

GOOD TIMES RESTAURANTS INC
Form PRER14A
July 23, 2012

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 14A
(Rule 14a-101)
SCHEDULE 14A INFORMATION
Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934

Filed by the Registrant
Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
 Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
 Definitive Proxy Statement
 Definitive Additional Materials
 Soliciting Material Pursuant to §240.14a-12

GOOD TIMES RESTAURANTS INC.
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
 Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

Fee paid previously with preliminary materials:

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or

the Form or Schedule and the date of its filing.

- (1) Amount Previously Paid:
 - (2) Form, Schedule or Registration Statement No.:
 - (3) Filing Party:
 - (4) Date Filed:
-

GOOD TIMES RESTAURANTS INC.

601 Corporate Circle

Golden, Colorado 80401

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

To Be Held August 22, 2012

To the Stockholders of Good Times Restaurants Inc.:

The Annual Meeting of the Stockholders (the "Annual Meeting") of Good Times Restaurants Inc., a Nevada corporation (the "Company"), will be held at our corporate offices, which are located at 601 Corporate Circle, Golden, Colorado 80401 on August 22, 2012 at 9:00 a.m. local time. The purposes of the Annual Meeting are:

1. To elect seven directors of the Company to serve for the next year;
2. To consider and approve a \$2,000,001.48 equity investment in the Company through the issuance of 473,934 shares (the "Shares") of newly designated "Series C Convertible Preferred Stock" of the Company, which shall be convertible into the Company's common stock at a ratio of two shares of common stock for each share of Series C Convertible Preferred Stock, to Small Island Investments Limited, a Bermuda corporation (the "Investor"), referred to herein as the "Investment Transaction";
3. To consider and approve an amendment to the Company's 2008 Omnibus Equity Incentive Compensation Plan to increase the number of shares of the Company's common stock available for issuance thereunder from 184,022 shares to a total of 500,000 shares, referred to herein as the "2008 Plan Amendment"; and
4. To transact such other business as may properly come before the Annual Meeting and any adjournments or postponements thereof.

The accompanying proxy statement (the "Proxy Statement") contains additional information about the Annual Meeting. Only stockholders of record at the close of business on the record date of July 9, 2012 are entitled to notice of and to vote at the Annual Meeting and any adjournments or postponements thereof. The Proxy Statement is being mailed to stockholders entitled to vote at the Annual Meeting on or about August 2, 2012.

All stockholders are cordially invited to attend the Annual Meeting. If you do not plan to attend the meeting, please sign, date, and promptly return the enclosed proxy card. A business reply envelope is enclosed for your convenience. The delivery of a proxy will not affect your right to vote in person if you attend the Annual Meeting. Your vote is important.

Sincerely,

/Susan M. Knutson/

Susan M. Knutson
Secretary and Controller
[_____] , 2012

TABLE OF CONTENTS

GENERAL INFORMATION	1
PROPOSAL #1 – ELECTION OF DIRECTORS	4
CORPORATE GOVERNANCE	8
AUDIT COMMITTEE REPORT	12
INDEPENDENT AUDITOR INFORMATION	12
SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT	15
EXECUTIVE COMPENSATION	17
PROPOSAL #2 – APPROVAL OF THE INVESTMENT TRANSACTION	20
PROPOSAL #3 – APPROVAL OF THE 2008 PLAN AMENDMENT	27
INTEREST OF CERTAIN PERSONS IN MATTERS TO BE ACTED UPON	33
STOCKHOLDER NOMINATIONS AND OTHER PROPOSALS	33
OTHER MATTERS	33
WHERE YOU CAN FIND MORE INFORMATION	33
INCORPORATION OF DOCUMENTS BY REFERENCE	34
ANNEX A – SECURITIES PURCHASE AGREEMENT, DATED JUNE 13, 2012, BETWEEN THE COMPANY AND THE INVESTOR	
ANNEX B – PROPOSED AMENDMENT TO 2008 OMNIBUS EQUITY INCENTIVE COMPENSATION PLAN	

GOOD TIMES RESTAURANTS INC.

601 Corporate Circle
Golden, Colorado 80401

PROXY STATEMENT FOR ANNUAL MEETING OF STOCKHOLDERS

To Be Held August 22, 2012

This Proxy Statement relates to the Annual Meeting of Stockholders (the “Annual Meeting”) of Good Times Restaurants Inc., a Nevada corporation (the “Company”). The Annual Meeting will be held on Wednesday, August 22, 2012, at 9:00 a.m. local time, at our corporate offices, which are located at 601 Corporate Circle, Golden, Colorado 80401, or at such other time and place to which the Annual Meeting may be adjourned or postponed. The enclosed proxy is solicited by our Board of Directors (the “Board”). The proxy materials relating to the Annual Meeting are first being mailed to stockholders entitled to vote at the meeting on or about August 2, 2012.

The terms “we,” “us,” and “our” in this Proxy Statement refer to the Company.

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Stockholders To Be Held on August 22, 2012: This Proxy Statement is also available at our website at www.goodtimesburgers.com.

GENERAL INFORMATION

What is the purpose of the Annual Meeting?

At the Annual Meeting, the stockholders will act upon the matters outlined in the accompanying Notice of Annual Meeting and this Proxy Statement, including:

1. The election of seven directors of the Company;
2. The approval of a \$2,000,001.48 equity investment in the Company through the issuance of 473,934 shares (the “Shares”) of the Company’s preferred stock, par value \$0.001 per share (“Preferred Stock”), to be designated as “Series C Convertible Preferred Stock” and which shall be convertible into shares of the Company’s common stock, par value \$0.001 per share (“Common Stock”), at a ratio of two shares of Common Stock for each share of Series C Convertible Preferred Stock, to Small Island Investments Limited, a Bermuda corporation (the “Investor”), referred to herein as the “Investment Transaction”; and
3. The approval of an amendment to the Company’s 2008 Omnibus Equity Incentive Compensation Plan to increase the number of shares of Common Stock issuable thereunder from 184,022 shares to a total of 500,000 shares, referred to herein as the “2008 Plan Amendment”.

Who is entitled to attend and vote at the Annual Meeting?

Only stockholders of record at the close of business on the record date of July 9, 2012, or their duly appointed proxies, are entitled to receive notice of the Annual Meeting, attend the meeting, and vote their shares at the Annual Meeting or any adjournment or postponement thereof. At the close of business on July 9, 2012, there were 2,726,214 shares of our Common Stock outstanding. Each outstanding share of our Common Stock is entitled to one vote. Our Bylaws do not allow holders to accumulate votes in the election of directors.

How do I vote?

You may vote on matters to come before the Annual Meeting in two ways: (i) you can attend the Annual Meeting and cast your vote in person, or (ii) you can vote by completing, signing, and dating the enclosed proxy card and returning it to us in the enclosed business reply envelope or via facsimile to Boyd E. Hoback, our President and Chief Executive Officer, at (303) 273-0177. If you return the proxy card, you will authorize the individuals named on the proxy card, referred to as proxy holders, to vote your shares according to your instructions or, if you provide no instructions, according to the recommendations of our Board. If your shares are held by a broker in "street name," you will receive a voting instruction form from your broker or the broker's agent asking you how your shares should be voted.

What if I vote and then change my mind?

You may revoke a proxy at any time before the vote is taken at the Annual Meeting by either (i) filing with our corporate secretary a written notice of revocation, (ii) sending in another duly executed proxy bearing a later date, or (iii) attending the meeting and casting your vote in person. Your last vote will be the vote that is counted.

How can I get more information about attending the Annual Meeting and voting in person?

The Annual Meeting will be held on Wednesday, August 22, 2012, at 9:00 a.m., local time, at the Company's corporate offices, which are located at 601 Corporate Circle, Golden, Colorado 80401, or at such other time and place to which the Annual Meeting may be adjourned or postponed. For additional details about the Annual Meeting, including directions to the meeting site and information about how you may vote in person if you so desire, please call or email Boyd E. Hoback, our President and Chief Executive Officer, at (303) 384-1400 or at bhoback@gtrestaurants.com.

What are the Board's recommendations?

Unless you give other instructions on your proxy card, the persons named on the proxy card will vote in accordance with the recommendations of our Board, which are described in this Proxy Statement. Our Board recommends a vote FOR each of the proposals described in the accompanying Notice of Annual Meeting of Stockholders and this Proxy Statement.

With respect to any other matter that properly comes before the meeting, the proxy holders will vote as recommended by our Board or, if no recommendation is given, in their own discretion.

What constitutes a quorum?

The presence at the Annual Meeting, in person or by proxy, of the holders of a majority of the issued and outstanding shares of our Common Stock on the record date will constitute a quorum at the Annual Meeting, permitting us to conduct our business at the Annual Meeting. Proxies received but marked as abstentions and broker non-votes (defined below) will be included in the calculation of the number of shares considered to be present at the meeting for purposes of determining whether a quorum is present. If a quorum is not present, the Annual Meeting may be adjourned until a quorum is obtained.

What vote is required to approve each proposal?

Vote Required. Approval of each proposal to be considered and voted upon at the Annual Meeting will require the affirmative vote of a majority of the votes cast by the holders of our Common Stock present in person or represented by proxy at the Annual Meeting (assuming we have a quorum as described above). In addition, in order for the

Investor to be obligated to close the Investment Transaction, among other conditions that must be satisfied, the Investment Transaction must be approved by a majority of the votes cast by the holders of our Common Stock other than the Investor and its affiliates. A properly executed proxy marked "ABSTAIN" with respect to a proposal will not be voted for that proposal but will be counted for purposes of whether there is a quorum at the meeting. Abstentions will result in the respective proposal receiving fewer votes.

Effect of Broker Non-Votes. If your shares are held by your broker in "street name," you will receive a voting instruction form from your broker or the broker's agent asking you how your shares should be voted. Please complete the form and return it in the envelope provided by the broker or agent. No postage is necessary if mailed in the United States. If you do not instruct your broker how to vote, your broker may vote your shares at its discretion or, on some matters, may not be permitted to exercise voting discretion. Votes that could have been cast on the matter in question if the brokers have received their customers' instructions, and as to which the broker has notified us on a proxy form in accordance with industry practice or has otherwise advised us that it lacks voting authority, are referred to as "broker non-votes." Thus, if you do not give your broker or nominee specific instructions, your shares may not be voted on those matters and will not be counted as a vote cast in determining the number of shares necessary for approval of those matters. Shares represented by such broker non-votes, however, will be counted in determining whether there is a quorum. Accordingly, broker non-votes will result in the respective proposal receiving fewer votes.

Can I dissent or exercise rights of appraisal?

Neither Nevada law nor our Articles of Incorporation or Bylaws provide our stockholders with dissenters' or appraisal rights in connection with the proposals to be voted on at the Annual Meeting. If the proposals are approved at the Annual Meeting, stockholders voting against such proposals will not be entitled to seek appraisal for their shares.

Who pays for this proxy solicitation?

The Company will bear the entire cost of this proxy solicitation, including the preparation, assembly, printing, and mailing of this Proxy Statement, the proxy card, and any additional solicitation materials furnished to the stockholders. In addition to solicitation by mail, proxies may be solicited by our directors, officers, and regular employees by telephone or personal interview. These individuals will not receive any compensation for their services other than their regular salaries. Arrangements will also be made with brokerage houses and other custodians and fiduciaries to forward solicitation materials to the beneficial owners of the shares held on the record date, and we may reimburse those persons for reasonable out-of-pocket expenses incurred by them in so doing.

PROPOSAL #1 – ELECTION OF DIRECTORS

Pursuant to our Bylaws, the size of our Board has been set at seven directors. All of our directors are elected annually to serve a one-year term expiring at the next annual meeting of stockholders. The seven nominees for election at the Annual Meeting, listed below, are currently serving as directors of the Company. Each nominee has consented to be named in this Proxy Statement and to serve as a director if elected. However, if any nominee is unable to serve or for good cause will not serve as a director, each of the persons named in the proxy intend to vote in his or her discretion for a substitute who will be designated by our Board.

Director Nominees

The following table sets forth certain information about the Company's seven director nominees.

Name	Age	Director Since	Other Positions Held with the Company	Employment and Business Experience
Geoffrey R. Bailey	60	1996	Member of the Compensation Committee	<p>Mr. Bailey is a director of The Erie County Investment Co., which owns 99% of The Bailey Company. The principal business of The Bailey Company is owning and operating 51 Arby's restaurants as a franchisee, and The Bailey Company has also been a franchisee and joint venture partner of the Company since 1987. Mr. Bailey joined The Erie County Investment Co. in 1979. Mr. Bailey is a graduate of the University of Denver with a Bachelor's degree in Business Administration.</p> <p>Mr. Bailey was selected to serve on our Board in light of his substantial experience within the restaurant industry and his broad knowledge concerning corporate governance and management.</p>
Neil Calvert	61	2012	Chairman of the Audit Committee	<p>Mr. Calvert currently serves as an advisor to Lease Corporation International, a London-based helicopter leasing company (2011-present). Previously, Mr. Calvert held various executive positions in the CHC Group, and a subsidiary, Heli One, where he was responsible for flight operations and maintenance (1998-2011). As President of Heli One (2005-2011), he had direct oversight of a Chief Financial Officer, responsibility for preparation & accuracy of financial statements, communication with the company's auditors on all significant accounting policies and review of financials with the board. Additionally, he built</p>

the company into a \$400 million business with over 1,000 employees around the world. He also served as Managing Director of the British operations for CHC UK (1999-2003).

Mr. Calvert was selected to serve on our Board in light of his various executive positions with major companies and his experience overseeing and assessing those companies' performance.

David L. Dobbin	51	2010	Chairman of the Board	<p>Mr. Dobbin serves as Chairman of the Board of Small Island Investments Limited (2010-present). In addition, he serves as Chairman of the Board of Welaptega Marine Ltd. (2008-present), a leading supplier of offshore mooring inspection systems. Prior to March 2012, he also served as Chairman of the Boards of Terra Nova Pub Groups Ltd., and its subsidiaries and affiliates, including Elephant & Castle Group, Inc. (2007-2012).</p> <p>Previously, Mr. Dobbin served in several capacities with CHC Helicopter Corporation, the world's leading offshore helicopter services provider, and led Canadian Ocean Resource Associates Inc., a consulting firm specializing in international best practice reviews in various sectors, third world institutional support, and public/private partnerships. Mr. Dobbin holds a Bachelor of Commerce degree from Memorial University of Newfoundland.</p> <p>Mr. Dobbin was selected to serve on our Board in light of his substantial experience in the restaurant industry and his experience as an investor in the transportation, service, real estate, and hospitality sectors.</p>
Gary J. Heller	45	2010	Principal of Heathcote Capital, LLC, financial advisor to the Company; Prior Member of the Audit Committee (2010-2012); Prior Chairman of the Compensation Committee (2010-2012) ²	<p>Mr. Heller is the principal of Heathcote Capital, LLC, a financial and strategic advisory services company. Prior to March 2012, he served as Secretary and a Director of Elephant & Castle Group Inc. (2007-2012), Secretary and a Manager of Massachusetts Pub Group LLC (2008-2012), and Executive Vice President of Terra Nova Pub Group Ltd. (2009-2012). Prior to entering the restaurant industry in 2007, Mr. Heller spent 16 years as an investment banker, including serving as a Managing Director of FTI Capital Advisors, LLC (2002-2006) and a Director of Andersen Corporate Finance LLC (1999-2002). Mr. Heller holds a BA in Economics from the University of Pennsylvania and an MBA in Finance from New York University.</p> <p>Mr. Heller was selected to serve on our Board in light of his substantial experience in the restaurant industry and his experience as a</p>

is an honors graduate of the University of Colorado in Finance.

Mr. Hoback was selected to serve on our Board in light of his in-depth understanding of our business and the restaurant industry and his position as our President and Chief Executive Officer.

