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

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of report (Date of earliest event reported): February 20, 2019

ZIX CORPORATION
(Exact Name of Registrant as Specified in Charter)

Texas
(State or Other Jurisdiction
of Incorporation)

0-17995
(Commission
File Number)

75-2216818
(I.R.S. Employer
Identification No.)

**2711 North Haskell Avenue
Suite 2200, LB 36
Dallas, Texas 75204-2960**
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (214) 370-2000

Not Applicable
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.***Credit Agreement***

On February 20, 2019, Zix Corporation (“Zix”) entered into a credit agreement (the “Credit Agreement”) with a syndicate of lenders and SunTrust Bank, as administrative agent for such lenders and as an issuing bank and swing line lender, providing Zix with (1) a senior secured term loan facility in an aggregate principal amount of \$175 million (the “Term Loan”), (2) a senior secured delayed draw term loan facility in an aggregate principal amount of \$10 million (the “Delayed Draw Term Loan Facility”), and (3) a senior secured revolving credit facility in an aggregate principal amount of \$25 million, up to \$5 million of which is available for letters of credit (the “Revolving Facility” and, together with the Term Loan and the Delayed Draw Term Loan Facility, the “Credit Facilities”). On February 20, 2019, the Term Loan was borrowed in full to pay a portion of the purchase price in connection with the Acquisition (as defined below) (including certain fees, costs and expenses related thereto). The Delayed Draw Term Loan Facility is currently undrawn and available until August 20, 2019, for Zix to use in connection with future acquisitions permitted under the Credit Agreement, while the Revolving Facility is currently undrawn and available to fund working capital and for other general corporate purposes, including the financing of permitted acquisitions, investments and restricted payments, subject, in both cases, to the conditions contained in the Credit Agreement.

The Credit Facilities are guaranteed by substantially all of the wholly-owned domestic subsidiaries of Zix (including AppRiver (as defined below)). The Credit Facilities are secured by substantially all of the assets of Zix and the subsidiary guarantors, subject to certain exceptions.

The Credit Facilities are scheduled to mature on February 20, 2024, unless extended in accordance with the terms of the Credit Agreement. The Credit Agreement includes procedures for additional financial institutions to become lenders, or for any existing lender to increase its commitments thereunder, subject to the limits and conditions set forth in the Credit Agreement.

Borrowings under the Credit Agreement bear interest, at Zix’s option, at either (1) the adjusted LIBO rate (as defined in the Credit Agreement) plus a margin ranging from 2.50% to 3.50% or (2) the alternate base rate (as defined in the Credit Agreement) plus a margin ranging from 1.50% to 2.50%. The applicable margin varies depending on Zix’s total net leverage ratio. Zix is charged a commitment fee ranging from 0.25% to 0.50% per year on the daily amount of the unused portions of the commitments under the Revolving Facility. Commencing March 23, 2019, Zix will pay a ticking fee on the unused portion of the Delayed Draw Term Loan Facility. Zix paid upfront fees, underwriting fees and other fees to the various lenders, arrangers and agents of the Credit Agreement.

Optional prepayments of borrowings under the Credit Facilities are permitted at any time and do not require any prepayment premium (other than reimbursement of the lenders’ breakage and redeployment costs in the case of a prepayment of LIBO rate borrowings). The Term Loan and Delayed Draw Term Loan Facility (if funded) require 1.00% per annum amortization of the original principal amount borrowed, payable in equal quarterly installments until the final maturity date. In addition to other customary mandatory prepayment requirements, the Term Loan and Delayed Draw Term Loan Facility require annual prepayments based on a percentage of Zix’s excess cash flow, which percentage will reduce as Zix’s total net leverage ratio decreases. The Credit Agreement contains various financial, operational, and legal covenants. The financial covenant is tested on a quarterly basis (commencing March 31, 2019), based on the rolling four-quarter period that ends on the last day of each fiscal quarter. The financial covenant requires Zix to maintain a maximum total net leverage ratio of:

- 5.50:1.00 for the fiscal quarters ending March 31, 2019 and June 30, 2019;
- 5.25:1.00 for the fiscal quarter ending September 30, 2019;
- 5.00:1.00 for the fiscal quarters ending December 31, 2019 through June 30, 2020;
- 4.75:1.00 for the fiscal quarters ending September 30, 2020 through March 30, 2021;
- 4.50:1.00 for the fiscal quarters ending June 30, 2021 through December 31, 2021; and
- 4.25:1.00 for the fiscal quarter ending March 31, 2022 and each fiscal quarter thereafter.

The non-financial covenants restrict Zix's ability and the ability of Zix's restricted subsidiaries to, among other things, incur indebtedness, incur liens, merge with or acquire other entities, make investments, dispose of assets, enter into sale and leaseback transactions, make dividends, distributions or stock repurchases, prepay junior indebtedness, enter into transactions with affiliates, enter into restrictive agreements, and amend organizational documents or the terms of junior indebtedness.

The Credit Agreement contains events of default that Zix believes are customary for a secured credit facility. If an event of default relating to bankruptcy or other insolvency events occurs, all obligations under the Credit Agreement will immediately become due and payable. If any other event of default exists under the Credit Agreement, the lenders may accelerate the maturity of the Credit Facilities and exercise other rights and remedies, including foreclosure or other actions against the collateral. If any default exists under the Credit Agreement, or if Zix is unable to make any of the representations and warranties in the Credit Agreement at the applicable time, Zix will be unable to borrow additional funds or have letters of credit issued under the Credit Agreement.

The foregoing description of the Credit Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Credit Agreement, which Zix will file with the Securities and Exchange Commission ("SEC") as an exhibit to a forthcoming periodic financial report.

Registration Rights Agreement

Pursuant to an Investment Agreement, dated as of January 14, 2019 (the "Investment Agreement"), previously entered into by and between Zix and an investment fund managed by True Wind Capital (together with its successors and permitted assigns and affiliated transferees, the "Private Purchaser"), Zix and the Private Purchaser consummated the \$100 million private placement contemplated thereunder (the "Private Placement") on February 20, 2019 (the "Closing Date"), and the parties entered into a Registration Rights Agreement, dated as of that date (the "Registration Rights Agreement"). The securities that were offered and sold in the Private Placement were not registered under the Securities Act of 1933, as amended (the "Securities Act"), and may not be offered or sold in the United States absent such registration or the availability of an applicable exemption from registration.

The Registration Rights Agreement provides that Zix will use its commercially reasonable efforts to prepare and file a shelf registration statement with the SEC within 120 days after the Closing Date and to use its commercially reasonable efforts to cause such shelf registration statement to be declared effective as promptly as is reasonably practicable after its filing to permit the public resale of registrable securities covered by the Registration Rights Agreement. Such registrable securities generally include the securities issued in the Private Placement, shares of Zix's common stock, par value \$0.01 per share ("Common Stock"), into which the securities issued in the Private Placement are convertible, as well as other shares of Common Stock that the Private Purchaser may acquire from time to time.

Zix generally will be required to effect registrations for up to four underwritten offerings within any year during the term of the Registration Rights Agreement, subject to certain limitations, including that the anticipated gross proceeds of any such offering be at least \$10 million. In the event that Zix proposes to file a registration statement with the SEC, under certain circumstances, the Private Purchaser will be entitled to certain "piggyback" registration rights allowing the Private Purchaser to include its shares in such registration, subject to certain marketing and other limitations. Zix has generally agreed to pay the related registration expenses, including the expenses of one counsel for the Private Purchaser and one counsel for all other stockholders party to the Registration Rights Agreement, but excluding underwriting discounts and commissions and has also agreed to indemnify the Private Purchaser for certain liabilities arising from such registrations. The Private Purchaser's rights pursuant to the Registration Rights Agreement will terminate upon the date on which the Private Purchaser no longer holds any registrable securities covered thereby.

The foregoing description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Registration Rights Agreement, which is attached as Exhibit 10.1 to this Current Report on Form 8-K and incorporated by reference herein.

Item 2.01 Completion of Acquisition or Disposition of Assets.

On February 20, 2019, Zix completed its previously announced acquisition of the AppRiver Companies (as defined below) pursuant to a Securities Purchase Agreement, dated as of January 14, 2019 (the “Securities Purchase Agreement”), by and among Zix, AR Topco, LLC, a Delaware limited liability company (“AppRiver”), AppRiver Marlin Blocker Corp., a Delaware corporation (“Blocker”), AppRiver Holdings, LLC, a Florida limited liability company (the “Rollover Seller”), AppRiver Marlin Topco, L.P., a Delaware limited partnership (the “Marlin Seller”), Marlin Equity IV, L.P., a Delaware limited partnership (the “Blocker Seller”), AppRiver Management Holding, LLC, a Delaware limited liability company (the “MIU Seller” and, together with the Rollover Seller, the Marlin Seller, and the Blocker Seller, the “Sellers”), and Marlin Topco GP, LLC, solely in its capacity as the representative of the Sellers. Pursuant to the Securities Purchase Agreement, Zix acquired, directly or indirectly, from the Sellers (the “Acquisition”) 100% of the equity interests of Blocker and AppRiver (collectively, with their respective subsidiaries, the “AppRiver Companies”).

Zix paid \$275 million in cash to the Sellers, less outstanding indebtedness of the AppRiver Companies retired at closing and certain accrued items and unpaid transaction expenses, and subject to a customary working capital adjustment, in exchange for 100% of the equity of the AppRiver Companies. As part of the transaction, Zix secured a representation and warranty insurance policy (50% of the cost of which was borne by the Sellers), under which the issuer of that policy insures Zix against any post-closing claims, damages or other losses arising from breaches of the representations and warranties of the Sellers and the AppRiver Companies in the Securities Purchase Agreement, up to a policy limit of \$27.5 million and subject to a \$2.75 million retainage amount for which Zix will retain responsibility for one year. After one year, the retainage amount will automatically reduce to \$1,375,000 and stay at that level for the remaining duration of the policy, which is six years for certain “fundamental” representations and warranties and three years for the remainder of the representations and warranties.

The foregoing summary is qualified in its entirety by the full text of the Securities Purchase Agreement, which Zix will file with the SEC as an exhibit to a forthcoming periodic financial report.

Important Note

The representations, warranties and covenants contained in the agreements and documents described above were made only for purposes of those agreements and documents and as of the specified dates set forth therein, were solely for the benefit of the parties to those agreements and documents, may be subject to limitations agreed upon by those parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between those parties instead of establishing particular matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors should not rely on these representations, warranties or covenants or any descriptions thereof as characterizations of the actual state of facts or conditions of Zix, the AppRiver Companies or the Sellers or any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the agreement containing them, which subsequent information may or may not be fully reflected in Zix’s public disclosures.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The Credit Agreement disclosure contained in Item 1.01 is incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

On February 20, 2019, Zix consummated the Private Placement pursuant to the Investment Agreement and, in connection therewith, issued an aggregate of \$100 million of shares of its convertible Preferred Stock (as defined below) at a price of \$1,000 per share.

Approximately \$65 million was issued in the form of Series A Convertible Preferred Stock (the “Series A Preferred Stock”), which has an initial stated value of \$1,000 per share, which stated value will accrete at an annual rate of 8%, compounded quarterly, and will vote together with the Common Stock on an as-converted basis. Subject to certain limitations, the accreted value of each share of Series A Preferred Stock may be converted into shares of Common Stock of Zix, subject to a cap prior to the receipt of Stockholder Approval (as defined in the Investment Agreement), at a conversion rate of 166.11 shares of Common Stock per \$1,000 of accreted value (equivalent to \$6.02 per common share), subject to adjustment to take into account certain dilutive issuances, stock splits, stock dividends, or similar events. Under Nasdaq Listing Rule 5635, Zix is required to obtain approval by the holders of a majority of its then outstanding shares of common stock for the issuance of shares of Common Stock to the Private Purchaser (a) in an amount equal to or greater than 20% of the Common Stock outstanding prior to the Private Placement in connection with the Acquisition and (b) because such issuance may result in a change of control of Zix as interpreted by Nasdaq. No shares of Series A Preferred Stock may be voted for such approval.

An additional approximately \$35 million was issued in the form of Series B Convertible Preferred Stock (the “Series B Preferred Stock” and, together with the Series A Preferred Stock, the “Preferred Stock”), which has an initial stated value of \$1,000 per share, will be entitled to receive dividends each quarter, which accrue daily at an initial annual rate of 10% (which rate will increase by an additional 1% for each six-month period that elapses before Stockholder Approval is obtained, up to a maximum of 12%), and will be non-voting. The Series B Preferred Stock will automatically convert into shares of Series A Preferred Stock upon receipt of Stockholder Approval, which Zix expects to seek at its 2019 annual meeting of shareholders.

In connection with the Private Placement, Zix has granted customary registration rights to the Private Purchaser pursuant to the Registration Rights Agreement, which is described in Item 1.01. Such description is incorporated by reference into this Item 3.02.

Zix has granted certain consent rights to the holders of the Preferred Stock pursuant to the Certificate of Designations of Series A Convertible Preferred Stock (the “Series A Certificate of Designations”) and the Certificate of Designations of Series B Convertible Preferred Stock (the “Series B Certificate of Designations”), which are more fully described in Item 5.03 below and incorporated by reference into this Item 3.02.

The shares of Preferred Stock issued and sold in the Private Placement pursuant to the Investment Agreement were issued and sold in reliance upon an exemption from the registration requirements of the Securities Act pursuant to Section 4(a)(2) thereof.

Item 3.03 Material Modifications to Rights of Security Holders.

The disclosures contained in Item 1.01 under “Registration Rights Agreement,” in Item 3.02 and in Item 5.03 are incorporated by reference into this Item 3.03.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(d) Election of Directors.

Pursuant to the Investment Agreement, until such time as the Private Purchaser no longer beneficially owns shares of Preferred Stock and/or Common Stock that represent, in the aggregate and on an as-converted basis, at least 10% of the then-outstanding Common Stock, the Private Purchaser has the right to appoint two designees (the “Investor Designees”) to the Board. In connection with Zix’s consummation of the Private Placement, and pursuant to the Investment Agreement, on February 20, 2019, Zix increased the size of its Board of Directors (the “Board”) from six to eight members and elected James H. Greene, Jr. and Brandon Van Buren to the Board, each of whom constitutes an Investor Designee. Mr. Greene has been appointed to the Compensation Committee of the Board, and Mr. Van Buren has been appointed to the Nominating and Corporate Governance Committee of the Board. Mr. Greene and Mr. Van Buren will serve on the Board until the 2019 annual meeting of Zix’s stockholders and until each of their respective successors is duly elected and qualified.

At such time as the Private Purchaser no longer beneficially owns shares of Preferred Stock and/or Common Stock that represent, in the aggregate and on an as-converted basis, at least 10% of the then-outstanding Common Stock, but continues to beneficially own shares of Preferred Stock and/or Common Stock that represent, in the aggregate and on an as-converted basis, at least 5% of the then-outstanding Common Stock, the Private Purchaser will have the right to appoint one Investor Designee to the Board. At such time as the Private Purchaser no longer beneficially owns shares of Preferred Stock and/or Common Stock that represent, in the aggregate and on an as-converted basis, at least 5% of the then-outstanding Common Stock, the Private Purchaser will no longer have a right to appoint an Investor Designee to the Board.

Mr. Greene co-founded True Wind Capital (“True Wind”) in 2014. He currently serves on True Wind’s investment committee and is responsible for managing the firm’s day-to-day operations. Prior to True Wind, Greene was a Partner with Kohlberg Kravis Roberts & Co. (“KKR”), which he joined in 1986. Greene founded KKR’s Global Technology Group in 2004. Prior to joining KKR, Greene had 14 years of banking experience as a Vice President at Bankers Trust Company. Greene currently serves as Chairman of the Board of Transflo and is a Director and Co-Chief Executive Officer of Nebula Acquisition Corporation. He is also a Trustee and a Member of the Executive Committee of the University of Pennsylvania, and a member of the Executive Committee and Board of Penn Medicine, which includes the Perelman School of Medicine and the University of Pennsylvania Health System. He received a B.S. in Economics from the University of Pennsylvania.

Mr. Van Buren joined True Wind in 2017. Previously, he was a Principal at Google Capital, Alphabet’s private investment arm, where he led growth equity investments within the technology, media, and telecommunications sectors. Prior to joining Google, Van Buren was with KKR where he executed leveraged buyout transactions within the technology space. Van Buren holds a B.S. in Business Administration with concentrations in Finance and Accounting from California Polytechnic State University, San Luis Obispo and a MBA from Harvard Business School where he was a Baker Scholar.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

In connection with Zix’s consummation of the Private Placement, and pursuant to the Investment Agreement, Zix filed the Series A Certificate of Designations and the Series B Certificate of Designations with the Texas Secretary of State creating the Series A Preferred Stock and Series B Preferred Stock and establishing the relative rights, preferences and other terms of such series of preferred stock. The Series A Preferred Stock ranks senior to the Common Stock, and on a parity basis with the Series B Preferred Stock, with respect to dividend rights and rights on the distribution of assets upon liquidation, dissolution and winding up, and the Series B Preferred Stock ranks senior to the Common Stock and on a parity basis with the Series A Preferred Stock with respect to dividend rights and rights on the distribution of assets upon liquidation, dissolution and winding up.

Series A Certificate of Designations

Accretion; Dividends; No Stated Maturity

The Series A Preferred Stock initially has a Stated Value (as defined in the Series A Certificate of Designations) of \$1,000 per share. From the Closing Date, the Stated Value per share of Series A Preferred Stock accrete at a fixed rate of 8.0% per annum, compounded quarterly (the “Rate of Accretion”). The Series A Preferred Stock is also entitled to receive any dividends paid in respect of the Common Stock on an as-converted basis.

The Series A Preferred Stock has no stated maturity and will remain outstanding indefinitely unless converted into Common Stock or repurchased or redeemed by Zix.

Voting Rights

The holders of the Series A Preferred Stock (the “Series A Holders”) are entitled to vote, together with the holders of Common Stock, on an as-converted basis, subject to a cap until the Stockholder Approval is obtained, on all matters submitted to a vote of the holders of Common Stock, and as a separate class on all matters relating to the Series A Preferred Stock.

Liquidation Rights

The Series A Preferred Stock has a liquidation preference equal to the greater of (i) the Stated Value per share as it has accreted as of such date (the “Accreted Value”) and (ii) the amount such holder would have received if the Series A Preferred Stock had converted into Common Stock immediately prior to such liquidation.

Optional Redemption

At any time after the fourth anniversary of the Closing Date, Zix may redeem the Series A Preferred Stock for an amount per share of Series A Preferred Stock equal to the Accreted Value per share of the Series A Preferred Stock to be redeemed as of the applicable redemption date *multiplied by* 1.50.

Holder Conversion Right

At any time, each Series A Holder may, subject to a cap until Stockholder Approval is obtained, elect to convert each share of such Series A Holder’s then-outstanding Series A Preferred Stock into (i) the number of shares of Common Stock equal to the product of (A) the Accreted Value with respect to such share on the conversion date *multiplied by* (B) the Conversion Rate as of the applicable conversion date *divided by* (C) 1,000 *plus* (ii) cash in lieu of fractional shares. Prior to obtaining Stockholder Approval, Zix will be required to pay an amount in cash upon conversion in lieu of delivering shares that are otherwise restricted from being delivered upon conversion prior to obtaining Stockholder Approval. The initial Conversion Rate is equal to 166.11 shares and is subject to adjustment from time to time upon the occurrence of certain customary events in accordance with the terms of the Series A Certificate of Designations.

Change of Control

Upon a change of control (as defined in the Series A Certificate of Designations), Zix is required to redeem the Series A Preferred Stock at a price per share of Series A Preferred Stock in cash equal to the greater of (i) the Series A Change of Control Redemption Price (as defined below) of such share of Series A Preferred Stock and (ii) (A) the amount of cash such Series A Holder would have received *plus* (B) the fair market value of any other assets in each case had such Series A Holder, immediately prior to such change of control, converted such shares of Series A Preferred Stock into shares of Common Stock. The “Series A Change of Control Redemption Price” per share of Series A Preferred Stock is the product of the Accreted Value of such share as of the date of determination *multiplied by* (1) 1.30 (if the change of control occurs before the first anniversary of the Closing Date), (2) 1.35 (if the change of control occurs on or after the first anniversary of the Closing Date but before the second anniversary of the Closing Date), (3) 1.40 (if the change of control occurs on or after the second anniversary of the Closing Date but before the third anniversary of the Closing Date), (4) 1.45 (if the change of control occurs on or after the third anniversary of the Closing Date but before the fourth anniversary of the Closing Date) and (5) 1.50 (if the change of control occurs on or after the fourth anniversary of the Closing Date).

Consent Rights

So long as any shares of Series A Preferred Stock are outstanding, the consent of the holders of a majority of the then-outstanding shares of Series A Preferred Stock is necessary for Zix to effect (1) any amendment, alteration or repeal of Zix’s Restated Articles of Incorporation (the “Articles of Incorporation”) or the Series A Certificate of Designations in a manner that would adversely affect the rights, preferences, privileges or power of the Series A Preferred Stock, (2) any amendment or alteration to the Articles of Incorporation or any other action to authorize or create, or increase the number of authorized or issued shares of, or any securities convertible into shares of, or reclassify any security into, or issue any parity stock or senior stock as to dividend or liquidation rights, (3) the issuance of shares of Series A Preferred Stock other than in connection with the conversion of Series B Preferred Stock that was issued on the Closing Date, (4) any action that would cause Zix to cease to be treated as a domestic corporation for U.S. federal income tax purposes, or (5) the incurrence of indebtedness that would cause Zix to exceed a specified leverage ratio.

Series B Certificate of Designation

Dividends; No Stated Maturity

The Series B Preferred Stock initially has a Stated Value (as defined in the Series B Certificate of Designations) of \$1,000 per share. The holders of Series B Preferred Stock ("Series B Holders") are entitled to receive dividends accruing daily on a cumulative basis payable quarterly in arrears in cash at a fixed rate of 10.0% per annum on the Stated Value per share (the "Dividend Rate"), which rate will automatically increase by 1.0% every six months that the Series B Preferred Stock remains outstanding (subject to a cap of 12.0%). The cash dividends are payable only when, as and if declared by the Board out of funds legally available therefor. If a cash dividend is not paid in respect of any dividend payment period, then the liquidation preference of each outstanding share of Series B Preferred Stock will automatically increase at the Dividend Rate. Such liquidation preference of each outstanding share of Series B Preferred Stock is in full satisfaction of the dividend that would have otherwise accrued for such dividend payment period.

The Series B Preferred Stock has no stated maturity and will remain outstanding indefinitely unless converted into Series A Preferred Stock upon receipt of Stockholder Approval, repurchased or redeemed by Zix.

Voting Rights

The Series B Holders are entitled to vote as a separate class on certain matters relating to the Series B Preferred Stock. Otherwise, the Series B Holders do not have any voting rights, except as otherwise provided by the Texas Business Organizations Code.

Liquidation Rights

The Series B Preferred Stock has a liquidation preference equal to the sum of (i) the Stated Value and (ii) without duplication, any accrued but unpaid preferred dividends.

Automatic Conversion

Following the receipt of Stockholder Approval, each share of Series B Preferred Stock will automatically be converted into the number of shares of Series A Preferred Stock equal to the liquidation preference of such share of Series B Preferred Stock *divided by* the accreted value of a share of Series A Preferred Stock on the date of conversion *plus* cash in lieu of fractional shares. If Stockholder Approval is not obtained, the Series B Preferred Stock will not be convertible into shares of Series A Preferred Stock or Common Stock.

Optional Redemption by Zix

At any time after the fourth anniversary of the Closing Date, Zix may redeem any then-outstanding shares of Series B Preferred Stock for an amount per share of Series B Preferred Stock equal to the liquidation preference per share of the Series B Preferred Stock to be redeemed as of the applicable redemption date *multiplied by* 1.50.

Holder Redemption Right

At any time after the seventh anniversary of the Closing Date, upon 90 days' prior notice, each Series B Holder may elect to require Zix to redeem the Series B Preferred Stock for an amount per share of Series B Preferred Stock equal to the liquidation preference per share of the Series B Preferred Stock to be redeemed as of the applicable redemption date *multiplied by* 1.50.

