

PROPOSAL NO. 4

AMEND OUR CERTIFICATE OF INCORPORATION TO INCREASE THE AUTHORIZED SHARES OF COMMON STOCK FROM 300,000,000 TO 600,000,000 (THE "AUTHORIZED SHARES AMENDMENT")

After careful consideration, the Board has adopted, declared advisable and directed that there be submitted to the stockholders a proposed amendment of the Company's Third Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") to increase the number of shares of authorized common stock from 300,000,000 to 600,000,000.

Background

Article IV of the Certificate of Incorporation currently authorizes the Company to issue up to 300,000,000 shares of common stock and 1,000,000 shares of preferred stock of the Company, par value \$0.0001 per share ("preferred stock"). As of March 1, 2024, approximately 202,776,151 shares of common stock were issued, including zero held as treasury shares, with warrants outstanding to purchase up to an aggregate of 61,411,390 shares of common stock, options and restricted stock units outstanding to acquire up to an aggregate of 9,196,514 shares of common stock, a maximum of 6,516,359 shares of common stock issuable upon conversion of the Company's outstanding 5%/6% Convertible Senior PIK Toggle Notes due 2026, and a maximum of 19,488,773 shares of common stock issuable upon conversion of the Company's outstanding 26.5% Convertible PIK Notes due 2026. As a result, approximately 610,813 authorized shares remain available for issuance for future purposes. The adoption of the proposed Authorized Shares Amendment would provide for an additional 300,000,000 authorized shares of common stock for future issuance, which would bring the aggregate total of authorized shares of common stock to 600,000,000.

The Authorized Shares Amendment amends and restates Section 4.1(b) of Article IV of the Certificate of Incorporation in its entirety to read as follows:

The total number of shares of all classes of capital stock, each with a par value of \$0.0001 per share, which the Corporation is authorized to issue is 601,000,000 shares, consisting of (a) 600,000,000 shares of common stock (the "Common Stock") and (b) 1,000,000 shares of preferred stock (the "Preferred Stock").

Reasons for Seeking Stockholder Approval

As of March 1, 2024, the Company had approximately 0.2% of the authorized shares of common stock available for issuance for future purposes. The additional shares may be used for various purposes without further stockholder approval (except as required by law or Nasdaq rules). These purposes may include: (i) raising capital, if the Company has an appropriate opportunity, through offerings of common stock or securities that are convertible into common stock; (ii) exchanging common stock or securities that are convertible into common stock for other outstanding securities; (iii) providing equity incentives to employees, officers, directors, customers, consultants, or advisors; (iv) expanding the Company's business through the acquisition of other businesses or assets; (v) stock splits, dividends, and similar transactions; (vi) debt or equity restructuring or refinancing transactions; and (vii) other corporate purposes.

The Board has not proposed the increase in the number of authorized shares of common stock with the intent of preventing or discouraging any actual or threatened tender offers or takeover attempts of the Company and the Board is not currently aware of any attempt or plan to acquire control of the Company. Rather, the Authorized Shares Amendment has been prompted by business and financial considerations, as set out above, and it is the intended purpose of the Authorized Shares Amendment to provide greater flexibility to the Board in considering and planning for our potential future corporate needs.

Rights of Additional Authorized Shares

The additional authorized shares contemplated by the Authorized Shares Amendment would be a part of the existing class of our common stock and, if issued, would have the same rights and privileges as the shares of our common stock presently issued and outstanding. Holders of shares of our common stock (solely in their capacity as holders of shares of our common stock) have no preemptive rights or rights to convert their shares of our common stock into any other securities. Accordingly, should the Board elect to issue additional shares of our common stock, existing holders of shares of our common stock would not have any preferential rights to purchase the shares.

Effect on Current Stockholders

Future issuance of common stock or securities convertible into our common stock could have a dilutive effect on the earnings per share, book value per share, voting power and percentage interest of holdings of current stockholders. In addition, the availability of additional shares of our common stock for issuance could, under certain circumstances, discourage or make more difficult efforts to obtain control of the Company under a possible take-over scenario. The Board is not aware of any attempt, or contemplated attempt, to acquire control of the Company. This proposal is not being presented with the intent that it be used to prevent or discourage any acquisition attempt, but nothing would prevent the Board from taking any appropriate actions not inconsistent with its fiduciary duties. The Authorized Shares Amendment does not affect the number of shares or rights of preferred stock authorized.

Effectiveness of the Amendment

If this proposal is approved by the Company's stockholders, the Authorized Shares Amendment will become effective upon the filing of a Certificate of Amendment to the Certificate of Incorporation with the Delaware Secretary of State, which the Company intends to do promptly following the Annual Meeting. If the proposal is not approved by the Company's stockholders, the Authorized Shares Amendment will not be implemented and the Company's capitalization will remain as it is currently.

Required Vote

Approval of Proposal No. 4 requires the affirmative vote of the holders of at least 66 2/3% of the voting power of all outstanding shares of capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class. Abstentions, if any, will have the effect of votes "AGAINST" the proposal. In addition, because this is a routine item, there will not be any broker non-votes.

THE BOARD RECOMMENDS A VOTE FOR THE AUTHORIZED SHARES AMENDMENT.