Eric W. Reinhard	54	2005	Member of the Audit and Compensation Committees; Prior Chairman of the Board (2005-2010)	<p>Mr. Reinhard serves as President of the Pepsi Cola Bottler's Association, a beverage association management and consulting association (2006-present). Prior to June 2004 he was the General Manager for the Pepsi Bottling Group's Great West Business Unit. While in this role, Mr. Reinhard was also a member of the Pepsi Bottling Group's Chairman's Operating Council, a member of the Food Service Strategic Planning Committee, and a member of The Dr. Pepper Bottler Marketing Committee. Mr. Reinhard joined Pepsi Cola in 1984 after four years with The Proctor & Gamble Distributing Company. Since 1984 he has held several field and headquarters positions including Vice President/General Manager Pepsi-Lipton Tea partnership (JV), General Manager Mid-Atlantic business Unit, Area Vice President Retail Channels, Vice President On-Premise Operations and Area Vice President of Franchise Operations. Mr. Reinhard holds a BA from Michigan State University and has completed the Executive Business Program at the University of Michigan.</p>
				<p>Mr. Reinhard was selected to serve on our Board in light of his substantial experience within the beverage industry and his broad knowledge concerning corporate governance and management.</p>
Alan A. Teran	67	20123	Member of the Audit Committee; Chairman of the Compensation Committee	<p>Mr. Teran is currently a principal in multiple private restaurants. He previously served on our Board from 1994 to 2010. Mr. Teran also served as a Director of Morton's Restaurant Group, Inc. from 1994 until February 2012. He served as president of the Cork & Cleaver</p>

restaurant chain from 1975 to 1981 and served as a Director for Boulder Valley National Bank and Charlie Brown's Restaurants. He was one of the first franchisees of Le Peep Restaurants. Mr. Teran graduated from the University of Akron in 1968 with a degree in business. Mr. Teran was selected to serve on our Board in light of his substantial experience within the restaurant industry, his experience as an investor in multiple private restaurants, and his prior service on our Board.

1 Mr. Calvert was elected as a director on July 3, 2012 to fill the vacancy created by the resignation of Keith A. Radford effective June 30, 2012. On the same date, Mr. Calvert was appointed as chairman of the Audit Committee, to succeed Mr. Radford in such capacity.

2 Mr. Heller resigned as a member of the Audit Committee and as chairman of the Compensation Committee effective April 6, 2012, upon the Company's engagement of Heathcote Capital, LLC, a company of which Mr. Heller is the principal, as its financial advisor.

3 Mr. Teran was elected as a director effective April 10, 2012 to fill the vacancy created by the resignation of John F. Morgan on August 10, 2011. On the same date, Mr. Teran was appointed as a member of the Audit Committee and as the chairman of the Compensation Committee, to succeed Mr. Heller in both capacities. Mr. Teran also served on our Board from 1994 to 2010.

As set forth above, prior to March 2012, Messrs. Dobbin and Heller each served as a director and executive officer of Elephant & Castle Group Inc. On June 28, 2011, Elephant & Castle Group, Inc. and related subsidiaries (collectively, the "Elephant & Castle Group") filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code. The Elephant & Castle Group subsequently sold all of its assets in a sale under the bankruptcy proceedings.

There are no family relationships among the directors. As discussed below, under the heading "Director Independence", the Board has determined that of the current directors Messrs. Bailey, Calvert, Reinhard, and Teran are independent directors under the NASDAQ listing standards.

Geoffrey R. Bailey was originally elected to the Board pursuant to contractual board representation rights granted to The Bailey Company in connection with its investment in shares of our Series A Convertible Preferred Stock in 1996. Mr. Bailey has continued to serve on the Board pursuant to contractual board representation rights held by The Bailey Company and its affiliates ("The Bailey Group") in connection with our Series B Convertible Preferred Stock financing in February 2005 and the subsequent modification of those contractual rights in connection with the closing of our initial investment transaction with the Investor in December 2010, whereby The Bailey Group is entitled to designate one individual for election to our Board.

Eric W. Reinhard was originally elected to the Board pursuant to contractual board representation rights granted to certain investors in connection with our Series B Convertible Preferred Stock financing in February 2005 and the subsequent modification of those contractual rights in connection with the closing of our initial investment transaction with the Investor in December 2010, whereby Mr. Reinhard and his affiliates are entitled to designate one individual for election to our Board.

Messrs. Calvert, Dobbin, Heller, and Teran were originally elected to the Board pursuant to the director designation rights granted to the Investor under the Securities Purchase Agreement dated October 29, 2010 between the Company and the Investor (the "Prior Purchase Agreement"). The Prior Purchase Agreement provides that, for so long as the Investor continues to own at least 50% of our outstanding capital stock, (i) our Board shall not consist of more than seven directors, and (ii) the Investor shall have the right to designate four individuals for election to our Board. In connection with the Investment Transaction, the Securities Purchase Agreement entered into by the Company and the Investor on June 13, 2012 reconfirms and continues the Investor's director designation rights as provided by the Prior Purchase Agreement. Pursuant to both the Prior Purchase Agreement and the Securities Purchase Agreement entered into in connection with the Investment Transaction, the Investor has also agreed to vote its shares in any election of directors for one individual designated by The Bailey Group and one individual designated by Mr. Reinhard and his affiliates, in addition to the Investor's four director designees.

Vote Required for Approval

Approval of Proposal #1 – the election of seven directors – will require the affirmative vote of a majority of the votes cast by the holders of our Common Stock present in person or represented by proxy at the meeting and entitled to vote on the matter.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT STOCKHOLDERS VOTE “FOR” THE COMPANY’S SEVEN DIRECTOR NOMINEES LISTED ON THE ENCLOSED PROXY CARD.

CORPORATE GOVERNANCE

Director Independence

The Company's Common Stock is listed on the NASDAQ Capital Market under the trading symbol "GTIM". NASDAQ listing rules require that a majority of the Company's directors be "independent directors" as defined by NASDAQ corporate governance standards.

The Board has determined that of the current directors Messrs. Bailey, Calvert, Reinhard, and Teran are independent directors under the NASDAQ listing standards, while Messrs. Dobbin, Heller, and Hoback are not independent under such standards. The Board has also determined that each of the three current members of the Audit Committee is "independent" for purposes of Section 10A(m)(3) of the Securities Exchange Act of 1934 under the rules of the Securities and Exchange Commission ("SEC") promulgated thereunder. In addition, the Board previously determined that Mr. Radford qualified as an independent director under both the NASDAQ listing standards and SEC rules until his resignation from the Board effective June 30, 2012, and that Mr. Heller qualified as an independent director under both the NASDAQ listing standards and SEC rules prior to the Company's engagement of Heathcote Capital, LLC as a financial advisor on April 6, 2012.

Leadership Structure

The Board does not have a policy regarding the separation of the roles of Chief Executive Officer and Chairman of the Board as the Board believes it is in the best interests of the Company to make that determination from time to time based on the position and direction of the Company and the membership of the Board. However, the Board has determined that separating these roles is in the best interests of the Company's stockholders at this time. The Board believes that this structure permits the Chief Executive Officer to focus on the management of the Company's day-to-day operations.

Risk Oversight

Material risks are identified and prioritized by the Company's management and reported to the Board for oversight. The Board as a whole administers the Board's risk oversight function. The Board regularly reviews information regarding the Company's credit, liquidity, and operations, as well as the risks associated with each. In addition, the Board continually works, with the input of the Company's executive officers, to assess and analyze the most likely areas of future risk for the Company.

Code of Ethics

The Company has adopted a Code of Business Conduct which applies to all directors, officers, employees, and franchisees of the Company. The Code of Business Conduct was filed as an exhibit to the Company's Annual Report on Form 10-KSB for the fiscal year ended September 30, 2003. The Code of Business Conduct is also available on the Company's website at www.goodtimesburgers.com.

Board Committees

The standing committees of the Board are the Audit Committee, which is currently comprised of Messrs. Calvert (Chairman), Reinhard, and Teran, and the Compensation Committee, which is currently comprised of Messrs. Bailey, Reinhard, and Teran (Chairman). As discussed under the heading "Nominee Selection Process" below, there is no standing nominating committee of the Board and instead the Board as a whole acts as the nominating committee for the selection of nominees for election as directors.

Prior to his resignation from the Board effective June 30, 2012, Keith Radford served as chairman of the Audit Committee. Prior to April 6, 2012, Gary Heller served as a member of the Audit Committee and as chairman of the Compensation Committee. Mr. Heller resigned from those positions (but not from our Board) on April 6, 2012 in connection with the Company's engagement of Heathcote Capital, LLC as a financial advisor.

Audit Committee

The Audit Committee currently consists of Messrs. Calvert (Chairman), Reinhard, and Teran. The Board has determined that all of the members of the Audit Committee are “independent,” as defined by the NASDAQ listing standards and by applicable SEC rules. In addition, the Board has determined that Mr. Calvert is an audit committee financial expert, as that term is defined by the SEC rules, by virtue of having the following attributes through relevant experience: (i) an understanding of generally accepted accounting principles and financial statements; (ii) the ability to assess the general application of such principles in connection with the accounting for estimates, accruals, and reserves; (iii) experience preparing, auditing, analyzing, or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the Company’s financial statements, or experience actively supervising one or more persons engaged in such activities; (iv) an understanding of internal controls and procedures for financial reporting; and (v) an understanding of audit committee functions. Prior to his resignation from the Board effective June 30, 2012, Keith Radford served as our audit committee financial expert.

The function of the Audit Committee relates to oversight of the auditors, the auditing, accounting, and financial reporting processes, and the review of the Company’s financial reports and information. In addition, the functions of this Committee have included, among other things, recommending to the Board the engagement or discharge of independent auditors, discussing with the auditors their review of the Company’s quarterly results and the results of their audit, and reviewing the Company’s internal accounting controls. The Audit Committee operates pursuant to a written Charter adopted by the Board. A current copy of the Audit Committee Charter is available on our website at www.goodtimesburgers.com. The Audit Committee held four meetings during the fiscal year ended September 30, 2011.

Compensation Committee

The Compensation Committee currently consists of Messrs. Bailey, Reinhard, and Teran (Chairman). The Board has determined that all of the members of the Compensation Committee are “independent,” as defined by the NASDAQ listing standards. The function of the Compensation Committee is to consider and determine all matters relating to the compensation of the President and Chief Executive Officer and other executive officers, including matters relating to the employment agreements. The Compensation Committee held one meeting during the fiscal year ended September 30, 2011.

The Compensation Committee does not have a written Charter. The responsibility of the Compensation Committee is to review and approve the compensation and other terms of employment of our Chief Executive Officer and our other executive officers, including all of the executive officers named in the Summary Compensation Table in this Proxy Statement (the “Named Executive Officers”). Among its other duties, the Compensation Committee oversees all significant aspects of the Company’s compensation plans and benefit programs. The Compensation Committee annually reviews and approves corporate goals and objectives for the Chief Executive Officer’s compensation and evaluates the Chief Executive Officer’s performance in light of those goals and objectives. The Compensation Committee also recommends to the Board the compensation and benefits for members of the Board. The Compensation Committee has also been appointed by the Board to administer our 2008 Omnibus Equity Incentive Compensation Plan, which is the successor equity compensation plan to the Company’s 2001 Stock Option Plan. The Compensation Committee does not delegate any of its authority to other persons.

In carrying out its duties, the Compensation Committee participates in the design and implementation and ultimately reviews and approves specific compensation programs. The Compensation Committee reviews and determines the base salaries for the Named Executive Officers, and also approves awards to the Named Executive Officers under the Company’s equity compensation plans.

In determining the amount and form of compensation for Named Executive Officers other than the Chief Executive Officer, the Compensation Committee obtains input from the Chief Executive Officer regarding the duties, responsibilities, and performance of the other executive officers and the results of performance reviews. The Chief Executive Officer also recommends to the Compensation Committee the base salary levels for all Named Executive Officers and the award levels for all Named Executive Officers under the Company's equity compensation programs. No Named Executive Officer attends any executive session of the Compensation Committee or is present during final deliberations or determinations of such Named Executive Officer's compensation. The Chief Executive Officer also provides input with respect to the amount and form of compensation for the members of the Board.

The Compensation Committee has the authority to directly engage, at the Company's expense, any compensation consultants or other advisers as it deems necessary to carry out its responsibilities in determining the amount and form of executive and director compensation. For the fiscal year ended September 30, 2011, the Compensation Committee did not use the services of a compensation consultant or other adviser. However, the Compensation Committee has reviewed surveys, reports, and other market data against which it has measured the competitiveness of the Company's compensation programs. In determining the amount and form of executive and director compensation, the Compensation Committee has reviewed and discussed historical salary information as well as salaries for similar positions at comparable companies.

Communication with Directors

The Board welcomes questions or comments about us and our operations. Those interested may contact the Board as a whole or any one or more specified individual directors by sending a letter to the intended recipients' attention in care of Good Times Restaurants Inc., Attention: Corporate Secretary, 601 Corporate Circle, Golden, CO 80401. All such communications other than commercial advertisements will be forwarded to the appropriate director or directors for review.

Director Attendance at Meetings

There were four meetings of the Board held during the fiscal year ended September 30, 2011. No member of the Board attended fewer than 75% of the Board meetings and applicable committee meetings for the fiscal year ended September 30, 2011.

The Company does not have a formal policy on director attendance at the annual meeting. Messrs. Bailey, Dobbin, and Hoback attended the annual meeting of stockholders for the fiscal year ended September 30, 2010, which was held on September 21, 2011. Messrs. Heller, Radford, and Reinhard did not attend the last annual meeting. John Morgan resigned from our Board on August 10, 2011, prior to the last annual meeting, and neither Mr. Calvert nor Mr. Teran served on our Board at that time.

Nominee Selection Process

Our Board as a whole acts as the nominating committee for the selection of nominees for election as directors. We do not have a separate standing nominating committee since we require that our director nominees be approved as nominees by a majority of our independent directors. The Board will consider suggestions by stockholders for possible future nominees for election as directors at the next annual meeting when the suggestion is delivered in writing to the corporate secretary of the Company by November 15 of the year immediately preceding the annual meeting. No request for a recommended nominee was made by the 2011 deadline by any stockholder or group of stockholders with beneficial ownership of more than five percent of our Common Stock as indicated in a Schedule 13D or 13G, other than those stockholders with contractual board representation or director designation rights as discussed above.

The Board selects each nominee, subject to contractual representation or designation rights held by certain stockholders, based on the nominee's skills, achievements, and experience, with the objective that the Board as a whole should have broad and relevant experience in high policymaking levels in business and a commitment to representing the long-term interests of the stockholders. The Board believes that each nominee should have experience in positions of responsibility and leadership, an understanding of our business environment, and a reputation for integrity.

The Board evaluates each potential nominee individually and in the context of the Board as a whole. The objective is to recommend a group that will effectively contribute to our long-term success and represent stockholder interests. In determining whether to recommend a director for re-election, the Board also considers the director's past attendance at meetings and participation in and contributions to the activities of the Board.

When seeking candidates for director, the Board solicits suggestions from incumbent directors, management, stockholders, and others. The Board does not have a charter for the nominating process.

The Company does not have a formal policy with regard to the consideration of diversity in identifying director nominees, but the Board strives to nominate directors with a variety of complementary skills so that, as a group, the Board will possess the appropriate talent, skills, and expertise to oversee the Company's business.