Change of Control

Upon a change of control (as defined in the Series B Certificate of Designations), Zix is required to redeem the Series B Preferred Stock at a price per share of Series B Preferred Stock in cash equal to the greater of (i) the Series B Change of Control Redemption Price (as defined below) of such share of Series B Preferred Stock and (ii) (A) the amount of cash such Series B Holder would have received *plus* (B) the fair market value of any other assets in each case had such Series B Holder, immediately prior to such change of control, converted such shares of Series B Preferred Stock into shares of Series A Stock. The "Series B Change of Control Redemption Price" per share of Series B Preferred Stock is the product of the liquidation preference of such share as of the date of determination *multiplied by* (1) 1.30 (if the change of control occurs before the first anniversary of the Closing Date), (2) 1.35 (if the change of control occurs on or after the first anniversary of the Closing Date but before the second anniversary of the Closing Date), (3) 1.40 (if the change of control occurs on or after the second anniversary of the Closing Date but before the third anniversary of the Closing Date), (4) 1.45 (if the change of control occurs on or after the third anniversary of the Closing Date but before the fourth anniversary of the Closing Date) and (5) 1.50 (if the change of control occurs on or after the fourth anniversary of the Closing Date).

Consent Rights

So long as any shares of Series B Preferred Stock are outstanding, the consent of the holders of a majority of the then-outstanding shares of Series B Preferred Stock is necessary for Zix to effect (1) any amendment, alteration or repeal to the Articles of Incorporation or the Series B Certificate of Designations in a manner that would adversely affect the rights, preferences, privileges or power of the Series B Preferred Stock; (2) any amendment or alteration to the Articles of Incorporation or any other action to authorize or create, or increase the number of authorized or issued shares of, or any securities convertible into shares of, or reclassify any security into, or issue any parity stock or senior stock as to dividend or liquidation rights; (3) the issuance of shares of Series B Preferred Stock; (4) any action that would cause Zix to cease to be treated as a domestic corporation for U.S. federal income tax purposes; or (5) the incurrence of indebtedness that would cause Zix to exceed a specified leverage ratio.

The foregoing description of the Series A Certificate of Designations, the Series A Preferred Stock, the Series B Certificate of Designations and the Series B Preferred Stock does not purport to be complete and is qualified in its entirety by reference to the full text of the Series A Certificate of Designations and the Series B Certificate of Designations, which are attached hereto as Exhibits 3.1 and 3.2, respectively, and the Investment Agreement, which was filed as Exhibit 10.1 to the Current Form on Form 8-K, dated January 14, 2019, and filed with the SEC on January 17, 2019.

Item 7.01. Regulation FD Disclosure.

On February 20, 2019, Zix issued a press release announcing that it had closed the Private Placement, entered into and obtained a \$175 million term loan, a \$10 million delayed draw term loan facility and a \$25 million revolving credit facility under the Credit Agreement and closed the Acquisition. A copy of the press release is furnished herewith as Exhibit 99.1.

The information furnished under Item 7.01 of this Current Report on Form 8-K shall be deemed "furnished" and not "filed" for purposes of Section 18 of the Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that Section, and shall not be incorporated by reference in any filing under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired.

The financial statements required by this item are not included in this filing. The required financial statements will be filed not later than 71 calendar days after February 26, 2019, the date that this Current Report on Form 8-K was required to be filed.

(d) Exhibits.

Exhibit No.	Description
3.1	<u>Certificate of Designations of Series A Convertible Preferred Stock, as filed with the Texas Secretary of State on February 15, 2019.</u>
3.2	<u>Certificate of Designations of Series B Convertible Preferred Stock, as filed with the Texas Secretary of State on February 15, 2019.</u>
10.1	<u>Registration Rights Agreement, dated as of February 20, 2019, by and between Zix Corporation and Zephyr Holdco, LLC.</u>
99.1	<u>Zix Corporation Press Release, dated February 20, 2019, titled “Zix Closes Acquisition of AppRiver, Creating Leading Cloud-based Cybersecurity Solutions Provider.”</u>

Exhibit 99.1 attached hereto shall be deemed “furnished” and not “filed” for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that Section, and shall not be incorporated by reference in any filing under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ZIX CORPORATION

By: /s/ David E. Rockvam
David E. Rockvam
Vice President and Chief Financial Officer

Date: February 21, 2019

CERTIFICATE OF DESIGNATIONS OF
SERIES A CONVERTIBLE PREFERRED STOCK,
PAR VALUE \$1.00,
OF
ZIX CORPORATION

ZIX CORPORATION, a corporation organized and existing under the Business Organizations Code of the State of Texas (the "Company"), in accordance with the provisions of Sections 21.155 and 21.156 thereof:

HEREBY CERTIFIES:

That, the Restated Articles of Incorporation (the "Articles of Incorporation") of the Company, as filed with the Secretary of State of the State of Texas, authorizes the issuance of 185,000,000 shares of capital stock, consisting of 175,000,000 shares of common stock, \$0.01 par value ("Common Stock"), and 10,000,000 shares of preferred stock, \$1.00 par value ("Preferred Stock");

That, the Articles of Incorporation expressly authorize the Board of Directors of the Company (the "Board") by resolution or resolutions, subject to limitations prescribed by law and by Article IV of the Articles of Incorporation, to provide for the issuance of Preferred Stock as a class or in one or more series and, with respect to each series of Preferred Stock, to establish the number of shares included in each such series and to fix the designations, powers, relative rights, qualifications, preferences, limitations and restrictions of the shares of such series not fixed by the Articles of Incorporation;

That, pursuant to the authority conferred upon the Board by the Articles of Incorporation, the Board, on January 11, 2019, adopted the following resolution designating a new series of Preferred Stock as "Series A Convertible Preferred Stock":

RESOLVED, that, pursuant to the authority vested in the Board in accordance with the provisions of Article IV of the Articles of Incorporation and the provisions of Section 21.155 of the Texas Business Organizations Code, a series of Preferred Stock of the Company is hereby authorized, and the number of shares to be included in such series, and the designations, powers, relative rights, qualifications, preferences, limitations and restrictions of the shares of Preferred Stock included in such series, shall be as follows:

SECTION 1. Designation and Number of Shares. The shares of such series of Preferred Stock shall be designated as "Series A Convertible Preferred Stock" (the "Series A Preferred Stock"). The number of authorized shares constituting the Series A Preferred Stock shall be 64,914 (or up to 100,914 shares if the shares of the Series B Preferred Stock issued on the Original Issuance Date are automatically converted into shares of Series A Preferred Stock in accordance with the terms of Section 6 of the Series B Certificate). That number from time to time may be increased or decreased (but not below the number of shares of Series A Preferred

Stock then outstanding) by further resolution duly adopted by the Board, or any duly authorized committee thereof and by the filing of a certificate pursuant to the provisions of the Texas Business Organizations Code stating that such increase or decrease, as applicable, has been so authorized. The Company shall not have the authority to issue fractional shares of Series A Preferred Stock.

SECTION 2. Ranking. The Series A Preferred Stock will rank, with respect to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company:

(a) on a parity basis with each other class or series of Capital Stock of the Company now existing or hereafter authorized, the terms of which expressly provide that such class or series ranks on a parity basis with the Series A Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company (such Capital Stock, "Parity Stock"); and the Series B Preferred Stock shall be deemed to be Parity Stock and the Series A Preferred Stock shall rank on a parity basis with the Series B Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company;

(b) junior to each other class or series of Capital Stock of the Company now existing or hereafter authorized, the terms of which expressly provide that such class or series ranks senior to the Series A Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company (such Capital Stock, "Senior Stock"); and

(c) senior to the Common Stock and each other class or series of Capital Stock of the Company now existing or hereafter authorized, the terms of which do not expressly provide that such class or series ranks on a parity basis with or senior to the Series A Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company (such Capital Stock, "Junior Stock").

SECTION 3. Definitions. As used herein with respect to Series A Preferred Stock:

"Accreted Value" has the meaning set forth in Section 4(a).

"Acquisition" has the meaning set forth in the Investment Agreement.

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person; provided, however, (a) that the Company and its Subsidiaries shall not be deemed to be Affiliates of any Investor Party or any of its Affiliates, (b) portfolio companies in which any Investor Party or any of its Affiliates has an investment (whether as debt or equity) shall not be deemed an Affiliate of such Investor Party and (c) the Excluded True Wind Parties shall not be deemed to be Affiliates of any Investor Party, the Company or any of the Company's Subsidiaries. For this purpose, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

“Articles of Incorporation” has the meaning set forth in the recitals above.

Any Person shall be deemed to “beneficially own”, to have “beneficial ownership” of, or to be “beneficially owning” any securities (which securities shall also be deemed “beneficially owned” by such Person) that such Person is deemed to “beneficially own” within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act; provided that any Person shall be deemed to beneficially own any securities that such Person has the right to acquire, whether or not such right is exercisable within sixty (60) days or thereafter (including assuming conversion of all Series A Preferred Stock, if any, owned by such Person to Common Stock).

“Board” has the meaning set forth in the recitals above.

“Business Day” means any weekday that is not a day on which banking institutions in New York, New York are authorized or required by law, regulation or executive order to be closed.

“Bylaws” means the Second Amended and Restated Bylaws of the Company, as amended and as may be amended from time to time.

“Capital Stock” means, with respect to any Person, any and all shares of, interests in, rights to purchase, warrants to purchase, options for, participations in or other equivalents of or interests in (however designated) stock issued by such Person.

“Certificate of Designations” means this Certificate of Designations relating to the Series A Preferred Stock, as it may be amended from time to time.

“Change of Control” means the occurrence of one of the following, whether in a single transaction or a series of transactions:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of a majority of the total voting power of the Voting Stock of the Company, other than as a result of a transaction in which (1) the holders of securities that represented 100% of the Voting Stock of the Company immediately prior to such transaction are substantially the same as the holders of securities that represent a majority of the Voting Stock of the surviving Person or its Parent Entity immediately following such transaction and (2) the holders of securities that represented 100% of the Voting Stock of the Company immediately prior to such transaction own directly or indirectly Voting Stock of the surviving Person or its Parent Entity in substantially the same proportion to each other as immediately prior to such transaction;

(b) the merger or consolidation of the Company with or into another Person or the merger of another Person with or into the Company, or the sale, transfer or lease of all or substantially all the assets of the Company (determined on a consolidated basis), whether in a

single transaction or a series of transactions, to another Person (other than to a Subsidiary or a Person that becomes a Subsidiary of the Company), or any recapitalization, reclassification or other transaction in which all or substantially all of the Common Stock is exchanged for or converted into cash, securities or other property, other than a transaction following which in the case of a merger or consolidation transaction, holders of securities that represented 100% of the Voting Stock of the Company immediately prior to such transaction own directly or indirectly (in substantially the same proportion to each other as immediately prior to such transaction, other than changes in proportionality as a result of any cash/stock election provided under the terms of the definitive agreement regarding such transaction) at least a majority of the voting power of the Voting Stock of the surviving Person in such merger or consolidation transaction immediately after such transaction; or

(c) shares of Common Stock or shares of any other Capital Stock into which the Series A Preferred Stock is convertible are not listed for trading on any United States national securities exchange or cease to be traded in contemplation of a de-listing (other than as a result of a transaction described in clause (b) above).

“close of business” means 5:00 p.m. (New York City time).

“Closing Price” of the Common Stock on any date of determination means the closing sale price or, if no closing sale price is reported, the last reported sale price, of the shares of the Common Stock on NASDAQ on such date. If the Common Stock is not traded on NASDAQ on any date of determination, the Closing Price of the Common Stock on such date of determination means the closing sale price as reported in the composite transactions for the principal United States securities exchange or automated quotation system on which the Common Stock is so listed or quoted, or, if no closing sale price is reported, the last reported sale price on the principal United States securities exchange or automated quotation system on which the Common Stock is so listed or quoted, or if the Common Stock is not so listed or quoted on a United States securities exchange or automated quotation system, the last quoted bid price for the Common Stock in the over-the-counter market as reported by OTC Markets Group Inc. or any similar organization, or, if that bid price is not available, the market price of the Common Stock on that date as determined by an Independent Financial Advisor retained by the Company for such purpose.

“Common Stock” has the meaning set forth in the recitals above.

“Company” has the meaning set forth in the recitals above.

“Constituent Person” has the meaning set forth in Section 12(a).

“Conversion Agent” means the Transfer Agent acting in its capacity as conversion agent for the Series A Preferred Stock, and its successors and assigns.

“Conversion Date” has the meaning set forth in Section 8(a).

“Conversion Notice” has the meaning set forth in Section 8(a)(i).

“Conversion Rate” means 166.11, subject to adjustment as set forth herein.

“Conversion Restriction” has the meaning set forth in Section 6(c).

“Current Market Price” per share of Common Stock, as of any date of determination, means the arithmetic average of the VWAP per share of Common Stock for each of the ten (10) consecutive full Trading Days ending on the Trading Day immediately preceding such day, appropriately adjusted to take into account the occurrence during such period of any event described in Section 11.

“Debt Financing” has the meaning set forth in the Investment Agreement.

“Distributed Property” has the meaning set forth in Section 11(a)(iv).

“Distribution Transaction” means any distribution of equity securities of a Subsidiary of the Company to holders of Common Stock, whether by means of a spin-off, split-off, redemption, reclassification, exchange, stock dividend, share distribution, rights offering or similar transaction.

“EBITDA” shall mean, for purposes of this Certificate, “Consolidated Adjusted EBITDA” (or the substantially similar definition) as defined from time to time in, and calculated in accordance with, the primary credit facility of the Company and its Subsidiaries, provided that if the Company and its Subsidiaries do not have a primary credit facility that includes a definition of “Consolidated Adjusted EBITDA” (or a substantially similar definition), EBITDA shall be calculated by the Company in a manner consistent with its public disclosure of Adjusted EBITDA.

“Excess Amount” has the meaning set forth in Section 6(c).

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Exchange Property” has the meaning set forth in Section 12(a).

“Excluded True Wind Parties” has the meaning set forth in the Investment Agreement.

“Expiration Date” has the meaning set forth in Section 11(a)(iii).

“Fall-Away of Investor Board Rights” has the meaning set forth in the Investment Agreement.

“Fair Market Value” means, with respect to any security or other property, the fair market value of such security or other property as reasonably determined in good faith by a majority of the Board, or an authorized committee thereof, which determination shall be made after consultation with an Independent Financial Advisor, as to any security or other property with a Fair Market Value of greater than \$35,000,000.

“GAAP” shall mean generally accepted accounting principles in the United States.

“Holder” means a Person in whose name the shares of the Series A Preferred Stock are registered, which Person shall be treated by the Company, Transfer Agent, Registrar, paying agent and Conversion Agent as the absolute owner of the shares of Series A Preferred Stock for the purpose of making payment and settling conversions and for all other purposes; provided that, to the fullest extent permitted by law, no Person that has received shares of Series A Preferred Stock in violation of the Investment Agreement shall be a Holder, the Transfer Agent, Registrar, paying agent and Conversion Agent, as applicable, shall not, unless directed otherwise by the Company, recognize any such Person as a Holder and the Person in whose name the shares of the Series A Preferred Stock were registered immediately prior to such transfer shall remain the Holder of such shares.

“Indebtedness” shall mean any indebtedness (including principal and premium) in respect of borrowed money.

“Independent Financial Advisor” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing; provided, however, that such firm or consultant is not an Affiliate of the Company.

“Investment Agreement” means that certain Investment Agreement between the Company and the Investor dated as of January 14, 2019, as it may be amended, supplemented or otherwise modified from time to time, with respect to certain terms and conditions concerning, among other things, the rights of and restrictions on the Holders.

“Investor” has the meaning set forth in the Investment Agreement.

“Investor Designee” means an individual nominated by the Board as a “Investor Designee” for election to the Board pursuant to Section 5.10(a), Section 5.10(d) or Section 5.10(e) of the Investment Agreement.

“Investor Parties” means the Investor and each Permitted Transferee of the Investor to whom shares of Series A Preferred Stock or Common Stock are transferred pursuant to Section 5.08(b)(i) of the Investment Agreement.

“Issuance Date” means, with respect to any share of Series A Preferred Stock, the date of issuance of such share.

“Junior Stock” has the meaning set forth in Section 2(c).

“Market Disruption Event” means any of the following events:

(a) any suspension of, or limitation imposed on, trading of the Common Stock by any exchange or quotation system on which the Closing Price is determined pursuant to the definition of the term “Closing Price” (the “Relevant Exchange”) during the one-hour period prior to the close of trading for the regular trading session on the Relevant Exchange (or for purposes of determining the VWAP per share of Common Stock, any period or periods aggregating one half-hour or longer during the regular trading session on the relevant day) and whether by reason of movements in price exceeding limits permitted by the Relevant Exchange as to securities generally, or otherwise relating to the Common Stock or options contracts relating to the Common Stock on the Relevant Exchange; or

(b) any event that disrupts or impairs (as determined by the Company in its reasonable discretion) the ability of market participants during the one-hour period prior to the close of trading for the regular trading session on the Relevant Exchange (or for purposes of determining the VWAP per share of Common Stock, any period or periods aggregating one half-hour or longer during the regular trading session on the relevant day) in general to effect transactions in, or obtain market values for, the Common Stock on the Relevant Exchange or to effect transactions in, or obtain market values for, options contracts relating to the Common Stock on the Relevant Exchange.

“NASDAQ” means The Nasdaq Stock Market.

“Officer’s Certificate” means a certificate signed by the Chief Executive Officer, the Chief Financial Officer, the General Counsel or the Secretary of the Company.

“Original Issuance Date” means the Closing Date, as defined in the Investment Agreement.

“Parent Entity” means, with respect to any Person, any other Person of which such first Person is a direct or indirect wholly owned Subsidiary.

“Parity Stock” has the meaning set forth in Section 2(a).

“Participating Dividend” has the meaning set forth in Section 4(b).

“Permitted Transferee” means, with respect to any Person, (a) any Affiliate of such Person, (b) any successor entity of such Person and (c) with respect to any Person that is an investment fund, vehicle or similar entity, any other investment fund, vehicle or similar entity of which such Person or an Affiliate, advisor or manager of such Person serves as the general partner, manager or advisor.

“Person” means any individual, corporation, estate, partnership, joint venture, association, joint-stock company, limited liability company, trust, unincorporated organization or any other entity.

“Preferred Stock” has the meaning set forth in the recitals above.

“Rate of Accretion” means 8.0% per annum, or, to the extent and during the period with respect to which such rate has been adjusted as provided in Section 9(d), such adjusted rate.

“Record Date” means, with respect to any dividend, distribution or other transaction or event in which the holders of the Common Stock have the right to receive any cash, securities or other property or in which the Common Stock is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock entitled to receive such cash, securities or other property (whether such date is fixed by the Board or by statute, contract or otherwise).

“Registrar” means the Transfer Agent acting in its capacity as registrar for the Series A Preferred Stock, and its successors and assigns.

“Relevant Exchange” has the meaning set forth in the definition of the term “Market Disruption Event”.

“Reorganization Event” has the meaning set forth in Section 12(a).

“Senior Stock” has the meaning set forth in Section 2(b).

“Series A Change of Control Redemption Price” means with respect to each share of Series A Preferred Stock then outstanding, the product of (a) the Accreted Value of such share as of the date of determination *multiplied by* (b) (i) 1.30 (if the Change of Control occurs before the first anniversary of the Original Issuance Date), (ii) 1.35 (if the Change of Control occurs on or after the first anniversary of the Original Issuance Date but before the second anniversary of the Original Issuance Date), (iii) 1.40 (if the Change of Control occurs on or after the second anniversary of the Original Issuance Date but before the third anniversary of the Original Issuance Date), (iv) 1.45 (if the Change of Control occurs on or after the third anniversary of the Original Issuance Date but before the fourth anniversary of the Original Issuance Date) and (v) 1.50 (if the Change of Control occurs on or after the fourth anniversary of the Original Issuance Date).

“Series A Preferred Stock” has the meaning set forth in Section 1.

“Series B Certificate” means that certain Certificate of Designations of Series B Preferred Stock of the Company dated as of the Original Issuance Date.

“Series B Preferred Stock” means the shares of Series B Convertible Preferred Stock, par value \$1.00, of the Company issued on the Original Issuance Date.

“Share Cap” means a number of shares of Common Stock equal to (a) the product of (i) 0.199 and (ii) 54,186,180.

“Stated Value” means \$1,000 per share of Series A Preferred Stock.

“Stockholder Approval” has the meaning set forth in the Investment Agreement.

“Stockholder Meeting” has the meaning set forth in the Investment Agreement.

“Subsidiary”, when used with respect to any Person, means any corporation, limited liability company, partnership, association, trust or other entity of which (a) securities or other ownership interests representing more than 50% of the ordinary voting power (or, in the case of a partnership, more than 50% of the general partnership interests) or (b) sufficient voting rights to elect at least a majority of the board of directors or other governing body are, as of such date, owned by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

“Trading Day” means a Business Day on which the Relevant Exchange is scheduled to be open for business and on which there has not occurred a Market Disruption Event.

“Transfer Agent” means the Person acting as Transfer Agent, Registrar and paying agent and Conversion Agent for the Series A Preferred Stock, and its successors and assigns. The Transfer Agent initially shall be Computershare Trust Company, N.A.

“Trigger Event” has the meaning set forth in Section 11(a)(vii).

“Voting Stock” means (a) with respect to the Company, the Common Stock, the Series A Preferred Stock and any other Capital Stock of the Company having the right to vote generally in any election of directors of the Board and (b) with respect to any other Person, all Capital Stock of such Person having the right to vote generally in any election of directors of the board of directors of such Person or other similar governing body.

“VWAP” per share of Common Stock on any Trading Day means the per share volume-weighted average price as displayed under the heading Bloomberg VWAP on Bloomberg (or, if Bloomberg ceases to publish such price, any successor service reasonably chosen by the Company) page “ZIXI <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the open of trading on the relevant Trading Day until the close of trading on such Trading Day (or if such volume-weighted average price is unavailable, the market price of one share of Common Stock on such Trading Day determined, using a volume-weighted average method, by an Independent Financial Advisor retained for such purpose by the Company).

SECTION 4. Accreted Value; Dividends. (a) Each share of Series A Preferred Stock will have an initial stated liquidation value equal to the Stated Value. From the Original Issuance Date, the Stated Value per share of Series A Preferred Stock will accrete at the Rate of Accretion, compounded quarterly on each March 31, June 30, September 30 and on December 31 of each year during which any shares of Series A Preferred Stock remain outstanding (each a “Quarterly Calculation Date”), beginning on the Quarterly Calculation Date immediately following the Original Issuance Date (the Stated Value per share as it has accreted as of any date, the “Accreted Value”, subject to appropriate adjustment in the event of any stock dividend, stock split, stock distribution or combination, consolidation, subdivision, reclassification or other corporate actions having the similar effect with respect to the Series A Preferred Stock). All calculations of Accreted Value will be computed on the basis of a 360-day year of twelve 30-day months. Notwithstanding the foregoing, each share of Series A Preferred Stock issued in connection with the conversion of shares of Series B Preferred Stock in accordance with the terms of the Series B Preferred Stock shall be deemed to have the same Accreted Value as of the date such share of Series A Preferred Stock is issued (the “Conversion Date”) as the Accreted Value as of the Conversion Date of a share of Series A Preferred stock that was issued on the Original Issuance Date.

(b) Participating Dividends. The Holders shall also be entitled to receive, when, as and if declared by the Board, dividends per share of Series A Preferred Stock of an amount equal to the aggregate amount of any dividends or other distributions, whether cash, in kind or other property (including, for the avoidance of doubt, any securities), paid on outstanding shares of Common Stock on a per share basis based on the number of shares of Common Stock into which such share of Series A Preferred Stock could be converted on the applicable record date for such dividends or other distributions, assuming such shares of Common Stock were outstanding on the applicable record date for such dividend or other distributions (the "Participating Dividends"). Participating Dividends shall be payable as and when paid to the holders of shares of Common Stock. Participating Dividends are payable on a cumulative basis once declared, whether or not there shall be funds legally available for the payment thereon. The Company shall not declare or pay any dividends on shares of Common Stock unless the holders of the Series A Preferred Stock then outstanding shall simultaneously receive Participating Dividends on a pro rata basis as if the shares of Series A Preferred Stock had been converted into shares of Common Stock immediately prior to the record date for determining the stockholders eligible to receive such dividends. If the Company distributes any rights pursuant to any stockholder rights plan on or after the date hereof, then such distribution will not require a Participating Dividend except to the extent provided in the immediately following sentence. If any shares of Common Stock are issued upon conversion of any share of Series A Preferred Stock and, at the time of such conversion, the Company has in effect any stockholder rights plan, then the holder of such share of Series A Preferred Stock will be entitled to receive, in addition to, and concurrently with the delivery of, the consideration otherwise payable under this Certificate of Designations upon such conversion, the rights set forth in such stockholder rights plan, unless such rights have separated from the shares of Common Stock at such time, in which case such separation will require, at the time of such separation, a Participating Dividend pursuant to this Section 4(b).

