

acquires more than 20% or more of our common stock. Accordingly, the rights agreement allows the board time to pursue alternate strategies to maximize our stockholders' long-term value.

The rights may have certain anti-takeover effects. The rights will cause substantial dilution to any person or group that attempts to acquire us without our board's approval. As a result, the overall effect of the rights may be to render more difficult or discourage any attempt to acquire us even if such acquisition may be favorable to the interests of our stockholders. Because our board can redeem the rights and amend the rights agreement in any respect prior to a person or group owning more than 20% of our outstanding common stock, the rights should not interfere with a merger or other business combination that our board approves or any other potential acquirer that is willing to make an offer at a fair price or otherwise in our stockholders' best interests.

Our rights agreement is similar to rights agreements that other public companies have adopted and our adoption of this plan was not prompted by any external actions. We have received no hostile communications or takeover approaches of any kind. We adopted the plan to give our board time to evaluate and respond to any unsolicited future attempts to acquire our company and to protect the long-term value of our stockholders' investment in us.

### **Description of Rights Agreement**

*Distribution of Rights.* On January 29, 2009, our board declared a dividend of one right for each outstanding share of our common stock, \$0.001 par value per share, or common stock, to stockholders of record at the close of business on February 9, 2009. Each right entitles the registered holder to purchase from us one ten-thousandth of a share of our series A junior participating preferred stock, or preferred stock, at a purchase price of \$40.00 in cash per one ten-thousandth of a share, subject to adjustment. The rights are attached to the certificates representing shares of our common stock and do not trade separately. Until the distribution date, the rights are not exercisable or transferable separately from the common stock.

*Term.* The rights currently will expire on January 29, 2013, unless earlier redeemed or exchange. If our stockholders do not ratify the Rights Agreement at the annual meeting, our board may, but is not required to, terminate the rights agreement prior to January 29, 2013.

*Events Causing Exercisability of Rights.* The rights will separate from our common stock after the distribution date which is the earlier to occur of the following:

- the close of business on the tenth day after the first public announcement that a person or group has become an "acquiring person" (as defined below); and
- the close of business on the tenth day (or a later date determined by action of our board prior to such time as any person or group becomes an acquiring person) following the commencement of, or announcement of an intention to make, a tender offer or exchange offer, which when consummated would result in a person or group becoming an acquiring person.

*Acquiring Person.* Our rights agreement generally defines an "acquiring person" as a person or group of affiliated or associated persons that have acquired beneficial ownership of at least 20% of our outstanding shares of common stock. As described below, after a person or group becomes an acquiring person, the rights may not be redeemed or amended.

*Authority of the Board.* When evaluating decisions surrounding the redemption of the rights or any amendment to the rights agreement to delay or prevent the rights from detaching and becoming exercisable as a result of a particular transaction, the board, or any future board, is not subject to restrictions that would limit its ability to redeem the rights or otherwise make the rights non-applicable to a particular transaction prior to a person or group becoming an "acquiring person."

*Flip-in and Flip-Over Events and Adjustment.* After a person or group of affiliated or associated persons becomes an acquiring person, each holder of a right, except an acquiring person, will have the right to receive, upon exercise, shares of our common stock (or, in certain circumstances, cash, property or other securities of the company) having a value equal to two times the purchase price of the right instead of our preferred stock.