Directors' Compensation

The following table sets forth compensation information for the fiscal year ended September 30, 2011 with respect to directors:

Director Compensation Table for Fiscal Year Ended September 30, 2011

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$)	Option Awards (\$) ^{1, 2}	Non-Equity Incentive Plan Compensation (\$)	Nonqualified Deferred Compensation Earnings \$	All Other Compensation \$	Total \$
Geoffrey R. Bailey	2,000	-	840	-	-	-	2,840
David Dobbin	2,000	-	840	-	-	-	2,840
Gary Heller	1,500	-	840	-	-	-	2,340
Eric W. Reinhard	1,000	-	840	-	-	-	1,840
Keith Radford	1,500	-	840	-	-	-	2,340
John Morgan ³	1,500	-	840	-	-	-	2,340
Boyd E. Hoback ⁴	-	-	-	-	-	-	0

- The value of stock option awards shown in this column includes all amounts expensed in the Company's financial statements in 2011 for equity awards in accordance with the guidance of FASB ASC 718-10-30, Compensation – Stock Compensation, excluding any estimate for forfeitures. The Company's accounting treatment for, and assumptions made in the valuation of equity awards are set forth in Note 1 of the notes to the Company's 2011 consolidated financial statements included in the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2011. There were no option awards re-priced in 2011.
- As of September 30, 2011, the following directors held options to purchase the following number of shares of our Common Stock: Mr. Bailey 5,333 shares; Mr. Dobbin 667 shares; Mr. Heller 667 shares; Mr. Reinhard 6,167 shares; Mr. Radford 667 shares; and Mr. Hoback 57,081 shares.
- Resigned as a director effective as of August 10, 2011. Mr. Morgan's options expired without being exercised subsequent to his resignation.
- Mr. Hoback is an employee director and does not receive additional fees for service as a member of the Board.

Each non-employee director receives \$500 for each Board meeting attended. Members of the Compensation and Audit Committees generally each receive \$100 per meeting attended. However, where both Compensation and Audit Committee meetings are held at the same gathering only \$100 is paid to directors attending both committee meetings. Additionally, for the fiscal year ended September 30, 2011, each non-employee director, with the exception of Messrs. Calvert and Teran, received a non-statutory stock option to acquire 5,000 shares of Common Stock at an exercise price of \$1.31 per share. Mr. Teran received a non-statutory stock option to acquire 2,000 shares of Common Stock at an exercise price of \$2.12 per share in April 2012, when he was elected to the Board to fill the vacancy resulting from John Morgan's resignation.

Certain Relationships and Related Person Transactions

Our corporate headquarters are located in a building owned by The Bailey Company and in which The Bailey Company also has its corporate headquarters. We currently lease our executive office space of approximately 3,693 square feet from The Bailey Company for approximately \$59,000 per year. The lease expired September 30, 2009 and we continue to lease the space on a month to month basis.

The Bailey Company is the owner of one franchised Good Times Drive Thru restaurant which is located in Loveland, Colorado. The Company has entered into a letter agreement with The Bailey Company for the purchase of this restaurant for a purchase price of approximately \$100,000. We expect that the Company's purchase of the Loveland, Colorado restaurant from the Bailey Company will close by the end of July 2012. The Bailey Company was also previously the owner of one franchised restaurant in Thornton, Colorado which was closed in October 2009. The Bailey Company has entered into two franchise and management agreements with us. Franchise royalties and management fees paid under those agreements totaled approximately \$53,000 and \$50,000 for the fiscal years ending September 30, 2011 and 2010, respectively.

In December 2010, the Company repaid an outstanding loan from Golden Bridge, LLC ("Golden Bridge"), in the principal amount of \$185,000 plus accrued interest thereon in the amount of \$18,000. Directors Eric Reinhard and Alan Teran and former directors Ron Goodson, David Grissen, and Richard Stark, who are all stockholders of the Company, are the sole members of Golden Bridge, and Eric Reinhard is the sole manager of Golden Bridge. The Company's repayment of the Golden Bridge loan was duly approved in advance by our Board by the affirmative vote of members thereof who did not have an interest in the transaction.

On April 6, 2012, the Company entered into a financial advisory services agreement with Heathcote Capital, LLC (“Heathcote”), pursuant to which the Company engaged Heathcote to provide exclusive financial advisory services in connection with a possible strategic transaction. The services to be provided by Heathcote involve identifying and contacting potential acquisition targets and/or sources of financing for the Company, advising and assisting the Company in evaluating various structures and forms of any strategic transaction, assisting in the preparation of proposals and evaluation of offers, and assisting the Company in negotiating the financial aspects of the such transaction.

Gary J. Heller, a director of the Company, is the principal of Heathcote. Accordingly, the Company’s agreement with Heathcote constitutes a related party transaction and was reviewed and approved by the Audit Committee. Mr. Heller did not participate in the Audit Committee’s consideration of the agreement and abstained from the committee’s vote to approve the agreement. Concurrently with the Company’s engagement of Heathcote, Mr. Heller resigned as a member of the Audit Committee and as Chairman of the Compensation Committee, though he has continued to serve on our Board and has been nominated by the Company for re-election at the Annual Meeting.

On June 13, 2012, the Company entered into the Securities Purchase Agreement with the Investor, pursuant to which the Company has agreed to issue and sell to the Investor 473,934 Shares of newly designated Series C Convertible Preferred Stock for an aggregate purchase price of \$2,000,001.48 (i.e., \$4.22 per share), subject to the satisfaction of certain conditions precedent set forth in the Securities Purchase Agreement. David L. Dobbin, the Chairman of our Board, is a principal of the Investor. Accordingly, the Securities Purchase Agreement constitutes a related party transaction and was reviewed and approved by the Audit Committee. See “Proposal #2 – Approval of the Investment Transaction” and “Interests of Certain Persons in Matters to be Acted Upon” below.

AUDIT COMMITTEE REPORT

Management is responsible for the internal controls and financial reporting process for the Company. The independent accountants for the Company are responsible for performing an independent audit of the financial statements in accordance with generally accepted auditing standards and to issue a report on those financial statements. The Audit Committee’s responsibility is to monitor and oversee these processes.

In this context, the Audit Committee met with management and the independent accountants to review and discuss the Company’s financial statements for the fiscal year ended September 30, 2011. Management represented to the Audit Committee that the financial statements were prepared in accordance with generally accepted accounting principles, and the Audit Committee has reviewed and discussed the financial statements with management and the independent accountants.

The Audit Committee has discussed with the independent accountants matters required to be discussed by Statement on Auditing Standards No. 61, Communication with Audit Committees. The Audit Committee has also received the written disclosures and the letter from the independent accountants required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountants’ communications with the Audit Committee concerning independence and the Audit Committee discussed with the independent accountants that firm’s independence.

Based on the Audit Committee’s review and discussions referred to above, the Audit Committee recommended to the Board of Directors that the audited financial statements be included in the Good Times Restaurants Annual Report on Form 10-K for the fiscal year ended September 30, 2011 for filing with the SEC.

Audit Committee

Neil Calvert (Chairman)
Eric W. Reinhard
Alan A. Teran

INDEPENDENT AUDITOR INFORMATION

The Board appointed HEIN & ASSOCIATES LLP as the Company's independent auditors for the fiscal year ended September 30, 2010 and the fiscal year ended September 30, 2011, and to perform other accounting services. Representatives of HEIN & ASSOCIATES LLP are expected to be present at the annual meeting of stockholders, and will have the opportunity to make a statement if they so desire and to respond to appropriate stockholder questions.

Audit Fees

The aggregate fees billed for professional services rendered by HEIN & ASSOCIATES LLP for its audit of the Company's annual financial statements for the fiscal year ended September 30, 2011, and its reviews of the financial statements included in the Company's Quarterly Reports on Form 10-Q for fiscal year 2011, were \$71,482 compared to \$75,910 in fees for the fiscal year ended September 30, 2010.

Audit Related Fees

There were no aggregate fees billed by HEIN & ASSOCIATES LLP for assurance and related services that are reasonably related to the performance of the audit or review of our financial statements and are not reported under "Audit Fees" for the fiscal years ended September 30, 2011 and September 30, 2010.

Tax Fees

The aggregate fees billed by HEIN & ASSOCIATES LLP for the preparation and review of the Company's tax returns for the fiscal year ended September 30, 2011 were \$10,500 compared to \$10,500 in fees for the fiscal year ended September 30, 2010.

All Other Fees

The aggregate fees billed to the Company for all other services rendered by HEIN & ASSOCIATES LLP for the fiscal year ended September 30, 2011 were \$14,030 compared to \$12,214 in fees for the fiscal year ended September 30, 2010. These fees are primarily related to a 401(k) plan audit.

Policy on Pre-Approval Policies of Auditor Services

Under the provisions of the Audit Committee Charter, all audit services and all permitted non-audit services (unless subject to a de minimis exception allowed by law) provided by our independent auditors, as well as fees and other compensation to be paid to them, must be approved in advance by our Audit Committee. All audit and other services provided by HEIN & ASSOCIATES LLP during the fiscal year ended September 30, 2011, and the related fees as discussed above, were approved in advance in accordance with SEC rules and the provisions of the Audit Committee Charter. There were no other services or products provided by HEIN & ASSOCIATES LLP to us or related fees during the fiscal year ended September 30, 2011 except as discussed above.

Auditor Independence

The Audit Committee of our Board has considered the effect that the provision of the services described above under the caption “All Other Fees” may have on the independence of HEIN & ASSOCIATES LLP. The Audit Committee has determined that provision of those services is compatible with maintaining the independence of HEIN & ASSOCIATES LLP as the Company’s principal accountants.

OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table shows the beneficial ownership of shares of the Company's Common Stock as of July 9, 2012 by each person known by the Company to be the beneficial owner of more than five percent of the shares of the Company's Common Stock, each director and each executive officer named in the Summary Compensation Table, and all directors and executive officers as a group. The address for the principal stockholders and the directors and officers is 601 Corporate Circle, Golden, CO 80401.

Holder	Number of shares beneficially owned	Percent of class**
Principal stockholders:		
Small Island Investments Ltd.	1,383,3341	50.74%
The Bailey Co.	273,8372	10.04%
The Erie Co. Investment Co.	338,7302	12.42%
Directors and Officers:		
Geoffrey R. Bailey-Director	14,7663	*
David L. Dobbin-Director	1,389,0014	50.84%
Gary J. Heller-Director	5,6675	*
Boyd E. Hoback-Director/Officer	45,2146	1.63%
Sue M. Knutson-Officer	6,8477	*
Scott G. Lefever-Officer	12,6998	*
Alan A. Teran – Director	35,0699	1.28%
Keith A. Radford-Director	5,66710	*
Eric Reinhard-Director	109,33411	3.98%
Neil Calvert-Director	012	0.00%
All directors and executive officers as a group (9 persons including all those named above)	1,624,464 13, 14	56.68%

- 1 Small Island Investments Ltd. is owned and controlled by director David L. Dobbin and members of his family . Does not include the Shares issuable to Small Island Investments Ltd. in the Investment Transaction or the shares of Common Stock issuable upon conversion thereof.
- 2 The Bailey Company is 99% owned by The Erie County Investment Co., which should be deemed the beneficial owner of the Company's Common Stock held by The Bailey Company. The Erie County Investment Co. also owns 194,680 shares of the Company's Common Stock in its own name. Geoffrey R. Bailey is a director and executive officer of The Erie County Investment Co. Geoffrey R. Bailey disclaims beneficial ownership of the shares of Common Stock held by The Bailey Company and The Erie County Investment Co. Because of his ownership of only 26% of the voting shares of The Erie County Investment Co., Paul T. Bailey disclaims beneficial ownership of the shares of Common Stock held by The Bailey Company and The Erie County Investment Co.
- 3 Includes 10,333 shares underlying presently exercisable stock options.
- 4 Includes shares of Common Stock held beneficially by Small Island Investments Ltd. Also includes 5,667 shares underlying presently exercisable stock options. Does not include the Shares issuable to Small Island Investments Ltd. in the Investment Transaction or the shares of Common Stock issuable upon conversion thereof.
- 5 Includes 5,667 shares underlying presently exercisable stock options.
- 6 Includes 30,217 shares underlying presently exercisable stock options.

- 7 Includes 6,847 shares underlying presently exercisable stock options.
- 8 Includes 12,699 shares underlying presently exercisable stock options.
- 9 Includes 2,000 shares underlying presently exercisable stock options and 5,834 warrants to purchase stock. Mr. Teran was elected as a director effective April 10, 2012 to fill the vacancy created by the resignation of John Morgan on August 10, 2011.
- 10 Includes 5,667 shares underlying presently exercisable stock options. Mr. Radford resigned as a director effective June 30, 2012.
- 11 Includes 11,167 shares underlying presently exercisable stock options and 12,500 warrants to purchase stock.
- 12 Mr. Calvert was elected as a director on July 3, 2012 to fill the vacancy created by the resignation of Keith Radford effective June 30, 2012.

- 13 Does not include shares of Common Stock held beneficially by The Bailey Company and The Erie County Investment Co. If those shares were included, the number of shares of Common Stock beneficially held by all directors and executive officers as a group would be 1,963,194 and the percentage of the class would be 68.50%.
- 14 Does not include the Shares issuable to Small Island Investments Ltd. in the Investment Transaction or the shares of Common Stock issuable upon conversion thereof.
- * Less than one percent.
- ** Under SEC rules, beneficial ownership includes shares over which the individual or entity has voting or investment power and any shares which the individual or entity has the right to acquire within sixty days.

EXECUTIVE COMPENSATION

Executive Officers

The executive officers of the Company are as follows:

Name	Age	Position	Date Began With Company
Boyd E. Hoback	57	President & CEO	September 1987
Susan M. Knutson	53	Controller	September 1987
Scott G. LeFever	54	VP of Operations	September 1987

Boyd E. Hoback. See the description of Mr. Hoback's business experience under the heading "Director Nominees" under "Proposal #1 – Election of Directors" above.

Susan M. Knutson has been Controller since 1993 with direct responsibility for overseeing the accounting department, maintaining cash controls, producing budgets, financials, and quarterly and annual reports required to be filed with the SEC, acting as the principal financial officer of the Company, and preparing all information for the annual audit.

Scott G. LeFever has been Vice President of Operations since August 1995, and has been involved in all phases of operations with direct responsibility for restaurant service performance, personnel, and cost controls.

Executive officers do not have fixed terms and serve at the discretion of the Board. There are no family relationships among the executive officers or directors.

Executive Compensation

The following table sets forth compensation information for the fiscal years ended September 30, 2011 and September 30, 2010 with respect to the Named Executive Officers:

Summary Compensation Table for the Fiscal Years Ended September 30, 2011 and September 30, 2010:

Name and Principal Position	Year	Salary \$	Bonus \$	Stock Awards \$	Option Awards \$	Non-Equity Incentive Plan Compensation \$	Nonqualified Deferred Compensation Earnings \$	All Other Compensation \$	Total \$
Boyd E. Hoback President and Chief Executive Officer	2011	133,000	–	–	17,816	–	–	16,961	167,777
Scott G. LeFever Vice President of Operations	2010	148,000	–	–	29,381	–	–	13,978	191,359
	2011	75,000	–	–	9,565	–	–	12,470	97,035
	2010	90,625	–	–	11,645	–	–	10,580	112,850

- 1 The amount indicated for Mr. Hoback includes an automobile allowance, long-term disability, and personal expenses.
- 2 The amount indicated for Mr. LeFever includes an automobile allowance and long-term disability.
- 3 The value of stock option awards shown in this column includes all amounts expensed in the Company's financial statements in 2010 and 2011 for equity awards in accordance with the guidance of FASB ASC 718-10-30, Compensation – Stock Compensation, excluding any estimate for forfeitures. The Company's accounting treatment for, and assumptions made in the valuations of, equity awards is set forth in Note 1 of the notes to the Company's 2011 consolidated financial statements included in the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2011. There were no option awards re-priced in 2011.