SECTION 5. Liquidation Rights. (a) Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, the Holders shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Company may be made to or set aside for the holders of any Junior Stock, and subject to the rights of the holders of any Senior Stock or Parity Stock and the rights of the Company's existing and future creditors, to receive in full a liquidating distribution in cash and in the amount per share of Series A Preferred Stock equal to the greater of (i) the Accreted Value with respect to such share of Series A Preferred Stock as of the date of such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company and (ii) the amount such Holders would have received had such Holders, immediately prior to such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, converted such shares of Series A Preferred Stock into Common Stock (pursuant to Section 6 without regard to any of the limitations on convertibility contained therein). Holders shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company other than what is expressly provided for in this Section 5 and will have no right or claim to any of the Company's remaining assets.

(b) Partial Payment. If in connection with any distribution described in Section 5(a) above, the assets of the Company or proceeds therefrom are not sufficient to pay in full the aggregate liquidating distributions required to be paid pursuant to Section 5(a) to all

Holders and the liquidating distributions payable all holders of any Parity Stock, the amounts distributed to the Holders and to the holders of all such Parity Stock shall be paid pro rata in accordance with the respective aggregate liquidating distributions to which they would otherwise be entitled if all amounts payable thereon were paid in full.

(c) Merger, Consolidation and Sale of Assets Not Liquidation. For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Company shall not be deemed a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, nor shall the merger, consolidation, statutory exchange or any other business combination transaction of the Company into or with any other Person or the merger, consolidation, statutory exchange or any other business combination transaction of any other Person into or with the Company be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company.

SECTION 6. Right of the Holders to Convert.

(a) Each Holder shall have the right, at such Holder's option, subject to the conversion procedures set forth in Section 8, to convert each share of such Holder's Series A Preferred Stock at any time into (i) the number of shares of Common Stock equal to the product of (A) the Accreted Value with respect to such share of Series A Preferred Stock as of the applicable Conversion Date multiplied by (B) the Conversion Rate as of the applicable Conversion Date divided by (C) 1,000 plus (ii) cash in lieu of fractional shares as set out in Section 11(h). The right of conversion may be exercised as to all or any portion of such Holder's Series A Preferred Stock from time to time; provided that, in each case, no right of conversion may be exercised by a Holder in respect of fewer than 1,000 shares of Series A Preferred Stock (unless such conversion relates to all shares of Series A Preferred Stock held by such Holder).

(b) The Company shall at all times reserve and keep available out of its authorized and unissued Common Stock, solely for issuance upon the conversion of the Series A Preferred Stock, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the shares of Series A Preferred Stock then outstanding. Any shares of Common Stock issued upon conversion of Series A Preferred Stock shall be duly authorized, validly issued, fully paid and nonassessable.

(c) Notwithstanding the foregoing or anything else in this Certificate of Designations to the contrary, unless and until the Stockholder Approval is obtained, the Holders shall not have the right to convert their shares of Series A Preferred Stock into shares of Common Stock pursuant to the terms of this Certificate of Designation, and the Company shall not be required to issue shares of Common Stock pursuant to such conversion, in excess of the Share Cap (the "Conversion Restriction"); and the Company shall either obtain Stockholder Approval of such issuances or deliver, in lieu of any shares of Common Stock otherwise deliverable upon conversion in excess of the Conversion Restriction, an amount of cash per share equal to the VWAP per share of Common Stock on the Trading Day immediately preceding the Conversion Date (such cash amount, the "Excess Amount"). For the avoidance of doubt, when the Stockholder Approval is obtained, this Section 6(c) shall be deemed deleted in its entirety.

SECTION 7. [Reserved].

SECTION 8. Conversion Procedures and Effect of Conversion. (a) Conversion Procedure. A Holder must do each of the following in order to convert shares of Series A Preferred Stock pursuant to this Section 8(a):

(i) in the case of a conversion pursuant to Section 6(a), complete and manually sign the conversion notice provided by the Conversion Agent (the "Conversion Notice"), and deliver such notice to the Conversion Agent; provided that a Conversion Notice may be conditional on the completion of a Change of Control or other corporate transaction;

(ii) deliver to the Conversion Agent the certificate or certificates (if any) representing the shares of Series A Preferred Stock to be converted;

(iii) if required, furnish appropriate endorsements and transfer documents; and

(iv) if required, pay any stock transfer, documentary, stamp or similar taxes not payable by the Company pursuant to Section 21.

The "Conversion Date" means with respect to conversion of any shares of Series A Preferred Stock at the option of any Holder pursuant to Section 6(a), the date on which such Holder complies with the procedures in this Section 8(a) (including the satisfaction of any conditions to conversion set forth in the Conversion Notice).

(b) Effect of Conversion. Effective immediately prior to the close of business on the Conversion Date applicable to any shares of Series A Preferred Stock, Participating Dividends shall no longer be declared on any such shares of Series A Preferred Stock, and such shares of Series A Preferred Stock shall cease to be outstanding.

(c) Record Holder of Underlying Securities as of Conversion Date. The Person or Persons entitled to receive the Common Stock and, to the extent applicable, cash, securities or other property issuable upon conversion of Series A Preferred Stock on a Conversion Date shall be treated for all purposes as the record holder(s) of such shares of Common Stock and/or cash, securities or other property as of the close of business on such Conversion Date. As promptly as practicable on or after the Conversion Date and compliance by the applicable Holder with the relevant procedures contained in Section 8(a) (and in any event no later than three (3) Trading Days thereafter; provided, however, that, if a written notice from the Holder in accordance with Section 8(a) specifies a date of delivery for any shares of Common Stock, such shares shall be delivered on the date so specified, which shall be no earlier than the second Business Day immediately following the date of such notice and no later than the seventh Business Day thereafter), the Company shall issue the number of whole shares of Common Stock issuable upon conversion (and deliver payment of cash in lieu of fractional shares as set out in Section 11(h) and any Excess Amount) and, to the extent applicable, any cash, securities or other property issuable thereon. Such delivery of shares of Common Stock, securities or other property shall be made by book-entry or, at the request of the Holder, through the facilities of The Depository Trust Company or in certificated form. Any such certificate or certificates shall be delivered by the Company to the appropriate Holder on a book-entry basis, through the facilities of The Depository Trust Company, or by mailing certificates evidencing the shares to

the Holders, in each case at their respective addresses as set forth in the Conversion Notice (in the case of a conversion pursuant to Section 6(a)). In the event that a Holder shall not by written notice designate the name in which shares of Common Stock (and payments of cash in lieu of fractional shares) and, to the extent applicable, cash, securities or other property to be delivered upon conversion of shares of Series A Preferred Stock should be registered or paid, or the manner in which such shares, cash, securities or other property should be delivered, the Company shall be entitled to register and deliver such shares, securities or other property, and make such payment, in the name of the Holder and in the manner shown on the records of the Company.

(d) Status of Converted or Reacquired Shares. Shares of Series A Preferred Stock converted in accordance with this Certificate of Designations, or otherwise acquired by the Company in any manner whatsoever, shall be retired promptly after the conversion or acquisition thereof. All such shares shall, upon their retirement and any filing required by the Texas Business Organizations Code, become authorized but unissued shares of Preferred Stock, without designation as to series until such shares are once more designated as part of a particular series by the Board pursuant to the provisions of the Articles of Incorporation.

SECTION 9. Change of Control.

(a) Subject to Section 9(d), upon the occurrence of a Change of Control, the Company shall be required to redeem the outstanding shares of Series A Preferred Stock at a redemption price per share of Series A Preferred Stock, payable in cash, equal to the greater of (i) the Series A Change of Control Redemption Price of such share of Series A Preferred Stock and (ii) (A) the amount of cash such Holder would have received *plus* (B) the Fair Market Value of any other assets in each case had such Holder, immediately prior to such Change of Control, converted such share of Series A Preferred Stock into Common Stock pursuant to Section 6 without regard to any of the limitations on convertibility contained therein (the "Change of Control Redemption Price").

(b) Initial Change of Control Notice. On or before the twentieth (20th) Business Day prior to the date on which the Company anticipates consummating a Change of Control (or, if later, promptly after the Company discovers that a Change of Control may occur), a written notice (a "Change of Control Notice") shall be sent by or on behalf of the Company to the Holders as they appear in the records of the Company, which notice shall contain the date on which the Change of Control is anticipated to be effected (or, if applicable, the date on which a Schedule TO or other schedule, form or report disclosing a Change of Control was filed). The Change of Control Notice shall include (i) a description of the material terms and conditions of the Change of Control, (ii) the date on which the Change of Control is anticipated to be consummated, (iii) the Change of Control Redemption Price and the calculation thereof and (iv) the instructions a Holder must follow to receive payment.

(c) Delivery upon Change of Control. Upon the consummation of a Change of Control, subject to Section 9(d), the Company (or its successor) shall deliver or cause to be delivered to the Holder by wire transfer the Change of Control Redemption Price of such Holder's shares of Series A Preferred Stock.

(d) Sufficient Funds. If the Company shall not have sufficient funds legally available under the Texas Business Organizations Code to redeem all outstanding shares of Series A Preferred Stock if it redeems outstanding shares of Series A Preferred Stock, the Company shall (i) redeem, pro rata among the Holders, a number of shares of Series A Preferred Stock with an aggregate Change of Control Redemption Price equal to the amount legally available for the redemption of shares of Series A Preferred Stock under the Texas Business Organizations Code and (ii) redeem any shares of Series A Preferred Stock not purchased because of the foregoing limitations at the applicable Change of Control Redemption Price as soon as practicable after the Company is able to make such redemption out of assets legally available for the purchase of such share of Series A Preferred Stock. The inability of the Company (or its successor) to make a redemption payment for any reason shall not relieve the Company (or its successor) from its obligation to effect any required purchase when, as and if permitted by applicable law. If the Company fails to pay the Change of Control Redemption Price in full when due in accordance with this Section 9 in respect of some or all of the shares of Series A Preferred Stock to be redeemed pursuant to this Section 9, the Rate of Accretion on such shares repurchased shall equal 10.0% per annum, which shall then increase by 0.50% on every three-month anniversary after such failure (but not, in any event, to greater than 12.0% per annum. Notwithstanding the foregoing, if a Change of Control occurs at a time when the Company is restricted or prohibited from redeeming some or all of the Series A Preferred Stock, the Company will use its commercially reasonable efforts to obtain the requisite consents to remove or obtain an exception or waiver to such restrictions or prohibition. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to comply with its obligations under the Section 9.

(e) Change of Control Agreements. The Company shall not enter into any agreement for a transaction constituting a Change of Control unless (i) such agreement provides for or does not interfere with or prevent (as applicable) the payment in full of the Change of Control Redemption Price pursuant to this Section 9 and (ii) the acquiring or surviving Person in such Change of Control represents or covenants, in form and substance reasonably satisfactory to the Board acting in good faith, that at the closing of such Change of Control, such Person shall have sufficient funds (which may include, without limitation, cash and cash equivalents on the Company's balance sheet, the proceeds of any debt or equity financing, available lines of credit or uncalled capital commitments) to consummate such Change of Control and effect the payment of the Change of Control Redemption Price in respect of the outstanding shares of Series A Preferred Stock.

(f) Partial Redemption. In case any certificate for shares of Series A Preferred Stock shall be surrendered for partial redemption, the Company shall execute and deliver to or upon the written order of the Holder of the certificate so surrendered a new certificate for the shares of Series A Preferred Stock not redeemed.

(g) Effect of Redemption. Effective immediately prior to the close of business on the Redemption Date for any shares of Series A Preferred Stock redeemed pursuant to this Section 9, Participating Dividends shall no longer be declared on any such shares of Series A Preferred Stock, and such shares of Series A Preferred Stock shall cease to be outstanding.

(h) Status of Redeemed Shares. Shares of Series A Preferred Stock redeemed in accordance with this Section 9, shall return to the status of and constitute authorized but unissued shares of Preferred Stock, without classification as to series until such shares are once more classified as a particular series by the Board pursuant to the provisions of the Articles of Incorporation.

SECTION 10. Optional Redemption. (a) The Series A Preferred Stock may be redeemed in whole, but not in part, for cash at any time after the fourth anniversary of the Original Issuance Date, at the option of the Company, upon giving notice of redemption pursuant to Section 10(b), at a redemption price per share equal to the product of (A) the Accreted Value per share of the Series A Preferred Stock to be redeemed as of the applicable Redemption Date *multiplied by* (B) 1.50.

(b) Notice of every redemption of shares of Series A Preferred Stock pursuant to Section 10(a)(i) shall be mailed, postage prepaid, addressed to the Holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Company, or given by electronic communication in compliance with the provisions of the Texas Business Organizations Code. Such mailing or electronic transmission shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice made as provided in this Section 10(b) shall be conclusively presumed to have been duly given upon such mailing or electronic transmission, whether or not the Holder receives such notice, but failure duly to give such notice as provided in this Section 10(b), or any defect in such notice or in the mailing or electronic transmission thereof, to any Holder of shares of Series A Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series A Preferred Stock. Each notice of redemption given to a Holder shall state: (1) the redemption date; (2) the number of shares of the Series A Preferred Stock to be redeemed and, if less than all the shares held by such Holder are to be redeemed, the number of such shares to be redeemed from such Holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

SECTION 11. Anti-Dilution Adjustments. (a) Adjustments. The Conversion Rate will be subject to adjustment, without duplication, upon the occurrence of the following events, except that the Company shall not make any adjustment to the Conversion Rate if Holders of the Series A Preferred Stock participate, at the same time and upon the same terms as holders of Common Stock and solely as a result of holding shares of Series A Preferred Stock, in any transaction described in this Section 11(a), without having to convert their Series A Preferred Stock, as if they held a number of shares of Common Stock equal to the product of (x) Accreted Value of the shares of Series A Preferred Stock held by such Holders multiplied by (y) the Conversion Rate divided by (z) 1,000:

(i) The issuance of Common Stock as a dividend or distribution to all or substantially all holders of Common Stock, or a subdivision or combination of Common Stock or a reclassification of Common Stock into a greater or lesser number of shares of Common Stock, in which event the Conversion Rate shall be adjusted based on the following formula:

$$CR1 = CR0 \times (OS1 / OS0)$$

CR0 = the Conversion Rate in effect immediately prior to the close of business on (i) the Record Date for such dividend or distribution, or (ii) the effective date of such subdivision, combination or reclassification

CR1 = the new Conversion Rate in effect immediately after the close of business on (i) the Record Date for such dividend or distribution, or (ii) the effective date of such subdivision, combination or reclassification

OS0 = the number of shares of Common Stock outstanding immediately prior to the close of business on (i) the Record Date for such dividend or distribution or (ii) the effective date of such subdivision, combination or reclassification

OS1 = the number of shares of Common Stock that would be outstanding immediately after, and solely as a result of, the completion of such event

Any adjustment made pursuant to this clause (i) shall be effective immediately after the close of business on the Record Date for such dividend or distribution, or the effective date of such subdivision, combination or reclassification. If any such event is announced or declared but does not occur, the Conversion Rate shall be readjusted, effective as of the date the Board announces that such event shall not occur, to the Conversion Rate that would then be in effect if such event had not been declared.

(ii) The dividend, distribution or other issuance to all or substantially all holders of Common Stock of rights (other than rights, options or warrants distributed in connection with a stockholder rights plan (in which event the provisions of Section 11(a)(vii) shall apply)), options or warrants entitling them to subscribe for or purchase shares of Common Stock for a period expiring forty-five (45) days or less from the date of issuance thereof, at a price per share that is less than the Current Market Price as of the Record Date for such issuance, in which event the Conversion Rate will be increased based on the following formula:

$$CR1 = CR0 \times [(OS0+X) / (OS0+Y)]$$

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend, distribution or issuance

CR1 = the new Conversion Rate in effect immediately following the close of business on the Record Date for such dividend, distribution or issuance

OS0 = the number of shares of Common Stock outstanding immediately prior to the close of business on the Record Date for such dividend, distribution or issuance

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants divided by the Current Market Price as of the Record Date for such dividend, distribution or issuance.

For purposes of this clause (ii), in determining whether any rights, options or warrants entitle the holders to purchase the Common Stock at a price per share that is less than the Current Market Price as of the Record Date for such dividend, distribution or issuance, there shall be taken into account any consideration the Company receives for such rights, options or warrants, and any amount payable on exercise thereof, with the value of such consideration, if other than cash, to be the Fair Market Value thereof.

Any adjustment made pursuant to this clause (ii) shall become effective immediately following the close of business on the Record Date for such dividend, distribution or issuance. In the event that such rights, options or warrants are not so issued, the Conversion Rate shall be readjusted, effective as of the date the Board publicly announces its decision not to issue such rights, options or warrants, to the Conversion Rate that would then be in effect if such dividend, distribution or issuance had not been declared. To the extent that such rights, options or warrants are not exercised prior to their expiration or shares of Common Stock are otherwise not delivered pursuant to such rights, options or warrants upon the exercise of such rights, options or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the dividend, distribution or issuance of such rights, options or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered.

(iii) The Company or one or more of its Subsidiaries purchases Common Stock pursuant to a tender offer or exchange offer (other than an exchange offer that constitutes a Distribution Transaction subject to Section 11(a)(v)) by the Company or a Subsidiary of the Company for all or any portion of the Common Stock, or otherwise acquires Common Stock (except (1) in an open market purchase in compliance with Rule 10b-18 promulgated under the Exchange Act, (2) through an “accelerated share repurchase” on customary terms or (3) in connection with tax withholding upon vesting or settlement of options, restricted stock units, performance share units or other similar equity awards or upon forfeiture or cashless exercise of options or other equity awards) (a “Covered Repurchase”), if the cash and value of any other consideration included in the payment per share of Common Stock validly tendered, exchanged or otherwise acquired through a Covered Repurchase exceeds the arithmetic average of the VWAP per share of Common Stock for each of the ten (10) consecutive full Trading Days commencing on, and including, the Trading Day next succeeding the last day on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) or shares of Common Stock are otherwise acquired through a Covered Repurchase (the “Expiration Date”), in which event the Conversion Rate shall be increased based on the following formula:

$$CR1 = CR0 \times [(FMV + (SP1 \times OS1))] / (SP1 \times OS0)$$

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Expiration Date

CR1 = the new Conversion Rate in effect immediately after the close of business on the Expiration Date

FMV = the Fair Market Value, on the Expiration Date, of all cash and any other consideration paid or payable for all shares validly tendered or exchanged and not withdrawn, or otherwise acquired through a Covered Repurchase, as of the Expiration Date

OS₀ = the number of shares of Common Stock outstanding immediately prior to the last time tenders or exchanges may be made pursuant to such tender or exchange offer (including the shares to be purchased in such tender or exchange offer) or shares are otherwise acquired through a Covered Repurchase

OS₁ = the number of shares of Common Stock outstanding immediately after the last time tenders or exchanges may be made pursuant to such tender or exchange offer (after giving effect to the purchase of shares in such tender or exchange offer) or shares are otherwise acquired through a Covered Repurchase

SP₁ = the arithmetic average of the VWAP per share of Common Stock for each of the ten (10) consecutive full Trading Days commencing on, and including, the Trading Day next succeeding the Expiration Date

Such adjustment shall become effective immediately after the close of business on the Expiration Date. If an adjustment to the Conversion Rate is required under this Section 11(a)(iii), delivery of any additional shares of Common Stock that may be deliverable upon conversion as a result of an adjustment required under this Section 11(a)(iii) shall be delayed to the extent necessary in order to complete the calculations provided for in this Section 11(a)(iii).

In the event that the Company or any of its Subsidiaries is obligated to purchase Common Stock pursuant to any such tender offer, exchange offer or other commitment to acquire shares of Common Stock through a Covered Repurchase but is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall be readjusted to be the Conversion Rate that would have been then in effect if such tender offer, exchange offer or Covered Repurchase had not been made.

(iv) The Company shall, by dividend or otherwise, distribute to all or substantially all holders of its Common Stock (other than for cash in lieu of fractional shares), shares of any class of its Capital Stock, evidences of its Indebtedness, assets, other property or securities, but excluding (A) dividends or distributions referred to in Section 11(a)(i) or Section 11(a)(ii) hereof, (B) Distribution Transactions as to which Section 11(a)(v) shall apply, (C) dividends or distributions paid exclusively in cash as to which Section 11(a)(vi) shall apply and (D) rights, options or warrants distributed in connection with a stockholder rights plan as to which Section 11(a)(vii) shall apply (any of such shares of its Capital Stock, Indebtedness, assets or property that are not so excluded are hereinafter called the "Distributed Property"), then, in each such case the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times [SP_0 / (SP_0 - FMV)]$$

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution

CR1 = the new Conversion Rate in effect immediately after the close of business on the Record Date for such dividend or distribution

SP0 = the Current Market Price as of the Record Date for such dividend or distribution

FMV = the Fair Market Value of the portion of Distributed Property distributed with respect to each outstanding share of Common Stock on the Record Date for such dividend or distribution; provided that, if FMV is equal or greater than SP0, then in lieu of the foregoing adjustment, the Company shall distribute to each holder of Series A Preferred Stock on the date the applicable Distributed Property is distributed to holders of Common Stock, but without requiring such holder to convert its shares of Series A Preferred Stock, in respect of each share of Series A Preferred Stock held by such holder, the amount of Distributed Property such holder would have received had such holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for such dividend or distribution

Any adjustment made pursuant to this clause (iv) shall be effective immediately after the close of business on the Record Date for such dividend or distribution. If any such dividend or distribution is declared but does not occur, the Conversion Rate shall be readjusted, effective as of the date the Board announces that such dividend or distribution shall not occur, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(v) The Company effects a Distribution Transaction, in which case the Conversion Rate in effect immediately prior to the effective date of the Distribution Transaction shall be increased based on the following formula:

$$CR1 = CR0 \times [(FMV + MP0) / MP0]$$

CR0 = the Conversion Rate in effect immediately prior to the close of business on the effective date of the Distribution Transaction

CR1 = the new Conversion Rate in effect immediately after the close of business on the effective date of the Distribution Transaction

FMV = the arithmetic average of the volume-weighted average prices for a share of the capital stock or other interest distributed to holders of Common Stock on the principal United States securities exchange or automated quotation system on which such capital stock or other interest trades, as reported by Bloomberg (or, if Bloomberg ceases to publish such price, any successor service chosen by the Company) in respect of the period from the open of trading on the relevant Trading Day until the close of trading on such Trading Day (or if such volume-weighted average price is unavailable, the market price of one share of such capital stock or other interest on such Trading Day determined, using a volume-weighted average method, by an Independent Financial Advisor retained for such purpose by the Company), for each of the ten consecutive full Trading Days commencing with, and including, the effective date of the Distribution Transaction

MP0 = the arithmetic average of the VWAP per share of Common Stock for each of the ten (10) consecutive full Trading Days commencing on, and including, the effective date of the Distribution Transaction

Such adjustment shall become effective immediately following the close of business on the effective date of the Distribution Transaction. If an adjustment to the Conversion Rate is required under this Section 11(a)(v), delivery of any additional shares of Common Stock that may be deliverable upon conversion as a result of an adjustment required under this Section 11(a)(v) shall be delayed to the extent necessary in order to complete the calculations provided for in this Section 11(a)(v).

(vi) The Company makes a cash dividend or distribution to all or substantially all holders of the Common Stock, the Conversion Rate shall be increased based on the following formula:

$$CR1 = CR0 \times [SP0 / (SP0 - C)]$$

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution

CR1 = the new Conversion Rate in effect immediately after the close of business on the Record Date for such dividend or distribution

SP0 = the Current Market Price as of the Record Date for such dividend or distribution

C = the amount in cash per share of Common Stock the Company distributes to all or substantially all holders of its Common Stock; provided that, if C is equal or greater than SP0, then in lieu of the foregoing adjustment, the Company shall pay to each holder of Series A Preferred Stock on the date the applicable cash dividend or distribution is made to holders of Common Stock, but without requiring such holder to convert its shares of Series A Preferred Stock, in respect of each share of Series A Preferred Stock held by such holder, the amount of cash such holder would have received had such holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for such dividend or distribution

Any adjustment made pursuant to this clause (vi) shall be effective immediately after the close of business on the Record Date for such dividend or distribution. If any dividend or distribution is declared but not paid, the Conversion Rate shall be readjusted, effective as of the date the Board announces that such dividend or distribution will not be paid, to the Conversion Rate that would then be in effect if such had dividend or distribution not been declared.

