agreement was also preceded by the disbanding of two special committees of the Board that had been formed to negotiate the internalization of the Advisor (*see infra*).

11. Through the Contribution Agreement, the Company assumed "substantially all of the [Advisor's] assets and liabilities." As consideration for this transaction, the Contribution Agreement provides for the issuance of 1,600,000 shares of the Company's common stock to the

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[3] The Stockholders other than Shustek, his family members, and the entities that he owns and/or controls, are referred to as the "Non-Controlling Stockholders."

Advisor in four equal installments. The first such installment of 400,000 shares was issued on April 1, 2019; the remaining three installments of 400,000 shares each are due on or around December 31, 2019, December 31, 2020, and December 31, 2021.

12. The Company reported an estimated value of the Company's common stock of $24.61 per share as of May 29, 2018 and $25.10 per share as of May 28, 2019; and, the Company had 6,542,797 shares of common stock outstanding and reported shareholder equity of $159,429,000 as of December 31, 2018. The quantity of shares of Company common stock that the Contribution Agreement purportedly requires the Company to issue is very substantial in relation to the number of shares outstanding.

13. The most recent financial statements for VRM II that were publicly filed with the SEC were included within its Form 10-Q for the period ended September 30, 2016. VRM II made the following representation concerning the value of its investments in the Advisor:

> As of September 30, 2016 **we have made loans of approximately $12.9 million to [the Advisor]**, the manager of [MVP REIT I]. We believe the [Advisor] has the opportunity to generate fees for the services it will render to [MVP REIT I]. However, such fees may not be significant in the near term as [MVP REIT I] only recently commenced operations in December 2012, and over the next 12 months, there may be a diminution of our liquid assets. If [MVP REIT I] is unable to deploy the capital and operate its business successfully, then our return on our investment in [the Advisor] and the ability of [the Advisor] to repay our loans could be adversely impacted. We have not forgiven the balance due from [the Advisor]; however the decision by [the Advisor][4] to forgive certain amounts creates additional uncertainty as to when we will be repaid the amounts loaned to the [Advisor]. Based on these uncertainties, **we have determined to fully impair the balance of this investment and note receivable.** (Emphasis added.)

VRM II recognized that the Advisor would likely never achieve profitability and recognized that the Advisor had no ability to repay any portion of its $12.9 million loan to VRM II. In fact, the fees for services that the Advisor received from the Company in 2018 ($2.0 million) following the

[4] MVP Capital rather than the Advisor made the decision to forgive the loan.

merger with MVP REIT I were substantially less than the fees for services that the Advisor received from both the Company and MVP REIT I in 2016 (approximately $3.9 million). Upon information and belief, the compensation that the Advisor paid to Shustek and other Company officers in 2018 (which were not reimbursable by the Company) exceeded the $2.0 million of revenue that it received. Taking account for the Advisor's non-reimbursable expenses in addition to officer compensation, the Advisor likely suffered a significant loss in 2018.

14. VRM II recognized that its investments in the Advisor were total, unrecoverable losses, and therefore determined to fully impair its equity investment in the Advisor and to fully impair its $12.9 million note receivable from the Advisor. The fact that VRM II had marked the value of its 60% equity stake in the Advisor to $0, as well as the value of its note receivable from the Advisor to $0, is further evidenced by the fact that these investments do not appear as assets on VRM II's September 30, 2016 balance sheet.

15. VRM II's Form 10-Q for the period ended September 30, 2016 states that VRM II did not forgive the $12.9 million balance due from the Advisor. It likewise discloses that the Advisor "owed VRM I approximately $4.5 million as of September 30, 2016."

16. The Company's Non-Controlling Stockholders suffered a direct injury as a result of the internalization through which the Company received the Advisor's assets which had no meaningful value, assumed the Advisor's substantial debt, issued 400,000 shares of common stock to the Advisor, and is purportedly required to issue a total of 1,200,000 additional shares to the Advisor. The Contribution Agreement does not require the Company to pay monetary compensation, or otherwise to contribute any assets on the Company's balance sheet to the Advisor, in exchange for the Advisor's assets and liabilities. However, the Company's issuances of stock to the Advisor represent unlawful expropriations of both economic value (including a

reduction of the Non-Controlling Stockholders' share of any future declared distributions) and voting power away from the Non-Controlling Stockholders to Shustek for which the Non-Controlling Stockholders have received no consideration. The Company's current Directors (the "Director Defendants")[5] and Advisor – which owe fiduciary duties directly to the Stockholders pursuant to the Company's Charter ("Charter") – acted in bad faith and breached fiduciary duties owed to the Non-Controlling Stockholders when they caused the Company to enter into the Contribution Agreement and when they caused the Company to issue stock to the Advisor. The Non-Controlling Stockholders (rather than the Company) have suffered the injuries resulting from the Company's issuance of stock. An appropriate shareholder level remedy to compensate the Non-Controlling Stockholders for their personal injuries would be an order requiring the invalidation of the shares that were wrongfully issued to the Advisor. Such share invalidation would have the effect of transferring the wrongfully expropriated economic value and voting power back to the Non-Controlling Stockholders. The Non-Controlling Stockholders, rather than the Company itself, would be the beneficiaries of such remedial action.

17. The Company has also suffered injuries as a result of the Directors' and Advisor's wrongdoing. For example, the Company received nothing in value through the internalization but has been saddled with the Advisor's debt, which upon information and belief, is in excess of $17.4 million. Plaintiff will make his Demand on the Board to investigate and to take appropriate action with respect to claims belonging directly to the Company; Plaintiff intends to pursue these claims derivatively on behalf of the Company if his Demand is refused. Appropriate remedies to

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[5] Each of the Company's Directors as of the date of initiation of this action is named as a Defendant in this action.

compensate the Company for its injuries would be an order rescinding the Company's assumption of the Advisor's debt or an order requiring the Directors to pay monetary damages to the Company.

18. Accordingly, Plaintiff asserts direct claims on behalf of himself and the Class for breach of fiduciary duty against the Director Defendants and the Advisor (Count I), and for unjust enrichment against Shustek, the Advisor, VRM I and VRM II (Count II). Plaintiff also asserts a direct claim for declaratory judgment against the Director Defendants, the Advisor, VRM I, VRM II, and the Company (Count III).

PARTIES

I. The Plaintiff

19. Plaintiff Magowski is an individual who is a resident of the State of Florida. On or about December 13, 2016, Plaintiff purchased 1,500 shares of common stock in The Parking REIT at the price of $25.00 per share through his IRA. Through the Company's distribution reinvestment program ("DRIP"), Plaintiff subsequently purchased an additional 57.245 shares of common stock. Plaintiff has held shares in The Parking REIT continuously since he made his investment in December 2016.

II. The Entity Defendants

20. Defendant The Parking REIT is a Maryland corporation that was formed on or about May 4, 2015. The Parking REIT was known as MVP REIT II, Inc. from its inception until its merger with MVP REIT I was consummated on December 15, 2017.

21. Defendant Advisor is a Delaware limited liability company that was formed on or around November 9, 2007. Pursuant to Section 8.3 of the Charter, titled "Fiduciary Obligations," "[t]he Advisor shall have a fiduciary responsibility and duty to…the Stockholders." In addition, Pursuant to the Contribution Agreement, the Advisor submitted to "the exclusive jurisdiction of

any state or federal court located within Maryland, for the purpose of any legal proceeding arising out of or relating to [the Contribution Agreement]."

22. Defendant VRM I is a Maryland corporation that was formed on or around January 3, 2006. VRM I operated as a REIT until March 28, 2012 when it terminated its election to be treated as a REIT. VRM I's shares of common stock were listed on the Nasdaq Global Market ("NASDAQ") from June 2, 2006 until on or around December 30, 2015 when VRM I voluntarily delisted its common stock and voluntarily deregistered its common stock from the reporting requirements of the Securities Exchange Act of 1934 ("Exchange Act").