•

any limit upon the aggregate principal amount that may be issued;

•the maturity date or dates;

•the form of the debt securities of the series;

•the applicability of any guarantees;

•whether or not the debt securities will be secured or unsecured, and the terms of any secured debt;

•whether the debt securities rank as senior debt, senior subordinated debt, subordinated debt or any combination thereof, and the terms of any subordination;

11

- if the price (expressed as a percentage of the aggregate principal amount thereof) at which such debt securities will be issued is a price other than the principal amount thereof, the portion of the principal amount thereof payable upon declaration of acceleration of the maturity thereof, or if applicable, the portion of the principal amount of such debt securities that is convertible into another security or the method by which any such portion shall be determined;
- the interest rate or rates, which may be fixed or variable, or the method for determining the rate and the date interest will begin to accrue, the dates interest will be payable and the regular record dates for interest payment dates or the method for determining such dates;
- our right, if any, to defer payment of interest and the maximum length of any such deferral period;
- if applicable, the date or dates after which, or the period or periods during which, and the price or prices at which, we may, at our option, redeem the series of debt securities pursuant to any optional or provisional redemption provisions and the terms of those redemption provisions;
- the date or dates, if any, on which, and the price or prices at which we are obligated, pursuant to any mandatory sinking fund or analogous fund provisions or otherwise, to redeem, or at the holder's option to purchase, the series of debt securities and the currency or currency unit in which the debt securities are payable;
- the denominations in which we will issue the series of debt securities, if other than denominations of \$1,000 and any integral multiple thereof;
- any and all terms, if applicable, relating to any auction or remarketing of the debt securities of that series and any security for our obligations with respect to such debt securities and any other terms which may be advisable in connection with the marketing of debt securities of that series;
- whether the debt securities of the series shall be issued in whole or in part in the form of a global security or securities; the terms and conditions, if any, upon which such global security or securities may be exchanged in whole or in part for other individual securities; and the depository for such global security or securities;
- if applicable, the provisions relating to conversion or exchange of any debt securities of the series and the terms and conditions upon which such debt securities will be so convertible or exchangeable, including the conversion or exchange price, as applicable, or how it will be calculated and may be adjusted, any mandatory or optional (at our option or the holders' option) conversion or exchange features, the applicable conversion or exchange period and the manner of settlement for any conversion or exchange;
 - if other than the full principal amount thereof, the portion of the principal amount of debt securities of the series which shall be payable upon declaration of acceleration of the maturity thereof;
- additions to or changes in the covenants applicable to the particular debt securities being issued, including, among others, the consolidation, merger or sale covenant;

- additions to or changes in the events of default with respect to the securities and any change in the right of the trustee or the holders to declare the principal, premium, if any, and interest, if any, with respect to such securities to be due and payable;
- additions to or changes in or deletions of the provisions relating to covenant defeasance and legal defeasance;
- additions to or changes in the provisions relating to satisfaction and discharge of the indenture;
- additions to or changes in the provisions relating to the modification of the indenture both with and without the consent of holders of debt securities issued under the indenture;
- the currency of payment of debt securities if other than U.S. dollars and the manner of determining the equivalent amount in U.S. dollars;
- whether interest will be payable in cash or additional debt securities at our or the holders' option and the terms and conditions upon which the election may be made;

- the terms and conditions, if any, upon which we will pay amounts in addition to the stated interest, premium, if any and principal amounts of the debt securities of the series to any holder that is not a “United

States person” for federal tax purposes;

- any restrictions on transfer, sale or assignment of the debt securities of the series; and

- any other specific terms, preferences, rights or limitations of, or restrictions on, the debt securities, any other additions or changes in the provisions of the indenture, and any terms that may be required by us or advisable under applicable laws or regulations.

Conversion or Exchange Rights

We will set forth in the prospectus supplement the terms on which a series of debt securities may be convertible into or exchangeable for our common stock or our other securities. We will include provisions as to settlement upon conversion or exchange and whether conversion or exchange is mandatory, at the option of the holder or at our option. We may include provisions pursuant to which the number of shares of our common stock or our other securities that the holders of the series of debt securities receive would be subject to adjustment.

Consolidation, Merger or Sale

Unless we provide otherwise in the prospectus supplement applicable to a particular series of debt securities, the indenture will not contain any covenant that restricts our ability to merge or consolidate, or sell, convey, transfer or otherwise dispose of our assets in their entirety or substantially in their entirety. However, any successor to or acquirer of such assets (other than a subsidiary of ours) must assume all of our obligations under the indenture or the debt securities, as appropriate.

Events of Default under the Indenture

Unless we provide otherwise in the prospectus supplement applicable to a particular series of debt securities, the following are events of default under the indenture with respect to any series of debt securities that we may issue:

- if we fail to pay any installment of interest on any series of debt securities, as and when the same shall become due and payable, and such default continues for a period of 90 days; provided, however, that a valid extension of an interest payment period by us in accordance with the terms of any indenture supplemental thereto shall not constitute a default in the payment of interest for this purpose;
- if we fail to pay the principal of, or premium, if any, on any series of debt securities as and when the same shall become due and payable whether at maturity, upon redemption, by declaration or otherwise, or in any payment required by any sinking or analogous fund established with respect to such series; provided, however, that a valid extension of the maturity of such debt securities in accordance with the terms of any indenture supplemental thereto shall not constitute a default in the payment of principal or premium, if any;

- if we fail to observe or perform any other covenant or agreement contained in the debt securities or the indenture, other than a covenant specifically relating to another series of debt securities, and our failure continues for 90 days after we receive written notice of such failure, requiring the same to be remedied and stating that such is a notice of default thereunder, from the trustee or holders of at least 25% in aggregate principal amount of the outstanding debt securities of the applicable series; and

- if specified events of bankruptcy, insolvency or reorganization occur.

If an event of default with respect to debt securities of any series occurs and is continuing, other than an event of default specified in the last bullet point above, the trustee or the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series, by notice to us in writing, and to the trustee if notice is given by such holders, may declare the unpaid principal of, premium, if any, and accrued interest, if any, due and payable immediately. If an event of default specified in the last bullet point above occurs with respect to us, the principal amount of and accrued interest, if any, of each issue of debt securities then outstanding shall be due and payable without any notice or other action on the part of the trustee or any holder.

The holders of a majority in principal amount of the outstanding debt securities of an affected series may waive any default or event of default with respect to the series and its consequences, except defaults or events of default regarding payment of principal, premium, if any, or interest, unless we have cured the default or event of default in accordance with the indenture. Any waiver shall cure the default or event of default.

Subject to the terms of the indenture, if an event of default under an indenture shall occur and be continuing, the trustee will be under no obligation to exercise any of its rights or powers under such indenture at the request or direction of any of the holders of the applicable series of debt securities, unless such holders have offered the trustee reasonable indemnity. The holders of a majority in principal amount of the outstanding debt securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee, or exercising any trust or power conferred on the trustee, with respect to the debt securities of that series, provided that:

- the direction so given by the holder is not in conflict with any law or the applicable indenture; and

- subject to its duties under the Trust Indenture Act, the trustee need not take any action that might involve it in personal liability or might be unduly prejudicial to the holders not involved in the proceeding.

A holder of the debt securities of any series will have the right to institute a proceeding under the indenture or to appoint a receiver or trustee, or to seek other remedies only if:

- the holder has given written notice to the trustee of a continuing event of default with respect to that series;

- the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series have made written request,

- such holders have offered to the trustee indemnity satisfactory to it against the costs, expenses and liabilities to be incurred by the trustee in compliance with the request; and

- the trustee does not institute the proceeding, and does not receive from the holders of a majority in aggregate principal amount of the outstanding debt securities of that series other conflicting directions within 90 days after the notice, request and offer.

These limitations do not apply to a suit instituted by a holder of debt securities if we default in the payment of the principal, premium, if any, or interest on, the debt securities.

We will periodically file statements with the trustee regarding our compliance with specified covenants in the indenture.

Modification of Indenture; Waiver

We and the trustee may change an indenture without the consent of any holders with respect to specific matters:

- to cure any ambiguity, defect or inconsistency in the indenture or in the debt securities of any series;

- to comply with the provisions described above under “Description of Debt Securities—Consolidation, Merger or Sale;”
- to provide for uncertificated debt securities in addition to or in place of certificated debt securities;
- to add to our covenants, restrictions, conditions or provisions such new covenants, restrictions, conditions or provisions for the benefit of the holders of all or any series of debt securities, to make the occurrence, or the occurrence and the continuance, of a default in any such additional covenants, restrictions, conditions or provisions an event of default or to surrender any right or power conferred upon us in the indenture;
- to add to, delete from or revise the conditions, limitations, and restrictions on the authorized amount, terms, or purposes of issue, authentication and delivery of debt securities, as set forth in the indenture;
- to make any change that does not adversely affect the interests of any holder of debt securities of any series in any material respect;
- to provide for the issuance of and establish the form and terms and conditions of the debt securities of any series as provided above under “Description of Debt Securities—General” to establish the form of any certifications required to be furnished pursuant to the terms of the indenture or any series of debt securities, or to add to the rights of the holders of any series of debt securities;
- to evidence and provide for the acceptance of appointment under any indenture by a successor trustee; or

- to comply with any requirements of the SEC in connection with the qualification of any indenture under the Trust Indenture Act.

In addition, under the indenture, the rights of holders of a series of debt securities may be changed by us and the trustee with the written consent of the holders of at least a majority in aggregate principal amount of the outstanding debt securities of each series that is affected. However, unless we provide otherwise in the prospectus supplement applicable to a particular series of debt securities, we and the trustee may make the following changes only with the consent of each holder of any outstanding debt securities affected:

- extending the fixed maturity of any debt securities of any series;
- reducing the principal amount, reducing the rate of or extending the time of payment of interest, or reducing any premium payable upon the redemption of any series of any debt securities; or
- reducing the percentage of debt securities, the holders of which are required to consent to any amendment, supplement, modification or waiver.

Discharge

Each indenture provides that we can elect to be discharged from our obligations with respect to one or more series of debt securities, except for specified obligations, including obligations to:

- provide for payment;
- register the transfer or exchange of debt securities of the series;
- replace stolen, lost or mutilated debt securities of the series;
- pay principal of and premium and interest on any debt securities of the series;
- maintain paying agencies;
- hold monies for payment in trust;
- recover excess money held by the trustee;

- compensate and indemnify the trustee; and

- appoint any successor trustee.

In order to exercise our rights to be discharged, we must deposit with the trustee money or government obligations sufficient to pay all the principal of, any premium, if any, and interest on, the debt securities of the series on the dates payments are due.

Form, Exchange and Transfer

We will issue the debt securities of each series only in fully registered form without coupons and, unless we provide otherwise in the applicable prospectus supplement, in denominations of \$1,000 and any integral multiple thereof. The indenture provides that we may issue debt securities of a series in temporary or permanent global form and as book-entry securities that will be deposited with, or on behalf of, The Depository Trust Company (“DTC”) or another depository named by us and identified in a prospectus supplement with respect to that series. To the extent the debt securities of a series are issued in global form and as book-entry, a description of terms relating will be set forth in the applicable prospectus supplement.

At the option of the holder, subject to the terms of the indenture and the limitations applicable to global securities described in the applicable prospectus supplement, the holder of the debt securities of any series can exchange the debt securities for other debt securities of the same series, in any authorized denomination and of like tenor and aggregate principal amount.

Subject to the terms of the indenture and the limitations applicable to global securities set forth in the applicable prospectus supplement, holders of the debt securities may present the debt securities for exchange or for registration of transfer, duly endorsed or with the form of transfer endorsed thereon duly executed if so required by us or the security registrar, at the office of the security registrar or at the office of any transfer agent designated by us for this purpose. Unless otherwise provided in the debt securities that the holder presents for transfer or exchange, we will impose no service charge for any registration of transfer or exchange, but we may require payment of any taxes or other governmental charges.

We will name in the applicable prospectus supplement the security registrar, and any transfer agent in addition to the security registrar, that we initially designate for any debt securities. We may at any time designate additional transfer agents or rescind the designation of any transfer agent or approve a change in the office through which any transfer agent acts, except that we will be required to maintain a transfer agent in each place of payment for the debt securities of each series.

If we elect to redeem the debt securities of any series, we will not be required to:

- issue, register the transfer of, or exchange any debt securities of that series during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of any debt securities that may be selected for redemption and ending at the close of business on the day of the mailing; or
- register the transfer of or exchange any debt securities so selected for redemption, in whole or in part, except the unredeemed portion of any debt securities we are redeeming in part.

Information Concerning the Trustee

The trustee, other than during the occurrence and continuance of an event of default under an indenture, undertakes to perform only those duties as are specifically set forth in the applicable indenture. Upon an event of default under an indenture, the trustee must use the same degree of care as a prudent person would exercise or use in the conduct of his or her own affairs. Subject to this provision, the trustee is under no obligation to exercise any of the powers given it by the indenture at the request of any holder of debt securities unless it is offered reasonable security and indemnity against the costs, expenses and liabilities that it might incur.

Payment and Paying Agents

Unless we otherwise indicate in the applicable prospectus supplement, we will make payment of the interest on any debt securities on any interest payment date to the person in whose name the debt securities, or one or more predecessor securities, are registered at the close of business on the regular record date for the interest.

We will pay principal of and any premium and interest on the debt securities of a particular series at the office of the paying agents designated by us, except that unless we otherwise indicate in the applicable prospectus supplement, we will make interest payments by check that we will mail to the holder or by wire transfer to certain holders. Unless we otherwise indicate in the applicable prospectus supplement, we will designate the corporate trust office of the trustee as our sole paying agent for payments with respect to debt securities of each series. We will name in the applicable prospectus supplement any other paying agents that we initially designate for the debt securities of a particular series. We will maintain a paying agent in each place of payment for the debt securities of a particular series.

All money we pay to a paying agent or the trustee for the payment of the principal of or any premium or interest on any debt securities that remains unclaimed at the end of two years after such principal, premium or interest has become due and payable will be repaid to us, and the holder of the debt security thereafter may look only to us for payment thereof.

Governing Law

The indenture and the debt securities will be governed by and construed in accordance with the laws of the State of New York, except to the extent that the Trust Indenture Act of 1939 is applicable.

DESCRIPTION OF WARRANTS

The following description, together with the additional information that we include in any applicable prospectus supplements and in any related free writing prospectus that we may authorize to be distributed to you, summarizes the material terms and provisions of the warrants that we may offer under this prospectus and the related warrant agreements and warrant certificates, which may consist of warrants to purchase common stock, preferred stock and/or debt securities and may be issued in one or more series. We may issue warrants independently or together with common stock, preferred stock and/or debt securities, and the warrants may be attached to or separate from these securities. While the terms summarized below will apply generally to any warrants that we may offer, we will describe the particular terms of any series of warrants in more detail in the applicable prospectus supplement. The terms of any warrants offered under a prospectus supplement may differ from the terms described below.

We have filed forms of the warrant agreements and forms of warrant certificates containing the terms of the warrants being offered as exhibits to the registration statement of which this prospectus is a part. We will file as exhibits to the registration statement of which this prospectus is a part, or will incorporate by reference from reports that we file with the SEC, the form of warrant agreement, including a form of warrant certificate, that describes the terms of the particular series of warrants we are offering before the issuance of the related series of warrants. The following summaries of material provisions of the warrants and the warrant agreements are subject to, and qualified in their entirety by reference to, all the provisions of the warrant agreement and warrant certificate applicable to the particular series of warrants that we may offer under this prospectus. We urge you to read the applicable prospectus supplements related to the particular series of warrants that we may offer under this prospectus, as well as any related free writing prospectuses and the complete warrant agreements and warrant certificates that contain the terms of the warrants.

General

We will describe in the applicable prospectus supplement the terms of the series of warrants, including:

- the offering price and aggregate number of warrants offered;
- the currency for which the warrants may be purchased;
- if applicable, the designation and terms of the securities with which the warrants are issued and the number of warrants issued with each such security or each principal amount of such security;
- if applicable, the date on and after which the warrants and the related securities will be separately transferable;
- in the case of warrants to purchase debt securities, the principal amount of debt securities purchasable upon exercise of one warrant and the price at, and currency in which, this principal amount of debt securities may be purchased upon such exercise;
- in the case of warrants to purchase common stock or preferred stock, the number of shares of common stock or preferred stock, as the case may be, purchasable upon the exercise of one warrant and the price at which these shares

may be purchased upon such exercise;

- the effect of any merger, consolidation, sale or other disposition of our business on the warrant agreements and the warrants;
- the terms of any rights to redeem or call the warrants;
- the terms of any rights to force the exercise of the warrants;
- any provisions for changes to or adjustments in the exercise price or number of securities issuable upon exercise of the warrants;
- the dates on which the right to exercise the warrants will commence and expire;
- the manner in which the warrant agreements and warrants may be modified;
- a discussion of any material or special United States federal income tax consequences of holding or exercising the warrants;

- the terms of the securities issuable upon exercise of the warrants; and

- any other specific terms, preferences, rights or limitations of, or restrictions on, the warrants.