(vii) If the Company has a stockholder rights plan in effect with respect to the Common Stock on any Conversion Date, upon conversion of any shares of the Series A Preferred Stock, Holders of such shares will receive, in addition to the applicable number of shares of Common Stock, the rights under such rights plan relating to such Common Stock, unless, prior to such Conversion Date, the rights have (i) become exercisable or (ii) separated from the shares of Common Stock (the first of such events to occur, a

“Trigger Event”), in which case, the Conversion Rate will be adjusted, effective automatically at the time of such Trigger Event, as if the Company had made a distribution of such rights to all holders of the Company Common Stock as described in Section 11(a)(ii) (without giving effect to the forty-five (45) day limit on the exercisability of rights, options or warrants ordinarily subject to such Section 11(a)(ii)), subject to appropriate readjustment in the event of the expiration, termination or redemption of such rights prior to the exercise, deemed exercise or exchange thereof. Notwithstanding the foregoing, to the extent any such stockholder rights are exchanged by the Company for shares of Common Stock or other property or securities, the Conversion Rate shall be appropriately readjusted as if such stockholder rights had not been issued, but the Company had instead issued such shares of Common Stock or other property or securities as a dividend or distribution of shares of Common Stock pursuant to Section 11(a)(i) or Section 11(a)(iv), as applicable.

To the extent that such rights are not exercised prior to their expiration, termination or redemption, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the occurrence of the Trigger Event been made on the basis of the issuance of, and the receipt of the exercise price with respect to, only the number of shares of Common Stock actually issued pursuant to such rights.

Notwithstanding anything to the contrary in this Section 11(a)(vii), no adjustment shall be required to be made to the Conversion Rate with respect to any Holder which is, or is an “affiliate” or “associate” of, an “acquiring person” under such stockholder rights plan or with respect to any direct or indirect transferee of such Holder who receives Series A Preferred Stock in such transfer after the time such Holder becomes, or its affiliate or associate becomes, such an “acquiring person”.

(b) Calculation of Adjustments. All adjustments to the Conversion Rate shall be calculated by the Company to the nearest 1/10,000th of one share of Common Stock (or if there is not a nearest 1/10,000th of a share, to the next lower 1/10,000th of a share). No adjustment to the Conversion Rate will be required unless such adjustment would require an increase or decrease of at least one percent of the Conversion Rate; provided, however, that any such adjustment that is not required to be made will be carried forward and taken into account in any subsequent adjustment; provided, further, that any such adjustment of less than one percent that has not been made will be made upon any Conversion Date or redemption or repurchase date.

(c) When No Adjustment Required. (i) Except as otherwise provided in this Section 11, the Conversion Rate will not be adjusted for the issuance of Common Stock or any securities convertible into or exchangeable for Common Stock or carrying the right to purchase any of the foregoing, for the repurchase of Common Stock or to the extent that an adjustment would be duplicative because an equivalent Participating Dividend was distributed to the Holders.

(ii) Except as otherwise provided in this Section 11, the Conversion Rate will not be adjusted as a result of the issuance of, the distribution of separate certificates representing, the exercise or redemption of, or the termination or invalidation of, rights pursuant to any stockholder rights plans.

(iii) No adjustment to the Conversion Rate will be made:

(A) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on securities of the Company and the investment of additional optional amounts in Common Stock under any plan in which purchases are made at market prices on the date or dates of purchase, without discount, and whether or not the Company bears the ordinary costs of administration and operation of the plan, including brokerage commissions;

(B) upon the issuance of any shares of Common Stock or options or rights to purchase such shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of its Subsidiaries or of any employee agreements or arrangements or programs;

(C) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right, or exercisable, exchangeable or convertible security, including the Series A Preferred Stock; or

(D) for a change in the par value of the Common Stock.

(d) Successive Adjustments. After an adjustment to the Conversion Rate under this Section 11, any subsequent event requiring an adjustment under this Section 11 shall cause an adjustment to each such Conversion Rate as so adjusted.

(e) Multiple Adjustments. For the avoidance of doubt, if an event occurs that would trigger an adjustment to the Conversion Rate pursuant to this Section 11 under more than one subsection hereof, such event, to the extent fully taken into account in a single adjustment, shall not result in multiple adjustments hereunder; provided, however, that if more than one subsection of this Section 11 is applicable to a single event, the subsection shall be applied that produces the largest adjustment.

(f) Notice of Adjustments. Whenever the Conversion Rate is adjusted as provided under this Section 11, the Company shall as soon as reasonably practicable following the occurrence of an event that requires such adjustment (or if the Company is not aware of such occurrence, as soon as reasonably practicable after becoming so aware):

(i) compute the adjusted applicable Conversion Rate in accordance with this Section 11 and prepare and transmit to the Conversion Agent an Officer's Certificate setting forth the applicable Conversion Rate, the method of calculation thereof, and the facts requiring such adjustment and upon which such adjustment is based; and

(ii) provide a written notice to the Holders of the occurrence of such event and a statement in reasonable detail setting forth the method by which the adjustment to the applicable Conversion Rate was determined and setting forth the adjusted applicable Conversion Rate.

(g) Conversion Agent. The Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine whether any facts exist that may require any adjustment of the Conversion Rate or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed in making the same. The Conversion Agent shall be fully authorized and protected in relying on any Officer's Certificate delivered pursuant to this Section 11(g) and any adjustment contained therein and the Conversion Agent shall not be deemed to have knowledge of any adjustment unless and until it has received such certificate. The Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property, that may at the time be issued or delivered with respect to any Series A Preferred Stock and the Conversion Agent makes no representation with respect thereto. The Conversion Agent shall not be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock pursuant to the conversion of Series A Preferred Stock or to comply with any of the duties, responsibilities or covenants of the Company contained in this Section 11.

(h) Fractional Shares. No fractional shares of Common Stock will be delivered to the Holders upon conversion. In lieu of fractional shares otherwise issuable, the Holders will be entitled to receive, at the Company's sole discretion, either (i) an amount in cash equal to the fraction of a share of Common Stock multiplied by the Closing Price of the Common Stock on the Trading Day immediately preceding the applicable Conversion Date or (ii) one additional whole share of Common Stock. In order to determine whether the number of shares of Common Stock to be delivered to a Holder upon the conversion of such Holder's shares of Series A Preferred Stock will include a fractional share, such determination shall be based on the aggregate number of shares of Series A Preferred Stock of such Holder that are being converted on any single Conversion Date.

SECTION 12. Adjustment for Reorganization Events.

(a) Reorganization Events. In the event of:

(i) any reclassification, statutory exchange, merger, consolidation or other similar business combination of the Company with or into another Person, in each case, pursuant to which at least a majority of the Common Stock is changed or converted into, or exchanged for, cash, securities or other property of the Company or another Person;

(ii) any sale, transfer, lease or conveyance to another Person of all or a majority of the property and assets of the Company, in each case pursuant to which the Common Stock is converted into cash, securities or other property; or

(iii) any statutory exchange of securities of the Company with another Person (other than in connection with a merger or acquisition) or reclassification, recapitalization or reorganization of the Common Stock into other securities;

(each of which is referred to as a "Reorganization Event"), each share of Series A Preferred Stock outstanding immediately prior to such Reorganization Event will, without the consent of

the Holders and subject to Section 12(d) and Section 13(b), remain outstanding but shall become convertible into, out of funds legally available therefor, the number, kind and amount of securities, cash and other property (the “Exchange Property”) (without any interest on such Exchange Property and without any right to dividends or distribution on such Exchange Property which have a record date that is prior to the applicable Conversion Date) that the Holder of such share of Series A Preferred Stock would have received in such Reorganization Event had such Holder converted its shares of Series A Preferred Stock into the applicable number of shares of Common Stock immediately prior to the effective date of the Reorganization Event using the Conversion Rate applicable immediately prior to the effective date of the Reorganization Event and the Accreted Value applicable at the time of such subsequent conversion; provided that the foregoing shall not apply if such Holder is a Person with which the Company consolidated or into which the Company merged or which merged into the Company or to which such sale or transfer was made, as the case may be (any such Person, a “Constituent Person”), or an Affiliate of a Constituent Person, to the extent such Reorganization Event provides for different treatment of Common Stock held by such Constituent Persons or such Affiliate thereof. If the kind or amount of securities, cash and other property receivable upon such Reorganization Event is not the same for each share of Common Stock held immediately prior to such Reorganization Event by a Person (other than a Constituent Person or an Affiliate thereof), then for the purpose of this Section 12(a), the kind and amount of securities, cash and other property receivable upon conversion following such Reorganization Event will be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock.

(b) Successive Reorganization Events. The above provisions of this Section 12 shall similarly apply to successive Reorganization Events and the provisions of Section 11 shall apply to any shares of Capital Stock received by the holders of the Common Stock in any such Reorganization Event.

(c) Reorganization Event Notice. The Company (or any successor) shall, no less than thirty (30) days prior to the anticipated effective date of any Reorganization Event, provide written notice to the Holders of such occurrence of such event and of the kind and amount of the cash, securities or other property that constitutes the Exchange Property. Failure to deliver such notice shall not affect the operation of this Section 12.

(d) Reorganization Event Agreements. The Company shall not enter into any agreement for a transaction constituting a Reorganization Event unless (i) such agreement provides for or does not interfere with or prevent (as applicable) conversion of the Series A Preferred Stock into the Exchange Property in a manner that is consistent with and gives effect to this Section 12, and (ii) to the extent that the Company is not the surviving corporation in such Reorganization Event or will be dissolved in connection with such Reorganization Event, proper provision shall be made in the agreements governing such Reorganization Event for the conversion of the Series A Preferred Stock into stock of the Person surviving such Reorganization Event or such other continuing entity in such Reorganization Event.

SECTION 13. Voting Rights.

(a) General. Except as provided in Section 13(b) and Section 14, Holders of shares of Series A Preferred Stock shall be entitled to vote as a single class with the holders of

the Common Stock and the holders of any other class or series of Capital Stock of the Company then entitled to vote with the Common Stock on all matters submitted to a vote of the holders of Common Stock (and, if applicable, holders of any other class or series of Capital Stock of the Company). Each Holder shall be entitled to the number of votes equal to the product of (i) the largest number of whole shares of Common Stock into which all shares of Series A Preferred Stock could be converted pursuant to Section 6 (taking into account the Conversion Restriction to the extent applicable) *multiplied by* (ii) a fraction the numerator of which is the number of shares of Series A Preferred Stock held by such Holder and the denominator of which is the aggregate number of issued and outstanding shares of Series A Preferred Stock, in each case at and calculated as of the record date for the determination of stockholders entitled to vote or consent on such matters or, if no such record date is established, at and as of the date such vote or consent is taken or any written consent of stockholders is first executed. The Holders shall be entitled to notice of any meeting of holders of Common Stock in accordance with the Articles of Incorporation and Bylaws of the Company.

(b) Consent Rights. The vote or consent of the Holders of at least a majority of the shares of Series A Preferred Stock outstanding at such time, voting together as a separate class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, will be necessary for effecting or validating any of the following actions, whether or not such approval is required pursuant to the Texas Business Organizations Code:

(i) any amendment, alteration or repeal (whether by merger, consolidation or otherwise) of any provision of the Articles of Incorporation (including this Certificate of Designations) or Bylaws that would have an adverse effect on the rights, preferences, privileges or voting power of the Series A Preferred Stock or the Holder thereof;

(ii) any amendment or alteration (whether by merger, consolidation or otherwise) of, or any supplement (whether by a certificate of designations or otherwise) to, the Articles of Incorporation or any provision thereof, or any other action to authorize or create, or increase the number of authorized or issued shares of, or any securities convertible into shares of, or reclassify any security into, or issue, any Parity Stock or Senior Stock or any other class or series of Capital Stock of the Company ranking senior to, or on a parity basis with, the Series A Preferred Stock as to dividend rights or rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company;

(iii) any issuance of shares of Series A Preferred Stock after the Original Issuance Date other than in connection with the conversion of Series B Preferred Stock that was issued on the Original Issuance Date;

(iv) any action that would cause the Company to cease to be treated as a domestic C corporation for U.S. federal income tax purposes;

(v) on or prior to the Business Day immediately following the Stockholder Meeting, effect any action that would result in (A) a change to the Conversion Rate, (B) the obligation to pay Participating Dividends or (C) the payment of cash dividends in respect of the Series B Preferred Stock; and

(vi) any incurrence of any Indebtedness of the Company or any of its Subsidiaries (other than (x) the refinancing of any existing Indebtedness in an aggregate principal amount that does not exceed the then outstanding principal amount of the Indebtedness refinanced, plus all unpaid accrued or capitalized interest thereon, any prepayment premium applicable thereto, any swap breakage costs or hedge termination costs related thereto, upfront fees and original issue discount on such refinancing indebtedness, and customary fees and expenses relating to such financing, and (y) ordinary course of business working capital draws under the Company's revolving credit facility) to the extent that, immediately after giving effect to such incurrence or refinancing, the ratio of the consolidated Indebtedness of the Company and its Subsidiaries (net of unrestricted cash and cash equivalents of the Company and its Subsidiaries) to the EBITDA of the Company and its Subsidiaries for the most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred would not be less than a ratio of 5.15-to-1 on a pro forma basis after giving effect to such incurrence and the use of the proceeds therefrom;

provided, however, (A) that, with respect to the occurrence of any of the events set forth in clause (i) above, so long as (1) the Series A Preferred Stock remains outstanding with the terms thereof materially unchanged, or (2) the holders of the Series A Preferred Stock receive equity securities with rights, preferences, privileges and voting power substantially the same as those of the Series A Preferred Stock, then the occurrence of such event shall not be deemed to adversely affect such rights, preferences, privileges or voting power of the Series A Preferred Stock, and in such case such holders shall not have any voting rights with respect to the occurrence of any of the events set forth in clause (i) above and (B) that the authorization or creation of, or the increase in the number of authorized or issued shares of, or any securities convertible into shares of, or the reclassification of any security (other than the Series A Preferred Stock) into, or the issuance of, Junior Stock will not require the vote the holders of the Series A Preferred Stock.

For purposes of this Section 13, the filing in accordance with applicable law of a certificate of designations or any similar document setting forth or changing the designations, powers, preferences, rights, qualifications, limitations and restrictions of any class or series of stock of the Company shall be deemed an amendment to the Articles of Incorporation.

(c) Each Holder of Series A Preferred Stock will have one vote per share of Series A Preferred Stock on any matter on which Holders of Series A Preferred Stock are entitled to vote separately as a class, whether at a meeting or by written consent.

(d) The vote or consent of the Holders of a majority of the shares of Series A Preferred Stock outstanding at such time, voting together as a single class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, will be sufficient to waive or amend the provisions of Section 9(e) of this Certificate of Designations, and any amendment or waiver of any of the provisions of Section 9(e) approved by such percentage of the Holders shall be binding on all of the Holders.

(e) For the avoidance of doubt and notwithstanding anything to the contrary in the Articles of Incorporation or Bylaws of the Company, the Holders of Series A Preferred Stock shall have the exclusive consent and voting rights set forth in Sections 13(b) and 14 and may

take action or consent to any action with respect to such rights without a meeting by delivering a consent in writing or by electronic transmission of the Holders of the Series A Preferred Stock entitled to cast not less than the minimum number of votes that would be necessary to authorize, take or consent to such action at a meeting of stockholders.

SECTION 14. Election of Directors. Provided that the Fall Away of Investor Board Rights has not occurred and subject to Section 5.10(b) of the Investment Agreement, (i) the Holders of a majority of the then outstanding shares of Series A Preferred Stock shall have, at each annual meeting of the Company's stockholders at which the Board is obligated to nominate one or more Investor Designees for election to the Board pursuant to and in accordance with the Investment Agreement, the exclusive right, voting separately as a class, to elect or appoint such Investor Designee(s) to the Board, irrespective of whether the Board has nominated such Investor Designee(s), (ii) notwithstanding anything to the contrary in the Articles of Incorporation or Bylaws, the Holders of a majority of the then outstanding shares of Series A Preferred Stock shall have the exclusive right to remove any Investor Designee(s) at any time for any reason or no reason (with or without cause) by sending a written notice to the Company and, upon receipt of such notice by the Company, such Investor Designee(s) shall be deemed to have resigned from the Board, and (iii) in the event of the death, disability, resignation or removal of any Investor Designee(s), the Investor Parties shall have the exclusive right to designate or appoint a successor to fill the vacancy created thereby. The Board and the holders of Common Stock shall not have the right to remove any Investor Designee from the Board (even for cause), such right of removal being vested exclusively with the Holders of a majority of the then outstanding shares of Series A Preferred Stock.

SECTION 15. Preemptive Rights. Except for the right to participate in any issuance of new equity securities by the Company, as set forth in the Investment Agreement, the Holders shall not have any preemptive rights.

SECTION 16. Term. Except as expressly provided in this Certificate of Designations, the shares of Series A Preferred Stock shall not be redeemable or otherwise mature and the term of the Series A Preferred Stock shall be perpetual.

SECTION 17. Creation of Capital Stock. Subject to Section 13(b)(ii), the Board, or any duly authorized committee thereof, without the vote of the Holders, may authorize and issue additional shares of Capital Stock of the Company.

SECTION 18. No Sinking Fund. Shares of Series A Preferred Stock shall not be subject to or entitled to the operation of a retirement or sinking fund.

SECTION 19. Transfer Agent, Conversion Agent, Registrar and Paying Agent. The duly appointed Transfer Agent, Conversion Agent, Registrar and paying agent for the Series A Preferred Stock shall be Computershare Trust Company, N.A. The Company may, in its sole discretion, appoint any other Person to serve as Transfer Agent, Conversion Agent, Registrar or paying agent for the Series A Preferred Stock and thereafter may remove or replace such other Person at any time. Upon any such appointment or removal, the Company shall send notice thereof by first class mail, postage prepaid, to the Holders.

SECTION 20. Replacement Certificates. (a) Mutilated, Destroyed, Stolen and Lost Certificates. If physical certificates evidencing the Series A Preferred Stock are issued, the Company shall replace any mutilated certificate at the Holder's expense upon surrender of that certificate to the Transfer Agent. The Company shall replace certificates that become destroyed, stolen or lost at the Holder's expense upon delivery to the Company and the Transfer Agent of satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be required by the Transfer Agent and the Company.

(b) Certificates Following Conversion. If physical certificates representing the Series A Preferred Stock are issued, the Company shall not be required to issue replacement certificates representing shares of Series A Preferred Stock on or after the Conversion Date applicable to such shares. In place of the delivery of a replacement certificate following the applicable Conversion Date, the Transfer Agent, upon receipt of the satisfactory evidence and indemnity described in clause (a) above, shall deliver the shares of Common Stock issuable upon conversion of such shares of Series A Preferred Stock formerly evidenced by the physical certificate.

SECTION 21. Taxes. (a) Transfer Taxes. The Company shall pay any and all stock transfer, documentary, stamp and similar taxes that may be payable in respect of any issuance or delivery of shares of Series A Preferred Stock or shares of Common Stock or other securities issued on account of Series A Preferred Stock pursuant hereto or certificates representing such shares or securities. However, in the case of conversion of Series A Preferred Stock, the Company shall not be required to pay any such tax that may be payable in respect of any transfer involved in the issuance or delivery of shares of Series A Preferred Stock, shares of Common Stock or other securities to a beneficial owner other than the beneficial owner of the Series A Preferred Stock immediately prior to such conversion, and shall not be required to make any such issuance, delivery or payment unless and until the Person otherwise entitled to such issuance, delivery or payment has paid to the Company the amount of any such tax or has established, to the satisfaction of the Company, that such tax has been paid or is not payable.

(b) Withholding. All payments and distributions (or deemed distributions) on the shares of Series A Preferred Stock (and on the shares of Common Stock received upon their conversion) shall be subject to withholding and backup withholding of taxes to the extent required by law, subject to applicable exemptions, and amounts withheld, if any, shall be treated as received by the Holders.

SECTION 22. Notices. All notices referred to herein shall be in writing and, unless otherwise specified herein, all notices hereunder shall be deemed to have been given (a) upon the earlier of receipt thereof or three (3) Business Days after the mailing thereof if sent by registered or certified mail with postage prepaid, or by private courier service addressed: (i) if to the Company, to its office at Zix Corporation, 2711 N. Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960 (Attention: General Counsel), (ii) if to any Holder, to such Holder at the address of such Holder as listed in the stock record books of the Company (which may include the records of the Transfer Agent) or (iii) to such other address as the Company or any such Holder, as the case may be, shall have designated by notice similarly given; or (b) on the date sent by facsimile or transmitted to an email address designated by the Company or any such Holder if sent during normal business hours, and on the next Business Day if sent after normal business hours of the recipient.

SECTION 23. Facts Ascertainable. When the terms of this Certificate of Designations refers to a specific agreement or other document to determine the meaning or operation of a provision hereof, the Secretary of the Company shall maintain a copy of such agreement or document at the principal executive offices of the Company and a copy thereof shall be provided free of charge to any Holder who makes a request therefor. The Secretary of the Company shall also maintain a written record of the Issuance Date, the number of shares of Series A Preferred Stock issued to a Holder and the date of each such issuance, and shall furnish such written record free of charge to any Holder who makes a request therefor.

SECTION 24. Waiver. Notwithstanding any provision in this Certificate of Designations to the contrary, any provision contained herein and any right of the Holders of Series A Preferred Stock granted hereunder may be waived as to all shares of Series A Preferred Stock (and the Holders thereof) upon the vote or written consent of the Holders of a majority of the shares of Series A Preferred Stock then outstanding.

SECTION 25. Severability. If any term of the Series A Preferred Stock set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other terms set forth herein which can be given effect without the invalid, unlawful or unenforceable term will, nevertheless, remain in full force and effect, and no term herein set forth will be deemed dependent upon any other such term unless so expressed herein.

SECTION 26. Business Opportunities. To the fullest extent permitted by Section 2.101(21) of the Texas Business Organizations Code (or any successor provision) and except as may be otherwise expressly agreed in writing by the Company and the Investor Parties, the Company, on behalf of itself and its Subsidiaries, renounces any interest or expectancy of the Company and its Subsidiaries in, or in being offered an opportunity to participate in, business opportunities, that are from time to time presented to the Investor Parties or any of their respective officers, representatives, directors, agents, stockholders, members, partners, Affiliates, Subsidiaries (other than the Company and its Subsidiaries), or any of their respective designees on the Company's Board and/or any of their respective representatives who, from time to time, may act as officers of the Company, even if the opportunity is one that the Company or its Subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and no such person shall be liable to the Company or any of its Subsidiaries for breach of any fiduciary or other duty, as a director or officer or otherwise, by reason of the fact that such person pursues or acquires such business opportunity, directs such business opportunity to another person or fails to present such business opportunity, or information regarding such business opportunity, to the Company or its Subsidiaries unless, in the case of any such person who is a director or officer of the Company, such business opportunity is expressly offered to such director or officer in writing solely in his or her capacity as a director or officer of the Company. Any Person purchasing or otherwise acquiring any interest in any shares of Capital Stock of the Company shall be deemed to have notice of and consented to the provisions of this Section 26. Neither the alteration, amendment or repeal of this Section 26, nor the adoption of any provision of the Articles of Incorporation or this Certificate of Designations inconsistent with this Section 26, nor, to the fullest extent permitted by Texas

law, any modification of law, shall eliminate or reduce the effect of this Section 26 in respect of any business opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this Section 26, would accrue or arise, prior to such alteration, amendment, repeal, adoption or modification. If any provision or provisions of this Section 26 shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Section 26 (including, without limitation, each portion of any paragraph of this Section 26 containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Section 26 (including, without limitation, each such portion of any paragraph of this Section 26 containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Company to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Company to the fullest extent permitted by law. This Section 26 shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director, officer, employee or agent of the Company under the Articles of Incorporation, the Bylaws, any other agreement between the Company and such director, officer, employee or agent or applicable law.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations to be executed this 15 day of February, 2019.