23. Defendant VRM II is a Maryland corporation that was formed on or around January 3, 2006. VRM II operated as a REIT until December 31, 2011 when it terminated its election to be treated as a REIT. VRM II's shares of common stock were listed on the NASDAQ from May 1, 2006 until on or around March 30, 2017 when VRM II voluntarily delisted its common stock and voluntarily deregistered its common stock from the reporting requirements of the Exchange Act.

III. <u>The Director Defendants</u>

24. Defendant Shustek is an individual who upon information and belief is a resident of the State of Nevada. Shustek has served as a Director and as chief executive officer of the Company since its formation. Shustek also served as a director and as chief executive officer of MVP REIT I from its formation until its merger with the Company; is the president and chief executive officer of the Advisor; is a director and the chief executive officer of Defendants VRM I and VRM II; owns a substantial majority of the former external manager of VRM I and VRM II; and (as of May 7, 2019) owns approximately 18.25% and 33.56% of VRM I and VRM II

respectively. As of May 7, 2019, Shustek was the beneficial owner of 924,324 shares of common stock of the Company[6], representing 13.32% of its shares outstanding.

25. Defendant David Chavez ("Chavez") is an individual who upon information and belief is a resident of the State of Nevada. Chavez has served as a Director of the Company since its formation and is presently the co-chair of the Board's Audit Committee. The Company's April 26, 2019 Proxy Statement ("April 2019 Proxy") indicates that Chavez is not standing for reelection as a Director.

26. Defendant John Dawson ("Dawson") is an individual who upon information and belief is a resident of the State of Nevada. Dawson has served as a Director of the Company since its formation and has served as "Lead Independent Director" since April 2019. Dawson also served as a director of MVP REIT I from its formation until its merger with the Company; served as a director of VRM I from March 2007 until January 2008; served as a director of VRM II from March 2007 until November 2013; and served as a director of the Vestin Group, Inc. ("Vestin Group"), an entity majority owned by Shustek, from March of 2000 until December of 2005.

27. Defendant Robert J. Aalberts ("Aalberts") is an individual who upon information and belief is a resident of the Commonwealth of Pennsylvania. Aalberts served as a director of MVP REIT I from its formation until its merger with the Company closed in December 2017 and has served as a Director of the Company since the merger. Aalberts is currently co-chair of the Board's Nominating and Corporate Governance Committee. Aalberts served as a director of VRM

[6] Shustek's Schedule 13D/A (Statement of Acquisition of Beneficial Ownership) filed with the SEC on May 7, 2019 discloses that these shares include: 2,418 shares held in a Shustek family trust; 11,005 shares held by Michael V. Shustek LLC, a company wholly owned by Shustek; 296,834 shares directly owned by VRM I and 604,960 directly owned by VRM II of which Shustek has sole voting and dispositive power; and 9,107 shares indirectly owned by VRM II through its ownership of the Sponsor.

I from January 2006 until January 2008; served as a director of VRM II from January 2006 until November 2013; and served as a director of Vestin Group from April 1999 until December 20015. The Company's April 2019 Proxy indicates that Aalberts is not standing for reelection as a Director.

28. Defendant Nicholas Nilsen ("Nilsen") is an individual who upon information and belief is a resident of the State of Nevada. Nilsen served as a director of MVP REIT I from its formation until its merger with the Company closed in December 2017 and has served as a Director of the Company since the merger. Nilsen is a member of the Board's Audit Committee, is a member of the Board's Nominating and Corporate Governance Committee, and is the chair of the Board's Compensation Committee.

29. Defendant Shawn Nelson ("Nelson") is an individual who upon information and belief is a resident of the State of California. Nelson served as a director of MVP REIT I from its formation until its merger with the Company closed in December 2017 and has served as a Director of the Company since the merger. Nelson is a member of the Board's Compensation Committee and Nominating and Corporate Governance Committee.

30. Defendant William Wells ("Wells") is an individual who upon information and belief is a resident of the State of Nevada. Wells has served as a Director of the Company since May 31, 2018. Wells is currently co-chair of the Board's Audit Committee. The April 2019 Proxy indicates that Wells is not standing for reelection as a Director.

JURISDICTION AND VENUE

31. The damages suffered and sought to be recovered by Plaintiff and the Class are an amount in excess of $75,000. The exact amount of damages suffered by Plaintiff and the Class cannot be precisely determined at this point.

32. This Court has jurisdiction over the Defendants because each Defendant is either an entity that conducts business in or maintains operations in Maryland; has specifically consented to jurisdiction in Maryland for the purpose of any legal proceeding arising from or relating to the Contribution Agreement; or is an individual who has sufficient minimum contacts with Maryland so as to render the exercise of jurisdiction by the Maryland courts permissible under traditional notions of fair play and substantial justice. Additionally, Defendants purposefully availed themselves of the privileges and benefits of conducting business in Maryland.

33. Venue for the claims brought hereby is proper in this Court because the causes of action set forth herein arose in Baltimore City and/or The Parking REIT is incorporated in the state of Maryland, its resident agent is located in Baltimore City, and there are multiple Defendants with no single venue applicable.

34. Jurisdiction and venue in this Court are also proper under and due to Article XIII of The Parking REIT's Bylaws, which provides that the Circuit Court for Baltimore City, Maryland is the proper forum for the claims asserted in this complaint:

> **EXCLUSIVE FORUM FOR CERTAIN LITIGATION**
>
> Unless the [Company] consents in writing to the selection of an alternative forum, the Circuit Court for Baltimore City, Maryland, or, if that Court does not have jurisdiction, the U.S. District Court for the District of Maryland, Baltimore Division, shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the [Company]; (b) any action asserting a claim of breach of any duty owed by any director or officer or other employee of the [Company] to the [Company] or to the stockholders of the [Company]; (c) any action asserting a claim against the [Company] or any director or officer or other employee of the [Company] arising pursuant to any provision of the MGCL or the Charter or Bylaws; or (d) any action asserting a claim against the [Company] or any director or officer or other employee of the [Company] that is governed by the internal affairs doctrine.

SUBSTANTIVE ALLEGATIONS

I. The Company's Formation and Securities Offering

35. The Parking REIT was formed by the Sponsor on or around May 4, 2015. The Company states that its primary investment strategy "focuses on acquiring, owning and managing parking facilities, including parking lots, parking garages and other parking structures throughout the United States and Canada." The Company states that its primary investment objectives are to: "preserve, protect and return stockholders' capital contributions"; "provide periodic distributions once the Company has acquired a substantial portfolio of investments"; and "realize growth in the value of the Company's investments."

36. From its formation until the Contribution Agreement became effective on April 1, 2019, the Company did not have any employees. Instead, the Advisor managed the Company's business affairs and controlled its day-to-day operations.

37. The Parking REIT is a public, non-traded REIT, meaning: (1) that it is public because it is registered with the SEC, can sell to the investing public rather than only to qualified investors and is required to file reports with the SEC; and (2) that it is non-traded because its common stock is not listed on any national securities exchange. There is presently no public market for The Parking REIT's common stock.

38. The Parking REIT is structured as an umbrella limited partnership ("UPREIT") meaning that its business is conducted through its operating partnership, MVP REIT II Operating Partnership, LP ("Operating Partnership") of which it is the general partner. The Parking REIT makes real estate investments directly through the Operating Partnership's wholly owned subsidiaries.

39. The Parking REIT reports that it raised approximately $63.1 million through the offering of its common stock through its public securities offering which commenced in October 2015 and was terminated in March 2017. This amount includes capital raised through its DRIP. The Parking REIT contributed the net proceeds of the capital raised from Stockholders to its Operating Partnership through which it made investments in real estate.

40. The Parking REIT's common stock has never been listed for trading on any national stock exchange and there has never been a public market for it. The Parking REIT's common stock generally has been illiquid in that the ability of Stockholders to sell their shares has been limited to an inefficient, limited secondary market and its share repurchase program ("SRP") which was suspended on May 29, 2018 other than for repurchases in connection with a Stockholder's death. Prior to its suspension, the SRP contained significant restrictions, including that Stockholders must have held their shares for a minimum of two years before participation in the SRP and that the Company's repurchases were limited to 5% of the weighted average of the number of shares outstanding per quarter.