Before exercising their warrants, holders of warrants will not have any of the rights of holders of the securities purchasable upon such exercise, including:

- in the case of warrants to purchase debt securities, the right to receive payments of principal of, or premium, if any, or interest on, the debt securities purchasable upon exercise or to enforce covenants in the applicable indenture; or

- in the case of warrants to purchase common stock or preferred stock, the right to receive dividends, if any, or payments upon our liquidation, dissolution or winding up or to exercise voting rights, if any.

Exercise of Warrants

Each warrant will entitle the holder to purchase the securities that we specify in the applicable prospectus supplement at the exercise price that we describe in the applicable prospectus supplement. Unless we otherwise specify in the applicable prospectus supplement, holders of the warrants may exercise the warrants at any time up to the specified time on the expiration date that we set forth in the applicable prospectus supplement. After the close of business on the expiration date, unexercised warrants will become void.

Unless we otherwise specify in the applicable prospectus supplement, holders of the warrants may exercise the warrants by delivering the warrant certificate representing the warrants to be exercised together with specified information, and paying the required amount to the warrant agent in immediately available funds, or, if provided in the applicable prospectus supplement by cashless exercise. We will set forth on the reverse side of the warrant certificate and in the applicable prospectus supplement the information that the holder of the warrant will be required to deliver to the warrant agent in connection with the exercise of the warrant.

Upon receipt of the required exercise price and the warrant certificate properly completed and duly executed at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement, we will issue and deliver the securities purchasable upon such exercise. If fewer than all of the warrants represented by the warrant certificate are exercised, then we will issue a new warrant certificate for the remaining amount of warrants. If we so indicate in the applicable prospectus supplement, holders of the warrants may surrender securities as all or part of the exercise price for warrants.

Governing Law

Unless we otherwise specify in the applicable prospectus supplement, the warrants and warrant agreements will be governed by and construed in accordance with the laws of the State of New York.

Enforceability of Rights by Holders of Warrants

Each warrant agent will act solely as our agent under the applicable warrant agreement and will not assume any obligation or relationship of agency or trust with any holder of any warrant. A single bank or trust company may act as warrant agent for more than one issue of warrants. A warrant agent will have no duty or responsibility in case of any default by us under the applicable warrant agreement or warrant, including any duty or responsibility to initiate any proceedings at law or otherwise, or to make any demand upon us. Any holder of a warrant may, without the consent of the related warrant agent or the holder of any other warrant, enforce by appropriate legal action its right to exercise, and receive the securities purchasable upon exercise of, its warrants.

LEGAL OWNERSHIP OF SECURITIES

We can issue securities in registered form or in the form of one or more global securities. We describe global securities in greater detail below. We refer to those persons who have securities registered in their own names on the books that we or any applicable trustee, depositary or warrant agent maintain for this purpose as the “holders” of those securities. These persons are the legal holders of the securities. We refer to those persons who, indirectly

18

through others, own beneficial interests in securities that are not registered in their own names, as “indirect holders” of those securities. As we discuss below, indirect holders are not legal holders, and investors in securities issued in book-entry form or in street name will be indirect holders.

Book-Entry Holders

We may issue securities in book-entry form only, as we will specify in the applicable prospectus supplement. This means securities may be represented by one or more global securities registered in the name of a financial institution that holds them as depositary on behalf of other financial institutions that participate in the depositary’s book-entry system. These participating institutions, which are referred to as participants, in turn, hold beneficial interests in the securities on behalf of themselves or their customers.

Only the person in whose name a security is registered is recognized as the holder of that security. Securities issued in global form will be registered in the name of the depositary or its participants. Consequently, for securities issued in global form, we will recognize only the depositary as the holder of the securities, and we will make all payments on the securities to the depositary. The depositary passes along the payments it receives to its participants, which in turn pass the payments along to their customers who are the beneficial owners. The depositary and its participants do so under agreements they have made with one another or with their customers; they are not obligated to do so under the terms of the securities.

As a result, investors in a book-entry security will not own securities directly. Instead, they will own beneficial interests in a global security, through a bank, broker or other financial institution that participates in the depositary’s book-entry system or holds an interest through a participant. As long as the securities are issued in global form, investors will be indirect holders, and not holders, of the securities.

Street Name Holders

We may terminate a global security or issue securities in non-global form. In these cases, investors may choose to hold their securities in their own names or in “street name.” Securities held by an investor in street name would be registered in the name of a bank, broker or other financial institution that the investor chooses, and the investor would hold only a beneficial interest in those securities through an account he or she maintains at that institution.

For securities held in street name, we will recognize only the intermediary banks, brokers and other financial institutions in whose names the securities are registered as the holders of those securities, and we will make all payments on those securities to them. These institutions pass along the payments they receive to their customers who are the beneficial owners, but only because they agree to do so in their customer agreements or because they are legally required to do so. Investors who hold securities in street name will be indirect holders, not holders, of those securities.

Legal Holders

Our obligations, as well as the obligations of any applicable trustee and of any third parties employed by us or a trustee, run only to the legal holders of the securities. We do not have obligations to investors who hold beneficial interests in global securities, in street name or by any other indirect means. This will be the case whether an investor chooses to be an indirect holder of a security or has no choice because we are issuing the securities only in global form.

For example, once we make a payment or give a notice to the holder, we have no further responsibility for the payment or notice even if that holder is required, under agreements with depositary participants or customers or by

law, to pass it along to the indirect holders but does not do so. Similarly, we may want to obtain the approval of the holders to amend an indenture, to relieve us of the consequences of a default or of our obligation to comply with a particular provision of the indenture or for other purposes. In such an event, we would seek approval only from the registered holders, and not the indirect holders, of the securities. Whether and how the holders contact the indirect holders is up to the holders.

Special Considerations for Indirect Holders

19

If you hold securities through a bank, broker or other financial institution, either in book-entry form or in street name, you should check with your own institution to find out:

- how it handles securities payments and notices;
- whether it imposes fees or charges;
- how it would handle a request for the holders' consent, if ever required;
- whether and how you can instruct it to send you securities registered in your own name so you can be a holder, if that is permitted in the future;
- how it would exercise rights under the securities if there were a default or other event triggering the need for holders to act to protect their interests; and
- if the securities are in book-entry form, how the depository's rules and procedures will affect these matters.

Global Securities

A global security is a security that represents one or any other number of individual securities held by a depository. Generally, all securities represented by the same global securities will have the same terms.

Each security issued in book-entry form will be represented by a global security that we deposit with and register in the name of a financial institution or its nominee that we select. The financial institution that we select for this purpose is called the depository. Unless we specify otherwise in the applicable prospectus supplement, The Depository Trust Company, New York, New York, known as DTC, will be the depository for all securities issued in book-entry form.

A global security may not be transferred to or registered in the name of anyone other than the depository, its nominee or a successor depository, unless special termination situations arise. We describe those situations below under the section entitled "Special Situations When a Global Security Will Be Terminated" in this prospectus. As a result of these arrangements, the depository, or its nominee, will be the sole registered owner and holder of all securities represented by a global security, and investors will be permitted to own only beneficial interests in a global security. Beneficial interests must be held by means of an account with a broker, bank or other financial institution that in turn has an account with the depository or with another institution that does. Thus, an investor whose security is represented by a global security will not be a holder of the security, but only an indirect holder of a beneficial interest in the global security.

If the prospectus supplement for a particular security indicates that the security will be issued in global form only, then the security will be represented by a global security at all times unless and until the global security is terminated. If termination occurs, we may issue the securities through another book-entry clearing system or decide that the securities may no longer be held through any book-entry clearing system.

Special Considerations for Global Securities

The rights of an indirect holder relating to a global security will be governed by the account rules of the investor's financial institution and of the depositary, as well as general laws relating to securities transfers. We do not recognize an indirect holder as a holder of securities and instead deal only with the depositary that holds the global security.

If securities are issued only in the form of a global security, an investor should be aware of the following:

- an investor cannot cause the securities to be registered in his or her name, and cannot obtain non-global certificates for his or her interest in the securities, except in the special situations we describe below;
- an investor will be an indirect holder and must look to his or her own bank or broker for payments on the securities and protection of his or her legal rights relating to the securities, as we describe above;
- an investor may not be able to sell interests in the securities to some insurance companies and to other institutions that are required by law to own their securities in non-book-entry form;

- an investor may not be able to pledge his or her interest in a global security in circumstances where certificates representing the securities must be delivered to the lender or other beneficiary of the pledge in order for the pledge to be effective;
- the depositary's policies, which may change from time to time, will govern payments, transfers, exchanges and other matters relating to an investor's interest in a global security;
- we and any applicable trustee have no responsibility for any aspect of the depositary's actions or for its records of ownership interests in a global security, nor do we or any applicable trustee supervise the depositary in any way;
- the depositary may, and we understand that DTC will, require that those who purchase and sell interests in a global security within its book-entry system use immediately available funds, and your broker or bank may require you to do so as well; and
- financial institutions that participate in the depositary's book-entry system, and through which an investor holds its interest in a global security, may also have their own policies affecting payments, notices and other matters relating to the securities.

There may be more than one financial intermediary in the chain of ownership for an investor. We do not monitor and are not responsible for the actions of any of those intermediaries.

Special Situations When a Global Security Will Be Terminated

In a few special situations described below, the global security will terminate and interests in it will be exchanged for physical certificates representing those interests. After that exchange, the choice of whether to hold securities directly or in street name will be up to the investor. Investors must consult their own banks or brokers to find out how to have their interests in securities transferred to their own name, so that they will be direct holders. We have described the rights of holders and street name investors above.

Unless we provide otherwise in the applicable prospectus supplement, the global security will terminate when the following special situations occur:

- if the depositary notifies us that it is unwilling, unable or no longer qualified to continue as depositary for that global security and we do not appoint another institution to act as depositary within 90 days;
- if we notify any applicable trustee that we wish to terminate that global security; or
- if an event of default has occurred with regard to securities represented by that global security and has not been cured or waived.

The applicable prospectus supplement may also list additional situations for terminating a global security that would apply only to the particular series of securities covered by the applicable prospectus supplement. When a global security terminates, the depositary, and not we or any applicable trustee, is responsible for deciding the names of the

institutions that will be the initial direct holders.

PLAN OF DISTRIBUTION

We may sell the securities covered hereby from time to time pursuant to underwritten public offerings, direct sales to the public, negotiated transactions, block trades or a combination of these methods. A distribution of the securities offered by this prospectus may also be effected through the issuance of derivative securities, including without limitation, warrants and subscriptions. We may sell the securities to or through underwriters or dealers, through agents, or directly to one or more purchasers. We may distribute securities from time to time in one or more transactions:

- at a fixed price or prices, which may be changed;

- at market prices prevailing at the time of sale;
 - at prices related to such prevailing market prices;

- at varying prices determined at the time of sale; or

21

- at negotiated prices.

A prospectus supplement or supplements will describe the terms of the offering of the securities, including:

- the name or names of the underwriters, dealers or agents participating in the offering, if any;
- the purchase price of the securities sold by us to any underwriter or dealer and the net proceeds we expect to receive from the offering;
- any over-allotment options under which underwriters may purchase additional securities from us;
- any agency fees or underwriting discounts or commissions and other items constituting agents' or underwriters' compensation;
- any public offering price;
- any discounts or concessions allowed or reallocated or paid to dealers; and
- any securities exchange or market on which the securities may be listed.

Only underwriters named in the prospectus supplement will be underwriters of the securities offered by the prospectus supplement.

If underwriters are used in the sale, they will acquire the securities for their own account and may resell the securities from time to time in one or more transactions at a fixed public offering price or at varying prices determined at the time of sale. The obligations of the underwriters to purchase the securities will be subject to the conditions set forth in the applicable underwriting agreement. We may offer the securities to the public through underwriting syndicates represented by managing underwriters or by underwriters without a syndicate. Subject to certain conditions, the underwriters will be obligated to purchase all of the securities offered by the prospectus supplement, other than securities covered by any over-allotment option. Any public offering price and any discounts or commissions or concessions allowed or reallocated or paid to dealers may change from time to time. We may use underwriters with whom we have a material relationship. We will describe in the prospectus supplement, naming the underwriter, the nature of any such relationship.

We may sell securities directly or through agents we designate from time to time. We will name any agent involved in the offering and sale of securities and we will describe any commissions and other compensation we will pay the agent in the prospectus supplement. Unless the prospectus supplement states otherwise, our agent will act on a best-efforts basis for the period of its appointment.

We may authorize agents or underwriters to solicit offers by certain types of institutional investors to purchase securities from us at the public offering price set forth in the prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. We will describe the conditions to these contracts and the commissions we must pay for solicitation of these contracts in the prospectus supplement.

We may provide agents and underwriters with indemnification against civil liabilities related to this offering, including liabilities under the Securities Act, or contribution with respect to payments that the agents or underwriters may make with respect to these liabilities. Agents and underwriters may engage in transactions with, or perform services for, us in the ordinary course of business.

All securities we may offer, other than common stock, will be new issues of securities with no established trading market. Any agents or underwriters may make a market in these securities, but will not be obligated to do so and may discontinue any market making at any time without notice. We cannot guarantee the liquidity of the trading markets for any securities. There is currently no market for any of the offered securities, other than our common stock which is listed on the on the NASDAQ Capital Market. We have no current plans for listing of the debt securities, preferred stock, warrants or subscription rights on any securities exchange or quotation system; any such listing with respect to any particular debt securities, preferred stock, warrants or subscription rights will be described in the applicable prospectus supplement or other offering materials, as the case may be.

Any underwriter may engage in overallotment, stabilizing transactions, short covering transactions and penalty bids in accordance with Regulation M under the Exchange Act. Overallotment involves sales in excess of the offering size, which create a short position. Stabilizing transactions permit bids to purchase the underlying

security so long as the stabilizing bids do not exceed a specified maximum. Short covering transactions involve purchases of the securities in the open market after the distribution is completed to cover short positions. Penalty bids permit the underwriters to reclaim a selling concession from a dealer when the securities originally sold by the dealer are purchased in a stabilizing or covering transaction to cover short positions. Those activities may cause the price of the securities to be higher than it would otherwise be. If commenced, the underwriters may discontinue any of the activities at any time.

Any agents and underwriters who are qualified market makers on the NASDAQ Capital Market may engage in passive market making transactions in the securities on the NASDAQ Capital Market in accordance with Regulation M, during the business day prior to the pricing of the offering, before the commencement of offers or sales of the securities. Passive market makers must comply with applicable volume and price limitations and must be identified as passive market makers. In general, a passive market maker must display its bid at a price not in excess of the highest independent bid for such security; if all independent bids are lowered below the passive market maker's bid, however, the passive market maker's bid must then be lowered when certain purchase limits are exceeded. Passive market making may stabilize the market price of the securities at a level above that which might otherwise prevail in the open market and, if commenced, may be discontinued at any time.

In compliance with guidelines of the Financial Industry Regulatory Authority, Inc., or FINRA, the maximum compensation to be received by any FINRA member or independent broker dealer may not exceed 8% of the aggregate amount of the securities offered pursuant to this prospectus and any applicable prospectus supplement.

LEGAL MATTERS

Unless otherwise indicated in the applicable prospectus supplement, certain legal matters in connection with the offering and the validity of the securities offered by this prospectus, and any supplement thereto, will be passed upon for us by Cooley LLP.

