

RESOLVED:

Shareholders of Digital Realty Trust, Inc. (“Digital Realty”) ask that the Board of Directors prepare a public report assessing the potential risks to the company associated with its use of concealment clauses in the context of harassment, discrimination and other unlawful acts. The report should be prepared at reasonable cost and omit proprietary and personal information.

SUPPORTING STATEMENT:

Concealment clauses are defined as any employment or post-employment agreement that Digital Realty asks employees or contractors to sign to limit their ability to discuss unlawful acts in the workplace, including harassment and discrimination. These can include non-voluntary arbitration agreements (including those with short opt-out periods early in employment), settlement agreements, and non-disclosure or non-disparagement agreements.

WHEREAS:

In June 2022, 45.59% percent of Digital Realty’s investors supported the request of this resolution. Since this high vote, the company has not released any additional information on its use of concealment clauses, nor has it agreed to a conversation with the resolution’s proponents.

It is appropriate to use concealment clauses in employment agreements to protect confidential corporate information. However, Digital Realty’s employment-related agreements may also prohibit workers from speaking publicly about harassment, discrimination, or other unlawful acts. Harassment and discrimination claims should not be kept confidential. If they are, investors cannot be confident in their knowledge of Digital Realty’s workplace culture.

Concealment clauses may limit employees’ remedies for wrongdoing, reduce employee willingness to report discrimination,¹ and prevent employees from learning about shared concerns. Concealment clause use may also create brand, legal, and human capital risks. Arbitration prevents class-action suits, which may allow a sense of impunity from companies with poorly implemented human capital management practices.

A healthy workplace culture is linked to strong returns. McKinsey found that companies in the top quartile for workplace culture post a return to shareholders 60 percent higher than median companies and 200 percent higher than organizations in the bottom quartile.²

Digital Realty operates under a quickly changing patchwork of state and federal laws related to the use of concealment clauses and may benefit from a consistent practice across all employees and contractors. As of November 21, 2022, “The Speak Out Act,” which limits non-disclosure agreements when sexual harassment is claimed, is expected to soon be signed into federal law by the President.³ It joins existing federal legislation which ended the use of forced arbitration in workplace sexual assault

¹<https://www.hnrl.org/2020/08/forced-into-employment-arbitration-sexual-harassment-victims-are-saying-metoo-and-beginning-to-fight-back-but-they-need-congressional-help/>

²<https://www.mckinsey.com/business-functions/organization/our-insights/the-organization-blog/culture-4-keys-to-why-it-matters>

³ <https://www.forbes.com/sites/kimelsesser/2022/11/16/congress-passes-law-restoring-victims-voices-banning-ndas-in-sexual-harassment-cases/>

and harassment cases.⁴ Additionally, a number of states, including California, Maine, New York, and Washington, have reduced employers' abilities to use of concealment clauses.

Investors seek assurance that missteps are not occurring at Digital Realty, hidden from view because of concealment clauses. Companies such as Alphabet,⁵ Apple,⁶ Microsoft,⁷ and Salesforce,⁸ among others, have moved away from the use of these clauses.

⁴<https://www.washingtonpost.com/politics/2022/03/03/biden-signs-new-law-ending-forced-arbitration-sex-assault-harassment/>

⁵ https://www.sec.gov/Archives/edgar/data/1652044/000130817922000262/lgoog2022_def14a.htm

⁶ <https://www.sec.gov/Archives/edgar/data/320193/000119312522003583/d222670ddef14a.htm>

⁷ <https://www.reuters.com/legal/litigation/microsoft-says-it-will-not-enforce-non-compete-clauses-us-employee-agreements-2022-06-08/>

⁸ Salesforce Will Let Workers Break NDAs to Report Harassment, Discrimination (yahoo.com)