41. On September 22, 2015, the Company announced the Board's approval of a plan pursuant to which it would pay distributions to Stockholders, in cash or in shares of common stock through the DRIP (at the election of the Stockholder), at the annual rate of $0.75 per share (i.e., an annual distribution rate of 3% based upon the $25.00 per share offering price). The Company has performed poorly since it commenced operations, never generating positive Adjusted Funds from Operations ("AFFO") (*see infra*); the distributions paid to Stockholders therefore represented returns *of* investor capital rather than returns *on* investor capital. On March 22, 2018, the Company authorized the suspension of the Company's payment of distributions; the Company has not paid any distributions since this time.

42. The Parking REIT reports that as of December 31, 2018, it held 41 properties among which include properties acquired in connection with the Company's merger with MVP REIT I.

II. <u>The Company's Charter and the Advisory Agreements</u>

43. The Company's Amended Articles and Restatement (i.e., Charter)[7] became effective on September 22, 2015, prior to the commencement of the Company's securities offering. The Charter contains provisions based upon the Statement of Policy Regarding Real Estate Investment Trusts adopted by the North American Securities Administrators Association, Inc. ("NASAA REIT Guidelines") which recognize the conflicts and potential for self-dealing inherent to public REITs managed by external, founder-controlled affiliated companies. Therefore, the NASAA REIT Guidelines have provisions for inclusion in companies' charters that serve to protect stockholders against misconduct by directors, and external advisors their affiliates. The Company's Sponsor and Advisor caused the Company to adopt Charter provisions based upon the NASAA REIT Guidelines in order to obtain approval of state securities regulators so that they could then conduct the Company's securities offering and raise millions of dollars from public investors.

44. Section 7.5 of the Charter specifies that the Directors owe a fiduciary duty to the Stockholders. Section 8.3 of the Charter likewise specifies that the Advisor owes a fiduciary duty to the Stockholders. These provisions are consistent with the NASAA REIT Guidelines. Likewise, consistent with the NASAA REIT Guidelines, the Charter does not provide for payment of any termination fee to the Advisor upon the Advisor's termination; rather, Section 8.5 specifies

[7] Available at: https://www.sec.gov/Archives/edgar/data/1642985/000119312515326585/d945370dex31.htm

that a "majority of the Independent Directors may terminate the Advisory Agreement on 60 days' written notice without cause or penalty."

45. Sections 12.2 and 12.3 of the Charter specify that the Company shall neither indemnify nor hold harmless an Independent Director for loss or liability suffered by the Company resulting from the Independent Director's bad faith conduct or gross negligence. In addition, the Charter specifies that the Company shall neither indemnify nor hold harmless a Company officer or Director (who does not qualify as an "Independent Director") for loss or liability suffered by the Company resulting from the officer's or Director's bad faith conduct or negligence. Further, Section 12.4 of the Charter specifies that the Company may not pay or reimburse legal expenses for a Director or Company officer unless: the indemnitee provides the Company with a written affirmation stating that the indemnitee has met the standard of conduct necessary for indemnification pursuant to Sections 12.2 and 12.3; that the indemnitee has provided the Company with a written agreement to repay the amount paid or reimbursed by the Company if it is ultimately determined that the indemnitee is not entitled to indemnification; and that a court of competent jurisdiction approves such advancement. These provisions are consistent with the NASAA REIT Guidelines.

46. Pursuant to Section 5.2.4 of the Charter, subject to the rights of any preferred stockholders, the "holders of the Company's Common Stock have the exclusive right to vote on all matters (as to which a common stockholder shall be entitled to vote pursuant to applicable law) at all meetings of the Stockholders."

47. On or about August 16, 2017, the Company disseminated a proxy statement to the Stockholders on Schedule 14A soliciting approval of amendments to the Charter. The proxy statement states that the Company intends "to file the Amended Charter immediately before our

common stock becomes listed for trading on a national securities exchange. This means that the changes to the charter will not be effective unless and until we complete an exchange listing."

48. Among the proposed Charter amendments were for the removal of Stockholder protection consistent with the NASAA REIT Guidelines. These amendments included the removal of the Charter provision prohibiting the Company's payment of a termination fee to the Advisor; and the removal of the Charter provisions limiting the Company's indemnification and exculpation of Company Directors and officers outlined above, and instead permitting indemnification and exculpation to the maximum extent permissible under Maryland law. The proxy statement provides the following reason for the proposed charter amendments:

> The proposed amendments to our charter are primarily intended to accomplish two objectives in connection with the possible listing of our common stock: (1) to remove provisions of our charter that we believe may unnecessarily restrict our ability to take advantage of further opportunities for liquidity events or are redundant with or otherwise addressed or permitted to be addressed under Maryland law and (2) to amend certain provisions in a manner that we believe would be more suitable for becoming a publicly-traded REIT. The majority of the changes to our charter that we are proposing relate to the removal or revision of provisions and restrictions that were required by state securities administrators in order for us to publicly offer shares of our stock without having it listed on a national securities exchange.

On September 26, 2017 the Company announced through an 8-K filing that the Stockholders had approved the Charter amendments. However, the Company's Second Articles of Amendment and Restatement ("Amended Charter") never became effective because the Company did not list its shares on the NASDAQ or on any other national exchange.

49. From its inception until the process of internalizing the Advisor began in April 2019, the Advisor managed the Operating Partnership and the Company and controlled the day-to-day operations of each pursuant to an advisory agreement.

50. On or about June 22, 2015, an advisory agreement between the Company, Operating Partnership and Advisor ("Original Advisory Agreement")[8] was entered. On or about October 5, 2015, the Amended and Restated Agreement ("Amended Advisory Agreement")[9] was entered, replacing the Original Advisory Agreement. On or about November 30, 2015, Amendment No. 1 to the Amended Advisory Agreement[10] was entered. On or about May 27, 2017, the Second Amended and Restated Advisory Agreement ("Second Amended Advisory Agreement")[11] was entered replacing the Amended Advisory Agreement; the Second Amended Advisory Agreement became effective upon the merger of the Company with MVP REIT I which was consummated on December 15, 2017.

51. On September 21, 2018, the Third Amended and Restated Advisory Agreement ("Third Amended Advisory Agreement")[12] was entered; the Third Amended Advisory Agreement was to become effective upon the listing of the Company's shares of common stock on the NASDAQ or another national exchange. Since the Advisor's management function was internalized pursuant to the Contribution Agreement in April 2019, and since the Company's stock has never been listed on the NASDAQ or any other national exchange, the Third Amended Advisory Agreement never became effective, and for avoidance of doubt, was terminated pursuant to the Contribution Agreement.

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[8] Document available at:
https://www.sec.gov/Archives/edgar/data/1642985/000119312515264465/d945370dex101.htm

[9] Document available at:
https://www.sec.gov/Archives/edgar/data/1642985/000119312515337761/d945370dex101.htm

[10] Document available at:
https://www.sec.gov/Archives/edgar/data/1642985/000119312515394063/d85078dex101.htm

[11] Document available at:
https://www.sec.gov/Archives/edgar/data/1642985/000164298517000097/ex10-1.htm

[12] Document available at:
https://www.sec.gov/Archives/edgar/data/1642985/000164298518000077/ex_10-1.htm

52. Since its inception, the Company has paid the Advisor various fees including asset management fees and acquisition fees. Prior to the merger of the Company and MVP REIT I, the Company was required to pay the Advisor the following servicing fees pursuant to the Amended Advisory Agreement: (1) acquisition fees of 2.25% of the purchase price of any real estate acquired; (2) disposition fees equal to the lesser of (i) one-half of the aggregate brokerage commission if a brokerage commission is paid to a third party, (ii) a competitive real estate commission if no brokerage commission is paid to a third party, or (iii) 3.0% of the contract sales price; (3) asset management fees on a monthly basis of one-twelfth of 1.0% of "(i) the cost of each real estate asset then held by the Company, without deduction for depreciation, bad debts or other non-cash reserves, or (ii) the Company's proportionate share thereof in the case of an investment made through a joint venture or other co-ownership arrangement excluding (only for clause (ii)) debt financing on the investment"; and (4) a subordinated performance fee upon condition of certain events – including the listing of the Company's common stock, a merger, a sale of the Company, or a termination of the Amended Advisory Agreement – if the Company had met a performance threshold.

