UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

April 8, 2024

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

Re: Lowe's Companies, Inc. (the "Company")
Incoming letter dated January 26, 2024

Dear Ronald O. Mueller:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the New York City Carpenters Pension Fund for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal asks that the board of directors take the necessary action to adopt specific director election resignation provisions in the Company's bylaws.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(2). We note that in the opinion of North Carolina counsel, implementation of the Proposal would cause the Company to violate state law. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(2).

Copies of all of the correspondence on which this response is based will be made available on our website at https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Michael Piccirillo
New York City District Council of Carpenters

GIBSON DUNN

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January 26, 2024

VIA ONLINE PORTAL SUBMISSION

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Lowe's Companies, Inc.*
*Shareholder Proposal of New York City Carpenters Pension Fund*
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, Lowe's Companies, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the "2024 Proxy Materials") a shareholder proposal (the "Proposal") and statement in support thereof received from the New York City Carpenters Pension Fund (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and

- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of such correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## THE PROPOSAL

The Proposal states:

> **Resolved:** That the shareholders of Lowe's Companies, Inc. ("Company") hereby request that the board of directors take the necessary action to adopt a director election resignation bylaw that requires each director nominee to submit an irrevocable conditional resignation to the Company to be effective upon the director's failure to receive the required shareholder majority vote support in an uncontested election. The proposed resignation bylaw shall require the Board to accept a tendered resignation absent the finding of a compelling reason or reasons to not accept the resignation. Further, if the Board does not accept a tendered resignation and the director remains as a "holdover" director, the resignation bylaw shall stipulate that should a "holdover" director fail to be re-elected at the next annual election of directors, that director's new tendered resignation will be automatically effective 30 days after the certification of the election vote. The Board shall report the reasons for its actions to accept or reject a tendered resignation in a Form 8-K filing with the U.S. Securities and Exchange Commission.

A copy of the Proposal and statement in support thereof is attached to this letter as Exhibit A.

## BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate North Carolina law.

## ANALYSIS

### The Proposal May Be Excluded Under Rule 14a-8(i)(2) Because Implementation Of The Proposal Would Cause The Company To Violate North Carolina Law

*A. Background On Rule 14a-8(i)(2)*

Rule 14a-8(i)(2) permits a company to exclude a shareholder proposal if implementation of the proposal would "cause the company to violate any state, federal, or foreign law to which it is subject." *See The Goldman Sachs Group, Inc.* (avail. Feb. 1, 2016); *Kimberly-Clark Corp.* (avail. Dec. 18, 2009); *Bank of America Corp.* (avail. Feb. 11, 2009). As discussed below and for the reasons set forth in the legal opinion provided by Moore & Van Allen PLLC, the Company's North Carolina counsel, attached hereto as Exhibit B (the "North Carolina Law Opinion"), the

Proposal is excludable under Rule 14a-8(i)(2) because implementation of the Proposal would cause the Board of Directors (the "Board") and the Company to violate North Carolina law.

On numerous occasions, the Staff has concurred with the exclusion of shareholder proposals where the proposal, if implemented, would cause a company to violate state law. For example, in *Johnson & Johnson* (avail. Feb. 16, 2012), the Staff concurred that a proposal could be excluded under Rule 14a-8(i)(2) where, as here, the proposal would have required adoption of a bylaw that restricted a board's ability to exercise its fiduciary duty by altering the board's standard of conduct in response to a shareholder vote. Specifically, the proposal in *Johnson & Johnson* sought to limit the ability of the board of directors to appoint directors to the compensation committee if such directors received a certain number of "no" or "withhold" votes in a director election. The Staff concurred with exclusion of the proposal because its implementation would violate New Jersey law—which provides that decisions regarding committee composition are exclusively left to the board of directors—by limiting the decision-making authority of the board to select such committee members in the exercise of its fiduciary duties.

