

PROPOSAL 5 — ADOPTION OF THE AMENDMENT TO THE COMPANY'S AMENDED AND RESTATED CERTIFICATE OF INCORPORATION TO LIMIT THE LIABILITY OF CERTAIN OFFICERS AS PERMITTED BY DELAWARE LAW

Proposed Amendment

We are submitting for stockholder adoption an amendment (the "Proposed Amendment") to the Company's current Amended and Restated Certificate of Incorporation (the "Current Charter") to provide for exculpation for certain corporate officers of the Company for monetary damages resulting from a breach of the fiduciary duty of care, subject to certain limitations, as permitted by a recent amendment to the Delaware General Corporation Law ("DGCL"). The Board has unanimously approved and adopted, and recommends that all stockholders adopt, the Proposed Amendment to Section 1 of Article VIII of the Current Charter to expand the exculpation provision to include officers. The discussion regarding this proposal is qualified in its entirety by reference to the complete text of the Proposed Amendment to Section 1 of Article VIII of the Current Charter, which is set forth below (with additions to existing language indicated by underlined text):

Section 1. Elimination of Certain Liability of Directors and Officers. A director or officer of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director or officer of the Corporation existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

For purposes of this Article VIII, Section 1, "officer" shall have the meaning provided in Section 102(b)(7) of the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended.

If you approve Proposal 5, you will be adopting the changes to Section 1 of Article VIII of the Current Charter as described above.

Background and Reasons for the Recommendation

The Company is incorporated in the State of Delaware and is, therefore, subject to the DGCL. The DGCL permits Delaware corporations to limit or eliminate directors' personal liability for monetary damages resulting from a breach of the fiduciary duty of care, subject to certain limitations such as prohibiting exculpation for intentional misconduct or knowing violations of the law. These provisions are referred to as "exculpatory provisions" or "exculpatory protections." Exculpatory provisions for directors are included in the Current Charter.

Effective August 1, 2022, the Delaware legislature amended Section 102(b)(7) of the DGCL to permit Delaware corporations to provide similar exculpatory protections for officers in corporate charters. This change was due in part to the recognition that both officers and directors owe fiduciary duties to corporations, and yet only directors were protected by the exculpatory provisions. In addition, plaintiffs may attempt to exploit the absence of protection for officers to prolong litigation and extract settlements for nuisance claims.

Under the DGCL amendment, the officers who may be exculpated by a Section 102(b)(7) provision in a corporate charter consist of any person who (i) is the president, chief executive officer, chief operating officer, chief financial officer, chief legal officer, controller, treasurer or chief accounting officer of the corporation at any time during the course of conduct alleged in the action or proceeding to be wrongful, (ii) is or was identified in the corporation's public filings with the SEC because such person is or was one of the most highly compensated executive officers of the corporation or (iii) has consented to service of process in Delaware by written agreement.

Conditions and Limitations to Exculpation under DGCL Section 102(b)(7)

As amended, Section 102(b)(7) of the DGCL protects officers from personal monetary liability for breaches of the fiduciary duty of care. However, exculpation for officers is not available for:

- Breaches of the fiduciary duty of loyalty (which requires officers to act in good faith for the benefit of the corporation and not for personal gain);
- Intentional misconduct or knowing violations of the law; or
- Derivative claims on behalf of a corporation by a stockholder.

In addition, the protections of Section 102(b)(7) of the DGCL are limited to monetary damages only. Accordingly, claims against officers for equitable relief are unaffected by exculpation provisions.

Reasons for the Proposed Amendment

The Board believes it is appropriate for stockholders to adopt the Proposed Amendment as permitted by the DGCL. The nature of the role of directors and officers often requires them to make decisions on crucial matters. Frequently, directors and officers must make decisions in response to time-sensitive opportunities and challenges, which can create substantial risk of investigations, claims, actions, suits or proceedings seeking to impose liability on the basis of hindsight, especially in the current litigious environment and regardless of merit. Claims against directors and officers for breaches of fiduciary duties are expected to continue. Limiting concern about personal risk empowers both directors and officers to best exercise their business judgment in furtherance of stockholder interests while reducing the potential distraction posed by frivolous lawsuits and costs that are often borne by the Company either directly, through indemnification, or indirectly through higher director and officer liability insurance premiums.


The Company expects many of its peers and competitors that have not already done so to amend their charters to limit the personal liability of officers similar to the Proposed Amendment, and failing to adopt the Proposed Amendment could impact our recruitment and retention of exceptional officer candidates who conclude that the potential exposure to liabilities, costs of defense and other risks of proceedings exceeds the benefits of serving as an officer of the Company.

The Board believes that eliminating personal monetary liability for officers under the circumstances permitted by the DGCL is reasonable and appropriate. Accordingly, the Board has unanimously approved and adopted the Proposed Amendment and recommended that our stockholders vote in favor of the adoption of the Proposed Amendment.

For the reasons described above, the Board believes that the Proposed Amendment is advisable and in the best interests of the Company and its stockholders.

Text of the Proposed Amendment

The Proposed Amendment, which is set forth above, shows the proposed revisions to Section 1 of Article VIII of the Current Charter, with additions indicated by underlined text. If Proposal 5 is approved by our stockholders and, thus our stockholders adopt the Proposed Amendment, the Board has authorized to the filing with the Delaware Secretary of State of a certificate of amendment to the Current Charter (the "Amendment Certificate"), reflecting the revisions contemplated by the Proposed Amendment. The Amendment Certificate will become effective upon its filing with the Delaware Secretary of State, which is anticipated to occur promptly after the Annual Meeting. If our stockholders do not approve Proposal 5, the Current Charter will remain in place, and the Amendment Certificate will not be filed with the Delaware Secretary of State. However, even if our stockholders approve Proposal 5, the Board retains discretion under Delaware law to abandon the Proposed Amendment without further action by our stockholders.

 **The Board of Directors unanimously recommends that stockholders vote FOR Proposal 5 and adopt the Proposed Amendment.**