53. Following the merger of the Company with MVP REIT I, the Second Amended Advisory Agreement became effective pursuant to which the only fee that the Company was required to pay the Advisor was an asset management fee; eliminated from the agreement were the acquisition fee, the disposition fee, and the subordinated performance fee. The Second Amended Advisory Agreement required the payment of asset management fees at the rate of "one-twelfth of 1.1% of (i) the cost of each asset then held by the Company, without deduction for depreciation, bad debts or other non-cash reserves, or (ii) the Company's proportionate share thereof in the case of an investment made through a joint venture or other co-ownership arrangement excluding (only

for clause (ii)) debt financing on the investment." The Second Amended Advisory Agreement capped the annual asset management fee to $2 million unless the Company's holds real estate property, mortgage, or other investments with a total appraised value of at least $500 million or the Company achieved AFFO equal to at least "$.3125 per share of Common Stock (an amount intended to reflect a 5% or greater annualized return on $25.00 per share of Common Stock)…for two consecutive quarters, on a fully diluted basis."

54. The Third Amended Advisory Agreement – which was entered on September 21, 2018 but which never became effective – purportedly required the Company to pay a termination fee to the Advisor of up to $21 million upon the termination of the Third Amended Advisory Agreement or a "Company Change of Control[13]." The agreement provides the following explanation for this massive fee:

> In recognition of the upfront effort required by the Advisor to structure and acquire the assets of the Company and its subsidiaries and the Advisor's commitment of monies and resources to the Company's business and operations for which the Advisor would be entitled to but, has not received, reimbursement from the Company, and as consideration for the Advisor's release and performance of its other obligations under Section 17(b) [in the event of termination or a Change of Company Control] the Company shall pay to the Advisor, on the Termination Date or, with respect to a Company Change of Control, the effective date of the Company Change of Control, the Termination Fee

55. In fact, the Advisor had already received acquisition fees pursuant to the Amended Advisory Agreement in connection with the Company's acquisition of assets. Further, the Advisor

[13] The Third Amended Advisory Agreement defines a "Company Change of Control" as "any (i) event (including, without limitation, issue, transfer or other disposition of shares, merger, share exchange or consolidation) after which any "person" (as that term is used in Sections 13(d) and 14(d) of the [Securities Exchange Act ("Exchange Act")) is or becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company or the Operating Partnership (other than the Company or its Affiliates) representing greater than 50% of the combined voting power of the Company's or the Operating Partnership's then outstanding securities, respectively…"

had been reimbursed by the Company for the expenses that the Advisor had incurred for which the Advisor was entitled to reimbursement. As of the date that the Third Amended Advisory Agreement was entered, a $21 million termination fee would have represented approximately 13% of the Company's equity value.

III. The Merger of the Company and MVP REIT I

56. MVP REIT I was a non-traded REIT that was formed on or around April 3, 2012 by its sponsor, MVP Capital, which (as discussed *supra*) originally owned 60% of the Company's Advisor. The Company's Advisor was also MVP REIT I's external advisor from its formation until its merger with the Company. MVP REIT I was required to pay various categories of service fees to the Advisor pursuant to its advisory agreement.

57. MVP REIT I's securities offering commenced in September 2012; through the offering, pursuant to which shares of common stock were sold for the price of $9.00 per share, MVP REIT I raised approximately $78.8 million, which amount includes approximately $2.9 million raised through its DRIP.

58. In addition, in exchange for real estate assets, MVP REIT I issued a total of approximately $19.5 million of common stock between June 2013 and November 2013 to an entity owned and controlled by an individual who had previously served as an officer of Vestin Manager, as the president of Vestin Group, and who would later serve as president of MVP REIT I between January 2016 and March 2016.

59. MVP REIT I original investments included office properties. However, in March 2014, its board approved a new strategic plan pursuant to which MVP REIT I's primary strategy shifted to investments in parking and self-storage facilities. MVP REIT I subsequently entered

into agreements to exchange its office properties with VRM I and VRM II in exchange for their ownership interests in five parking facilities.

60. On May 16, 2017, the Company and MVP REIT I announced that MVP REIT I would merge into MVP Merger Sub, LLC ("Merger Sub"), a wholly owned subsidiary of The Parking REIT. On August 16, 2017, MVP REIT I filed a proxy statement on Schedule 14A through which it solicited stockholder approval of the merger as well as amendments to its charter. MVP REIT I's stockholders subsequently approved the merger and charter amendments. The Company did not solicit the Stockholders' approval of the merger[14].

61. The merger was consummated on December 15, 2017, and the Company subsequently transferred its ownership interest in Merger Sub to the Operating Partnership. Each outstanding share of MVP REIT I's common stock was cancelled and retired and converted into the right to receive 0.365 shares of Company common stock. Following the merger, former MVP REIT I stockholders owned 59.7% of the Company's common stock. The Company paid a $3.6 million fee to the Advisor in connection with the merger.

IV. Shustek's Pattern of Corporate Misconduct

A. Shustek's History of Regulatory Problems

62. In February 1999, the Nevada Financial Institutions Division ("NFID") entered an order seizing a mortgage company controlled by Shustek, Del Mar Mortgage, Inc. ("Del Mar"). The NFID alleged that Del Mar had engaged in misconduct including: withholding material information from investors in Del Mar's holding company and making false statements to investors; and violating an agreement with the NFID requiring it to handle trust accounts or

[14] However, as discussed *supra*, the Company filed a proxy statement on August 16, 2017 soliciting the Stockholders' approval of Charter amendments to become effective upon the listing of the Company's common stock.

investor funds only through its mortgage-company operation or through an independent escrow agent. The NFID later returned control of Del Mar to Shustek.

63. On September 27, 2006, the SEC entered an order against Shustek, the Vestin Manager, and Vestin Capital, Inc., a FINRA registered broker-dealer firm owned and controlled by Shustek, following an investigation. The SEC determined that Shustek and the other respondents violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") by making false and misleading representations to prospective investors. Specifically, the SEC determined that the respondents represented that VRM II's cash distribution rates were based upon net income calculated in accordance with Generally Accepted Accounting Principles ("GAAP") when they were not, and that respondents omitted to disclose that the cash distribution rates caused VRM II's equity securities to decline in value. Further, the SEC determined that respondents' misstatements were material and ones that a reasonable investor would determine important in a decision to invest in VRM II. Without admitting or denying the allegations, respondents (including Shustek) consented to entry of a cease and desist order, Shustek agreed to pay a fine of $100,000, and Shustek was suspended from association with any broker-dealer for a period of six months.

B. In April 2018 the Board's Audit Committee Determined that Shustek Failed to Exercise Proper Judgment in Connection with His Responsibilities as the Company's Chief Executive Officer

64. In February 2018, the Board's Audit Committee began an investigation of whistleblower allegations made against Shustek by a former employee of the Advisor, as well as an investigation as to whether Shustek provided false information to FINRA in connection with an investigation that FINRA was conducting of him. The whistleblower reported to the Board that Shustek had provided false personal financial statements to one or more of the Company's lenders

in connection with mortgage loans or guarantees where Shustek is a personal non-recourse carve-out guarantor. FINRA's investigation related to whether aggregate underwriting compensation paid by the Company and by MVP REIT I in their initial public offerings exceeded the applicable limits permitted by FINRA rules. In February 2019, FINRA's Department of Enforcement staff determined that it would not recommend action against Shustek.

65. The Audit Committee, however, found that Shustek had provided false information to the both the Company's lenders and to FINRA. As reported in the Company's May 3, 2018 8-K filing: "the Audit Committee determined that [Shustek] did not exercise proper judgment and appropriate oversight in connection with the initial submission of underwriting compensation information to FINRA and personal financial statements to the Company's lenders, which resulted in the submission of inaccurate information to FINRA and the Company's lenders."