In other precedent, the Staff has concurred with the exclusion under Rule 14a-8(i)(2) of proposals that sought to dictate standards or procedures regarding the election of directors that varied from state law standards. For example, the proposal in *Oshkosh Corp.* (avail. Nov. 21, 2019) requested that the company amend its bylaws to require that a director who received less than a majority vote be removed from the board "immediately." The Staff concurred with the proposal's exclusion under Rule 14a-8(i)(2) because implementing it would cause the company to violate Wisconsin law, which provided two methods for the removal of directors—by a shareholder vote or by a judicial proceeding—and neither was immediate or an action the company or its board could unilaterally take. Similarly, in *IDACORP, Inc.* (avail. Mar. 13, 2012), the Staff concurred with the exclusion under Rule 14a-8(i)(2) of a shareholder proposal requesting that the company amend its bylaws to implement majority voting for director elections where Idaho law provided for plurality voting unless a company's certificate of incorporation provided otherwise. *See also Ball Corp.* (avail. Jan. 25, 2010, *recon. denied* Mar. 12, 2010) (concurring with the exclusion under Rule 14a-8(i)(2) of a shareholder proposal that would cause the company to violate Indiana law relating to board classification); *Bank of America Corp.* (avail. Feb. 11, 2009) (concurring with the exclusion under Rule 14a-8(i)(2) of a shareholder proposal to amend the company's bylaws to establish a board committee and authorize the board chairman to appoint members of the committee that would cause the company to violate Delaware law).

As in the precedent cited above, implementation of the Proposal would cause the Company to violate North Carolina law because it requires the Board to accept a director's resignation in circumstances where doing so would violate its fiduciary duty. Accordingly, the Proposal may properly be excluded under Rule 14a-8(i)(2).

*B. Implementation Of The Proposal Would Cause The Company To Violate North Carolina Law*

The Company is incorporated in North Carolina and is governed by North Carolina law. As discussed in detail in the North Carolina Law Opinion, in accordance with Section 55-8-01(b) of the North Carolina Business Corporation Act (the "NCBCA"), the Board possesses the full power and authority to manage the business and affairs of the Company. Article 8(b) of the Company's Restated Charter[1] provides that in the event a director fails to receive a majority vote in an uncontested election, "the Board of Directors may decrease the number of Directors, fill any vacancy, or take other appropriate action." The Company's Corporate Governance Guidelines (the "Guidelines") facilitate the Board's ability to take appropriate action by requiring each director who has been nominated for re-election and fails to be elected by a majority of votes in an uncontested election to tender his or her resignation to the Board.

As outlined in the North Carolina Law Opinion, when managing the business and affairs of the Company, including when exercising its authority under Article 8(b) of the Company's Restated Charter, the Board is subject to statutory and common law fiduciary duties of care and loyalty that require directors to base their decisions on what they reasonably believe to be in the best interests of the corporation and its shareholders. Furthermore, there is no statutory basis under North Carolina law for releasing directors from the obligation to exercise their fiduciary duties. Accepting or rejecting a director resignation involves the business and affairs of the corporation, and thus, consistent with these principles, represents a business decision for the Board in which it is required to exercise its fiduciary duties.

The Proposal requests that the Board amend the Bylaws of the Company (the "Bylaws") to adopt a director resignation bylaw that, instead of allowing the Board to exercise its fiduciary duties, would require the Board to accept a director's tendered resignation unless the Board finds a "compelling reason or reasons" not to accept the resignation. As written, the Proposal thus inhibits the Board's ability to take an "appropriate action" and exercise its fiduciary duties when evaluating whether to accept a tendered resignation, and instead obligates the Board to accept a tendered resignation, absent a determination under a "compelling reasons" standard that is not recognized under North Carolina law.

If implemented, the Proposal thus would establish a standard of director conduct that is not recognized under North Carolina law and would mandate a substantive decision by the Board without regard to the Board's authority to manage corporate affairs or the Board's requirement to discharge its duties in a manner it reasonably believes to be in the best interest in the Company. Because the Proposal would require the Board to act under a standard that is not recognized by

[1] Filed as Exhibit 3.1 to the Company's Annual Report on Form 10-K for the year ended Feb. 3, 2023, available at https://www.sec.gov/Archives/edgar/data/60667/000006066709000096/exhibit031.htm.