EXPERTS

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2013, and the effectiveness of our internal control over financial reporting as of December 31, 2013, as set forth in their reports, which are incorporated by reference in this prospectus and elsewhere in the registration statement. Our financial statements are incorporated by reference in reliance on Ernst & Young LLP's reports, given on their authority as experts in accounting and auditing.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's web site at <http://www.sec.gov>. You may read and copy any document we file at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the public reference room. The SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC, including Dynavax Technologies Corporation. In addition, all of the documents incorporated by reference into this prospectus may be accessed via the Internet at our website: www.dynavax.com. We have not incorporated by reference into this prospectus the information on our website, and you should not consider it to be a part of this prospectus.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to incorporate by reference the information we file with it, which means that we can disclose important information to you by referring you to another document that we have filed separately with the SEC. You should read the information incorporated by reference because it is an important part of this prospectus. We incorporate by reference the following information or documents that we have filed with the SEC, excluding any

23

portions of any Current Report on Form 8-K that are not deemed “filed” pursuant to the General Instructions of Form 8-K:

- our Annual Report on Form 10-K for the year ended December 31, 2013 filed with the SEC on March 10, 2014;
- the information specifically incorporated by reference into our Annual Report on Form 10-K for the year ended December 31, 2013 from our Definitive Proxy Statement on Schedule 14A for our 2014 Annual Meeting of Stockholders, filed with the SEC on April 28, 2014;
- our Quarterly Report on Form 10-Q for the periods ended March 31, 2014 (filed with the SEC on May 5, 2014), June 30, 2014 (filed with the SEC on August 7, 2014) and September 30, 2014 (filed with the SEC on November 5, 2014);
- our Current Reports on Form 8-K (other than information furnished rather than filed) filed with the SEC on February 7, 2014, February 18, 2014, April 16, 2014, May 29, 2014, September 22, 2014, October 7, 2014, October 14, 2014 and November 10, 2014; and
- the description of the our common stock contained in our registration statement on Form 8-A (No. 000-50577), filed with the SEC on February 6, 2004, as amended by Form 8-A, filed with the SEC on November 6, 2008, including any amendments or reports filed for the purpose of updating such description.

Any information in any of the foregoing documents will automatically be deemed to be modified or superseded to the extent that information in this prospectus or in a later filed document that is incorporated or deemed to be incorporated herein by reference modifies or replaces such information.

We also incorporate by reference any future filings (other than current reports furnished under Item 2.02 or Item 7.01 of Form 8-K and exhibits filed on such form that are related to such items) made with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, including those made after the date of filing of the initial registration statement and prior to effectiveness of the registration statement, until we file a post-effective amendment that indicates the termination of the offering of the securities made by this prospectus. Information in such future filings updates and supplements the information provided in this prospectus. Any statements in any such future filings will automatically be deemed to modify and supersede any information in any document we previously filed with the SEC that is incorporated or deemed to be incorporated herein by reference to the extent that statements in the later filed document modify or replace such earlier statements.

We will provide to each person, including any beneficial owner, to whom a prospectus is delivered, without charge upon written or oral request, a copy of any or all of the documents that are incorporated by reference into this prospectus but not delivered with the prospectus, including exhibits which are specifically incorporated by reference into such documents. You may request a copy of these filings at no cost, by writing to or telephoning us at the following address or telephone number, respectively:

Dynavax Technologies Corporation

Attention: Michael Ostrach, Secretary

2929 7th Street, Suite 100

Berkeley, CA 94710-2753

(510) 848-5100

24

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion, Dated November 10, 2014

PROSPECTUS

\$50,000,000

Common Stock

We have entered into a certain Sales Agreement, or sales agreement, with Cowen and Company, LLC, or Cowen, relating to shares of our common stock offered by this prospectus. In accordance with the terms of the sales agreement, we may offer and sell shares of our common stock having an aggregate offering price of up to \$50 million from time to time through Cowen.

Our common stock is quoted on The NASDAQ Capital Market, or the Exchange, under the symbol "DVAX." The last reported sale price of our common stock on November 7, 2014 was \$15.90 per share.

Sales of our common stock, if any, under this prospectus may be made in sales deemed to be "at-the-market" equity offerings as defined in Rule 415 promulgated under the Securities Act of 1933, as amended, or the Securities Act, including sales made directly on or through the Exchange, the existing trading market for our common stock, sales made to or through a market maker other than on an exchange or otherwise, in negotiated transactions at market prices prevailing at the time of sale or at prices related to such prevailing market prices, and/or any other method permitted by law. Cowen is not required to sell any specific number or dollar amount of securities, but will act as a sales agent using commercially reasonable efforts consistent with its normal trading and sales practices, on mutually agreed terms between Cowen and us. There is no arrangement for funds to be received in any escrow, trust or similar arrangement.

The compensation to Cowen for sales of common stock sold pursuant to the sales agreement will be an amount up to 3% of the gross proceeds of any shares of common stock sold under the sales agreement. In connection with the sale of the common stock on our behalf, Cowen will be deemed to be an "underwriter" within the meaning of the Securities Act and the compensation of Cowen will be deemed to be underwriting commissions or discounts. We have also agreed to provide indemnification and contribution to Cowen with respect to certain liabilities, including liabilities under the Securities Act or the Exchange Act of 1934, as amended, or the Exchange Act.

Investing in our securities involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading "Risk Factors" on page 4 of this prospectus and as updated in the applicable prospectus supplement and any related free writing prospectus, and under similar headings in the other documents that are incorporated by reference into this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

COWEN

AND COMPANY

The date of this prospectus is _____, 2014.

TABLE OF CONTENTS

Prospectus

	Page
<u>ABOUT THIS PROSPECTUS</u>	1
<u>PROSPECTUS SUMMARY</u>	2
<u>THE OFFERING</u>	3
<u>RISK FACTORS</u>	4
<u>SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS</u>	5
<u>USE OF PROCEEDS</u>	6
<u>DILUTION</u>	7
<u>DESCRIPTION OF CAPITAL STOCK</u>	8
<u>PLAN OF DISTRIBUTION</u>	12
<u>LEGAL MATTERS</u>	13
<u>EXPERTS</u>	13
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	13
<u>INCORPORATION OF CERTAIN INFORMATION BY REFERENCE</u>	13

ABOUT THIS PROSPECTUS

This prospectus relates to the offering of our common stock. Before buying any of the common stock that we are offering, we urge you to carefully read this prospectus, together with the information incorporated by reference as described under the headings “Where You Can Find More Information” and “Incorporation of Certain Information by Reference” in this prospectus. These documents contain important information that you should consider when making your investment decision.

This prospectus describes the terms of this offering of common stock and also adds to and updates information contained in the documents incorporated by reference into this prospectus. To the extent there is a conflict between the information contained in this prospectus, on the one hand, and the information contained in any document incorporated by reference into this prospectus that was filed with the Securities and Exchange Commission, or SEC, before the date of this prospectus, on the other hand, you should rely on the information in this prospectus. If any statement in one of these documents is inconsistent with a statement in another document having a later date — for example, a document incorporated by reference into this prospectus — the statement in the document having the later date modifies or supersedes the earlier statement.

You should rely only on the information contained in or incorporated by reference in this prospectus and in any free writing prospectus that we have authorized for use in connection with this offering. We have not, and the sales agent has not, authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not, and the sales agent is not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus, the documents incorporated by reference in this prospectus, and in any free writing prospectus that we have authorized for use in connection with this offering, is accurate only as of the date of those respective documents. Our business, financial condition, results of operations and prospects may have changed since those dates. You should read this prospectus, the documents incorporated by reference in this prospectus, and any free writing prospectus that we have authorized for use in connection with this offering, in their entirety before making an investment decision.

Unless otherwise mentioned or unless the context requires otherwise, all references in this prospectus to “Dynavax,” “we,” “our” or similar references mean Dynavax Technologies Corporation and its subsidiaries.

This prospectus and the information incorporated herein and therein by reference include trademarks, service marks and trade names owned by us or other companies. All trademarks, service marks and trade names included or incorporated by reference into this prospectus are the property of their respective owners.

PROSPECTUS SUMMARY

This summary highlights certain information about us, this offering and selected information contained elsewhere in or incorporated by reference into this prospectus. This summary is not complete and does not contain all of the information that you should consider before deciding whether to invest in our common stock. For a more complete understanding of our company and this offering, we encourage you to read and consider carefully the more detailed information in this prospectus, including the information incorporated by reference in this prospectus, and the information included in any free writing prospectus that we have authorized for use in connection with this offering, including the information under the heading “Risk Factors” in this prospectus on page 4 and in the documents incorporated by reference into this prospectus.

About Dynavax Technologies Corporation

We are a clinical-stage biopharmaceutical company that develops products to prevent and treat infectious and inflammatory diseases and cancer based on Toll-like Receptor (“TLR”) biology and its ability to modulate the innate immune system. Our lead product candidate is HEPLISAV-B™, an investigational adult hepatitis B vaccine in Phase 3 clinical development.

In addition to HEPLISAV-B, we are conducting clinical and preclinical programs that utilize our expertise in TLR biology. Our product candidates include both TLR agonists and TLR inhibitors. Our clinical stage programs include our cancer immunotherapy program, our autoimmune program partnered with GlaxoSmithKline (“GSK”) and our asthma therapeutic program partnered with AstraZeneca AB (“AstraZeneca”). We also are advancing preclinical development programs in adjuvant technology and TLR 7, 8, and 9 inhibition. We compete with pharmaceutical companies, biotechnology companies, academic institutions and research organizations in developing therapies to prevent or treat infectious and inflammatory diseases and cancer.

We were incorporated in California in August 1996 under the name Double Helix Corporation, and we changed our name to Dynavax Technologies Corporation in September 1996. We reincorporated in Delaware in 2000. Our principal offices are located at 2929 Seventh Street, Suite 100, Berkeley, California 94710-2753. Our telephone number is (510) 848-5100. Our Internet address is www.dynavax.com. We do not incorporate the information on our website into this prospectus, and you should not consider it part of this prospectus.

Dynavax Technologies and HEPLISAV-B are registered trademarks of Dynavax. Each of the other trademarks, trade names or service marks appearing in this prospectus belongs to its respective holder. For further information regarding us and our financial information, you should refer to our recent filings with the SEC. See “Where You Can Find More Information.”

The Offering

Common Stock Offered By Us Shares of our common stock having an aggregate offering price of up to \$50 million.

Manner of Offering “At-the-market” offering that may be made from time to time through our sales agent, Cowen. See “Plan of Distribution” on page 12.

Use of proceeds We currently intend to use the net proceeds from this offering primarily for research, development, manufacturing, and commercialization of product candidates, and for other general corporate purposes. See “Use of Proceeds” on page 6 of this prospectus.

Risk factors Investing in our common stock involves significant risks. See “Risk Factors” on page 4 of this prospectus, and under similar headings in other documents incorporated by reference into this prospectus.

NASDAQ Capital Market Symbol DVAX

RISK FACTORS

Investing in our securities involves a high degree of risk. You should carefully review the risks and uncertainties described under the heading “Risk Factors” contained in the applicable prospectus supplement and any related free writing prospectus, and under similar headings in the other documents that are incorporated by reference into this prospectus, before deciding whether to purchase any of the securities being registered pursuant to the registration statement of which this prospectus is a part. The risks described in these documents are not the only ones we face, but those that we consider to be material. Each of the risk factors could adversely affect our business, operating results and financial condition, as well as adversely affect the value of an investment in our securities, and the occurrence of any of these risks might cause you to lose all or part of your investment. Moreover, the risks described are not the only ones that we face. Additional risks not presently known to us or that we currently believe are immaterial may also significantly impair our business operations. Please also read carefully the section below titled “Special Note Regarding Forward-Looking Statements.”

Additional Risks Related to This Offering

You will experience immediate and substantial dilution.

The offering price per share in this offering may exceed the net tangible book value per share of our common stock outstanding prior to this offering. Assuming that an aggregate of 3,144,654 shares of our common stock are sold at a price of \$15.90 per share, the last reported sale price of our common stock on the Exchange on November 7, 2014, for aggregate gross proceeds of \$50 million, and after deducting commissions and estimated offering expenses payable by us, you will experience immediate dilution of \$10.20 per share, representing the difference between our as adjusted net tangible book value per share as of September 30, 2014 after giving effect to this offering and the assumed offering price. The exercise of outstanding stock options and warrants will result in further dilution of your investment. See the section entitled “Dilution” below for a more detailed illustration of the dilution you would incur if you participate in this offering.

You may experience future dilution as a result of future equity offerings.

In order to raise additional capital, we may in the future offer additional shares of our common stock or other securities convertible into or exchangeable for our common stock at prices that may not be the same as the price per share in this offering. We may sell shares or other securities in any other offering at a price per share that is less than the price per share paid by investors in this offering, and investors purchasing shares or other securities in the future could have rights superior to existing stockholders. The price per share at which we sell additional shares of our common stock, or securities convertible or exchangeable into common stock, in future transactions may be higher or lower than the price per share paid by investors in this offering.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, the documents we file with the SEC that are incorporated by reference in this prospectus and any free writing prospectus that we have authorized for use in connection with this offering contain “forward-looking statements” within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act. These statements relate to future events or to our future operating or financial performance and involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from any future results, performances or achievements expressed or implied by the forward-looking statements. Forward-looking statements may include, but are not limited to, statements about:

- our ability to timely and appropriately respond to the complete response letter issued to us in February 2013 by the U.S. Food and Drug Administration, or FDA, with respect to our Biologics License Application for HEPLISAV-B;
- the progress, timing and results of clinical trials and research and development efforts involving our product candidates;
- the potential for and timing of regulatory clearances and approvals by the FDA and international regulatory agencies;
- our ability to manufacture and commercialize our product candidates;
- our business strategy and our expectations with respect to the implementation of our business strategy;
- our expectations with respect to the potential commercial value of our product candidates;
- the benefits we expect to derive from relationships with our collaborators;
- our expectations with respect to our intellectual property position;
- the use of proceeds from this offering; and
- our estimates regarding our capital requirements and our need for additional financing.

In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “could,” “would,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “project,” “predict,” “potential,” “future,” “intend,” “certain,” and similar expressions to identify forward-looking statements. These statements reflect our current views with respect to future events and are based on assumptions and subject to risks and uncertainties. Given these uncertainties, you should not place undue reliance on these forward-looking statements. We discuss many of these risks in greater detail under the heading “Risk Factors” on page 3 of this prospectus and in our SEC filings. Also, these forward-looking statements represent our

estimates and assumptions only as of the date of the document containing the applicable statement.

You should read this prospectus, the documents we file with the SEC that are incorporated by reference in this prospectus and any free writing prospectus that we have authorized for use in connection with this offering completely and with the understanding that our actual future results may be materially different from what we expect. We qualify all of the forward-looking statements in the foregoing documents by these cautionary statements.

You should rely only on the information contained, or incorporated by reference, in this prospectus and any free writing prospectus that we have authorized for use in connection with this offering. We and the sales agent for this offering have not authorized anyone to provide you with different information. The common stock offered under this prospectus is not being offered in any state where the offer is not permitted. You should not assume that the information contained in this prospectus is accurate as of any date other than the date on the front of this prospectus, or that any information incorporated by reference into this prospectus is accurate as of any date other than the date of the document so incorporated by reference. Unless required by law, we undertake no obligation to update or revise any forward-looking statements to reflect new information or future events or developments. Thus, you should not assume that our silence over time means that actual events are bearing out as expressed or implied in such forward-looking statements.

USE OF PROCEEDS

We may issue and sell shares of our common stock having aggregate sales proceeds of up to \$50 million from time to time. Because there is no minimum offering amount required as a condition to close this offering, the actual total public offering amount, commissions and proceeds to us, if any, are not determinable at this time. We estimate that the net proceeds from the sale of the shares of common stock that we are offering may be up to approximately \$48.5 million, after deducting Cowen's commission and estimated offering expenses payable by us.