66. The Audit Committee recommended to the Board that the Company's chief financial officer report directly to the Board, and that the Company's chairman and chief executive officer roles (both occupied by Shustek) should be bifurcated, so as to limit Shustek's control over the Company. The Board adopted the Audit Committee's recommendation that the Company's chief financial officer report directly to the Board but declined to adopt its recommendation to bifurcate the chairman and chief executive officer roles.

67. As discussed *infra,* the Audit Committee that conducted the investigation of Shustek was comprised of three Directors. One of these Directors resigned shortly after the conclusion of the investigation, another of the Directors was forced off the Board in August 2018, and the third Director is not presently standing for re-election to the Board.

C. Shustek Expropriated Value from VRM II for His Improper Benefit

68. VRM II's SEC filings reveal Shustek's self-dealing at VRM II's expense. In November 2014, VRM II sold a loan with a reported book value of approximately $2.4 million to Shustek for $3.0 million and 50% of any amounts that Shustek collected from the borrower in excess of $3.0 million. During the first quarter of 2015, the borrower made payments of $6.2 million on the loan; Shustek kept $4.6 million and paid $1.6 million to VRM II. Shustek's self-dealing yielded him a profit of $1.6 million at the expense of VRM II within four and a half months.

V. Two Special Committees of the Board are Appointed and then Disbanded

69. On February 1, 2018, the Board appointed a special committee (the "February 2018 Special Committee"), with Director Allen Wolff ("Wolf")) as chair, and with Directors Erik A. Hart ("Hart") and Chavez as committee members. The purpose of the February 2018 Special Committee was to review the Company's potential internalization of the Advisor and to negotiate for it. On April 23, 2018 the Board disbanded this special committee. Prior to its termination, the February 2018 Special Committee held two meetings.

70. On May 31, 2018 the Board again appointed a special committee (the "May 2018 Special Committee"), naming Dawson as chair, with Nilsen and Aalberts as committee members. Like the February 2018 Special Committee which was just disbanded, the purpose of the May 2018 Special Committee was to review the Company's potential internalization of the Advisor and to negotiate for it. Yet, on November 7, 2018 the Board disbanded the May 2018 Special Committee, at which time it was decided that all future negotiations regarding a potential internalization would be the responsibility of the Company's entire Board (other than Shustek). The May 2018 Special Committee held ten meetings prior to its termination.

VI. Shustek Exercises Domination and Control Over the Board

71. On September 20, 2018, the Company filed an 8-K indicating that the Board had received a resignation letter from Director Hart[15] on September 14, 2018; a copy of the letter was included with the 8-K filing. Hart describes in the letter that he was forced off the Board as result of his attempt to exercise independence:

> I believe the decision by the Nominating Committee not to allow me to stand for re-election was a deliberate decision precipitated by the lack of control the CEO, Michael Shustek, and the Chairman of the Board had over my participation in Board meetings. I believe that my true independence and my participation in the investigation into Whistleblower allegations made against Mr. Shustek was the reason that the Nominating Committee took such action. It is my belief that Independence from management is neither a valued quality nor is it seen as an asset by the Company or a majority of its Board.

72. Hart's resignation letter further indicates that the Company's representation in its proxy statement filed on Schedule 14A on August 20, 2018 that Hart was not "standing for re-election" is misleading because it fails to mention that the Board's Nominating and Corporate Governance Committee had made the decision that Hart would not stand for re-election against his wishes:

> The proxy statement filed for the annual meeting is misleading as it states that I am not standing for re-election. It does not state that this was a decision made by the Nominating Committee against my wishes as I believed my independence is necessary on the Company's Board of Directors. Further, I have been asked by John Dawson, the Chairman of the Board, not to attend or participate in a mandatory Board meeting happening on September 14th, in Las Vegas, Nevada. I believe crucial issues facing the Company will be discussed and voted on at that meeting and that the request not to have me participate is the result of a desire to exclude an independent voice from any discussion. Since I was to be a director until October and since I am being excluded from Board meetings, I must resign rather than compromise my duty to shareholders.

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[15] Document available at:
https://www.sec.gov/Archives/edgar/data/1642985/000164298518000071/ex_17-1.htm

73. Hart's resignation letter also indicates that the Directors were expected to serve Shustek's interests rather than the Company's:

> I have worked tirelessly to uphold my duty to the Company's shareholders but I believe a majority of the Members of the Board have a different agenda. I believe the majority's top priority is the retention of Mr. Shustek as CEO, with all other priorities being secondary.

74. Hart also expressed his belief that the provision of the Third Amended Advisory Agreement requiring the Company to pay the Advisor a termination fee was improper, that the agreement to include such a provision was wasteful in light of the provision in the Second Amended Advisory Agreement permitting termination of the contract without penalty on sixty days' written notice, and that the Board failed to exercise independence in connection with its decision to approve such a termination fee:

> The Amendment was negotiated by a committee (the "Committee") consisting of three other board members, two of whom previously served as directors of [VRM II], which was a partial owner of the Advisor, loaned monies to the Advisor and will directly benefit from the Amendment. This creates at least an appearance of a conflict of interest among some of the committee members that negotiated the Amendment on behalf of the Company.
>
> ***
>
> I believe the entire process in which the Amendment was negotiated and approved was flawed, especially given that this Amendment comes on the heels of an Audit Committee investigation which found that "Mike Shustek did not exercise proper judgment and appropriate oversight" with matters crucial to his performance as CEO and required the Board to put enhanced procedures in place.

75. Hart's resignation letter also describes that the Directors improperly relied upon an opinion of Ladenburg Thalmann & Co., Inc. ("Ladenburg"), an investment banking firm which was motivated to win business from the Company in connection with the listing of its stock on a national stock exchange:

> The Committee did not seek a full fairness opinion from an independent third party firm, but instead relied on an informal opinion by Ladenburg-Thalmann, a firm

> which intends to represent the Company in a listing to a stock exchange in the near future. Again this creates an appearance of a conflict of interest, and in my opinion does not adequately insure the price being paid by the Company to the Advisor for internalization or termination is fair and a sound business decision.

76. The reasonable inferences that may be drawn from Hart's resignation letter are that the Board (that approved the internalization and Contribution Agreement) as a whole serves Shustek's interests rather than the Stockholders' interests and that the Nominating and Corporate Governance Committee seeks to nominate candidates for election to the Board who are willing to submit to Shustek's domination and control.

77. Hart was the second Director – and in fact the second member of the Board's Audit Committee that made findings against Shustek in April 2018 – to leave the Board in 2018. On April 29, 2018 the Company received the resignation letter of Director Wolff who indicated that he was resigning from the Board due to "philosophical differences":

> I came to the board very eager to help with the Company's organizational and financing strategies. However, I am concerned that my philosophy and vision for the Company are not in line with the thinking of a majority of the Board of Directors.

Wolff's resignation thus nearly coincided: (1) with the Audit Committee's conclusion of its investigation; and (2) with the termination of the February 2018 Special Committee (chaired by Wolff) that had been formed to review the proposed internalization of the Advisor and to negotiate for it. The reasonable inference that may be drawn from both the substance and timing of Wolff's resignation letter is that Wolff was concerned that the Directors primarily serve Shustek's interests rather than the Company's.

78. Further, the fact that the Board's termination of the February 2018 Special Committee nearly coincided with the Audit Committee's conclusion of its investigation does not appear to be coincidental. The February 2018 Special Committee, and the Board's Audit

Committee that investigated Shustek and made findings against him, were comprised of the same three Directors, Wolff, Hart, and Chavez.

79. Of the three Directors who comprised the Audit Committee that investigated and made findings against Shustek (and who also comprised the February 2018 Special Committee), one (Wolff) resigned from the Board and another (Hart) was forced off the Board before the end of 2018. It is also worth noting that the third member (Chavez) is not standing for re-election as a Director at the Company's annual meeting of shareholders presently scheduled for June 5, 2019.