ZIX CORPORATION

By: /s/ David Rockvam

Name: David Rockvam

Title: Vice President and Chief Financial Officer

[Signature Page to Series A Preferred Stock Certificate of Designations]

CERTIFICATE OF DESIGNATIONS OF
SERIES B CONVERTIBLE PREFERRED STOCK,
PAR VALUE \$1.00,
OF
ZIX CORPORATION

ZIX CORPORATION, a corporation organized and existing under the Business Organizations Code of the State of Texas (the "Company"), in accordance with the provisions of Sections 21.155 and 21.156 thereof:

HEREBY CERTIFIES:

That, the Restated Articles of Incorporation (the "Articles of Incorporation") of the Company, as filed with the Secretary of State of the State of Texas, authorizes the issuance of 185,000,000 shares of capital stock, consisting of 175,000,000 shares of common stock, \$0.01 par value ("Common Stock"), and 10,000,000 shares of preferred stock, \$1.00 par value ("Preferred Stock");

That, the Articles of Incorporation expressly authorize the Board of Directors of the Company (the "Board") by resolution or resolutions, subject to limitations prescribed by law and by Article IV of the Articles of Incorporation, to provide for the issuance of Preferred Stock as a class or in one or more series and, with respect to each series of Preferred Stock, to establish the number of shares included in each such series and to fix the designations, powers, relative rights, qualifications, preferences, limitations and restrictions of the shares of such series not fixed by the Articles of Incorporation;

That, pursuant to the authority conferred upon the Board by the Articles of Incorporation, the Board, on January 11, 2019, adopted the following resolution designating a new series of Preferred Stock as "Series B Convertible Preferred Stock":

RESOLVED, that, pursuant to the authority vested in the Board in accordance with the provisions of Article IV of the Articles of Incorporation and the provisions of Section 21.155 of the Texas Business Organizations Code, a series of Preferred Stock of the Company is hereby authorized, and the number of shares to be included in such series, and the designations, powers, relative rights, qualifications, preferences, limitations and restrictions of the shares of Preferred Stock included in such series, shall be as follows:

SECTION 1. Designation and Number of Shares. The shares of such series of Preferred Stock shall be designated as "Series B Convertible Preferred Stock" (the "Series B Preferred Stock"). The number of authorized shares constituting the Series B Preferred Stock shall be 35,086. That number from time to time may be increased or decreased (but not below the number of shares of Series B Preferred Stock then outstanding) by further resolution duly adopted by the Board, or any duly authorized committee thereof and by the filing of a certificate pursuant to the provisions of the Texas Business Organizations Code stating that such increase or decrease, as applicable, has been so authorized. The Company shall not have the authority to issue fractional shares of Series B Preferred Stock.

SECTION 2. Ranking. The Series B Preferred Stock will rank, with respect to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company:

(a) on a parity basis with each other class or series of Capital Stock of the Company now existing or hereafter authorized, the terms of which expressly provide that such class or series ranks on a parity basis with the Series B Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company (such Capital Stock, "Parity Stock"); and the Series A Preferred Stock shall be deemed to be Parity Stock and the Series B Preferred Stock shall rank on a parity basis with the Series A Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company;

(b) junior to each other class or series of Capital Stock of the Company now existing or hereafter authorized, the terms of which expressly provide that such class or series ranks senior to the Series B Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company (such Capital Stock, "Senior Stock"); and

(c) senior to the Common Stock and each other class or series of Capital Stock of the Company now existing or hereafter authorized, the terms of which do not expressly provide that such class or series ranks on a parity basis with or senior to the Series B Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company (such Capital Stock, "Junior Stock").

SECTION 3. Definitions. As used herein with respect to Series B Preferred Stock:

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person; provided, however, (a) that the Company and its Subsidiaries shall not be deemed to be Affiliates of any Investor Party or any of its Affiliates, (b) portfolio companies in which any Investor Party or any of its Affiliates has an investment (whether as debt or equity) shall not be deemed an Affiliate of such Investor Party and (c) the Excluded True Wind Parties shall not be deemed to be Affiliates of any Investor Party, the Company or any of the Company's Subsidiaries. For this purpose, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

"Articles of Incorporation" has the meaning set forth in the recitals above.

Any Person shall be deemed to “beneficially own”, to have “beneficial ownership” of, or to be “beneficially owning” any securities (which securities shall also be deemed “beneficially owned” by such Person) that such Person is deemed to “beneficially own” within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act; provided that any Person shall be deemed to beneficially own any securities that such Person has the right to acquire, whether or not such right is exercisable within sixty (60) days or thereafter (including assuming conversion of all Series A Preferred Stock, if any, owned by such Person to Common Stock).

“Board” has the meaning set forth in the recitals above.

“Business Day” means any weekday that is not a day on which banking institutions in New York, New York are authorized or required by law, regulation or executive order to be closed.

“Bylaws” means the Second Amended and Restated Bylaws of the Company, as amended and as may be amended from time to time.

“Capital Stock” means, with respect to any Person, any and all shares of, interests in, rights to purchase, warrants to purchase, options for, participations in or other equivalents of or interests in (however designated) stock issued by such Person.

“Certificate of Designations” means this Certificate of Designations relating to the Series B Preferred Stock, as it may be amended from time to time.

“Change of Control” means the occurrence of one of the following, whether in a single transaction or a series of transactions:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of a majority of the total voting power of the Voting Stock of the Company, other than as a result of a transaction in which (1) the holders of securities that represented 100% of the Voting Stock of the Company immediately prior to such transaction are substantially the same as the holders of securities that represent a majority of the Voting Stock of the surviving Person or its Parent Entity immediately following such transaction and (2) the holders of securities that represented 100% of the Voting Stock of the Company immediately prior to such transaction own directly or indirectly Voting Stock of the surviving Person or its Parent Entity in substantially the same proportion to each other as immediately prior to such transaction;

(b) the merger or consolidation of the Company with or into another Person or the merger of another Person with or into the Company, or the sale, transfer or lease of all or substantially all the assets of the Company (determined on a consolidated basis), whether in a single transaction or a series of transactions, to another Person (other than to a Subsidiary or a Person that becomes a Subsidiary of the Company), or any recapitalization, reclassification or other transaction in which all or substantially all of the Common Stock is exchanged for or converted into cash, securities or other property, other than a transaction following which in the case of a merger or consolidation transaction, holders of securities that represented 100% of the Voting Stock of the Company immediately prior to such transaction own directly or indirectly (in

substantially the same proportion to each other as immediately prior to such transaction, other than changes in proportionality as a result of any cash/stock election provided under the terms of the definitive agreement regarding such transaction) at least a majority of the voting power of the Voting Stock of the surviving Person in such merger or consolidation transaction immediately after such transaction; or

(c) shares of Common Stock or shares of any other Capital Stock into which the Series B Preferred Stock is convertible are not listed for trading on any United States national securities exchange or cease to be traded in contemplation of a de-listing (other than as a result of a transaction described in clause (b) above).

“close of business” means 5:00 p.m. (New York City time).

“Common Stock” has the meaning set forth in the recitals above.

“Company” has the meaning set forth in the recitals above.

“Conversion Agent” means the Transfer Agent acting in its capacity as conversion agent for the Series B Preferred Stock, and its successors and assigns.

“Conversion Date” has the meaning set forth in Section 6(a).

“Conversion Rate” means the “Accreted Value” (as defined in the Series A Certificate of Designations), of one share of Series A Preferred Stock as of the Conversion Date, as determined pursuant to the Series A Certificate of Designations.

“Designated Redemption Date” means any date occurring on or after February 20, 2026.

“Dividend Payment Date” has the meaning set forth in Section 4(a).

“Dividend Rate” means, from the Issuance Date until but excluding the six-month anniversary thereof, 10.0% per annum, which rate will be automatically increased by an additional 1% per annum for each six-month period that the Series B Preferred Stock remains outstanding (but not, in any event, to greater than 12.0% per annum); in addition, the Dividend Rate shall be further adjusted to the extent and during the period with respect to which such rate has been adjusted as provided in Section 9(d).

“EBITDA” shall mean, for purposes of this Certificate, “Consolidated Adjusted EBITDA” (or the substantially similar definition) as defined from time to time in, and calculated in accordance with, the primary credit facility of the Company and its Subsidiaries, provided that if the Company and its Subsidiaries do not have a primary credit facility that includes a definition of “Consolidated Adjusted EBITDA” (or a substantially similar definition), EBITDA shall be calculated by the Company in a manner consistent with its public disclosure of Adjusted EBITDA.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded True Wind Parties” has the meaning set forth in the Investment Agreement.

“Fair Market Value” means, with respect to any security or other property, the fair market value of such security or other property as reasonably determined in good faith by a majority of the Board, or an authorized committee thereof, which determination shall be made after consultation with an Independent Financial Advisor, as to any security or other property with a Fair Market Value of greater than \$35,000,000.

“GAAP” shall mean generally accepted accounting principles in the United States.

“Holder” means a Person in whose name the shares of the Series B Preferred Stock are registered, which Person shall be treated by the Company, Transfer Agent, Registrar, paying agent and Conversion Agent as the absolute owner of the shares of Series B Preferred Stock for the purpose of making payment and settling conversions and for all other purposes; provided that, to the fullest extent permitted by law, no Person that has received shares of Series B Preferred Stock in violation of the Investment Agreement shall be a Holder, the Transfer Agent, Registrar, paying agent and Conversion Agent, as applicable, shall not, unless directed otherwise by the Company, recognize any such Person as a Holder and the Person in whose name the shares of the Series B Preferred Stock were registered immediately prior to such transfer shall remain the Holder of such shares.

“Holder Redemption Right” has the meaning set forth in Section 10(b).

“Indebtedness” shall mean any indebtedness (including principal and premium) in respect of borrowed money.

“Independent Financial Advisor” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing; provided, however, that such firm or consultant is not an Affiliate of the Company.

“Investment Agreement” means that certain Investment Agreement between the Company and the Investor dated as of January 14, 2019, as it may be amended, supplemented or otherwise modified from time to time, with respect to certain terms and conditions concerning, among other things, the rights of and restrictions on the Holders.

“Investor” has the meaning set forth in the Investment Agreement.

“Investor Parties” means the Investor and each Permitted Transferee of the Investor to whom shares of Series B Preferred Stock are transferred pursuant to Section 5.08(b)(i) of the Investment Agreement.

“Issuance Date” means, with respect to any share of Series B Preferred Stock, the date of issuance of such share.

“Junior Stock” has the meaning set forth in Section 2(c).

“Liquidation Preference” means, with respect to any share of Series B Preferred Stock, on any date of determination, an amount equal to the sum of (a) the Stated Value of such share of Series B Preferred Stock on such date and (b) without duplication (including of any accrued but unpaid Preferred Dividends included in the determination of Stated Value), any accrued but unpaid Preferred Dividends with respect to such share of Preferred Stock as of such date (with respect to this clause (b), for purposes of a Conversion Date or a Redemption Date, up to but not including such Conversion Date or Redemption Date, as applicable).

“NASDAQ” means The Nasdaq Stock Market.

“Notice of Holder Redemption” has the meaning set forth in Section 10(b)(i).

“Original Issuance Date” means the Closing Date, as defined in the Investment Agreement.

“Parent Entity” means, with respect to any Person, any other Person of which such first Person is a direct or indirect wholly owned Subsidiary.

“Parity Stock” has the meaning set forth in Section 2(a).

“Permitted Transferee” means, with respect to any Person, (a) any Affiliate of such Person, (b) any successor entity of such Person and (c) with respect to any Person that is an investment fund, vehicle or similar entity, any other investment fund, vehicle or similar entity of which such Person or an Affiliate, advisor or manager of such Person serves as the general partner, manager or advisor.

“Person” means any individual, corporation, estate, partnership, joint venture, association, joint-stock company, limited liability company, trust, unincorporated organization or any other entity.

“Preferred Dividends” has the meaning set forth in Section 4(a).

“Preferred Stock” has the meaning set forth in the recitals above.

“Redemption Date” means, with respect to each share of Series A Preferred Stock, the date on which the Company makes the payment in full of the Redemption Price for such share to the Holder of such share.

“Redemption Price” has the meaning set forth in Section 10(b).

“Registrar” means the Transfer Agent acting in its capacity as registrar for the Series B Preferred Stock, and its successors and assigns.

“Reorganization Event” has the meaning set forth in Section 12(a).

“Senior Stock” has the meaning set forth in Section 2(b).

“Series A Preferred Stock” means the shares of Series A Convertible Preferred Stock, par value \$1.00, of the Company.

“Series A Certificate” means that certain Certificate of Designations of Series A Preferred Stock of the Company dated as of the Original Issuance Date.

“Series B Change of Control Redemption Price” means with respect to each share of Series B Preferred Stock then outstanding, the product of (a) the Liquidation Preference of such share as of the date of determination *multiplied by* (b) (i) 1.30 (if the Change of Control occurs before the first anniversary of the Original Issuance Date), (ii) 1.35 (if the Change of Control occurs on or after the first anniversary of the Original Issuance Date but before the second anniversary of the Original Issuance Date), (iii) 1.40 (if the Change of Control occurs on or after the second anniversary of the Original Issuance Date but before the third anniversary of the Original Issuance Date), (iv) 1.45 (if the Change of Control occurs on or after the third anniversary of the Original Issuance Date but before the fourth anniversary of the Original Issuance Date) and (v) 1.50 (if the Change of Control occurs on or after the fourth anniversary of the Original Issuance Date).

“Series B Preferred Stock” has the meaning set forth in Section 1.

“Stated Value” means, with respect to any share of Series B Preferred Stock, an amount equal to (a) prior to March 31, 2019, \$1,000.00 and (b) on March 31, 2019 and thereafter, determined quarterly as of March 31, June 30, September 31 and December 31 of each year (the “Stated Value Determination Date”), the sum of (i) the Stated Value as of the immediately preceding Dividend Payment Date plus (ii) the amount of Preferred Dividends that are accrued and unpaid from the immediately preceding dividend Payment Date to, but not including, the applicable Stated Value Determination Date, which accrued and unpaid amounts shall increase the Stated Value on each Stated Value Determination Date.

“Stockholder Approval” has the meaning set forth in the Investment Agreement.

“Stockholder Meeting” has the meaning set forth in the Investment Agreement.

“Subsidiary”, when used with respect to any Person, means any corporation, limited liability company, partnership, association, trust or other entity of which (a) securities or other ownership interests representing more than 50% of the ordinary voting power (or, in the case of a partnership, more than 50% of the general partnership interests) or (b) sufficient voting rights to elect at least a majority of the board of directors or other governing body are, as of such date, owned by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

“Transfer Agent” means the Person acting as Transfer Agent, Registrar and paying agent and Conversion Agent for the Series B Preferred Stock, and its successors and assigns. The Transfer Agent initially shall be Computershare Trust Company, N.A.

“Voting Stock” means (a) with respect to the Company, the Common Stock, the Series A Preferred Stock and any other Capital Stock of the Company having the right to vote generally in any election of directors of the Board and (b) with respect to any other Person, all Capital Stock of such Person having the right to vote generally in any election of directors of the board of directors of such Person or other similar governing body.

SECTION 4. Dividends. (a) Each Holder, in preference and priority to the holders of all other classes or series of stock, shall be entitled to receive, with respect to each share of Preferred Stock then outstanding and held by such Holder, dividends accruing daily on a cumulative basis, whether or not declared by the Board, from the Original Issuance Date, at the Dividend Rate of the Stated Value per share (the “Preferred Dividends”). The Preferred Dividends shall be payable quarterly in arrears in cash on March 31, June 30, September 30 and December 31 (each, a “Dividend Payment Date”) of each year, commencing March 31, 2019, when, as and if declared by the Board. The Preferred Dividends will be computed on the basis of a 360-day year comprised of twelve 30-day months. Each dividend period will end on (but not include) the relevant dividend payment date.

(b) Preferred Dividends, if declared by the Board, will be payable to holders of record of the shares of Preferred Stock as they appear on the stock ledger of the Company on the applicable record date, which record date shall be the 15th calendar day before such cash Preferred Dividend payment date or such other record date fixed by the Board that does not precede the date upon which the resolution fixing the record date is adopted, and is not more than 30 days prior to the scheduled dividend payment date. A Preferred Dividend record date shall not be required to be on a Business Day. A Preferred Dividend paid in cash shall not be deemed a redemption of the shares of Series B Preferred Stock to which such Preferred Dividend relates.

SECTION 5. Liquidation Rights. (a) Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, the Holders shall be entitled, out of assets legally available therefor, before any distribution or payment out of the assets of the Company may be made to or set aside for the holders of any Junior Stock, and subject to the rights of the holders of any Senior Stock or Parity Stock and the rights of the Company’s existing and future creditors, to receive in full a liquidating distribution in cash and in the amount per share of Series B Preferred Stock equal to the Liquidation Preference with respect to such share of Series B Preferred Stock as of the date of such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company. Holders shall not be entitled to any further payments in the event of any such voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company other than what is expressly provided for in this Section 5 and will have no right or claim to any of the Company’s remaining assets.

(b) Partial Payment. If in connection with any distribution described in Section 5(a) above, the assets of the Company or proceeds therefrom are not sufficient to pay in full the aggregate liquidating distributions required to be paid pursuant to Section 5(a) to all Holders and the liquidating distributions payable all holders of any Parity Stock, the amounts distributed to the Holders and to the holders of all such Parity Stock shall be paid pro rata in accordance with the respective aggregate liquidating distributions to which they would otherwise be entitled if all amounts payable thereon were paid in full.

(c) Merger, Consolidation and Sale of Assets Not Liquidation. For purposes of this Section 5, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Company shall not

be deemed a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, nor shall the merger, consolidation, statutory exchange or any other business combination transaction of the Company into or with any other Person or the merger, consolidation, statutory exchange or any other business combination transaction of any other Person into or with the Company be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company.

SECTION 6. Conversion.

(a) On the Business Day immediately following the date the Stockholder Approval is attained as contemplated by Section 5.18 of the Investment Agreement (the "Conversion Date"), each share of Series B Preferred Stock will automatically convert into (i) the number of shares of Series A Preferred Stock equal to the quotient of (A) the Liquidation Preference with respect to such share of Series B Preferred Stock as of the Conversion Date *divided by* (B) the Conversion Rate *plus* (ii) cash in lieu of fractional shares as set out in Section 6(c). For avoidance of any doubt, if the Stockholder Approval is not attained in connection with the Stockholder Meeting, the Series B Preferred Stock will not be converted into Series A Preferred Stock.

(b) The Company shall at all times reserve and keep available out of its authorized and unissued Series A Preferred Stock, solely for issuance upon the conversion of the Series B Preferred Stock, such number of shares of Series A Preferred Stock as shall from time to time be issuable upon the conversion of all the shares of Series B Preferred Stock then outstanding. Any shares of Series A Preferred Stock issued upon conversion of Series B Preferred Stock shall be duly authorized, validly issued, fully paid and nonassessable.

(c) No fractional shares of Series A Preferred Stock will be delivered to the Holders upon conversion. In lieu of fractional shares otherwise issuable, the Holders will be entitled to receive, at the Company's sole discretion, either (i) an amount in cash equal to the product of (A) such fractional share amount *multiplied by* (B) the Conversion Rate or (ii) one additional whole share of Series A Preferred Stock. In order to determine whether the number of shares of Series A Preferred Stock to be delivered to a Holder upon conversion of such Holder's shares of Series B Preferred Stock will include a fractional share, such determination shall be based on the aggregate number of shares of Series B Preferred Stock of such Holder that are being converted on the Conversion Date.

SECTION 7. [Reserved].

SECTION 8. Conversion Procedures and Effect of Conversion. (a) Conversion Procedure. A Holder must do each of the following in order to receive from the Company shares of Series A Preferred Stock pursuant to this Section 8(a) upon automatic conversion thereof pursuant to Section 6:

(i) deliver to the Conversion Agent the certificate or certificates (if any) representing the shares of Series B Preferred Stock that have converted;

(ii) if required, furnish appropriate endorsements and transfer documents; and

(iii) if required, pay any stock transfer, documentary, stamp or similar taxes not payable by the Company pursuant to Section 21.

(b) Effect of Conversion. Effective immediately prior to the close of business on the Conversion Date, Preferred Dividends shall no longer accrue or be declared on any shares of Series B Preferred Stock, and such shares of Series B Preferred Stock shall cease to be outstanding.

(c) Record Holder of Underlying Securities as of Conversion Date. The Person or Persons entitled to receive the Series A Preferred Stock and, to the extent applicable, cash, securities or other property issuable upon conversion of the Series B Preferred Stock on the Conversion Date shall be treated for all purposes as the record holder(s) of such shares of Series A Preferred Stock and/or cash, securities or other property as of the close of business on such Conversion Date. As promptly as practicable on or after the Conversion Date and compliance by the applicable Holder with the relevant procedures contained in Section 8(a) (and in any event no later than three (3) Business Days thereafter; the Company shall issue the number of whole shares of Series A Preferred Stock issuable upon conversion (and deliver payment of cash in lieu of fractional shares as set out in Section 6(c)) and, to the extent applicable, any cash, securities or other property issuable thereon. Such delivery of shares of Series A Preferred Stock, securities or other property shall be made by book-entry or, at the request of the Holder, through the facilities of The Depository Trust Company or in certificated form. Any such certificate or certificates shall be delivered by the Company to the appropriate Holder on a book-entry basis, through the facilities of The Depository Trust Company, or by mailing certificates evidencing the shares to the Holders at their respective addresses as notified in writing by such Holders to the Conversion Agent. The Company shall be entitled to register and deliver such shares, securities or other property, and make such payment, in the name of the Holder and in the manner shown on the records of the Company.

(d) Status of Converted or Reacquired Shares. Shares of Series B Preferred Stock converted in accordance with this Certificate of Designations, or otherwise acquired by the Company in any manner whatsoever, shall be retired promptly after the conversion or acquisition thereof. All such shares shall, upon their retirement and any filing required by the Texas Business Organizations Code, become authorized but unissued shares of Preferred Stock, without designation as to series until such shares are once more designated as part of a particular series by the Board pursuant to the provisions of the Articles of Incorporation.

SECTION 9. Change of Control.

(a) Subject to Section 9(d), upon the occurrence of a Change of Control, the Company shall be required to redeem the outstanding shares of Series B Preferred Stock at a redemption price per share of Series B Preferred Stock, payable in cash, equal to the greater of (i) the Series B Change of Control Redemption Price of such share of Series B Preferred Stock and (ii) (A) the amount of cash such Holder would have received *plus* (B) the Fair Market Value of any other assets, in each case had such Holder, immediately prior to such Change of Control, been able to convert such share of Series B Preferred Stock into Series A Preferred Stock pursuant to Section 6 and subsequently convert such shares of Series A Preferred Stock into Common Stock, in each case, without regard to any of the limitations on convertibility contained therein (the "Change of Control Redemption Price").

(b) Initial Change of Control Notice. On or before the twentieth (20th) Business Day prior to the date on which the Company anticipates consummating a Change of Control (or, if later, promptly after the Company discovers that a Change of Control may occur), a written notice (a “Change of Control Notice”) shall be sent by or on behalf of the Company to the Holders as they appear in the records of the Company, which notice shall contain the date on which the Change of Control is anticipated to be effected (or, if applicable, the date on which a Schedule TO or other schedule, form or report disclosing a Change of Control was filed). The Change of Control Notice shall include (i) a description of the material terms and conditions of the Change of Control, (ii) the date on which the Change of Control is anticipated to be consummated, (iii) the Change of Control Redemption Price and the calculation thereof and (iv) the instructions a Holder must follow to receive payment.

(c) Delivery upon Change of Control. Upon the consummation of a Change of Control, subject to Section 9(d), the Company (or its successor) shall deliver or cause to be delivered to the Holder by wire transfer the Change of Control Redemption Price of such Holder’s shares of Series B Preferred Stock.

(d) Sufficient Funds. If the Company shall not have sufficient funds legally available under the Texas Business Organizations Code to redeem all outstanding shares of Series B Preferred Stock if it redeems outstanding shares of Series B Preferred Stock, the Company shall (i) redeem, pro rata among the Holders, a number of shares of Series B Preferred Stock with an aggregate Change of Control Redemption Price equal to the amount legally available for the redemption of shares of Series B Preferred Stock under the Texas Business Organizations Code and (ii) redeem any shares of Series B Preferred Stock not purchased because of the foregoing limitations at the applicable Change of Control Redemption Price as soon as practicable after the Company is able to make such redemption out of assets legally available for the purchase of such share of Series B Preferred Stock. The inability of the Company (or its successor) to make a redemption payment for any reason shall not relieve the Company (or its successor) from its obligation to effect any required purchase when, as and if permitted by applicable law. If the Company fails to pay the Change of Control Redemption Price in full when due in accordance with this Section 9 in respect of some or all of the shares of Series B Preferred Stock to be redeemed pursuant to this Section 9, the Dividend Rate on such shares repurchased shall equal the Dividend Rate then in effect plus 2.0% per annum, which shall then increase by 0.50% on every three-month anniversary after such failure (but not, in any event, to greater than 16.0% per annum). Notwithstanding the foregoing, if a Change of Control occurs at a time when the Company is restricted or prohibited from redeeming some or all of the Series B Preferred Stock, the Company will use its commercially reasonable efforts to obtain the requisite consents to remove or obtain an exception or waiver to such restrictions or prohibition. Nothing herein shall limit a Holder’s right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company’s failure to comply with its obligations under the Section 9.