North Carolina law, the Board would breach its fiduciary duties if, applying this mandate, it complied with the Proposal by accepting resignations under an artificial "no compelling reasons" standard when a proper application of fiduciary principles would preclude acceptance of a resignation. The Proposal thus "invade[s] the province of the Board's fiduciary duties and its authority to govern the Company's management and affairs" in a manner that violates North Carolina law. As a result, and as set forth in the North Carolina Opinion, the Proposal, if implemented, would cause the Board to violate North Carolina law.

In addition, as outlined in the North Carolina Law Opinion, while the North Carolina courts have not directly addressed whether a bylaw violates the NCBCA if it forces a board of directors to make management or business decisions without allowing it to determine whether those decisions violate its fiduciary duties to the corporation, it follows from the foregoing analysis and from Delaware law precedent, which North Carolina courts routinely rely on, that adoption of the bylaw requested in the Proposal would result in the Company violating North Carolina law. In particular, the Delaware courts have, in several instances, invalidated bylaws that would require a board to make business decisions without being able to fully exercise its fiduciary duties. The Proposal does exactly that, and thus as addressed in the North Carolina Law Opinion, implementation of the Proposal would cause the Company to violate North Carolina Law.

**CONCLUSION**

Just as in *Johnson & Johnson*, the Proposal seeks to require that the Board act in a particular manner, following certain shareholder voting results, that differs from the standard of conduct that is applicable to the Board under state law. As in *Oshkosh* and the other precedents cited above, the Proposal also seeks to achieve its goal through adoption of a Bylaw that would purport to alter the state law effect of a shareholder vote. As in those precedents, the Proposal therefore may properly be excluded under Rule 14a-8(i)(2) because, as supported by the North Carolina Law Opinion, implementing the Proposal would violate state law.

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2024 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8(i)(2). We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671.

Sincerely,

Ronald O. Mueller

Enclosures

cc: Beth R. MacDonald, Esq., Lowe's Companies, Inc.
Moore & Van Allen PLLC
Michael Piccirillo, New York City Carpenters Pension Fund

**EXHIBIT A**

# UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

## NEW YORK CITY & VICINITY DISTRICT COUNCIL OF CARPENTERS

JOSEPH A. GEIGER
Executive Secretary - Treasurer

PAUL CAPURSO
President /Asst EST

DAVID CARABALLOSO
Vice President /Asst EST

395 HUDSON STREET - 9TH FLOOR
NEW YORK, N.Y. 10014
PHONE: [redacted]
FAX: [redacted]
www.nycdistrictcouncil.com


**SENT VIA OVERNIGHT UPS**

December 8, 2023

Ross W. McCanless
Executive Vice President,
General Counsel and Secretary
Lowe's Companies, Inc.
1000 Lowes Boulevard
Mooresville, NC 28117

Dear Mr. McCanless:

I hereby submit the enclosed shareholder proposal ("Proposal") on behalf of the New York City Carpenters Pension Fund ("Fund"), for inclusion in the Lowe's Companies, Inc. ("Company") proxy statement to be circulated in conjunction with the next annual meeting of shareholders. The Proposal relates to the issue of director resignations and is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission proxy regulations.

The Fund is the beneficial owner of shares of the Company's common stock, with a market value of at least $25,000, which shares have been held continuously for more than a year prior to and including the date of the submission of the Proposal. Verification of this ownership by the record holder of the shares, BNY Mellon, will be sent under separate cover. The Fund intends to hold the shares through the date of the Company's next annual meeting of shareholders. Either the undersigned or a designated representative will present the Fund's Proposal for consideration at the annual meeting of shareholders.

If you would like to discuss the Proposal, please contact Michael Piccirillo at [redacted]. Mr. Piccirillo will be available to discuss the proposal on Tuesday, December 19, or Tuesday, December 26, from 1:00PM to 5:00PM (ET) either day or other mutually agreeable date and time. Please forward any correspondence related to the proposal to Mr. Piccirillo, New York City District Council of Carpenters, 395 Hudson Street, 9th Floor, New York, NY 10014 or at the email address above.