VII. The Internalization of the Advisor

80. On April 3, 2019, the Company made an 8-K filing in which it announced that the Company had entered into definitive agreements on March 29, 2019 to internalize the Company's management functions effective April 1, 2019.

81. Through the Contribution Agreement (among the Company, the Advisor, VRM I, VRM II, and Shustek): (1) the Company has acquired and assumed substantially all of the Advisor's assets and liabilities effective April 1, 2019; (2) the Second Amended Advisory Agreement was terminated[16]; (3) the Company is purportedly required to issue the Advisor a total of 1,600,000 shares of the Company's common stock in four installments of 400,000 shares each; (4) the Company will extend offers of employment to the Advisor's officers and other employees; and (5) the Company has the right (at any time prior to December 31, 2022) to repurchase up to 1,100,0000 shares of common stock then held by the Advisor, VRM I, or VRM II at a price equal to $17.50 per share. The Company issued the first installment of 400,000 shares on April 1, 2019;

[16] The Contribution Agreement specifies for avoidance of doubt that the Third Amended Advisory Agreement – which never became effective because the Company's common stock was never listed on a national exchange – is likewise terminated.

the second, third and fourth installments are purportedly due on or around December 31, 2019, December 31, 2020, and December 31, 2021.

82. On March 2019 the Company also entered into various other contracts including: the "Services Agreement" among the Company, the Advisor, VRM I, VRM II, and Shustek; the "Employee Leasing Agreement" between the Company and Advisor; the "Registration Rights Agreement" among the Company, VRM I, and VRM II; and three employment agreements (collectively "Employment Agreements"), the first between the Company and Shustek (the Company's chief executive officer), the second between the Company and Daniel Huberty ("Huberty") (the Company's chief operating officer), and the third between the Company and Kevin Bland ("Bland") (the Company's chief financial officer).

83. Pursuant to the Services Agreement which became effective on March 29, 2019, the Company must pay the Advisor $200,000 per year in connection with agreements pursuant to which the Company, Operating Partnership, or any of the Company's subsidiaries borrows funds or is a guarantor with respect to borrowed funds.

84. Pursuant to the Employee Leasing Agreement, the Company must pay the Advisor to lease certain of the Advisor's employees before they become employees of the Company through the internalization process. The term of this agreement is between April 1, 2019 and the earlier of the date on which all leased employees become employees of the company or June 30, 2019.

85. The Registration Rights Agreement provides the Advisor, VRM I, and VRM II the rights to require the Company to register for resale the shares of common stock issued pursuant to the Contribution Agreement, and any additional shares issued in connection with these issued

shares (including shares issued as distributions or issued in connection with a merger or reorganization), pursuant to the Securities Act.

86. The Employment Agreements specify that the Company shall pay the following compensation to Shustek, Huberty and Bland:

- Annual base compensation of $550,000, $300,000 and $250,000 to Shustek, Huberty, and Bland respectively;
- Annual target incentive compensation of not more than $250,000, $153,000, and $50,000 to Shustek, Huberty, and Bland respectively; and
- Annual target equity awards of not more than $1 million, $153,000, and $130,000 in restricted shares of Company common stock to Shustek, Huberty, and Bland respectively.

Each of the Employment Agreements also specifies that the Company shall pay substantial severance compensation upon the officer's termination except upon the officer's termination with cause or upon the officer's resignation without good reason.

87. The Contribution Agreement indicates that a schedule of the Advisor's liabilities, which were assumed by the Company effective April 1, 2019, were set forth in Exhibit C to the Contribution Agreement, "Schedule of Transferred Liabilities and Retained Liabilities." However, the Company did not provide Exhibit C with its April 3, 2019 8-K filing. The Contribution Agreement specifies that the Advisor's retained liabilities (i.e., liabilities that were not assumed by the Company) were limited to: certain tax liabilities of the Advisor, and the obligation of the Advisor, Shustek and certain of their affiliates to perform services in connection with the Services Agreement as set forth *supra.*

88. The Advisor's massive debt is not included among the Advisor's "retained liabilities"; the Company therefore assumed this debt on April 1, 2019 pursuant to the Contribution Agreement. While the exact amount of the debt that the Company assumed from the Advisor is not publicly available (as discussed *supra*) the balance of VRM I's and VRM II's loans to the Advisor as of September 30, 2016 were $12.9 million and $4.5 million respectively. VRM II had determined to fully impair the value of its note receivable from the Advisor as of September 30, 2016 because the Advisor lacked any ability to repay it; however, VRM II had not forgiven the loan as of this date. Upon information and belief, the total amount of the Advisor's debt, including loans payable to VRM I and VRM II, was in excess of $17.4 million as of April 1, 2019.

89. The only "transferred assets" that the Contribution Agreement references are its contracts, and the only contract that generated meaningful revenue for the Advisor was the Second Amended Advisory Agreement. The Second Amended Advisory Agreement was terminated effective upon the consummation of the Contribution Agreement. As discussed *supra,* the Second Amended Advisory Agreement was a worthless asset prior to its termination: VRM II had determined to fully impair its equity investment in the Advisor by September 30, 2016 because the Advisor was unprofitable and would likely remain unprofitable for the foreseeable future due to its inability to generate sufficient revenue pursuant to its service contracts. Further, as discussed *supra*, the Advisor's service revenue fell sharply from 2016 to 2018; the Company paid the Advisor only $2.0 million in 2019. Upon information and belief, none of the assets that were transferred to the Company pursuant to the Contribution Agreement had any meaningful value.

90. Without accounting for the massive liabilities that the Company assumed in connection with the internalization – or accounting for the Company's purported obligation to issue 1,600,000 shares of common stock which affects the Non-Controlling Stockholders directly

– the Company will likely be worse off financially as a self-managed REIT. The Employment Agreements indicate that the Company may pay in excess of $2.0 million in annual compensation to its officers effective April 1, 2019, each of whom has become a new Company employee. The Company was not required to reimburse the Advisor for compensation paid to executive officers prior to the internalization pursuant to the Second Amended Advisory Agreement (or pursuant to the Amended Advisory Agreement previously in effect)[17]; the annual compensation that the Company will pay its officers represent new expenses for the Company. In addition, the Company was not required to reimburse the Advisor for certain other expenses including for rent or depreciation, utilities, capital equipment or other costs of the Advisor's own administrative items; the Company will now bear these expenses. While the Company will no longer pay asset management fees (which fees amounted to $2 million in 2018), these savings will likely be exceeded by the Company's new expenses.

91. The Company's April 3, 2019 8-K indicates that Ladenburg provided an opinion (the "Ladenburg March 2019 Opinion") as to the "fairness to the Company, from financial point of view as of [March 29, 2019] that the [c]onsideration to be paid by the Company pursuant to the Contribution Agreement, which opinion was subject to the qualifications, assumptions and limitations and other matters Ladenburg considered relevant." The opinion was not made publicly available, and the 8-K does not specify what "qualifications, assumptions, limitations and other

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[17] The Company's registration statements also explicitly state that the Company is not required to reimburse the Advisor for compensation paid to executive officers: "[w]e will not reimburse the advisor for personnel costs in connection with services for which the advisor receives a separate fee, such as an acquisition fee or disposition fee, or for the salaries and benefits paid to our executive officers" (Form S-11 Registration Statement filed on July 28, 2015); "The Company was not to reimburse the Advisor for personnel costs in connection with services for which the Advisor received a separate fee, such as…. for the salaries and benefits paid to the Company's executive officers…" (Form S-11 Registration Statement filed on October 9, 2018).

matters" the opinion was subject to. As former Director Hart expressed in his resignation letter, Ladenburg's opinions cannot be relied upon due to Ladenburg's conflict of interest. In fact, the opinion – attesting to the so-called fairness of a transaction pursuant to which the Company received assets without any meaningful value, assumed massive debt and issued 1,600,000 shares to the Advisor – was plainly tainted and unreliable. The Directors could not have relied upon the Ladenburg March 2019 Opinion in good faith.

