RESOLVED:

Shareholders of Digital Realty Trust, Inc. ("Digital Realty") ask the Board of Directors to oversee the preparation of a public report on the impact of the use of mandatory arbitration on Digital Realty's employees and workplace culture. The report should evaluate the impact of Digital Realty's current use of arbitration on the prevalence of harassment and discrimination in its workplace and on employees' ability to seek redress. The report should be prepared at reasonable cost and omit proprietary and personal information.

WHEREAS:

Title VII of the Civil Rights Act of 1964 states that it is unlawful "to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."[1] Nevertheless, 48 percent of African Americans and 36 percent of Hispanics have experienced race-based workplace discrimination.[2] More than half of senior-level women say that they have been sexually harassed during their careers, with African American women facing an increased relative risk of sexual harassment in the workplace.[3] A workplace that tolerates harassment invites legal, brand, financial and human capital risk. Companies may experience reduced morale, lost productivity, absenteeism and challenges in attracting and retaining talent. Unexpected leadership changes following allegations of harassment or discrimination put shareholder value at risk.

In contrast, research by McKinsey & Company found that companies with high levels of ethnic and cultural diversity are 33 percent more likely to outperform in profitability while those in the top quartile for gender diversity are 27 percent more likely to have superior value creation.[4] A study by the Wall Street Journal found that over the five-year period ended June 28, 2019, the 20 most diverse companies in the S&P 500 had an average annual stock return that was almost six percent higher than the 20 least diverse companies.[5]

Digital Realty requires its employees to agree to arbitrate employment-related claims. Mandatory arbitration limits employees' remedies for wrongdoing, keeps misconduct secret and prevents employees from learning about shared concerns.[6]

Arbitration clauses face a changing regulatory landscape. Attorneys general from every state voiced support for ending forced arbitration of sexual harassment claims in 2018. In 2019, the U.S. House of Representatives passed a bill banning mandatory arbitration. California banned the use of arbitration agreements as a condition of employment, Washington state invalidated contracts requiring arbitration of sexual harassment claims and the New York Supreme Court refused to compel arbitration in a

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[1] https://www.eeoc.gov/laws/statutes/titlevii.cfm

[2] https://www.nbcnews.com/politics/politics-news/poll-64-percent-americans-say-racism-remains-majorproblemn877536

[3] https://www.wsj.com/articles/what-metoo-has-to-do-with-the-workplace-gender-gap-1540267680; https://onlinelibrary.wiley.com/doi/abs/10.1111/gwao.12394

[4] https://www.mckinsey.com/~/media/mckinsey/business%20functions/organization/our%20insights/delivering%20through%20diversity/delivering-through-diversity_full-report.ashx

[5] https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200

[6] https://www.eeoc.gov/eeoc/systemic/review/

harassment lawsuit. Continuing to rely on arbitration clauses for protections, when these may be removed retroactively, creates a long-tail risk for our company.