Sincerely,

Joseph A. Geiger

Joseph A. Geiger
Fund Co-Chair - Trustee

cc. Michael Piccirillo
Edward J. Durkin
Enclosure

## Director Election Resignation Bylaw Proposal

**Resolved:** That the shareholders of Lowe's Companies, Inc. ("Company") hereby request that the board of directors take the necessary action to adopt a director election resignation bylaw that requires each director nominee to submit an irrevocable conditional resignation to the Company to be effective upon the director's failure to receive the required shareholder majority vote support in an uncontested election. The proposed resignation bylaw shall require the Board to accept a tendered resignation absent the finding of a compelling reason or reasons to not accept the resignation. Further, if the Board does not accept a tendered resignation and the director remains as a "holdover" director, the resignation bylaw shall stipulate that should a "holdover" director fail to be re-elected at the next annual election of directors, that director's new tendered resignation will be automatically effective 30 days after the certification of the election vote. The Board shall report the reasons for its actions to accept or reject a tendered resignation in a Form 8-K filing with the U.S. Securities and Exchange Commission.

**Supporting Statement:** The Proposal requests that the Board establish a director resignation bylaw to enhance director accountability. The Company has established in its bylaws a majority vote standard for use in an uncontested director election, an election in which the number of nominees equal the number of open board seats. Under applicable state corporate law, a director's term extends until his or her successor is elected and qualified, or until he or she resigns or is removed from office. Therefore, an incumbent director who fails to receive the required vote for election under a majority vote standard continues to serve as a "holdover" director until the next annual meeting. A Company governance policy currently addresses the continued status of an incumbent director who fails to be re-elected by requiring such director to tender his or her resignation for Board consideration.

The new director resignation bylaw will set a more demanding standard of review for addressing director resignations then that contained in the Company's resignation governance policy. The resignation bylaw will require the reviewing directors to articulate a compelling reason or reasons for not accepting a tendered resignation and allowing an unelected director to continue to serve as a "holdover" director. Importantly, if a director's resignation is not accepted and he or she continues as a "holdover" director but again fails to be elected at the next annual meeting of shareholders, that director's new tendered resignation will be automatically effective 30 days following the election vote certification. While providing the Board latitude to accept or not accept the initial resignation of an incumbent director that fails to receive majority vote support, the amended bylaw will establish the shareholder vote as the final word when a continuing "holdover" director is not re-elected. The Proposal's enhancement of the director resignation process will establish shareholder voting in director elections as a more consequential governance right.

**EXHIBIT B**

Moore&VanAllen

January 26, 2024

**Moore & Van Allen PLLC**
Attorneys at Law

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Charlotte, NC 28202-4003

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Lowe's Companies, Inc.
1000 Lowes Boulevard
Mooresville, North Carolina 28117

Re: Shareholder Proposal on behalf of the New York City Carpenters Pension Fund

Ladies and Gentlemen:

We have acted as counsel in the State of North Carolina to Lowe's Companies, Inc., a North Carolina corporation (the "Company"), in connection with a shareholder proposal (the "Proposal") submitted to the Company by the New York City Carpenters Pension Fund (the "Proponent") for inclusion in the Company's proxy statement for its 2024 annual meeting of shareholders (the "Annual Meeting"). In this regard, you have requested our opinion as to certain matters under the laws of the State of North Carolina.

For the purpose of rendering our opinion as expressed herein, we have reviewed the following documents: (i) the Restated Charter of the Company, (ii) the Bylaws of the Company, as amended and restated November 11, 2022, and (iii) the Proposal.

With respect to the foregoing documents, we have assumed (i) the conformity to authentic originals of all documents that we have reviewed as copies and (ii) that the foregoing documents, in the forms thereof provided to us for our review, have not been and will not be altered and amended in any respect material to our opinion as expressed herein. We have not reviewed any document other than the documents listed above for purposes of rendering this opinion, and we assume that there exists no provision of any such other document that bears upon or is inconsistent with our opinion as expressed herein.