92. The Company's April 3, 2019 8-K also recites various bogus factors offered by the Director Defendants that supposedly support the fairness of the Contribution Agreement. These factors include "the belief that the Internalization would result in a reduction in the Company's overall operating expenses, primarily as a result of terminating management fees paid to the Manager, which fees would have increased as the Company continues to grow in asset size." As discussed *supra,* pursuant to the Company's Second Amended Advisory Agreement, the Company's asset management fees were capped at $2.0 million unless the Company held real estate property, mortgage, or other investments with an appraised value of at least $500 million or achieved AFFO of at least $0.3125 per share of common stock for two consecutive quarters.

93. While the Company does not report AFFO in the financial statements provided within its annual and quarterly reports filed on Form 10-K and 10-Q respectively, its AFFO may be estimated based the Company's reports of its funds from operations ("FFO"). The Company has reported negative FFO for each year of its existence; the estimate that may be calculated for its AFFO for each of these years is likewise negative. The Company has never been on a trajectory to achieve quarterly AFFO of $0.3125 per share.

94. In addition, the Company's holdings of "real estate property, mortgage, or other investment" fall far short of the $500 million threshold: as of March 31, 2019, the Company's

balance sheet reflects investments (without accounting for accumulated depreciation) of only approximately $313 million. Even if Shustek's recent misconduct had never come to light, it is entirely speculative as to whether the Company could have ever raised sufficient capital through offerings of its securities to meet the $500 million threshold, and even under the most optimistic fundraising scenario, it would have been many years before the Company reached the threshold. The Company and MVP REIT I raised combined proceeds of only approximately $130.5 million through the sale of common stock to investors since September 2012 when MVP REIT I's securities offering commenced. The Company's 2018 annual report filed on Form 10-K also describes that the Company is expected to have a short life as a non-traded REIT: "the Company believes that non-listed REITs are unique in that they have a limited life with targeted exit strategies within a relatively limited time frame after the acquisition activity ceases."

95. Further, as set forth *supra*, the Company has consistently reported negative FFO which makes it even less likely that the Company will ever meet the $500 million threshold; negative FFO is erosive to the Company's asset base. Due to the Company's poor financial performance and the recent revelation of Shustek's misconduct, both of which hamper the Company's ability to raise funds through securities offerings, it is extremely unlikely that the Company will ever reach the $500 million threshold. The Director Defendants' explanation that the internalization will result in savings for the Company is disingenuous at best.

96. An additional bogus factor that the Director Defendants offered in support of the internalization is that the Advisor "has incurred unreimbursed expenses on behalf of MVP REIT and the Company in an aggregate amount exceeding $25 million." The Company was required to

reimburse the Advisor for certain operating expenses[18]; however, the Advisor has been reimbursed for all of its expenses to which it was entitled to reimbursement. The Company reported through its Form 10-Q on May 14, 2019 that "as of March 31, 2019, the Advisor was due approximately $0.6 million in reimbursable expenses, the balance of which has been paid as of the date of this filing."

97. Upon information and belief, most of the Advisor's unreimbursed expenses reflect compensation paid to the executive officers, and Shustek received the lion's share of this compensation. The Directors' explanation that the Contribution Agreement is fair to the Company because the Advisor incurred $25 million of unreimbursed expenses – when the majority of the unreimbursed expenses resulted from the Advisor's payments of substantial compensation to Shustek (notwithstanding the Advisor's lack of profitability) and when the Company's reimbursement of executive officer compensation to the Advisor was explicitly impermissible – is disingenuous at best. The Director Defendants have effectively shifted costs related to executive compensation (that the Advisor paid prior to the internalization) to the Company in violation of the Amended Advisory Agreement and Second Amended Advisory Agreement.

VIII. The Company's Issuance of Common Stock to the Advisor Pursuant to the Contribution Agreement Will Result in a Windfall for Shustek

98. Pursuant to the Advisor Operating Agreement (as discussed *supra*), Shustek is entitled to 40% of the Advisor's profits after VRM I and VRM II (the Advisor's owners) have

[18] Prior to the effective date of the Contribution Agreement, the Company was required to reimburse the Advisor for several categories of operating expenses, including compensation paid to the Advisor's non-executive employees but excluding compensation paid to executive officers. Pursuant to the Amended Advisory Agreement and Second Amended Advisory Agreement, the Company's reimbursement of expenses to the Advisor was subject to the "2%/25% Guidelines which capped the Company's expense reimbursement to 2% of the Company's "Average Invested Assets" or 25% of its "Net Income." In 2018, the Company reimbursed the Advisor $2.7 million in expenses.

received returns of their capital contributions and after VRM I and VRM II have received a 7.5% annualized return on their capital investments in the Advisor; these capital investments consist of VRM I's and VRM II's loans to the Advisor. VRM I and VRM II are entitled to the remaining 60% of the Advisor's net profits.

99. VRM I made no capital contribution to the Advisor and VRM II made only a $1,000 capital contribution (as discussed *supra*). The Company has assumed the Advisor's debt reflecting VRM I's and VRM II's loans to the Advisor (i.e, their "capital investments"). The Company is therefore purportedly liable for the repayment of the loans to VRM I and VRM II as well as interest payments. Upon information and belief, the annual rate of interest on these loans is at least 7.5%[19]; the Company's interest payments to VRM I and VRM II will therefore cover a 7.5% annualized return to which VRM I and VRM II.

100. When the Company satisfies VRM I's and VRM II's loans and the Advisor repays VRM II's $1,000 capital contribution, Shustek is purportedly entitled to 40% of the Advisor's profit resulting from the Company's issuance of common stock. Further, Shustek owns 18.25% of VRM I and 33.56% of VRM II; therefore, Shustek has a significant stake in VRM I's and VRM II's remaining 60% share of the Advisor's profit.

IX. Shustek and the Company's Investor Relations Director Have Concealed and Misstated the Impact of the Internalization

101. During the Company's first quarter 2019 earnings conference call held on May 22, 2019 by Shustek, Bland and Brandon Welch ("Welch") who "oversee[s] Capital Markets and Investor Relations" for the Company, Welch reported that prior to the April 1, 2019 internalization, "The Parking REIT was under an external management structure, whereby the management team

[19] The rate of interest on VRM I's and VRM II's loans to the Advisor is not disclosed in their public filings.

and employees of the Parking REIT worked for a ***third-party management*** company." (Form 8-K dated May 22, 2019, Ex. 99-1, emphasis added). Welch further misleadingly stated that, "we expect the internalization to result in a reduction in our overall operating expenses as we grow, primarily as a result of terminating management fees paid to the Manager, which management fees would have increased as we increased our assets. The only fee paid to the manager following internalization will be a $200,000 annual fee for four years related to the certain services to facilitate compliance with the Company's debt covenants." *Id.* With respect to Stockholder liquidity, Shustek highlighted two specific options under consideration as "selling the assets, or selling the Company" both of which would negate the purported (yet illusory) "benefits" of the internalization.

CLASS ACTION ALLEGATIONS

102. Plaintiff, a Stockholder in the Company, brings this action as a class action pursuant to Maryland Rule 2-231, on behalf of himself and all other Non-Controlling Stockholders (excluding the Defendants herein, and any person, firm, trust, corporation or other entity related to or affiliated with any of the Defendants) who have been wrongfully deprived of the full economic value and voting power of their shares as a result of the Director Defendants' and Advisors' wrongful expropriation (for which the Non-Controlling Stockholders have received no consideration) that the Director Defendants and Advisor achieved by causing the Company to issue common stock to the Advisor in violation of their fiduciary duties to Plaintiff and the other Stockholders.

103. This action is properly maintainable as a class action.

104. A class action is superior to all other available methods of fair and efficient adjudication of this controversy.

105. The Class is so numerous that joinder of all members is impracticable. As of December 31, 2019, there were 6,542,797 shares outstanding of The Parking REIT's common stock. Consequently, the number of Class members is believed to be in the tens of thousands, and the Class members are likely scattered across the United States. Moreover, damages suffered by individual Class members may be small, making it overly expensive and burdensome for individual Class members to pursue individual actions.