(e) Change of Control Agreements. The Company shall not enter into any agreement for a transaction constituting a Change of Control unless (i) such agreement provides for or does not interfere with or prevent (as applicable) the payment in full of the Change of Control Redemption Price pursuant to this Section 9 and (ii) the acquiring or surviving Person in such Change of Control represents or covenants, in form and substance reasonably satisfactory to the Board acting in good faith, that at the closing of such Change of Control, such Person shall have sufficient funds (which may include, without limitation, cash and cash equivalents on the Company's balance sheet, the proceeds of any debt or equity financing, available lines of credit or uncalled capital commitments) to consummate such Change of Control and effect the payment of the Change of Control Redemption Price in respect of the outstanding shares of Series B Preferred Stock.

(f) Partial Redemption. In case any certificate for shares of Series B Preferred Stock shall be surrendered for partial redemption, the Company shall execute and deliver to or upon the written order of the Holder of the certificate so surrendered a new certificate for the shares of Series B Preferred Stock not redeemed.

(g) Effect of Redemption. Effective immediately prior to the close of business on the Redemption Date for any shares of Series B Preferred Stock redeemed pursuant to this Section 9, Preferred Dividends shall no longer accrue or be declared on any such shares of Series B Preferred Stock, and such shares of Series B Preferred Stock shall cease to be outstanding.

(h) Status of Redeemed Shares. Shares of Series B Preferred Stock redeemed in accordance with this Section 9, shall return to the status of and constitute authorized but unissued shares of Preferred Stock, without classification as to series until such shares are once more classified as a particular series by the Board pursuant to the provisions of the Articles of Incorporation.

SECTION 10. Redemption. (a) Redemption at the Option of the Company. (i) The Series B Preferred Stock may be redeemed in whole, but not in part, for cash at any time after the fourth anniversary of the Original Issuance Date, at the option of the Company, upon giving notice of redemption pursuant to Section 10(a)(ii), at a redemption price per share equal to the product of (A) the Liquidation Preference per share of the Series B Preferred Stock to be redeemed as of the applicable Redemption Date *multiplied by* (B) 1.50.

(ii) Notice of every redemption of shares of Series B Preferred Stock pursuant to Section 10(a)(i) shall be mailed, postage prepaid, addressed to the Holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Company, or given by electronic communication in compliance with the provisions of the Texas Business Organizations Code. Such mailing or electronic transmission shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice made as provided in this Section 10(a) shall be conclusively presumed to have been duly given upon such mailing or electronic transmission, whether or not the Holder receives such notice, but failure duly to give such notice as provided in this Section 10(a), or any defect in such notice or in the mailing or electronic transmission thereof, to any Holder of shares of Series B Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series B Preferred Stock. Each notice of redemption given to a Holder shall state: (1)

the redemption date; (2) the number of shares of the Series B Preferred Stock to be redeemed and, if less than all the shares held by such Holder are to be redeemed, the number of such shares to be redeemed from such Holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

(b) Redemption at the Option of the Holder. On each Designated Redemption Date, each Holder of shares of Series B Preferred Stock shall have the right (a “Holder Redemption Right”) to require the Company to redeem any or all of the shares of Series B Preferred Stock of such Holder outstanding on such Designated Redemption Date, in each case to the extent not prohibited by law, at a redemption price per share equal to the product of (A) the Liquidation Preference per share of the Series B Preferred Stock to be redeemed as of the applicable Redemption Date *multiplied by* (B) 1.50 (such price, the “Redemption Price”), payable in cash.

(i) To exercise its Holder Redemption Right pursuant to this Section 10(b) in respect of any Designated Redemption Date, a Holder must, no later than 5:00 p.m., New York City time, on the date that is at least 90 days prior to the Designated Redemption Date specified by the Holder therein, deliver written notice thereof (a “Notice of Holder Redemption”) to the Company and the Transfer Agent and shall, on or prior to the Designated Redemption Date, surrender to the Transfer Agent the certificates representing the shares of Series B Preferred Stock to be redeemed by the Company; provided that, such Holder will be entitled to revoke its Notice of Holder Redemption at any time but no later than 15 days prior to the Designated Redemption Date. On such Designated Redemption Date, the Company shall deliver or cause to be delivered to each Holder that has exercised its Holder Redemption Right with respect to such Designated Redemption Date, cash by wire transfer, the Redemption Price of the shares of Series B Preferred Stock in respect of which such Holder has delivered (and has not revoked in accordance with this Section 10(b)(i)) a Notice of Holder Redemption in accordance herewith.

(ii) If a Holder does not elect to exercise its Holder Redemption Right pursuant to this Section 10(b) with respect to all of its shares of Series B Preferred Stock (and has not revoked such exercise in accordance with Section 10(b)(i)), the shares of Series B Preferred Stock held by it and not surrendered for redemption by the Company will remain outstanding until otherwise subsequently converted, redeemed, reclassified or canceled. From and after the Redemption Date with respect to any share of Series B Preferred Stock for which a Holder elected to effect a Holder Redemption Right and the Company has redeemed in accordance with the provisions of this Section 10(b), (i) Dividends shall cease to accrue on such share, (ii) such share shall no longer be deemed outstanding and (iii) all rights with respect to such share shall cease and terminate. For the avoidance of doubt, notwithstanding anything contained herein to the contrary, until a share of Series B Preferred Stock is redeemed by the payment in full of the applicable Redemption Price, such share of Series B Preferred Stock will remain outstanding and will be entitled to all of the powers, designations, preferences and other rights provided herein including the right to convert.

(iii) In the event that a Holder Redemption Right is exercised with respect to shares of Series B Preferred Stock representing less than all the shares of Series B Preferred Stock held by a Holder, upon such redemption, the Company shall execute and the Transfer Agent shall countersign and deliver to such Holder, at the expense of the Company, a certificate representing the shares of Series B Preferred Stock held by the Holder as to which a Holder Redemption Right was not exercised (or book-entry interests representing such shares).

(iv) If the Company shall not have sufficient funds legally available under the Texas Business Organizations Code to redeem all outstanding shares of Series B Preferred Stock if it redeems outstanding shares of Series B Preferred Stock, the Company shall (i) redeem, pro rata among the Holders, a number of shares of Series B Preferred Stock with an aggregate Redemption Price equal to the amount legally available for the redemption of shares of Series B Preferred Stock under the Texas Business Organizations Code and (ii) redeem any shares of Series B Preferred Stock not purchased because of the foregoing limitations at the applicable Redemption Price as soon as practicable after the Company is able to make such redemption out of assets legally available for the purchase of such share of Series B Preferred Stock. The inability of the Company (or its successor) to make a redemption payment for any reason shall not relieve the Company (or its successor) from its obligation to effect any required purchase when, as and if permitted by applicable law. If the Company fails to pay Redemption Price in full when due in accordance with this Section 10 in respect of some or all of the shares of Series B Preferred Stock to be redeemed pursuant to this Section 10, the Dividend Rate on such shares repurchased shall equal 12.0% per annum, which shall then increase by 0.50% on every three-month anniversary after such failure (but not, in any event, to greater than 14.0% per annum. Notwithstanding the foregoing, if a Holder Redemption Right is exercised at a time when the Company is restricted or prohibited from redeeming some or all of the Series B Preferred Stock, the Company will use its commercially reasonable efforts to obtain the requisite consents to remove or obtain an exception or waiver to such restrictions or prohibition. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to comply with its obligations under this Section 10.

SECTION 11. [Reserved].

SECTION 12. Adjustment for Reorganization Events.

(a) Reorganization Events. In the event of:

(i) any reclassification, statutory exchange, merger, consolidation or other similar business combination of the Company with or into another Person, in each case, pursuant to which at least a majority of the Common Stock is changed or converted into, or exchanged for, cash, securities or other property of the Company or another Person;

(ii) any sale, transfer, lease or conveyance to another Person of all or a majority of the property and assets of the Company, in each case pursuant to which the Common Stock is converted into cash, securities or other property; or

(iii) any statutory exchange of securities of the Company with another Person (other than in connection with a merger or acquisition) or reclassification, recapitalization or reorganization of the Common Stock into other securities;

(each of which is referred to as a “Reorganization Event”), each share of Series B Preferred Stock outstanding immediately prior to such Reorganization Event will, without the consent of the Holders and subject to Section 12(d), remain outstanding.

(b) Successive Reorganization Events. The above provisions of this Section 12 shall similarly apply to successive Reorganization Events.

(c) Reorganization Event Notice. The Company (or any successor) shall, no less than thirty (30) days prior to the anticipated effective date of any Reorganization Event, provide written notice to the Holders of such occurrence of such event and of the kind and amount of the cash, securities or other property that constitutes the Exchange Property. Failure to deliver such notice shall not affect the operation of this Section 12.

(d) Reorganization Event Agreements. The Company shall not enter into any agreement for a transaction constituting a Reorganization Event unless to the extent that the Company is not the surviving corporation in such Reorganization Event or will be dissolved in connection with such Reorganization Event, proper provision shall be made in the agreements governing such Reorganization Event for the conversion of the Series B Preferred Stock into stock of the Person surviving such Reorganization Event or such other continuing entity in such Reorganization Event.

SECTION 13. Consent Rights. The vote or consent of the Holders of at least a majority of the shares of Series B Preferred Stock outstanding at such time, voting together as a separate class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, will be necessary for effecting or validating any of the following actions, whether or not such approval is required pursuant to the Texas Business Organizations Code:

(a) any amendment, alteration or repeal (whether by merger, consolidation or otherwise) of any provision of the Articles of Incorporation (including this Certificate of Designations) or Bylaws that would have an adverse effect on the rights, preferences, privileges or voting power of the Series B Preferred Stock or the Holder thereof;

(b) any amendment or alteration (whether by merger, consolidation or otherwise) of, or any supplement (whether by a certificate of designations or otherwise) to, the Articles of Incorporation or any provision thereof, or any other action to authorize or create, or increase the number of authorized or issued shares of, or any securities convertible into shares of, or reclassify any security into, or issue, any Parity Stock or Senior Stock or any other class or series of Capital Stock of the Company ranking senior to, or on a parity basis with, the Series B Preferred Stock as to dividend rights or rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company;

(c) any issuance of shares of Series B Preferred Stock after the Original Issuance Date;

(d) on or prior to the Business Day immediately following the Stockholder Meeting, effect any action that would result in (i) a change to the "Conversion Rate" or (ii) the obligation to pay "Participating Dividends", in each case, as defined in the Series A Certificate of Designations;

(e) any action that would cause the Company to cease to be treated as a domestic C corporation for U.S. federal income tax purposes; and

(f) any incurrence of any Indebtedness of the Company or any of its Subsidiaries (other than (x) the refinancing of any existing Indebtedness in an aggregate principal amount that does not exceed the then outstanding principal amount of the Indebtedness refinanced, plus all unpaid accrued or capitalized interest thereon, any prepayment premium applicable thereto, any swap breakage costs or hedge termination costs related thereto, upfront fees and original issue discount on such refinancing indebtedness, and customary fees and expenses relating to such financing, and (y) ordinary course of business working capital draws under the Company's revolving credit facility) to the extent that, immediately after giving effect to such incurrence or refinancing, the ratio of the consolidated Indebtedness of the Company and its Subsidiaries (net of unrestricted cash and cash equivalents of the Company and its Subsidiaries) to the EBITDA of the Company and its Subsidiaries for the most recently ended four fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred would not be less than a ratio of 5.15-to-1 on a pro forma basis after giving effect to such incurrence and the use of the proceeds therefrom;

provided, however, (A) that, with respect to the occurrence of any of the events set forth in clause (a) above, so long as (1) the Series B Preferred Stock remains outstanding with the terms thereof materially unchanged, or (2) the holders of the Series B Preferred Stock receive equity securities with rights, preferences, privileges and voting power substantially the same as those of the Series B Preferred Stock, then the occurrence of such event shall not be deemed to adversely affect such rights, preferences, privileges or voting power of the Series B Preferred Stock, and in such case such holders shall not have any voting rights with respect to the occurrence of any of the events set forth in clause (a) above and (B) that the authorization or creation of, or the increase in the number of authorized or issued shares of, or any securities convertible into shares of, or the reclassification of any security (other than the Series B Preferred Stock) into, or the issuance of, Junior Stock will not require the vote the holders of the Series B Preferred Stock.

For purposes of this Section 13, the filing in accordance with applicable law of a certificate of designations or any similar document setting forth or changing the designations, powers, preferences, rights, qualifications, limitations and restrictions of any class or series of stock of the Company shall be deemed an amendment to the Articles of Incorporation.

(b) Each Holder of Series B Preferred Stock will have one vote per share of Series B Preferred Stock on any matter on which Holders of Series B Preferred Stock are entitled to vote separately as a class, whether at a meeting or by written consent.

(c) The vote or consent of the Holders of a majority of the shares of Series B Preferred Stock outstanding at such time, voting together as a single class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, will be sufficient to waive or amend the provisions of Section 9(e) of this Certificate of Designations, and any amendment or waiver of any of the provisions of Section 9(e) approved by such percentage of the Holders shall be binding on all of the Holders.

(d) For the avoidance of doubt and notwithstanding anything to the contrary in the Articles of Incorporation or Bylaws of the Company, the Holders of Series B Preferred Stock shall have the exclusive consent and voting rights set forth in Section 13(b) and may take action or consent to any action with respect to such rights without a meeting by delivering a consent in writing or by electronic transmission of the Holders of the Series B Preferred Stock entitled to cast not less than the minimum number of votes that would be necessary to authorize, take or consent to such action at a meeting of stockholders.

SECTION 14. [Reserved].

SECTION 15. Preemptive Rights. Except for the right to participate in any issuance of new equity securities by the Company, as set forth in the Investment Agreement, the Holders shall not have any preemptive rights.

SECTION 16. Term. Except as expressly provided in this Certificate of Designations, the shares of Series B Preferred Stock shall not be redeemable or otherwise mature and the term of the Series B Preferred Stock shall be perpetual.

SECTION 17. Creation of Capital Stock. Subject to Section 13(b)(ii), the Board, or any duly authorized committee thereof, without the vote of the Holders, may authorize and issue additional shares of Capital Stock of the Company.

SECTION 18. No Sinking Fund. Shares of Series B Preferred Stock shall not be subject to or entitled to the operation of a retirement or sinking fund.

SECTION 19. Transfer Agent, Conversion Agent, Registrar and Paying Agent. The duly appointed Transfer Agent, Conversion Agent, Registrar and paying agent for the Series B Preferred Stock shall be Computershare Trust Company, N.A. The Company may, in its sole discretion, appoint any other Person to serve as Transfer Agent, Conversion Agent, Registrar or paying agent for the Series B Preferred Stock and thereafter may remove or replace such other Person at any time. Upon any such appointment or removal, the Company shall send notice thereof by first class mail, postage prepaid, to the Holders.

SECTION 20. Replacement Certificates. (a) Mutilated, Destroyed, Stolen and Lost Certificates. If physical certificates evidencing the Series B Preferred Stock are issued, the Company shall replace any mutilated certificate at the Holder's expense upon surrender of that certificate to the Transfer Agent. The Company shall replace certificates that become destroyed, stolen or lost at the Holder's expense upon delivery to the Company and the Transfer Agent of satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be required by the Transfer Agent and the Company.

(b) Certificates Following Conversion. If physical certificates representing the Series B Preferred Stock are issued, the Company shall not be required to issue replacement certificates representing shares of Series B Preferred Stock on or after the Conversion Date applicable to such shares. In place of the delivery of a replacement certificate following the Conversion Date, the Transfer Agent, upon receipt of the satisfactory evidence and indemnity described in clause (a) above, shall deliver the shares of Series A Preferred Stock issuable upon conversion of such shares of Series B Preferred Stock formerly evidenced by the physical certificate.

SECTION 21. Taxes. (a) Transfer Taxes. The Company shall pay any and all stock transfer, documentary, stamp and similar taxes that may be payable in respect of any issuance or delivery of shares of Series B Preferred Stock or shares of Series A Preferred Stock or other securities issued on account of Series B Preferred Stock pursuant hereto or certificates representing such shares or securities. However, in the case of conversion of Series B Preferred Stock, the Company shall not be required to pay any such tax that may be payable in respect of any transfer involved in the issuance or delivery of shares of Series B Preferred Stock, shares of Series A Preferred Stock or other securities to a beneficial owner other than the beneficial owner of the Series B Preferred Stock immediately prior to such conversion, and shall not be required to make any such issuance, delivery or payment unless and until the Person otherwise entitled to such issuance, delivery or payment has paid to the Company the amount of any such tax or has established, to the satisfaction of the Company, that such tax has been paid or is not payable.

(b) Withholding. All payments and distributions (or deemed distributions) on the shares of Series B Preferred Stock (and on the shares of Series A Preferred Stock received upon their conversion) shall be subject to withholding and backup withholding of taxes to the extent required by law, subject to applicable exemptions, and amounts withheld, if any, shall be treated as received by the Holders.

SECTION 22. Notices. All notices referred to herein shall be in writing and, unless otherwise specified herein, all notices hereunder shall be deemed to have been given (a) upon the earlier of receipt thereof or three (3) Business Days after the mailing thereof if sent by registered or certified mail with postage prepaid, or by private courier service addressed: (i) if to the Company, to its office at Zix Corporation, 2711 N. Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960 (Attention: General Counsel), (ii) if to any Holder, to such Holder at the address of such Holder as listed in the stock record books of the Company (which may include the records of the Transfer Agent) or (iii) to such other address as the Company or any such Holder, as the case may be, shall have designated by notice similarly given; or (b) on the date sent by facsimile or transmitted to an email address designated by the Company or any such Holder if sent during normal business hours, and on the next Business Day if sent after normal business hours of the recipient.

SECTION 23. Facts Ascertainable. When the terms of this Certificate of Designations refers to a specific agreement or other document to determine the meaning or

operation of a provision hereof, the Secretary of the Company shall maintain a copy of such agreement or document at the principal executive offices of the Company and a copy thereof shall be provided free of charge to any Holder who makes a request therefor. The Secretary of the Company shall also maintain a written record of the Issuance Date, the number of shares of Series B Preferred Stock issued to a Holder and the date of each such issuance, and shall furnish such written record free of charge to any Holder who makes a request therefor.

SECTION 24. Waiver. Notwithstanding any provision in this Certificate of Designations to the contrary, any provision contained herein and any right of the Holders of Series B Preferred Stock granted hereunder may be waived as to all shares of Series B Preferred Stock (and the Holders thereof) upon the vote or written consent of the Holders of a majority of the shares of Series B Preferred Stock then outstanding.

SECTION 25. Severability. If any term of the Series B Preferred Stock set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other terms set forth herein which can be given effect without the invalid, unlawful or unenforceable term will, nevertheless, remain in full force and effect, and no term herein set forth will be deemed dependent upon any other such term unless so expressed herein.

SECTION 26. Business Opportunities. To the fullest extent permitted by Section 2.101(21) of the Texas Business Organizations Code (or any successor provision) and except as may be otherwise expressly agreed in writing by the Company and the Investor Parties, the Company, on behalf of itself and its Subsidiaries, renounces any interest or expectancy of the Company and its Subsidiaries in, or in being offered an opportunity to participate in, business opportunities, that are from time to time presented to the Investor Parties or any of their respective officers, representatives, directors, agents, stockholders, members, partners, Affiliates, Subsidiaries (other than the Company and its Subsidiaries), or any of their respective designees on the Company's Board and/or any of their respective representatives who, from time to time, may act as officers of the Company, even if the opportunity is one that the Company or its Subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and no such person shall be liable to the Company or any of its Subsidiaries for breach of any fiduciary or other duty, as a director or officer or otherwise, by reason of the fact that such person pursues or acquires such business opportunity, directs such business opportunity to another person or fails to present such business opportunity, or information regarding such business opportunity, to the Company or its Subsidiaries unless, in the case of any such person who is a director or officer of the Company, such business opportunity is expressly offered to such director or officer in writing solely in his or her capacity as a director or officer of the Company. Any Person purchasing or otherwise acquiring any interest in any shares of Capital Stock of the Company shall be deemed to have notice of and consented to the provisions of this Section 26. Neither the alteration, amendment or repeal of this Section 26, nor the adoption of any provision of the Articles of Incorporation or this Certificate of Designations inconsistent with this Section 26, nor, to the fullest extent permitted by Texas law, any modification of law, shall eliminate or reduce the effect of this Section 26 in respect of any business opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this Section 26, would accrue or arise, prior to such alteration, amendment, repeal, adoption or modification. If any provision or provisions of this Section 26 shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason

whatsoever: (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Section 26 (including, without limitation, each portion of any paragraph of this Section 26 containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Section 26 (including, without limitation, each such portion of any paragraph of this Section 26 containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Company to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Company to the fullest extent permitted by law. This Section 26 shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director, officer, employee or agent of the Company under the Articles of Incorporation, the Bylaws, any other agreement between the Company and such director, officer, employee or agent or applicable law.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations to be executed this 15 day of February, 2019.

ZIX CORPORATION

By: /s/ David Rockvam

Name: David Rockvam

Title: Vice President and Chief Financial Officer

[Signature Page to Series B Preferred Stock Certificate of Designations]

REGISTRATION RIGHTS AGREEMENT

by and between

ZIX CORPORATION

and

ZEPHYR HOLDCO, LLC

Dated as of February 20, 2019

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REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this "Agreement") is entered into as of February 20, 2019 by and among ZIX CORPORATION, a Texas corporation (the "Company"), and ZEPHYR HOLDCO, LLC (together with its successors and assigns, the "Investor"). Capitalized terms used but not defined elsewhere herein are defined in Exhibit A. The Investor and any other party that may become a party hereto pursuant to Section 4.1 are referred to collectively as the "Stockholders" and individually each as a "Stockholder".

WHEREAS, the Company and True Wind Capital, L.P. ("True Wind Capital"), an affiliate of the Investor, are parties to the Investment Agreement, dated as of January 14, 2019 (as amended from time to time, the "Investment Agreement"), pursuant to which the Company is selling to the Investor, and the Investor is purchasing from the Company, an aggregate of 64,914 shares of the Series A Preferred Stock (the "Series A Preferred Stock"), which is convertible into shares of Common Stock, and an aggregate of 35,086 shares of the Series B Preferred Stock (the "Series B Preferred Stock"), which is convertible into shares of Series A Preferred Stock;

WHEREAS, as a condition to the obligations of the Company and True Wind Capital under the Investment Agreement, the Company and the Investor are entering into this Agreement for the purpose of granting certain registration and other rights to the Stockholders.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

ARTICLE I

Resale Shelf Registration

Section 1.1 Resale Shelf Registration Statement. Subject to the other applicable provisions of this Agreement, the Company shall use its commercially reasonable efforts to prepare and file within 120 days after the date hereof a registration statement covering the sale or distribution from time to time by the Holders, on a delayed or continuous basis pursuant to Rule 415 of the Securities Act, of all of the Registrable Securities on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, then such registration shall be on another appropriate form and shall provide for the registration of such Registrable Securities for resale by the Holders in accordance with any reasonable method of distribution elected by the Investor) (the "Resale Shelf Registration Statement") and shall use its commercially reasonable efforts to cause such Resale Shelf Registration Statement to be declared effective by the SEC as promptly as is reasonably practicable after the filing thereof.

Section 1.2 Effectiveness Period. Once declared effective, the Company shall, subject to the other applicable provisions of this Agreement, use its commercially reasonable efforts to cause the Resale Shelf Registration Statement to be continuously effective and usable until such time as there are no longer any Registrable Securities (the "Effectiveness Period").