We currently intend to use the net proceeds from this offering primarily for research, development, manufacturing, and commercialization of product candidates, and for other general corporate purposes. Pending these uses, we expect to invest the net proceeds in short-term, interest-bearing securities.

DILUTION

Our net tangible book value as of September 30, 2014 was approximately \$119.2 million, or \$4.53 per share. Net tangible book value per share is determined by dividing our total tangible assets, less total liabilities, by the number of shares of our common stock outstanding as of September 30, 2014. Dilution with respect to net tangible book value per share represents the difference between the amount per share paid by purchasers of shares of common stock in this offering and the net tangible book value per share of our common stock immediately after this offering.

After giving effect to the sale of 3,144,654 shares of our common stock in this offering at an assumed offering price of \$15.90 per share, the last reported sale price of our common stock on the Exchange on November 7, 2014, and after deducting estimated offering commissions and offering expenses payable by us, our as adjusted net tangible book value as of September 30, 2014 would have been approximately \$167.8 million, or \$5.70 per share. This represents an immediate increase in net tangible book value of \$1.17 per share to existing stockholders and immediate dilution of \$10.20 per share to investors purchasing our common stock in this offering at the public offering price. The following table illustrates this dilution on a per share basis:

Assumed public offering price per share	\$15.90
Net tangible book value per share of as September 30, 2014	\$4.53
Increase in net tangible book value per share attributable to this offering	\$1.17
As adjusted net tangible book value per share as of September 30, 2014, after giving effect to this offering	\$5.70
Dilution per share to investors purchasing our common stock in this offering	\$10.20

The above discussion and table are based on 26,293,377 shares outstanding as of September 30, 2014, and exclude as of that date:

- 1,091,387 shares of common stock issuable upon the exercise of warrants outstanding as of September 30, 2014, having a weighted average exercise price of \$15.00 per share;
- 1,881,851 shares of common stock issuable upon the exercise of stock options outstanding as of September 30, 2014, having a weighted average exercise price of \$27.70 per share;
- 179,000 unvested restricted stock units as of September 30, 2014; and
- an aggregate of 912,572 shares of common stock reserved for future issuance under our stock option and employee stock purchase plans as of September 30, 2014.

The table above assumes for illustrative purposes that an aggregate of 3,144,654 shares of our common stock are sold during the term of the sales agreement with Cowen at a price of \$15.90 per share, the last reported sale price of our

common stock on The NASDAQ Capital Market on November 7, 2014, for aggregate gross proceeds of \$50,000,000. The shares subject to the sales agreement with Cowen are being sold from time to time at various prices. An increase of \$0.50 per share in the price at which the shares are sold from the assumed offering price of \$15.90 per share shown in the table above, assuming all of our common stock in the aggregate amount of \$50,000,000 during the term of the sales agreement with Cowen is sold at that price, would increase our adjusted net tangible book value per share after the offering to \$5.72 per share and would increase the dilution in net tangible book value per share to new investors in this offering to \$10.68 per share, after deducting commissions and estimated aggregate offering expenses payable by us. A decrease of \$0.50 per share in the price at which the shares are sold from the assumed offering price of \$15.90 per share shown in the table above, assuming all of our common stock in the aggregate amount of \$50,000,000 during the term of the sales agreement with Cowen is sold at that price, would decrease our adjusted net tangible book value per share after the offering to \$5.68 per share and would decrease the dilution in net tangible book value per share to new investors in this offering to \$9.72 per share, after deducting commissions and estimated aggregate offering expenses payable by us. This information is supplied for illustrative purposes only.

To the extent that outstanding options or warrants outstanding as of September 30, 2014 have been or may be exercised or other shares issued, investors purchasing our common stock in this offering may experience further dilution. In addition, we may choose to raise additional capital due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. To the extent that additional capital is raised through the sale of equity or convertible debt securities, the issuance of these securities could result in further dilution to our stockholders.

DESCRIPTION OF CAPITAL STOCK

General

Our authorized capital stock consists of 69,500,000 shares of common stock, \$0.001 par value per share, and 5,000,000 shares of preferred stock, \$0.001 par value per share, 450,000 shares of which has been designated as Series A Junior Participating Preferred, and 43,430 shares of which has been designated as Series B Convertible Preferred Stock. As of November 7, 2014, there were 26,295,877 shares of our common stock outstanding and 43,430 shares of Series B Convertible Preferred Stock outstanding.

The following summary description of our capital stock is based on the provisions of our amended and restated certificate of incorporation, or certificate of incorporation, and amended and restated bylaws, or bylaws, and the applicable provisions of the Delaware General Corporation Law (“Delaware Law”). This information is qualified entirely by reference to the applicable provisions of our certificate of incorporation, bylaws and Delaware Law. For information on how to obtain copies of our amended and restated certificate of incorporation and bylaws, which are exhibits to the registration statement of which this prospectus is a part, see the section entitled “Where You Can Find Additional Information” in this prospectus.

Common Stock

Voting Rights. Each holder of common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Our certificate of incorporation and bylaws do not provide for cumulative voting rights. Because of this, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose.

Dividends. Subject to preferences that may be applicable to any then outstanding preferred stock, holders of common stock are entitled to receive dividends, if any, as may be declared from time to time by our board of directors out of legally available funds.

Liquidation. In the event of our liquidation, dissolution or winding up, holders of common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then outstanding shares of preferred stock.

Rights and Preferences. Holders of common stock have no preemptive, conversion or subscription rights, and there are no redemption or sinking fund provisions applicable to the common stock. The rights, preferences and privileges of

the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock which we may designate in the future.

Fully Paid and Nonassessable. All of our outstanding shares of common stock are, and the shares of common stock to be issued in this offering, if any, will be, fully paid and nonassessable.

Preferred Stock

Pursuant to our certificate of incorporation, our board of directors has the authority, without further action by the stockholders (unless such stockholder action is required by applicable law or the rules of any stock exchange or market on which our securities are then traded), to designate and issue up to 5,000,000 shares of preferred stock in

8

one or more series, to establish from time to time the number of shares to be included in each such series, to fix the designations, voting powers, preferences and rights of the shares of each wholly unissued series, and any qualifications, limitations or restrictions thereof, and to increase or decrease the number of shares of any such series, but not below the number of shares of such series then outstanding.

Delaware Law provides that the holders of preferred stock will have the right to vote separately as a class (or, in some cases, as a series) on an amendment to our certificate of incorporation if the amendment would change the par value or, unless the certificate of incorporation provided otherwise, the number of authorized shares of the class or change the powers, preferences or special rights of the class or series so as to adversely affect the class or series, as the case may be. This right is in addition to any voting rights that may be provided for in the applicable certificate of designation.

Our board of directors may authorize the issuance of preferred stock with voting, exchange or conversion rights that could adversely affect the voting power or other rights of the holders of our common stock. Preferred stock could be issued quickly with terms designed to delay or prevent a change in control of our company or make removal of management more difficult. Additionally, the issuance of preferred stock may have the effect of decreasing the market price of our common stock.

Series B Convertible Preferred Stock

As of November 7, 2014, there were 43,430 shares of Series B Convertible Preferred Stock outstanding. Each share of Series B Convertible Preferred Stock is convertible into 100 shares of common stock at any time at the holder's option. However, the holder is prohibited from converting the Series B Convertible Preferred Stock into shares of common stock if, as a result of such conversion, the holder and its affiliates would own more than 9.98% of the total number of shares of common stock then issued and outstanding. In the event of the Company's liquidation, dissolution, or winding up, holders of Series B Convertible Preferred Stock will receive a payment equal to \$0.001 per share before any proceeds are distributed to the common stockholders. Shares of Series B Convertible Preferred Stock generally have no voting rights, except as required by law and except that the consent of holders of a majority of the outstanding Series B Convertible Preferred Stock is required to amend the terms of the Series B Convertible Preferred Stock. Holders of Series B Convertible Preferred Stock are not entitled to receive any dividends, unless and until specifically declared by the Company's board of directors. The Series B Convertible Preferred Stock ranks senior to our common stock as to distributions of assets upon the Company's liquidation, dissolution or winding up, whether voluntarily or involuntarily. The Series B Convertible Preferred Stock may rank senior to, on parity with or junior to any class or series of our capital stock created in the future depending upon the specific terms of such future stock issuance.

Rights Agreement

On November 5, 2008, we entered into a Rights Agreement with Mellon Investor Services LLC (now Computershare Limited) under which one preferred share purchase right was distributed on November 17, 2008 for each share of common stock held on that date. No certificates for the rights will be issued unless a person or group, subject to certain exceptions, acquires or makes a tender offer to purchase 20% or more of our common stock. Each right entitles the registered stockholder to purchase from us, upon such event, one one-hundredth of a share of Series A Junior Participating Preferred Stock, par value \$0.001 per share, at a price of \$6.00 per one one-hundredth of a preferred share, subject to adjustment. Each preferred share has designations and powers, preferences and rights, and the qualifications, limitations and restrictions designed to make it the economic equivalent of a share of common stock. The rights expire on November 18, 2018, and are subject to redemption at a price of \$0.001 in specified circumstances.

Warrants

As of November 7, 2014, warrants to purchase an aggregate of 1,091,387 shares of our common stock were issued and outstanding. The warrants contain provisions for the adjustment of the exercise price and the aggregate number of shares issuable upon the exercise of the warrants in the event of stock dividends, stock splits, reorganizations and reclassifications and consolidations.

9

Registration Rights

We agreed to provide certain registration rights to entities affiliated with Symphony Capital Partners, L.P. and Symphony Dynamo Holdings LLC, collectively known as Symphony, pursuant to the terms of an Amended and Restated Registration Rights Agreement dated November 9, 2009. In accordance with such agreement, we have filed a registration statement with the SEC covering the resale of shares of our common stock and the resale of shares of our common stock issuable upon the exercise of warrants we issued to Symphony and their affiliates.

Anti-Takeover Effects of Provisions of Our Amended and Restated Certificate of Incorporation and Bylaws

Our certificate of incorporation and bylaws provide for our board of directors to be divided into three classes, with staggered three-year terms. Only one class of directors is elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms. Because our stockholders do not have cumulative voting rights, our stockholders representing a majority of the shares of common stock outstanding will be able to elect all of our directors due to be elected at each annual meeting of our stockholders. In addition, our certificate of incorporation provides that vacancies on our board of directors resulting from death, resignation, disqualification, removal or other causes may be filled by the affirmative vote of a majority of the remaining directors in office, even if less than a quorum, and that newly created directorships shall be filled by the affirmative vote of a majority of the directors then in office, even if less than a quorum, unless our board of directors determines otherwise. Our bylaws provide that all stockholder action must be effected at a duly called meeting of stockholders and not by a consent in writing, and that only the chairman of our board, our president, our secretary or a majority of the authorized number of directors may call a special meeting of stockholders. Our certificate of incorporation requires a 66-2/3% stockholder vote for the amendment, repeal or modification of certain provisions of our certificate of incorporation relating to, among other things, the classification of our board of directors and filling of vacancies on our board of directors. Our certificate of incorporation and bylaws also require a 66-2/3% stockholder vote for the stockholders to adopt, amend or repeal certain provisions of our bylaws relating to stockholder proposals at annual meetings, director nominees and the number and term of office of directors.

The combination of the classification of our board of directors, the lack of cumulative voting and the 66-2/3% stockholder voting requirements will make it more difficult for our existing stockholders to replace our board of directors as well as for another party to obtain control of us by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In addition, the authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to effect a change of our control.

These provisions may have the effect of deterring hostile takeovers or delaying changes in our control or in our management. These provisions are intended to enhance the likelihood of continued stability in the composition of our board of directors and in the policies they implement, and to discourage certain types of transactions that may involve an actual or threatened change of our control. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal. The provisions also are intended to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they also may inhibit fluctuations in the market price of our shares that could result from actual or rumored takeover attempts.

Section 203 of Delaware Law

We are subject to Section 203 of Delaware Law, or Section 203, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that

such stockholder became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;

10

- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (i) by persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the

right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66-2/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines business combination to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, lease, transfer, pledge or other disposition of 10% or more of the assets of the corporation to or with the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loss, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines interested stockholder as an entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation or any entity or person affiliated with or controlling or controlled by such entity or person.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Investor Services. Its address is P.O. Box 43070, Providence, RI 02940-3070. Its phone number is (800) 522-6645. The transfer agent for any series of preferred stock, debt securities or warrants that we may offer under this prospectus will be named and described in the prospectus supplement for that series.

NASDAQ Capital Market Listing

Our common stock is listed on the NASDAQ Capital Market under the symbol "DVAX."

Plan Of Distribution

We have entered into a Sales Agreement with Cowen under which we may issue and sell shares of our common stock having aggregate sales proceeds of up to \$50 million from time to time through Cowen acting as agent. Cowen may sell the common stock by any method that is deemed to be an “at-the-market” equity offering as defined in Rule 415 promulgated under the Securities Act including sales made directly on or through the Exchange or any other existing trading market for the common stock in the US or to or through a market maker. Cowen also may sell the common stock in negotiated transactions, subject to our prior approval.

Each time we wish to issue and sell common stock under the sales agreement, we will notify Cowen of the number of shares to be issued, the dates on which such sales are anticipated to be made and any minimum price below which sales may not be made. Once we have so instructed Cowen, unless Cowen declines to accept the terms of this notice, Cowen has agreed to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such shares up to the amount specified on such terms. The obligations of Cowen under the sales agreement to sell our common stock are subject to a number of conditions that we must meet.

The settlement between us and Cowen is generally anticipated to occur on the third trading day following the date on which the sale was made. Sales of our common stock as contemplated in this prospectus will be settled through the facilities of The Depository Trust Company or by such other means as we and Cowen may agree upon. There is no arrangement for funds to be received in an escrow, trust or similar arrangement.

We will pay Cowen a commission equal to an aggregate of up to 3% of the gross proceeds we receive from the sales of our common stock. Because there is no minimum offering amount required as a condition to close this offering, the actual total public offering amount, commissions and proceeds to us, if any, are not determinable at this time. In connection with the sale of the common stock on our behalf, Cowen may, and will with respect to sales effected in an “at-the-market-offering,” be deemed to be an “underwriter” within the meaning of the Securities Act of 1933, as amended, and the compensation of Cowen will be deemed to be underwriting commissions or discounts. We have agreed to provide indemnification and contribution to Cowen with respect to certain civil liabilities, including liabilities under the Securities Act. We estimate that the total expenses for the offering, excluding compensation payable to Cowen under the terms of the sales agreement, will be approximately \$330,000.

The offering of our common stock pursuant to the sales agreement will terminate upon the earlier of (i) the issuance and sale of all of our common stock provided for in this prospectus, or (ii) termination of the sales agreement as permitted therein.

This summary of the material provisions of the sales agreement does not purport to be a complete statement of its terms and conditions. A copy of the sales agreement is filed with the SEC and is incorporated by reference into the registration statement of which this prospectus is a part. See “Where You Can Find More Information” below.

To the extent required by Regulation M, Cowen will not engage in any market making activities involving our common stock while the offering is ongoing under this prospectus.

LEGAL MATTERS

The validity of the common stock offered by this prospectus will be passed upon for us by Cooley LLP, Palo Alto, California. Goodwin Procter LLP, New York, New York, is counsel for Cowen in connection with this offering.