## THE PROPOSAL

The Proposal states the following:

> **Resolved**: That the shareholders of Lowe's Companies, Inc. ("Company") hereby request that the board of directors take the necessary action to adopt a director election resignation bylaw that requires each director nominee to submit an irrevocable conditional resignation to the Company to be effective upon the director's failure to receive the required shareholder majority vote support in an uncontested election. The proposed resignation bylaw shall require the Board to accept a tendered resignation absent the finding of a compelling reason or reasons to not accept the resignation. Further, if the Board does not accept a tendered resignation and the director remains as a "holdover" director, the resignation bylaw

> shall stipulate that should a "holdover" director fail to be re-elected at the next annual election of directors, that director's new tendered resignation will be automatically effective 30 days after the certification of the election vote. The Board shall report the reasons for its actions to accept or reject a tendered resignation in a Form 8-K filing with the U.S. Securities and Exchange Commission.

We have been advised that the Company is considering submitting a no-action letter to the U.S. Securities and Exchange Commission as to its intent to exclude the Proposal from the Company's proxy statement for the Annual Meeting under Rule 14a-8(i)(2) promulgated under the Securities Exchange Act of 1934, as amended. Rule 14a-8(i)(2) provides that a registrant may omit a proposal from its proxy statement when "the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." In this respect, you have requested our opinion as to whether, under North Carolina law, the implementation of the Proposal, if adopted, would violate North Carolina law.

For the reasons set forth below, it is our opinion the Proposal violates North Carolina law because, if implemented, the Proposal requires the board of directors of the Company (the "Board") to accept a resignation in circumstances where doing so would violate its fiduciary duties.

## DISCUSSION

**The Proposal Violates North Carolina Law by Invading the Province of the Board's Fiduciary Duties and Power to Manage Affairs of the Corporation.**

The North Carolina Business Corporation Act (the "NCBCA") charges the directors of North Carolina corporations with exercising, or directing the exercise of, all corporate powers:

> All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed by or under the direction of, its board of directors, except as otherwise provided in the articles of incorporation or in an agreement valid under [N.C.G.S.] 55-7-31(b)[1].

N.C.G.S. § 55-8-01(b). The NCBCA imposes on directors an affirmative statutory obligation to discharge their duties as directors in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests in the corporation. *See* N.C.G.S. § 55-8-30. North Carolina courts likewise recognize that the management of the business and affairs of a corporation is entrusted to its directors as the duly elected and authorized representatives of shareholders, and

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[1] The Restated Charter does not provide for management of the Company by persons other than the directors, and the shareholder agreements sanctioned by Section 55-7-31(b) of the NCBCA are specific to non-public corporations. Therefore, neither exception to the mandate set forth by Section 55-8-01(b) of the NCBCA applies, and the Board possesses the full power and authority to manage the business and affairs of the Company.

that, in making business decisions, directors owe duties of care and loyalty to the corporation and its shareholders. *See Belk v. Belk's Dep't Store, Inc.*, 250 N.C. 99, 103, 108 S.E.2d 131, 135 (1959) (recognizing a director's "duty to honestly exercise[]" his powers "for the benefit of the corporation and all of its shareholders"); *Loy v. Lorm Corp.*, 52 N.C. App. 428, 436, 278 S.E.2d 897, 903 (1981) ("Directors owe a duty of fidelity and due care in the management of a corporation and must exercise their authority solely for the benefit of the corporation and all its shareholders."); *Pierce Concrete, Inc. v. Cannon Realty & Constr. Co.*, 77 N.C. App. 411, 413-14, 335 S.E.2d 30, 31 (1985) (declaring that the fiduciary duty corporate officers owe to North Carolina corporations "is a high one"). The statutory and common law fiduciary duties imposed on corporate directors requires them to base their decisions on what they reasonably believe to be in the best interests of the corporation and its shareholders. Notably, North Carolina does not have any statutory law permitting directors to relinquish directors from exercising this fiduciary duty. We are similarly unaware of any North Carolina caselaw allowing directors to modify or eliminate their statutory fiduciary duties owed to the Company.