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Section 1.3 Subsequent Shelf Registration Statement. If any Shelf Registration Statement ceases to be effective under the Securities Act for any reason at any time during the Effectiveness Period, the Company shall use its commercially reasonable efforts to as promptly as is reasonably practicable cause such Shelf Registration Statement to again become effective under the Securities Act (including obtaining the prompt withdrawal of any order suspending the effectiveness of such Shelf Registration Statement), and shall use its commercially reasonable efforts to as promptly as is reasonably practicable amend such Shelf Registration Statement in a manner reasonably expected to result in the withdrawal of any order suspending the effectiveness of such Shelf Registration Statement or file an additional registration statement (a "Subsequent Shelf Registration Statement") for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act registering the resale from time to time by the Holders thereof of all securities that are Registrable Securities as of the time of such filing. If a Subsequent Shelf Registration Statement is filed, the Company shall use its commercially reasonable efforts to (a) cause such Subsequent Shelf Registration Statement to become effective under the Securities Act as promptly as is reasonably practicable after the filing thereof and (b) keep such Subsequent Shelf Registration Statement continuously effective and usable until the end of the Effectiveness Period. Any such Subsequent Shelf Registration Statement shall be a registration statement on Form S-3 to the extent that the Company is eligible to use such form. Otherwise, such Subsequent Shelf Registration Statement shall be on another appropriate form and shall provide for the registration of such Registrable Securities for resale by the Holders in accordance with any reasonable method of distribution elected by the Investor.

Section 1.4 Supplements and Amendments. The Company shall supplement and amend any Shelf Registration Statement if required by the Securities Act or the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement.

Section 1.5 Subsequent Holder Notice. If a Person entitled to the benefits of this Agreement becomes a Holder of Registrable Securities after a Shelf Registration Statement becomes effective under the Securities Act, the Company shall, as promptly as is reasonably practicable following delivery of written notice to the Company of such Person becoming a Holder and requesting for its name to be included as a selling securityholder in the prospectus related to the Shelf Registration Statement (a "Subsequent Holder Notice"):

(a) if required and permitted by applicable law, file with the SEC a supplement to the related prospectus or a post-effective amendment to the Shelf Registration Statement so that such Holder is named as a selling securityholder in the Shelf Registration Statement and the related prospectus in such a manner as to permit such Holder to deliver a prospectus to purchasers of the Registrable Securities in accordance with applicable law; provided, however, that the Company shall not be required to file more than one post-effective amendment or a supplement to the related prospectus for such purpose in any 90-day period;

(b) if, pursuant to Section 1.5(a), the Company shall have filed a post-effective amendment to the Shelf Registration Statement that is not automatically effective, use its commercially reasonable efforts to cause such post-effective amendment to become effective under the Securities Act as promptly as is reasonably practicable; and

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(c) notify such Holder as promptly as is reasonably practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to [Section 1.5\(a\)](#).

Section 1.6 [Underwritten Offering](#).

(a) Subject to any applicable restrictions on transfer in the Investment Agreement or otherwise, the Investor may, after the Resale Shelf Registration Statement becomes effective, deliver a written notice to the Company (the "[Underwritten Offering Notice](#)") specifying that the sale of some or all of the Registrable Securities subject to the Shelf Registration Statement, is intended to be conducted through an underwritten offering (the "[Underwritten Offering](#)"); provided, however, that the Holders of Registrable Securities may not, without the Company's prior written consent, (i) launch an Underwritten Offering the anticipated gross proceeds of which shall be less than \$10,000,000 (unless the Holders are proposing to sell all of their remaining Registrable Securities), (ii) launch more than four Underwritten Offerings at the request of the Holders within any three-hundred sixty-five (365) day-period or (iii) launch an Underwritten Offering within the period (a "[Quarterly Blackout Period](#)") commencing fourteen (14) days prior to and ending two (2) days following the Company's scheduled earnings release date for any fiscal quarter or year.

(b) In the event of an Underwritten Offering, the Stockholders participating in such Underwritten Offering shall select the managing underwriter(s) to administer the Underwritten Offering; provided, that the choice of such managing underwriter(s) shall be subject to the consent of the Company, which is not to be unreasonably withheld. In making the determination to consent to the Stockholder's choice of managing underwriter(s), the Company may take into account its business and strategic interests. The Company, the Investor and the Holders of Registrable Securities participating in an Underwritten Offering will enter into an underwriting agreement in customary form with the managing underwriter or underwriters selected for such offering.

(c) The Company will not include in any Underwritten Offering pursuant to this [Section 1.6](#) any securities that are not Registrable Securities without the prior written consent of the Investor. If the managing underwriter or underwriters advise the Company and the Investor in writing that in its or their good faith opinion the number of Registrable Securities (and, if permitted hereunder, other securities requested to be included in such offering) exceeds the number of securities which can be sold in such offering in light of market conditions or is such so as to adversely affect the success of such offering, the Company will include in such offering only such number of securities that can be sold without adversely affecting the marketability of the offering, which securities will be so included in the following order of priority: (i) first, the Registrable Securities of the Holders that have requested to participate in such Underwritten Offering, allocated *pro rata* among such Holders on the basis of the percentage of the Registrable Securities requested to be included in such offering by such Holders, and (ii) second, any other securities of the Company that have been requested to be so included.

Section 1.7 [Take-Down Notice](#). Subject to the other applicable provisions of this Agreement, at any time that any Shelf Registration Statement is effective, if the Investor delivers a notice to the Company (a "[Take-Down Notice](#)") stating that it intends to effect a sale or

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distribution of all or part of its Registrable Securities included by it on any Shelf Registration Statement (a “Shelf Offering”) and stating the number of the Registrable Securities to be included in such Shelf Offering, then the Company shall amend, subject to the other applicable provisions of this Agreement or supplement the Shelf Registration Statement as may be necessary in order to enable such Registrable Securities to be sold and distributed pursuant to the Shelf Offering.

Section 1.8 Piggyback Registration.

(a) If the Company proposes to file a registration statement under the Securities Act with respect to an offering of Common Stock or securities convertible into, or exchangeable or exercisable for, Common Stock, whether or not for sale for its own account (other than a registration statement (i) on Form S-4, Form S-8 or any successor forms thereto or (ii) filed to effectuate an exchange offer or any employee benefit or dividend reinvestment plan), then the Company shall give prompt written notice of such filing, which notice shall be given, to the extent reasonably practicable, no later than five (5) Business Days prior to the filing date (the “Piggyback Notice”) to the Investor on behalf of the Holders of Registrable Securities. The Piggyback Notice shall offer such Holders the opportunity to include (or cause to be included) in such registration statement the number of shares of Registrable Securities as each such Holder may request (each, a “Piggyback Registration Statement”). Subject to Section 1.8(b), the Company shall include in each Piggyback Registration Statement all Registrable Securities with respect to which the Company has received written requests for inclusion therein (each, a “Piggyback Request”) within five (5) Business Days after the date of the Piggyback Notice but in any event not later than one (1) Business Day prior to the filing date of a Piggyback Registration Statement. The Company shall not be required to maintain the effectiveness of a Piggyback Registration Statement beyond the earlier of (x) 180 days after the effective date thereof and (y) consummation of the distribution by the Holders of the Registrable Securities included in such registration statement.

(b) If any of the securities to be registered pursuant to the registration giving rise to the rights under this Section 1.8 are to be sold in an underwritten offering, the Company shall use commercially reasonable efforts to cause the managing underwriter or underwriters of a proposed underwritten offering to permit Holders of Registrable Securities who have timely submitted a Piggyback Request in connection with such offering to include in such offering all Registrable Securities included in each Holder’s Piggyback Request on the same terms and subject to the same conditions as any other shares of capital stock, if any, of the Company included in the offering. Notwithstanding the foregoing, if the managing underwriter or underwriters of such underwritten offering advise the Company in writing that in its or their good faith opinion the number of securities exceeds the number of securities which can be sold in such offering in light of market conditions or is such so as to adversely affect the success of such offering, the Company will include in such offering only such number of securities that can be sold without adversely affecting the marketability of the offering, which securities will be so included in the following order of priority: (i) first, the securities proposed to be sold by the Company for its own account; (ii) second, the Registrable Securities of the Holders that have requested to participate in such underwritten offering, allocated *pro rata* among such Holders on the basis of the percentage of the Registrable Securities requested to be included in such offering by such Holders; (iii) third, any other securities of the Company that have been requested to be

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included in such offering; provided, that Holders may, prior to the earlier of the (a) effectiveness of the registration statement and (b) the time at which the offering price or underwriter's discount is determined with the managing underwriter or underwriters, withdraw their request to be included in such registration pursuant to this [Section 1.8](#).

Section 1.9 [Rule 144A Sales](#). Holders of Registrable Securities that are eligible for resale pursuant to Rule 144A under the Securities Act shall have analogous rights to sell such securities in a marketed offering under Rule 144A under the Securities Act through one or more initial purchasers on a firm-commitment basis, using procedures that are substantially equivalent to those specified in Article I and Article II of this Agreement. The Company agrees to use its reasonable efforts to cooperate to effect any such sales under such Rule 144A. Nothing in this Section 1.9 shall impose any additional or more burdensome obligations on the Company than would apply under Article I and Article II, in each case, *mutatis mutandis* in respect of a registered Underwritten Offering (including the estimated gross proceeds minimum set forth in [Section 1.6\(a\)](#)), or require that the Company take any actions that it would not be required to take in an Underwritten Offering of such Registrable Securities.

ARTICLE II

[Additional Provisions Regarding Registration Rights](#)

Section 2.1 [Registration Procedures](#). Subject to the other applicable provisions of this Agreement, in the case of each registration of Registrable Securities effected by the Company pursuant to [Article I](#), the Company will:

(a) prepare and promptly file with the SEC a registration statement with respect to such securities and use commercially reasonable efforts to cause such registration statement to become and remain effective for the period of the distribution contemplated thereby, in accordance with the applicable provisions of this Agreement;

(b) prepare and file with the SEC such amendments (including post-effective amendments) and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to keep such registration statement effective for the period specified in paragraph (a) above and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement in accordance with the Investor's intended method of distribution set forth in such registration statement for such period;

(c) furnish to the Investor's legal counsel copies of the registration statement and the prospectus included therein (including each preliminary prospectus) proposed to be filed and provide such legal counsel a reasonable opportunity to review and comment on such registration statement;

(d) if requested by the managing underwriter or underwriters, if any, or the Investor, promptly include in any prospectus supplement or post-effective amendment such information as the managing underwriter or underwriters, if any, or the Investor may reasonably request in order to permit the intended method of distribution of such

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securities and make all required filings of such prospectus supplement or post-effective amendment as soon as reasonably practicable after the Company has received such request; provided, however, that the Company shall not be required to take any actions under this Section 2.1(d) that are not, in the opinion of counsel for the Company, in compliance with applicable law;

(e) in the event that the Registrable Securities are being offered in an Underwritten Offering, furnish to the Investor and to the underwriters of the securities being registered such reasonable number of copies of the registration statement, preliminary prospectus and final prospectus as the Investor or such underwriters may reasonably request in order to facilitate the public offering or other disposition of such securities;

(f) as promptly as reasonably practicable notify the Investor at any time when a prospectus relating thereto is required to be delivered under the Securities Act or of the Company's discovery of the occurrence of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing (which, for the avoidance of doubt, shall commence a Suspension Period), and, subject to Section 2.2, as promptly as is reasonably practicable, prepare and file with the SEC a supplement or post-effective amendment to such registration statement or the related prospectus or any document incorporated therein by reference or file any other required document and at the request of the Investor, furnish to the Investor a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing;

(g) use commercially reasonable efforts to register and qualify (or exempt from such registration or qualification) the securities covered by such registration statement under such other securities or "blue sky" laws of such jurisdictions within the United States as shall be reasonably requested in writing by the Investor; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (i) qualify to do business in any jurisdictions where it would not otherwise be required to qualify but for this subsection or (ii) take any action that would subject it to general service of process in any such jurisdictions;

(h) in the event that the Registrable Securities are being offered in a public offering, enter into an underwriting agreement, a placement agreement or equivalent agreement customary for a transaction of that nature, in each case in accordance with the applicable provisions of this Agreement, and take all such other actions reasonably requested by the Holders of the Registrable Securities being sold in connection therewith (including any reasonable actions requested by the managing underwriters, if any) to facilitate the disposition of such Registrable Securities, including furnishing the underwriters with a letter dated the date of such underwriting agreement, placement

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agreement or equivalent agreement from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters, placement agents or equivalent parties; provided, however, that in no event will the Company be required to enter into a holdback agreement other than as and if required by [Section 2.7](#);

(i) in connection with an Underwritten Offering, the Company shall cause its officers to use their commercially reasonable efforts to support the marketing of the Registrable Securities covered by such offering (including participation in “road shows” or other similar marketing efforts);

(j) use commercially reasonable efforts to furnish, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion dated such date of the legal counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, (ii) a “negative assurances letter”, dated such date of the legal counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering and (iii) a letter dated such date from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters;

(k) in the event that the Registrable Securities covered by such registration statement are shares of Common Stock, use commercially reasonable efforts to list the Registrable Securities covered by such registration statement with any securities exchange on which the Common Stock is then listed;

(l) provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such registration statement;

(m) in connection with a customary due diligence review, make available for inspection by the Investor, any underwriter participating in any such disposition of Registrable Securities, if any, and any counsel or accountants retained by the Investor or underwriter (collectively, the “[Offering Persons](#)”), at the offices where normally kept, during reasonable business hours, all financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries, and cause the officers, directors and employees of the Company and its subsidiaries to supply all information and participate in customary due diligence sessions in each case reasonably requested by any such representative, underwriter, counsel or accountant in connection with such Registration Statement; provided, however, that any information that is not generally publicly available at the time of delivery of such information shall be kept confidential by such Offering Persons unless (i) disclosure of such information is required by court or administrative order or in connection with an audit or examination by, or a blanket document request from, a regulatory or self-regulatory authority, bank examiner or

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auditor, (ii) disclosure of such information, in the reasonable judgment of the Offering Persons, is required by law or applicable legal process (including in connection with the offer and sale of securities pursuant to the rules and regulations of the SEC), (iii) such information is or becomes generally available to the public other than as a result of a non-permitted disclosure or failure to safeguard by such Offering Persons in violation of this Agreement or (iv) such information (A) was known to such Offering Persons (prior to its disclosure by the Company) from a source other than the Company when such source, to the knowledge of the Offering Persons, was not bound by any contractual, legal or fiduciary obligation of confidentiality to the Company with respect to such information, (B) becomes available to the Offering Persons from a source other than the Company when such source, to the knowledge of the Offering Persons, is not bound by any contractual, legal or fiduciary obligation of confidentiality to the Company with respect to such information or (C) was developed independently by the Offering Persons or their respective representatives without the use of, or reliance on, information provided by the Company. In the case of a proposed disclosure pursuant to (i) or (ii) above, such Person shall be required to give the Company written notice of the proposed disclosure prior to such disclosure (except in the case of (ii) above when a proposed disclosure was or is to be made in connection with a registration statement or prospectus under this Agreement and except in the case of clause (i) above when a proposed disclosure is in connection with a routine audit or examination by, or a blanket document request from, a regulatory or self-regulatory authority, bank examiner or auditor);

(n) cooperate with the Investor and each underwriter or agent participating in the disposition of Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA, including the use of commercially reasonable efforts to obtain FINRA's pre-clearance or pre-approval of the registration statement and applicable prospectus upon filing with the SEC; and

(o) as promptly as is reasonably practicable notify the Investor (i) when the prospectus or any prospectus supplement or post-effective amendment has been filed and, with respect to such registration statement or any post-effective amendment, when the same has become effective, (ii) of any request by the SEC or other federal or state governmental authority for amendments or supplements to such registration statement or related prospectus or to amend or to supplement such prospectus or for additional information, (iii) of the issuance by the SEC of any stop order suspending the effectiveness of such registration statement or the initiation of any proceedings for such purpose (which, for the avoidance of doubt, shall commence a Suspension Period), (iv) if at any time the Company has reason to believe that the representations and warranties of the Company contained in any document contemplated by [Section 2.1\(f\)](#) above relating to any applicable offering cease to be true and correct or (v) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose.

The Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in [Section 2.1\(f\)](#), [2.1\(o\)\(ii\)](#) or [2.1\(o\)\(iii\)](#), the Investor shall discontinue, and shall cause each Holder to discontinue, disposition of any

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Registrable Securities covered by such registration statement or the related prospectus until receipt of the copies of the supplemented or amended prospectus, which supplement or amendment shall, subject to the other applicable provisions of this Agreement, be prepared and furnished as soon as reasonably practicable, or until the Investor is advised in writing by the Company that the use of the applicable prospectus may be resumed, and have received copies of any amended or supplemented prospectus or any additional or supplemental filings which are incorporated, or deemed to be incorporated, by reference in such prospectus (such period during which disposition is discontinued being an “Interruption Period”) and, if requested by the Company, the Investor shall use commercially reasonable efforts to return, and cause the Holders to return, to the Company all copies then in their possession, of the prospectus covering such Registrable Securities at the time of receipt of such request. As soon as practicable after the Company has determined that the use of the applicable prospectus may be resumed, the Company will notify the Investor thereof. In the event the Company invokes an Interruption Period hereunder and in the reasonable discretion of the Company the need for the Company to continue the Interruption Period ceases for any reason, the Company shall, as soon as reasonably practicable, provide written notice to the Investor that such Interruption Period is no longer applicable.

Section 2.2 Suspension. (a) The Company shall be entitled, on one (1) occasion in any one-hundred eighty (180) day period, for a period of time not to exceed ninety (90) days in the aggregate in any twelve (12) month period (any such period a “Suspension Period”), to (x) defer any registration of Registrable Securities and shall have the right not to file and not to cause the effectiveness of any registration covering any Registrable Securities, (y) suspend the use of any prospectus and registration statement covering any Registrable Securities and (z) require the Holders of Registrable Securities to suspend any offerings or sales of Registrable Securities pursuant to a registration statement, if the Company delivers to the Investor a certificate signed by an executive officer certifying that such registration and offering would (i) require the Company to make an Adverse Disclosure or (ii) materially interfere with any *bona fide* material financing, acquisition, disposition or other similar transaction involving the Company or any of its subsidiaries then under consideration. Such certificate shall contain a statement of the reasons for such suspension and an approximation of the anticipated length of such suspension. The Investor shall keep the information contained in such certificate confidential subject to the same terms set forth in Section 2.1(m). If the Company defers any registration of Registrable Securities in response to an Underwritten Offering Notice or requires the Investor or the Holders to suspend any Underwritten Offering, the Investor shall be entitled to withdraw such Underwritten Offering Notice and if it does so, such request shall not be treated for any purpose as the delivery of an Underwritten Offering Notice pursuant to Section 1.6.

Section 2.3 Expenses of Registration. All Registration Expenses incurred in connection with any registration or offering pursuant to Article I shall be borne by the Company. All Selling Expenses relating to securities registered on behalf of the Holders shall be borne by the Holders of the Registrable Securities included in such registration.

Section 2.4 Information by Holders. The Holder or Holders of Registrable Securities included in any registration shall, and the Investor shall cause such Holder or Holders to, furnish to the Company such information regarding such Holder or Holders and their

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Affiliates, the Registrable Securities held by them and the distribution proposed by such Holder or Holders and their Affiliates as the Company or its representatives may reasonably request and as shall be required in connection with any registration, qualification or compliance referred to in this Agreement. It is understood and agreed that the obligations of the Company under Article I are conditioned on the timely provisions of the foregoing information by such Holder or Holders and, without limitation of the foregoing, will be conditioned on compliance by such Holder or Holders with the following:

(a) such Holder or Holders will, and will cause their respective Affiliates to, cooperate with the Company in connection with the preparation of the applicable registration statement and prospectus and, for so long as the Company is obligated to keep such registration statement effective, such Holder or Holders will and will cause their respective Affiliates to, provide to the Company, in writing and in a timely manner, for use in such registration statement (and expressly identified in writing as such), all information regarding themselves and their respective Affiliates and such other information as may be required by applicable law to enable the Company to prepare or amend such registration statement, any related prospectus and any other documents related to such offering covering the applicable Registrable Securities owned by such Holder or Holders and to maintain the currency and effectiveness thereof;

(b) during such time as such Holder or Holders and their respective Affiliates may be engaged in a distribution of the Registrable Securities, such Holder or Holders will, and they will cause their Affiliates to, comply with all laws applicable to such distribution, including Regulation M promulgated under the Exchange Act, and, to the extent required by such laws, will, and will cause their Affiliates to, among other things (i) not engage in any stabilization activity in connection with the securities of the Company in contravention of such laws; (ii) distribute the Registrable Securities acquired by them solely in the manner described in the applicable registration statement; and (iii) if required by applicable law, cause to be furnished to each agent or broker-dealer to or through whom such Registrable Securities may be offered, or to the offeree if an offer is made directly by such Holder or Holders or their respective Affiliates, such copies of the applicable prospectus (as amended and supplemented to such date) and documents incorporated by reference therein as may be required by such agent, broker-dealer or offeree;

(c) such Holder or Holders shall, and they shall cause their respective Affiliates to, (i) permit the Company and its representatives to examine such documents and records and will supply in a timely manner any information as they may be reasonably requested to provide in connection with the offering or other distribution of Registrable Securities by such Holder or Holders and (ii) execute, deliver and perform under any agreements and instruments reasonably requested by the Company or its representatives to effectuate such registered offering, including opinions of counsel and questionnaires; and

(d) on receipt of any notice from the Company of the occurrence of any of the events specified in Section 2.1(f) or clauses (ii) or (iii) of Section 2.1(o), or that otherwise requires the suspension by such Holder or Holders and their respective Affiliates of the

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offering, sale or distribution of any of the Registrable Securities owned by such Holder or Holders, such Holders shall, and they shall cause their respective Affiliates to, cease offering, selling or distributing the Registrable Securities owned by such Holder or Holders until the offering, sale and distribution of the Registrable Securities owned by such Holder or Holders may recommence in accordance with the terms hereof and applicable law.

Section 2.5 Rule 144. (a) With a view to making available the benefits of Rule 144 to the Holders, the Company agrees that, for so long as a Holder owns Registrable Securities, the Company will use its commercially reasonable efforts to:

(i) make and keep public information available, as those terms are understood and defined in Rule 144, at all times after the date of this Agreement; and

(ii) so long as a Holder owns any Restricted Securities, furnish to the Holder upon written request a written statement by the Company as to its compliance with the reporting requirements of the Exchange Act.

(b) For as long as a Holder owns Registrable Securities issued or issuable upon conversion thereof, the Company will use commercially reasonable efforts to take such further necessary action as any holder of Registrable Securities may reasonably request in connection with the removal of any restrictive legend on the Registrable Securities being sold, all to the extent required from time to time to enable such Holder to sell the Restricted Securities without registration under the Securities Act within the limitations of the exemption provided by Rule 144.

Section 2.6 Investor Holdback Agreement. If during the Effectiveness Period, the Company shall file a registration statement (other than in connection with the registration of securities issuable pursuant to an employee stock option, stock purchase or similar plan or pursuant to a merger, exchange offer or a transaction of the type specified in Rule 145(a) under the Securities Act) with respect to an underwritten public offering of Common Stock or securities convertible into, or exchangeable or exercisable for, such securities or otherwise informs the Investor that it intends to conduct such an offering utilizing an effective registration statement or pursuant to an underwritten Rule 144A and/or Regulation S offering and provides the Investor and each Holder the opportunity to participate in such offering in accordance with and to the extent required by Section 1.8, the Investor and each Holder shall for so long as such Investor or Holder together with its respective Affiliates beneficially owns, on an as converted basis (as defined in the Investment Agreement) greater than 10% of the then outstanding Common Stock or has a right to nominate a director to the Board (as defined in the Investment Agreement), if requested by the managing underwriter or underwriters, enter into a customary “lock-up” agreement relating to the sale, offering or distribution of Registrable Securities, in the form reasonably requested by the managing underwriter or underwriters, covering the period commencing on the date of the prospectus pursuant to which such offering may be made and continuing until the earlier of 45 days from the date of such prospectus and the date on which the Company’s “lock-up” agreement with the underwriters in connection with the offering expires.

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Section 2.7 Company Holdback Agreement. In connection with a distribution of Registrable Securities in which Holders of Registrable Securities are proposing to sell at least \$10,000,000 of Registrable Securities, the Company shall, if requested by the managing underwriter or underwriters, enter into a customary “lock-up” agreement relating to the sale, offering, distribution or granting of an option to purchase Common Stock, in the form reasonably requested by the managing underwriter or underwriters, covering the period commencing on the date of the prospectus pursuant to which such offering may be made and continuing until the earlier of 45 days from the date of such prospectus and the date on which the Selling Holders’ “lock-up” agreement with the underwriters in connection with the offering expires, during which time the Company may not offer, sell or grant any option to purchase shares of Common Stock or securities convertible or exchangeable for Common Stock of the Company, subject to customary carve-outs that include, but are not limited to, (i) issuances pursuant to the Company’s employee stock plans and issuances of shares upon the exercise of options or other equity awards under such stock plans and (ii) in connection with acquisitions, joint ventures and other strategic transactions.