106. There are questions of law and fact which are common to all Class members and which predominate over any questions affecting only individuals, including, but not limited to:

a. whether the Advisor and Director Defendants fulfilled, and are capable of fulfilling, their fiduciary duties to Plaintiff and the Class;

b. whether the Advisor and Director Defendants have breached fiduciary duties to Stockholders when they caused the Company to enter into the Contribution Agreement pursuant to which the Company has issued 400,000 shares of common stock in the Company to the Advisor, and is purportedly required to issue an additional 1,200,000 shares in exchange for assets without any meaningful value, through which the Non-Controlling Stockholders have been wrongfully deprived of the full economic value and voting power of their shares and for which the Non-Controlling Stockholders have received no consideration;

c. whether the Defendants are liable for the direct claims against them set forth in the Counts, below; and

d. whether the Class is entitled to injunctive relief, other appropriate relief and/or damages.

107. Plaintiff's claims and defenses are typical of the claims and defenses of other class members, and Plaintiff has no interests antagonistic or adverse to the interest of other class

members. Plaintiff will fairly and adequately protect the interest of the Class.

108. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature.

109. Defendants have acted in a manner that affects Plaintiff and all members of the Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief with respect to the Class as a whole.

110. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants; or adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other Class members or substantially impair or impede their ability to protect their interests.

COUNT I

Direct Claim on Behalf of Plaintiff and the Class for Breach of Fiduciary Duty against the Director Defendants and the Advisor

111. Plaintiff incorporates, adopts by reference and realleges each and every allegation set forth above as though set forth fully herein.

112. Section 7.5 of the Charter specifies that the Directors owe a fiduciary duty to the Stockholders. Section 8.3 of the Charter likewise specifies that the Advisor owes a fiduciary duty to the Stockholders.

113. The Directors and Advisor owe the Stockholders the fiduciary duties to protect their interests, including but not limited to protecting the economic value and voting power of their shares.

114. As alleged herein, the Director Defendants and Advisor breached their fiduciary duties to the Plaintiff and the Class by knowingly: causing the Company to enter the Contribution Agreement pursuant to which the Company is purportedly required to issue a total of 1,600,000 shares of Company common stock to the Advisor in exchange for the Advisor's assets that have no meaningful value and assumption of the Advisor's debt; causing the Company to issue 400,000 shares of Company common stock to the Advisor pursuant to the Contribution Agreement on or around April 1, 2019; and thereby depriving the Plaintiff and the Class of the full economic value and voting power of their shares (without consideration to the Plaintiff and the Class) through their wrongful expropriation of this economic value and voting power.

115. The Director Defendants' and Advisor's breaches of fiduciary duty as herein alleged constitute gross negligence.

116. As a direct and proximate result of the Director Defendants' and Advisor's breaches of fiduciary duties as herein alleged, the Plaintiff and the Class have sustained and will in the future sustain damages.

COUNT II

Direct Claim on Behalf of Plaintiff and the Class for Unjust Enrichment Against Shustek, the Advisor, VRM I, and VRM II

117. Plaintiff incorporates, adopts by reference and realleges each and every allegation set forth above as though set forth fully herein.

118. For all of the reasons set forth herein the issuance of 400,000 shares of the Company's common stock to the Advisor pursuant to the Contribution Agreement was improper, and the issuance of additional shares would be improper. Defendants the Advisor, VRM I and VRM II (which own the Advisor), and Shustek (who is the beneficial owner of the 400,000 shares

that have been issued to the Advisor) were unjustly enriched at the expense of Plaintiff and the Class.

119. The issuance of the 400,000 shares of common stock was wrongful and should be invalidated; such invalidation would have the effect of transferring the wrongfully expropriated economic value and voting power of the 400,000 shares of common stock that were wrongfully issued to the Advisor, back to the Non-Controlling Stockholders.

120. It would be unjust to allow Defendants Shustek, VRM I, VRM II, and the Advisor to retain the benefits of the wrongful issuance of 400,000 shares of common stock to the Advisor at the Plaintiff's and Class' expense.

121. The Plaintiff and the Class have no adequate remedy at law.

122. As a direct and proximate result of the unjust enrichment as herein alleged, the Plaintiff and the Class have sustained and will in the future sustain damages.

COUNT III

Direct Claim on Behalf of the Plaintiff and the Class for Declaratory Relief Pursuant to Courts and Judicial Proceedings Article of the Annotated Code of Maryland § 3-401. et seq. against all Defendants

123. Plaintiff incorporates, adopts by reference and realleges each and every allegation set forth above as though set forth fully herein.

124. Defendants (other than The Parking REIT) engaged in the wrongful conduct alleged in Counts I and II set forth above.

125. As a result of Defendants' conduct as herein alleged, Plaintiff and the other Non-Controlling Stockholders have sustained and/or will in the future sustain suffer damages and harm, including harm for which they have no adequate remedy at law.

126. An actual controversy exists between the Defendants (on the one hand) and the Plaintiff and the other Non-Controlling Stockholders (on the other hand), relating to whether 400,000 shares of common stock in the Company were wrongfully issued to the Advisor, and whether the Advisor is entitled to the issuance of any further shares of Company common stock pursuant to the Contribution Agreement.

127. Pursuant to the Courts and Judicial Proceedings Article of the Annotated Code of Maryland §3-412, Plaintiff demands declarations that include but are not limited to declarations that: (a) the Advisor and Director Defendants have committed a gross abuse of trust and have breached their fiduciary, contractual and other duties owed to the Non-Controlling Stockholders by causing the Company to enter the Contribution Agreement pursuant to which the Company is purportedly required to issue a total of 1,600,000 shares of common stock to the Advisor and pursuant to which the Director Defendants and Advisor have already caused the Company to issue 400,000 shares of common stock to the Advisor; (b) the Advisor is not entitled to receive any shareholder distributions with respect to the 400,000 shares that were wrongfully issued; and (c) that the wrongfully issued 400,000 shares of common stock should be invalidated. Further, the Plaintiff demands that the Court enjoin the Director Defendants, Advisor, and Company from causing the Company to issue any further shares of common stock to the Advisor pursuant to the Contribution Agreement, or from making any distribution payments to Shustek, the Advisor, VRM I, and/or VRM II on account of the 400,000 wrongfully issued shares, or from causing the Company to repurchase any shares of Company common stock from the Advisor, Shustek, VRM I, or VRM II pursuant to the call provision in the Contribution Agreement, during the pendency of this action and/or of any appeals.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

A. Certifying this case as a class action, certifying the proposed Class and designating Plaintiff and the undersigned counsel as representatives of the Class;

B. Declarations that include but are not limited to declarations that: Defendants (other than the Parking REIT) have committed a gross abuse of trust and have breached their fiduciary and other duties owed to the Non-Controlling Stockholders by: (1) causing the Company to enter into the Contribution Agreement that purportedly requires it to issue 1,600,000 shares of common stock to the Advisor in four installments; and (2) causing the Company to issue 400,000 shares to the Advisor pursuant to the first installment.

C. Issuance of an order enjoining Defendants and any and all other employees, agents, or representatives of the Company and persons acting in concert with any one or more of any of the foregoing, during the pendency of this action and/or any appeals, from taking any action to cause the Company to issue shares of common stock to the Advisor, including issuances of shares in connection with the Contribution Agreement, to cause the Company to make any distribution payment on account of the 400,000 shares that have been issued to the Advisor pursuant to the Contribution Agreement, or to cause the Company to purchase shares of Company common stock from Shustek, the Advisor, VRM I, or VRM II pursuant to the Contribution Agreement.

D. An award to the Non-Controlling Stockholders of the amount of compensatory damages sustained as a result of Defendants' wrongful conduct alleged herein, together with all pre- and post-judgment interest thereon;

E. Issuing an order requiring the Company to invalidate the shares of stock issued to the Advisor pursuant to the Contribution Agreement;

F. Awarding Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs and expenses; and

G. Granting such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff and the other members of the Class demand a trial by jury on all claims and Counts in this pleading so triable and as to all issues raised herein that are so triable.

DATED: May 31, 2019

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