Although North Carolina courts have not directly addressed the precise issue of whether a bylaw violates North Carolina law if it forces a board of directors to make management or business decisions without allowing it to determine whether those decisions violate its fiduciary duties owed to the corporation, North Carolina courts routinely rely upon Delaware precedent on corporate governance matters. *See Seraph Garrison, LLC v. Garrison,* 2016 N.C. App. LEXIS 1376, at *8 n.2; *see also Ehrenhaus v. Baker*, 216 N.C. App. 59 (2011) (relying on Delaware law as persuasive). Delaware courts have, in several instances, invalidated bylaws that forced the board of directors to make management or business decisions without allowing it to determine whether those decisions violate its fiduciary duties owed to the corporation. *See, e.g.*, *CA, Inc. v. AFSCME Emples. Pension Plan*, 953 A.2d 227, 238 (Del. 2008) ("Under at least one such hypothetical, the board of directors would breach their fiduciary duties if they complied with the proposed Bylaw. Accordingly, we conclude that the proposed Bylaw, as drafted, would violate the prohibition . . . against contractual arrangements that commit the board of directors to a course of action that would preclude them from fully discharging their fiduciary duties to the corporation and its shareholders."); *Gorman v. Salamone*, 2015 Del. Ch. LEXIS 202, at *17–18 (Del. Ch. July 31, 2015) (holding invalid an amended bylaw that would "unduly constrain" the board's ability to manage the company).

Accepting or rejecting a director resignation involves the business and affairs of the corporation, which are managed by the Board, and is a business decision for the Board in which it is required to exercise its fiduciary duties. Where a director resignation following failure to receive a majority vote is concerned, the Board must consider and evaluate a number of factors, including but not limited to, the underlying reasons for the failure to secure that majority vote, the tenure and qualifications of the director, the overall composition of the Board and whether accepting the resignation would violate any law, rule, or regulation applicable to the Company, and what remedial measures are in the best interest of the Company. The Board then has the discretion, under Article 8(b) of the Restated Charter, to take the action deemed most appropriate, in the best interest of the Company, based on an informed business decision, and in line with its fiduciary duties.

The Proposal, if implemented, would establish a standard of director conduct that is not recognized under North Carolina law. It would mandate a substantive decision by the Board without regard to the Board's authority to manage corporate affairs or the Board's requirement to discharge its duties in a manner it reasonably believes to be in the best interest in the Company. As written, the Proposal inhibits the Board's ability to make a business decision on director resignation by presumptively and involuntarily obligating it to accept a tendered resignation. Conversely, the Proposal requires the Board to defend any decision to reject a resignation under a "compelling reasons" standard, which is not recognized under the standard specified under North Carolina corporate law.

There are circumstances under which the Board would breach its fiduciary duties if, applying this mandate, it complied with the Proposal by accepting resignations under an artificial "no compelling reasons" standard when a proper application of fiduciary principles would preclude acceptance of the resignation. In light of the foregoing, the Proposal, if implemented, would invade the province of the Board's fiduciary duties and its authority to govern the Company's management and affairs and so may lead to a violation of North Carolina law.

## CONCLUSION

Based upon and subject to the foregoing and subject to the limitations stated herein, we are of the opinion that the Proposal, if implemented, would cause the Company to violate North Carolina law.

The foregoing opinion is limited to the laws of the State of North Carolina. We have not considered and express no opinion on the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

The foregoing opinion is rendered solely for your benefit as related to the matters addressed herein. We understand that the Company and the Company's counsel Gibson, Dunn & Crutcher LLP may furnish a copy of this opinion letter to the Securities and Exchange Commission and to the Proponent in connection with the matters addressed herein, and we consent to your doing so. Except as expressly stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinion be relied upon by, any other person or entity for any purpose without our prior written consent.

Very truly yours,

Moore & Van Allen PLLC

MOORE & VAN ALLEN PLLC