ARTICLE III

Indemnification

Section 3.1 Indemnification by Company. To the extent permitted by applicable law, the Company will, with respect to any Registrable Securities covered by a registration statement or prospectus, or as to which registration, qualification or compliance under applicable “blue sky” laws has been effected pursuant to this Agreement, indemnify and hold harmless each Holder, each Holder’s current and former officers, directors, partners, members, managers, shareholders, accountants, attorneys, agents and employees, and each Person controlling such Holder within the meaning of Section 15 of the Securities Act and such Holder’s current and former officers, directors, partners, members, managers, shareholders, accountants, attorneys, agents and employees, and each underwriter thereof, if any, and each Person who controls any such underwriter within the meaning of Section 15 of the Securities Act (collectively, the “Company Indemnified Parties”), from and against any and all expenses, claims, losses, damages, costs (including costs of preparation and reasonable attorney’s fees and any legal or other fees or expenses actually incurred by such party in connection with any investigation or proceeding), judgments, fines, penalties, charges, amounts paid in settlement and other liabilities, joint or several, (or actions in respect thereof) (collectively, “Losses”) to the extent arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular, “issuer free writing prospectus” (as such term is defined in Rule 433 under the Securities Act) or other document, in each case related to such registration statement, or any amendment or supplement thereto, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rules or regulations thereunder applicable to the Company and (without limiting the preceding portions of this Section 3.1), the Company will reimburse each of the Company Indemnified Parties for any reasonable and documented out-of-pocket legal expenses and any other reasonable and documented out-of-pocket expenses actually incurred in

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connection with investigating, defending or, subject to the last sentence of this Section 3.1, settling any such Losses or action, as such expenses are incurred; provided, that the Company's indemnification obligations shall not apply to amounts paid in settlement of any Losses or action if such settlement is effected without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed), nor shall the Company be liable to a Holder in any such case for any such Losses or action to the extent that it arises out of or is based upon a violation or alleged violation of any state or federal law (including any claim arising out of or based on any untrue statement or alleged untrue statement or omission or alleged omission in the registration statement or prospectus) which occurs in reliance upon and in conformity with written information regarding such Holder furnished to the Company by such Holder or its authorized representatives expressly for use in connection with such registration by or on behalf of any Holder.

Section 3.2 Indemnification by Holders. To the extent permitted by applicable law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which registration or qualification or compliance under applicable "blue sky" laws is being effected, indemnify, severally and not jointly with any other Holders of Registrable Securities, the Company, each of its representatives, each Person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act (collectively, the "Holder Indemnified Parties"), against all Losses (or actions in respect thereof) to the extent arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular, "issuer free writing prospectus" or other document, in each case related to such registration statement, or any amendment or supplement thereto, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, and will reimburse each of the Holder Indemnified Parties for any reasonable and documented out-of-pocket legal expenses and any other reasonable and documented out-of-pocket expenses actually incurred in connection with investigating, defending or, subject to the last sentence of this Section 3.2, settling any such Losses or action, as such expenses are incurred, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular, "issuer free writing prospectus" or other document in reliance upon and in conformity with written information regarding such Holder furnished to the Company by such Holder or its authorized representatives and stated to be specifically for use therein; provided, however, that in no event shall any indemnity under this Section 3.2 payable by the Investor and any Holder exceed an amount equal to the net proceeds received by such Holder in respect of the Registrable Securities sold pursuant to the registration statement. The indemnity agreement contained in this Section 3.2 shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the applicable Holder (which consent shall not be unreasonably withheld or delayed).

Section 3.3 Notification. If any Person shall be entitled to indemnification under this Article III (each, an "Indemnified Party"), such Indemnified Party shall give prompt notice to the party required to provide indemnification (each, an "Indemnifying Party") of any claim or of the commencement of any proceeding as to which indemnity is sought. The Indemnifying Party shall have the right, exercisable by giving written notice to the Indemnified Party as promptly as

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reasonably practicable after the receipt of written notice from such Indemnified Party of such claim or proceeding, to assume, at the Indemnifying Party's expense, the defense of any such claim or litigation, with counsel reasonably satisfactory to the Indemnified Party and, after notice from the Indemnifying Party to such Indemnified Party of its election to assume the defense thereof, the Indemnifying Party will not (so long as it shall continue to have the right to defend, contest, litigate and settle the matter in question in accordance with this paragraph) be liable to such Indemnified Party hereunder for any legal expenses and other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof; provided, however, that an Indemnified Party shall have the right to employ separate counsel in any such claim or litigation, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless the Indemnifying Party shall have failed within a reasonable period of time to assume such defense and the Indemnified Party is or would reasonably be expected to be materially prejudiced by such delay. The failure of any Indemnified Party to give notice as provided herein shall relieve an Indemnifying Party of its obligations under this [Article III](#) only to the extent that the failure to give such notice is materially prejudicial or harmful to such Indemnifying Party's ability to defend such action. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the prior written consent of each Indemnified Party (which consent shall not be unreasonably withheld or delayed), consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. The indemnity agreements contained in this [Article III](#) shall not apply to amounts paid in settlement of any claim, loss, damage, liability or action if such settlement is effected without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. The indemnification set forth in this [Article III](#) shall be in addition to any other indemnification rights or agreements that an Indemnified Party may have. An Indemnifying Party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such Indemnifying Party with respect to such claim, unless in the reasonable judgment of any Indemnified Party a conflict of interest may exist between such Indemnified Party and any other Indemnified Parties with respect to such claim.

Section 3.4 [Contribution](#). If the indemnification provided for in this [Article III](#) is held by a court of competent jurisdiction to be unavailable to an Indemnified Party, other than pursuant to its terms, with respect to any Losses or action referred to therein, then, subject to the limitations contained in this [Article III](#), the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses or action in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party, on the one hand, and the Indemnified Party, on the other, in connection with the actions, statements or omissions that resulted in such Losses or action, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party, on the one hand, and the Indemnified Party, on the other hand, shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made (or omitted) by, or relates to information supplied by such Indemnifying Party or such Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent any such action, statement or omission. The Company and the Holders agree that it would not be just and equitable if contribution pursuant to this [Section 3.4](#)

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was determined solely upon *pro rata* allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding sentence of this [Section 3.4](#). Notwithstanding the foregoing, the amount each Investor or any Holder will be obligated to contribute pursuant to this [Section 3.4](#) will be limited to an amount equal to the net proceeds received by such Investor or Holder in respect of the Registrable Securities sold pursuant to the registration statement which gives rise to such obligation to contribute. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

ARTICLE IV

[Transfer and Termination of Registration Rights](#)

Section 4.1 [Transfer of Registration Rights](#). Any rights to cause the Company to register securities granted to a Holder under this Agreement may be transferred or assigned to any Person in connection with a Transfer (as defined in the Investment Agreement) of Series A Preferred Stock, Series B Preferred Stock or Common Stock to such Person in a Transfer permitted by Section 5.08(b)(i) of the Investment Agreement or a lender in connection with a Permitted Loan (as defined in the Investment Agreement); provided, however, that (a) prior written notice of such assignment of rights is given to the Company and (b) such transferee agrees in writing to be bound by, and subject to, this Agreement as a “Holder” pursuant to a written instrument in form and substance reasonably acceptable to the Company.

Section 4.2 [Termination of Registration Rights](#). The rights of any particular Holder to cause the Company to register securities under [Article I](#) shall terminate with respect to such Holder upon the date upon which such Holder no longer holds any Registrable Securities.

ARTICLE V

[Miscellaneous](#)

Section 5.1 [Amendments and Waivers](#). Subject to compliance with applicable law, this Agreement may be amended or supplemented in any and all respects by written agreement of the Company and the Investor.

Section 5.2 [Extension of Time, Waiver, Etc.](#) The parties hereto may, subject to applicable law, (a) extend the time for the performance of any of the obligations or acts of the other party or (b) waive compliance by the other party with any of the agreements contained herein applicable to such party or, except as otherwise provided herein, waive any of such party’s conditions. Notwithstanding the foregoing, no failure or delay by the parties hereto in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right hereunder. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party; provided, that the Investor may execute such waivers on behalf of any Stockholder.

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Section 5.3 Assignment. Except as provided in Section 4.1, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of law or otherwise, by any of the parties hereto without the prior written consent of the other party hereto; provided, however, that the Investor may provide any such consent on behalf of the Stockholders; provided, further, that if the Company consolidates or merges with or into any Person and the Common Stock or any other Registrable Securities are, in whole or in part, converted into or exchanged for securities of a different issuer, and any Stockholder would, upon completion of such merger or consolidation, hold Registrable Securities of such issuer, then as a condition to such transaction the Company will cause such issuer to assume all of the Company's rights and obligations under this Agreement in a written instrument delivered to the Stockholders.

Section 5.4 Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile or electronic mail), each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties hereto.

Section 5.5 Entire Agreement; No Third Party Beneficiary. This Agreement, including the Transaction Documents (as defined in the Investment Agreement), constitutes the entire agreement, and supersedes all other prior agreements and understandings, both written and oral, among the parties and their Affiliates, or any of them, with respect to the subject matter hereof and thereof. No provision of this Agreement shall confer upon any Person other than the parties hereto and their permitted assigns and the Indemnified Parties any rights or remedies hereunder.

Section 5.6 Governing Law; Jurisdiction.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed entirely within that State, regardless of the laws that might otherwise govern under any applicable conflict of laws principles.

(b) All legal or administrative proceedings, suits, investigations, arbitrations or actions ("Actions") arising out of or relating to this Agreement shall be heard and determined in the county of New York in the State of New York and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Action and irrevocably waive the defense of an inconvenient forum or lack of jurisdiction to the maintenance of any such Action. The consents to jurisdiction and venue set forth in this Section 5.6 shall not constitute general consents to service of process in the State of New York and shall have no effect for any purpose except as provided in this paragraph and shall not be deemed to confer rights on any Person other than the parties hereto. Each party hereto agrees that service of process upon such party in any Action arising out of or relating to this Agreement shall be effective if notice is given by overnight courier at the address set forth in Section 5.9 of this Agreement. The parties hereto agree that a final judgment in any such Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law; provided, however, that nothing in the foregoing shall restrict any party's rights to seek any post-judgment relief regarding, or any appeal from, a final trial court judgment.

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Section 5.7 Specific Enforcement. The parties acknowledge and agree that (a) the parties shall be entitled to an injunction or injunctions, specific performance or other equitable relief to enforce specifically the terms and provisions hereof in the courts described in Section 5.6 without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement and (b) the right of specific enforcement is an integral part of this Agreement and without that right, neither the Company nor the Investor would have entered into this Agreement. The parties hereto agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to law or inequitable for any reason, and agree not to assert that a remedy of monetary damages would provide an adequate remedy or that the parties otherwise have an adequate remedy at law. The parties hereto acknowledge and agree that any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 5.7 shall not be required to provide any bond or other security in connection with any such order or injunction.

Section 5.8 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (C) IT MAKES SUCH WAIVER VOLUNTARILY AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 5.8.

Section 5.9 Notices. All notices, requests and other communications to any party hereunder shall be in writing and shall be deemed given if delivered personally, by facsimile (which is confirmed), emailed (which is confirmed) or sent by overnight courier (providing proof of delivery) to the parties at the following addresses:

(a) If to the Company, to it at:

Zix Corporation
2711 N. Haskell Avenue
Suite 2200, LB 36
Dallas, Texas 75204-2960
Attention: Noah Webster
Email: nwebster@zixcorp.com

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with a copy (which shall not constitute notice) to:

Baker Botts L.L.P.
2001 Ross Ave.
Suite 900
Dallas, TX 75201
Attention: Don McDermett
Email: don.mcdermett@bakerbotts.com

(b) If to the Stockholders or the Investor, to the Investor at:

True Wind Capital Management, L.P.
Four Embarcadero Center
Suite 2350
San Francisco, CA 94111
Attention: James H. Greene, Jr.
 Brandon Van Buren
Email: jamie@truewindcapital.com
 brandon@truewindcapital.com

with a copy (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
2475 Hanover Street
Palo Alto, CA 94304
Attention: William Brentani
Email: wbrentani@stblaw.com

or such other address, email address or facsimile number as such party may hereafter specify by like notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of actual receipt by the recipient thereof if received prior to 5:00 p.m. local time in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

Section 5.10 Severability. If any term, condition or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term, condition or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law.

Section 5.11 Expenses. Except as provided in Section 2.3 and Article III, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

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Section 5.12 Interpretation. The rules of interpretation set forth in Section 8.12 of the Investment Agreement shall apply to this Agreement, *mutatis mutandis*.

Section 5.13 Investor.

(a) Each Holder hereby consents to (i) the appointment of the Investor as the attorneys-in-fact for and on behalf of such Holder and (ii) the taking by the Investor of any and all actions and the making of any decisions required or permitted by, or with respect to, this Agreement and the transactions contemplated hereby, including, without limitation, (A) the exercise of the power to agree to execute any consents under this Agreement and all other documents contemplated hereby and (B) to take all actions necessary in the judgment of the Investor for the accomplishment of the foregoing and all of the other terms, conditions and limitations of this Agreement and the transactions contemplated hereby. Any reference to any action by the Investor in this Agreement shall require an instrument in writing signed by the Investor.

(b) Each Holder shall be bound by the actions taken by the Investor exercising the rights granted to it by this Agreement or the other documents contemplated by this Agreement, and the Company shall be entitled to rely on any such action or decision of the Investor.

[Signature pages follow]

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IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first above written.

COMPANY:

ZIX CORPORATION

By: /s/ David Rockvam

Name: David Rockvam

Title: Vice President and Chief Financial Officer

SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT

INVESTOR:

ZEPHYR HOLDCO, LLC

By: True Wind Capital, L.P., its manager

By: True Wind Capital GP, LLC its general partner

By: /s/ James H. Greene Jr.

Name: James H. Greene Jr.

Title: Managing Member

SIGNATURE PAGE TO REGISTRATION RIGHTS AGREEMENT

EXHIBIT A

DEFINED TERMS

1. The following capitalized terms have the meanings indicated:

“Adverse Disclosure” means public disclosure of material non-public information that, in the good faith judgment of the Company (after consultation with legal counsel): (a) would be required to be made in any registration statement filed with the SEC by the Company so that such registration statement would not be materially misleading; (b) would not be required to be made at such time but for the filing, effectiveness or continued use of such registration statement; and (c) the Company has a bona fide business purpose for not disclosing publicly.

“Affiliates” shall have the meaning given to such term in the Certificates of Designations.

“Business Day” means any day except a Saturday, a Sunday or other day on which the SEC or banks in the City of New York are authorized or required by law to be closed.

“Certificates of Designations” means the Certificate of Designations setting forth the designations, powers, preferences, qualifications, limitations and restrictions of the Series A Preferred Stock, and the Certificate of Designations setting forth the designations, powers, preferences, qualifications, limitations and restrictions of the Series B Preferred Stock, each dated as of the date hereof, as may be amended from time to time.

“Common Stock” means all shares currently or hereafter existing of the Company’s common stock, par value \$0.01 per share.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

“FINRA” means the Financial Industry Regulatory Authority, Inc.

“Holder” means any Stockholder holding Registrable Securities.

“Person” means any individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization or any other entity, including a governmental authority.

“register”, “registered” and “registration” refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement or the automatic effectiveness of such registration statement, as applicable.

“Registrable Securities” means, as of any date of determination, (a) any shares of the Series A Preferred Stock issued to the Investor pursuant to the Investment Agreement (whether or not subsequently transferred to any Stockholder) and any shares of Common Stock hereafter acquired by any Stockholder pursuant to the conversion of the Series A Preferred Stock, any securities of the Company acquired pursuant to Section 5.16 of the Investment Agreement (or

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acquired pursuant to conversion, exchange or exercise of such securities), (b) any shares of Series B Preferred Stock issued to the Investor pursuant to the Investment Agreement (whether or not subsequently transferred to any Stockholder) and any shares of Series A Preferred Stock hereafter acquired by any Stockholder pursuant to the conversion of the Series B Preferred Stock, (c) any shares of Common Stock held by any Stockholder at any time, however acquired and (d) any other securities issued or issuable with respect to any such shares of Common Stock, Series A Preferred Stock, Series B Preferred Stock or other such securities by way of share split, share dividend, distribution, recapitalization, merger, exchange, replacement or similar event or otherwise (including, for the avoidance of doubt, a redemption pursuant to the Certificates of Designations); provided, that for purpose of clauses (c) and (d), such securities will be Registrable Securities for a Stockholder if: (A) such securities are (or, in the case of securities issuable upon the conversion, exchange or exercise of other securities, if then issued would be) “restricted securities” or “control securities” (as such terms are used for purpose of Rule 144 under the Securities Act) in the hands of such Stockholder or (B) such Stockholder and its Affiliates beneficially own (as defined for purposes of Section 13(d) of the Exchange Act and the rules thereunder) at least 5% of the class of such securities when such securities are acquired or issued (or when such securities may be acquired upon conversion, exercise or exchange, in the case of securities issuable upon the conversion, exchange or exercise of other securities). As to any particular Registrable Securities, once issued, such securities shall cease to be Registrable Securities when (I) such securities are sold or otherwise transferred pursuant to an effective registration statement under the Securities Act, (II) such securities shall have ceased to be outstanding, (III) such securities have been transferred in a transaction in which the Holder’s rights under this Agreement are not assigned to the transferee of the securities, (IV) such securities are sold in a broker’s transaction under circumstances in which all of the applicable conditions of Rule 144 (or any similar provisions then in force) under the Securities Act are met or (v) the stock certificates or evidences of book-entry registration relating to such securities have had all restrictive legends removed.

“Registration Expenses” means all (a) expenses incurred by the Company in complying with Article I, including all registration, qualification, listing and filing fees, printing expenses, escrow fees, and fees and disbursements of counsel for the Company, blue sky fees and expenses and (b) reasonable, documented out-of-pocket fees and expenses of one outside legal counsel to the Investor and one outside legal counsel for all other Holders, in each case, retained in connection with registrations and offerings contemplated hereby; provided, however, that Registration Expenses shall not be deemed to include any Selling Expenses.

“Registration Statement” shall mean any registration statement of the Company filed or to be filed with the SEC under the rules and regulations promulgated under the Securities Act, including the related prospectus, amendments and supplements to such registration statement, and including pre- and post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement.

“Restricted Securities” means any Common Stock required to bear the legend set forth in Section 5.09(a) of the Investment Agreement.

“Rule 144” means Rule 144 promulgated under the Securities Act and any successor provision.

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“[Rule 462\(e\)](#)” means Rule 462(e) promulgated under the Securities Act and any successor provision.

“[SEC](#)” means the U.S. Securities and Exchange Commission.

“[Securities Act](#)” means the Securities Act of 1933, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

“[Selling Expenses](#)” means all underwriting discounts, selling commissions and stock transfer taxes applicable to the securities registered by the Holders, and the fees and expenses of any counsel to the Holders (other than such fees and expenses expressly included in Registration Expenses).

“[Shelf Registration Statement](#)” means the Resale Shelf Registration Statement or a Subsequent Shelf Registration Statement, as applicable.

2. The following terms are defined in the Sections of the Agreement indicated:

INDEX OF TERMS

<u>Term</u>	<u>Section</u>
Actions	Section 5.6(b)
Agreement	Preamble
Company	Preamble
Company Indemnified Parties	Section 3.1
Effectiveness Period	Section 1.2
Holder Indemnified Parties	Section 3.2
Indemnified Party	Section 3.3
Indemnifying Party	Section 3.3
Interruption Period	Section 2.1
Investment Agreement	Recitals
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Piggyback Registration Statement	Section 1.8(a)
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Quarterly Blackout Period	Section 1.6(a)
Resale Shelf Registration Statement	Section 1.1
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Shelf Offering	Section 1.7
Stockholder	Preamble
Stockholders	Preamble
Subsequent Holder Notice	Section 1.5
Subsequent Shelf Registration Statement	Section 1.3
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Underwritten Offering	Section 1.6(a)
Underwritten Offering Notice	Section 1.6(a)



Press Release | For Distribution

Zix Closes Acquisition of AppRiver, Creating Leading Cloud-based Cybersecurity Solutions Provider

DALLAS — February 20, 2019 — Zix Corporation (Zix) (NASDAQ: ZIXI), a leader in email security, has closed its previously announced acquisition of AppRiver, a leading provider of cloud-based cybersecurity solutions, for \$275 million in cash, subject to a customary working capital adjustment and reduction for outstanding AppRiver indebtedness, certain accrued items and transaction expenses.

“Today is a significant day for Zix and AppRiver employees, customers, partners, and shareholders, as we complete the acquisition of AppRiver and create one of the leading email and security solutions providers, particularly for the small and mid-size business market,” said David Wagner, Zix’s Chief Executive Officer. “Over the last three years we aligned our business with the growth drivers that are propelling our industry, especially our customers’ migration to the cloud, which is still in its early innings. This acquisition further strengthens that alignment by bolstering our security offerings, expanding our go-to-market channels, and providing a stronger cloud platform to drive even more value for our customers and partners. We’re excited to enter this new chapter of our value creation journey. We will focus on integrating the two businesses, accelerating our growth through channel partners and cross-selling, and increasing our profitability through cost synergies and improved attach rates.”

As previously announced, concurrent with the close of the acquisition, Zix entered into a credit agreement with a syndicate of financial institutions and SunTrust Bank, as administrative agent, for a new five-year \$175 million term loan, a \$10 million delayed draw term loan facility and a \$25 million revolving credit facility. The company also secured a new \$100 million convertible preferred equity investment from True Wind Capital. In connection with True Wind’s convertible preferred equity investment, Zix expanded its board of directors to eight members and appointed True Wind Founding Partner James H. Greene, Jr. and True Wind Principal Brandon Van Buren as directors.

As previously disclosed, the Annual Recurring Revenue (ARR) of the combined company (representing the projected future revenue to be generated over the ensuing 12-month period) is approximately \$180 million at the time of closing. Zix is targeting ARR of approximately \$200 million to \$207 million for 2019, which represents an organic growth rate of approximately 11% to 15% year-over-year. Zix management is also expecting revenue of approximately \$47 million to \$50 million with a 24% adjusted EBITDA margin in the fourth quarter of 2019.

www.zixcorp.com



The company will provide more complete guidance on its fourth quarter and full year 2018 earnings call, scheduled for February 28, 2019.

About Zix Corporation

Zix Corporation (Zix) is a leader in email security. Trusted by the nation's most influential institutions in healthcare, finance and government, Zix delivers a superior experience and easy-to-use solutions for email encryption and data loss prevention, advanced threat protection, unified information archiving and bring your own device (BYOD) mobile security. Focusing on the protection of business communication, Zix enables its customers to better secure data and meet compliance needs. Zix is publicly traded on the Nasdaq Global Market under the symbol ZIXI. For more information, visit www.zixcorp.com.

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Statements in this release that are not purely historical facts or that necessarily depend upon future events, including statements about future business combination and/or related financing transactions, forecasts of sales, revenue, EBITDA, earnings, earnings per share or similar financial measures, potential benefits of future business combination transactions or strategic relationships, or other statements about anticipations, beliefs, expectations, hopes, intentions or strategies for the future, may be forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. Readers are cautioned not to place undue reliance on forward-looking statements. All forward-looking statements are based upon information available to Zix on the date this release was issued. Zix undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. Any forward-looking statements involve risks and uncertainties that could cause actual events or results to differ materially from the events or results described in the forward-looking statements, including but not limited to risks or uncertainties related to the acquisition and integration of newly acquired companies and businesses, the company's taking on significant new indebtedness and/or issuance of significant new equity to finance its acquisitions, market acceptance of both existing and new Zix solutions, changing market dynamics resulting from technological change and innovation as well as ongoing customer migration of IT solutions to the "cloud", and how privacy and data security laws may affect demand for Zix data protection solutions. Zix may not succeed in addressing these and other risks. Further information regarding factors that could affect Zix financial and other results can be found in the risk factors section of Zix's most recent annual report on Form 10-K filed with the Securities and Exchange Commission, as those risk factors may be supplemented in subsequent quarterly reports on Form 10-Q.