EXPERTS

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2013, and the effectiveness of our internal control over financial reporting as of December 31, 2013, as set forth in their reports, which are incorporated by reference in this prospectus and elsewhere in the registration statement. Our financial statements are incorporated by reference in reliance on Ernst & Young LLP's reports, given on their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

This prospectus is part of the registration statement on Form S-3 we filed with the SEC under the Securities Act and do not contain all the information set forth in the registration statement. Whenever a reference is made in this prospectus to any of our contracts, agreements or other documents, the reference may not be complete and you should refer to the exhibits that are a part of the registration statement or the exhibits to the reports or other documents incorporated by reference in this prospectus for a copy of such contract, agreement or other document. Because we are subject to the information and reporting requirements of the Exchange Act, we file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's website at <http://www.sec.gov>. You also may read and copy any document we file at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to "incorporate by reference" information from other documents that we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus. Information contained in this prospectus and information that we file with the SEC in the future and incorporate by reference in this prospectus will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings (other than Current Reports on Form 8-K furnished under Item 2.02 or Item 7.01 and exhibits filed on such form that are related to such items) we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of the prospectus and before the sale of all the securities covered by this prospectus:

- our Annual Report on Form 10-K for the year ended December 31, 2013 filed with the SEC on March 10, 2014;
- the information specifically incorporated by reference into our Annual Report on Form 10-K for the year ended December 31, 2013 from our Definitive Proxy Statement on Schedule 14A for our 2014 Annual Meeting of Stockholders, filed with the SEC on April 28, 2014;
-

Edgar Filing: GOOD TIMES RESTAURANTS INC - Form PRER14A

our Quarterly Report on Form 10-Q for the periods ended March 31, 2014 (filed with the SEC on May 5, 2014), June 30, 2014 (filed with the SEC on August 7, 2014) and September 30, 2014 (filed with the SEC on November 5, 2014);

- our Current Reports on Form 8-K (other than information furnished rather than filed) filed with the SEC on February 7, 2014, February 18, 2014, April 16, 2014, May 29, 2014, September 22, 2014, October 7, 2014, October 14, 2014 and November 10, 2014; and
- the description of the our common stock contained in our registration statement on Form 8-A (No. 000-50577), filed with the SEC on February 6, 2004, as amended by Form 8-A, filed with the SEC on November 6, 2008, including any amendments or reports filed for the purpose of updating such description.

The public may read and copy any materials we filed with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549 or by calling 1-800-SEC-0330. The SEC maintains an Internet website that contains reports, proxy and information statements and other information that we file electronically with the SEC at www.sec.gov. You can request a copy of these filings, at no cost, by writing or telephoning us at the following address or telephone number:

Dynavax Technologies Corporation

Attention: Michael Ostrach, Secretary

2929 7th Street, Suite 100

Berkeley, CA 94710-2753

(510) 848-5100

\$50,000,000

Common stock

Prospectus

COWEN

AND COMPANY

_____, 2014

PART II

INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following table sets forth an estimate of the fees and expenses payable by the registrant in connection with the issuance and distribution of the securities being registered. All amounts are estimated except the SEC registration filing fee and FINRA filing fee. All of the expenses below will be paid by us.

SEC registration fee	\$25,760
Nasdaq Capital Market Listing Fee	15,500
Accounting fees and expenses	125,000
Legal fees and expenses	150,000
Transfer agent and registrar fees	5,000
Printing and engraving expenses	10,000
Miscellaneous	3,000
Total	\$334,260

Item 15. Indemnification of Directors and Officers.

Under Section 145 of the Delaware Law, the registrant has broad powers to indemnify its directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act.

The registrant's certificate of incorporation and bylaws include provisions which (i) eliminate the personal liability of its directors for monetary damages resulting from breaches of their fiduciary duty to the extent permitted by Delaware Law and (ii) require the registrant to indemnify its directors, officers, employees and agents to the fullest extent permitted by Delaware Law, including circumstances in which indemnification is otherwise discretionary. Pursuant to Section 145 of the Delaware Law, a corporation generally has the power to indemnify its present and former directors, officers, employees and agents against expenses incurred by them in connection with any suit to which they are, or are threatened to be made, a party by reason of their serving in such positions so long as they acted in good faith and in a manner they reasonably believed to be in or not opposed to, the best interests of the corporation and, with respect to any criminal action, had no reasonable cause to believe their conduct was unlawful. The registrant believes that these provisions are necessary to attract and retain qualified persons as directors and executive officers. These provisions do not eliminate the directors' duty of care, and, in appropriate circumstances, equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware Law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to the registrant, for acts or omissions not in good faith or involving intentional misconduct, for knowing violations of law, for acts or omissions that the director believes to be contrary to the registrant's best interests or the best interests of the registrant's stockholders, for any transaction from which the director derived an improper personal benefit, and any act related to unlawful stock repurchases, redemptions or other distribution or payments of dividends. The provision also does not affect a director's responsibilities under any other law, such as the federal securities law or state or federal environmental laws.

The registrant has entered into indemnity agreements with certain of its directors and executive officers that require the registrant to indemnify such persons against expenses, judgments, fines, settlements and other amounts incurred (including expenses of a derivative action) in connection with any proceeding, whether actual or threatened, to which any such person may be made a party by reason of the fact that such person is or was one of the registrant's directors or executive officers, provided, among other things, that such person's conduct was not knowingly fraudulent or deliberately dishonest or constituted willful misconduct. The indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder.

At present, there is no pending litigation or proceeding involving any of the registrant's directors or executive officers as to which indemnification is being sought nor is the registrant aware of any threatened litigation that may result in claims for indemnification by any executive officer or director.

The registrant maintains an insurance policy covering its officers and directors with respect to certain liabilities, including liabilities arising under the Securities Act or otherwise.

The underwriting agreement, if any, entered into with respect to an offering of securities registered hereunder will provide for indemnification by any underwriters of any offering, our directors and officers who sign the registration statement and our controlling persons for some liabilities, including liabilities arising under the Securities Act.

That certain Amended Registration Rights Agreement, dated as of November 9, 2009, between Dynavax Technologies Corporation and Symphony provides for cross-indemnification in connection with the registration of common stock of the registrant on behalf of such parties and their permitted transferees.

1

Item 16.Exhibits.

Exhibit Number	Description of the Document
1.1*	Form of Underwriting Agreement
1.2 ⁽¹³⁾	Sales Agreement dated as of November 10, 2014, between Dynavax and Cowen and Company, LLC
3.1 ⁽¹⁾	Sixth Amended and Restated Certificate of Incorporation
3.2 ⁽¹⁾	Amended and Restated Bylaws
3.3 ⁽²⁾	Form of Certificate of Designation of Series A Junior Participating Preferred Stock
3.4 ⁽³⁾	Certificate of Amendment of Amended and Restated Certificate of Incorporation
3.5 ⁽⁴⁾	Certificate of Amendment of Amended and Restated Certificate of Incorporation
3.6 ⁽⁵⁾	

- 3.7⁽⁶⁾ Certificate of Amendment of Amended and Restated Certificate of Incorporation
- 3.8⁽⁷⁾ Certificate of Designation for Series B Convertible Preferred Stock
- 4.1 Reference is made to Exhibits 3.1, 3.2, 3.3, 3.4 , 3.5, 3.6, 3.7 and 3.8
- 4.2⁽⁸⁾ Certificate of Amendment of Amended and Restated Certificate of Incorporation
- 4.3⁽⁹⁾ Registration Rights Agreement
- 4.4⁽¹⁰⁾ Form of Specimen Common Stock Certificate
- 4.5* Form of Specimen Series B Preferred Stock Certificate
- 4.6⁽²⁾ Form of Specimen Preferred Stock Certificate and Form of Certificate of Designation of Preferred Stock Rights Agreement dated as of

- November 5,
2008, by and
between the
Company and
Mellon
Investor
Services LLC
- 4.7⁽²⁾ Form of Right
Certificate
- 4.8⁽¹¹⁾ Amended and
Restated
Registration
Rights
Agreement,
dated as of
November 9,
2009,
between the
Company and
Symphony
Dynamo
Holdings
LLC
- 4.9 Form of Debt
Indenture,
between
Registrant
and one or
more trustees
to be named
- 4.10* Form of Debt
Securities
- 4.11⁽¹²⁾ Form of
Common
Stock
Warrant
Agreement
and Warrant
Certificate
- 4.12⁽¹²⁾ Form of
Preferred
Stock
Warrant
Agreement
and Warrant
Certificate
- 4.13⁽¹²⁾ Form of Debt
Securities
Warrant
Agreement
and Warrant

	Certificate
5.1	Opinion of Cooley LLP
12.1	Statement of Computation of Ratio of Earnings to Fixed Charges
23.1	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm
23.2	Consent of Cooley LLP is contained in Exhibit 5.1 to this Registration Statement
24.1	Power of Attorney is contained on the signature pages
25.1**	Statement of Eligibility of Trustee under the Debt Indenture

* To be filed by amendment or as an exhibit to a Current Report on Form 8-K and incorporated herein by reference, if applicable.

**To be filed separately under electronic form type 305B2, if applicable.

- (1) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Amendment No. 4 to Registration Statement on Form S-1/A (File No. 000-50577), as filed with the SEC on February 5, 2004 and such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on January 5, 2011.
- (2) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K (File No. 000-50577), as filed with the SEC on November 6, 2008.
- (3) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on January 4, 2010.
- (4) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on January 5, 2011.
- (5) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on May 30, 2013.
- (6) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on November 1, 2013.
- (7) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on November 7, 2014.
- (8) Incorporated by reference to Dynavax's Registration Statement (File No. 333-145836) on Form S-3 filed on August 31, 2007.
- (9) Incorporated by reference to Dynavax's Registration Statement (File No. 333-109965) on Form S-1/A filed on January 16, 2004.
- (10) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on November 1, 2013.
- (11) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on May 29, 2014.
- (12) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Registration Statement on Form S-3 (File No. 333-191610), as filed with the SEC on October 7, 2013.
- (13) Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K (File No. 000-50577) filed on November 10, 2014.

Item 17. Undertakings.

The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be

reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

3

provided, however, that subparagraphs (i), (ii) and (iii) above shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in the periodic reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement, or is contained in a prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for the purpose of determining liability under the Securities Act to any purchaser:
 - (A) Each prospectus filed by a registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
 - (B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.
- (5) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i)

Edgar Filing: GOOD TIMES RESTAURANTS INC - Form PRER14A

Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
 - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
 - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (6) That, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(7) That, for purposes of determining any liability under the Securities Act, (i) the information omitted from the form of prospectus filed as part of the registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be a part of the registration statement as of the time it was declared effective; and (ii) each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(8) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act, in accordance with the rules and regulations prescribed by the SEC under Section 305(b)(2) of the Trust Indenture Act.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to existing provisions or arrangements whereby the registrant may indemnify a director, officer or controlling person of the registrant against liabilities arising under the Securities Act, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Berkeley, State of California, on November 10, 2014.

DYNAVAX
TECHNOLOGIES
CORPORATION

By: /s/ Eddie Gray
Eddie Gray

Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENT, that each person whose signature appears below does hereby constitute and appoint Eddie Gray and Michael S. Ostrach, and each of them, with full power of substitution and full power to act without the other, his true and lawful attorney-in-fact and agent to act for him in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file this registration statement, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in order to effectuate the same as fully, to all intents and purposes, as they or he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ EDDIE GRAY Eddie Gray	Chief Executive Officer and Director (Principal Executive Officer)	November 10, 2014
/s/ MICHAEL S. OSTRACH Michael S. Ostrach	Vice President (Principal Financial Officer)	November 10, 2014
/s/ DAVID JOHNSON David Johnson	Vice President (Principal Accounting Officer)	November 10, 2014
/s/ ARNOLD L. ORONSKY, PH.D. Arnold L. Oronsky, Ph.D.	Director	November 10, 2014
/s/ FRANCIS R. CANO, PH.D. Francis R. Cano, Ph.D.	Director	November 10, 2014
Dennis A. Carson, M.D.	Director	November 10, 2014
/s/ DENISE M. GILBERT, PH.D. Denise M. Gilbert, Ph.D.	Director	November 10, 2014
/s/ DANIEL L. KISNER, M.D. Daniel L. Kisner, M.D.	Director	November 10, 2014
/s/ PEGGY V. PHILLIPS Peggy V. Phillips	Director	November 10, 2014

Stanley A. Plotkin, M.D.	Director	November 10, 2014
/s/ NATALE RICCIARDI		November 10, 2014
Natale Ricciardi	Director	

7

EXHIBIT INDEX

Exhibit

Number	Description of the Document
1.1*	Form of Underwriting Agreement
1.2 ⁽¹³⁾	Sales Agreement dated as of November 10, 2014, between Dynavax and Cowen and Company, LLC
3.1 ⁽¹⁾	Sixth Amended and Restated Certificate of Incorporation
3.2 ⁽¹⁾	Amended and Restated Bylaws
3.3 ⁽²⁾	Form of Certificate of Designation of Series A Junior Participating Preferred Stock
3.4 ⁽³⁾	Certificate of Amendment of Amended and Restated Certificate of Incorporation
3.5 ⁽⁴⁾	Certificate of Amendment of Amended and Restated Certificate of Incorporation
3.6 ⁽⁵⁾	Certificate of Amendment of Amended and Restated Certificate of Incorporation
3.7 ⁽⁶⁾	Certificate of Designation for Series B Convertible Preferred Stock
3.8 ⁽⁷⁾	Certificate of Amendment of Amended and Restated Certificate of Incorporation
4.1	Reference is made to Exhibits 3.1, 3.2, 3.3, 3.4 , 3.5, 3.6, 3.7 and 3.8
4.2 ⁽⁸⁾	Registration Rights Agreement
4.3 ⁽⁹⁾	Form of Specimen Common Stock Certificate
4.4 ⁽¹⁰⁾	Form of Specimen Series B Preferred Stock Certificate
4.5*	Form of Specimen Preferred Stock Certificate and Form of Certificate of Designation of Preferred Stock
4.6 ⁽²⁾	Rights Agreement dated as of November 5, 2008, by and between the Company and Mellon Investor Services LLC
4.7 ⁽²⁾	Form of Right Certificate
4.8 ⁽¹¹⁾	Amended and Restated Registration Rights Agreement, dated as of November 9, 2009, between the Company and Symphony Dynamo Holdings LLC
4.9	Form of Debt Indenture, between Registrant and one or more trustees to be named
4.10*	Form of Debt Securities
4.11 ⁽¹²⁾	Form of Common Stock Warrant Agreement and Warrant Certificate
4.12 ⁽¹²⁾	Form of Preferred Stock Warrant Agreement and Warrant Certificate
4.13 ⁽¹²⁾	Form of Debt Securities Warrant Agreement and Warrant Certificate
5.1	Opinion of Cooley LLP
12.1	Statement of Computation of Ratio of Earnings to Fixed Charges
23.1	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm
23.2	Consent of Cooley LLP is contained in Exhibit 5.1 to this Registration Statement
24.1	Power of Attorney is contained on the signature pages
25.1**	Statement of Eligibility of Trustee under the Debt Indenture

* To be filed by amendment or as an exhibit to a Current Report on Form 8-K and incorporated herein by reference, if applicable.

**To be filed separately under electronic form type 305B2, if applicable.

- (1) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Amendment No. 4 to Registration Statement on Form S-1/A (File No. 000-50577), as filed with the SEC on February 5, 2004 and such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on January 5, 2011.
- (2) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K (File No. 000-50577), as filed with the SEC on November 6, 2008.
- (3) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on January 4, 2010.
- (4) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on January 5, 2011.
- (5) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on May 30, 2013.
- (6) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on November 1, 2013.
- (7) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on November 7, 2014.
- (8) Incorporated by reference to Dynavax's Registration Statement (File No. 333-145836) on Form S-3 filed on August 31, 2007.
- (9) Incorporated by reference to Dynavax's Registration Statement (File No. 333-109965) on Form S-1/A filed on January 16, 2004.
- (10) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on November 1, 2013.
- (11) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Current Report on Form 8-K, as filed with the SEC on May 29, 2014.
- (12) Incorporated by reference from such document filed with the SEC as an exhibit to Dynavax's Registration Statement on Form S-3 (File No. 333-191610), as filed with the SEC on October 7, 2013.
- (13) Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K (File No. 000-50577) filed on November 10, 2014.