

ZIX CORP  
Form PRER14A  
September 28, 2005

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20529  
SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934  
Exchange Act of 1934 (Amendment No. 1)

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

Check the appropriate box:

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

**ZIX CORPORATION**

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

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

2) Aggregate number of securities to which transaction applies:

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

4) Proposed maximum aggregate value of transaction:

5) Total fee paid:

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

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-

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**ZIX CORPORATION**  
**2711 North Haskell Avenue**  
**Suite 2200, LB 36**  
**Dallas, Texas 75204-2960**

September , 2005

Dear Fellow Shareholders:

I am pleased to report that we have successfully closed the first part of a private placement of securities of our company, Zix Corporation. In the private placement, we agreed to issue and sell an aggregate of 10,503,862 shares of our common stock and warrants to purchase up to an additional 3,466,274 shares of our common stock for total proceeds to us of approximately \$26.3 million. Of that amount, we have completed the issuance of 6,302,318 shares of our common stock and warrants to purchase an additional 2,079,767 shares of our common stock, for total net proceeds to us of approximately \$14.67 million. However, under applicable Nasdaq rules, we cannot issue the balance of the shares and warrants without your approval. The attached Proxy Statement and notice of special meeting of shareholders describes in detail the proposal which requires your support to enable us to complete this important financing.

**COMPLETING THIS FINANCING WILL DILUTE YOUR EXISTING STOCKHOLDING. HOWEVER, IF SHAREHOLDERS DO NOT APPROVE THE PROPOSAL, WE WILL NOT BE ABLE TO OBTAIN APPROXIMATELY \$9.75 MILLION OF NET PROCEEDS THAT WE BELIEVE ARE ESSENTIAL TO OUR OPERATIONS AND SUCCESS.**

The affirmative vote of a majority of our shares of common stock as of the record date for the meeting and present in person or represented by proxy and entitled to vote at the Special Meeting (excluding shares of our common stock already issued in the private placement) will be required to approve such proposal. Each shareholder should take the time to review the attached Proxy Statement and to complete and return the enclosed proxy card.

Your vote is important, no matter how many shares you own. Please vote today.

Thank you very much for your prompt attention to this important matter.

**RICHARD D. SPURR**  
*Chief Executive Officer, President and*  
*Chief Operating Officer*

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**ZIX CORPORATION**  
**2711 North Haskell Avenue**  
**Suite 2200, LB 36**  
**Dallas, Texas 75204-2960**

**NOTICE OF SPECIAL MEETING OF SHAREHOLDERS**  
**To Be Held \_\_\_\_\_, \_\_\_\_\_, 2005**

We will hold a special shareholders meeting on \_\_\_\_\_, \_\_\_\_\_, 2005, at 10:00 a.m. (registration to begin at 9:30 a.m.), Central Time. We will hold the meeting at Cityplace Conference Center, Room, 2711 North Haskell Avenue, Dallas, Texas 75204. At the meeting, we will ask you to consider and vote on the following proposals:

a proposal to approve the issuance of 4,201,544 shares of our common stock and related warrants to purchase an additional 1,386,507 shares of our common stock pursuant to the securities purchase agreement described in the accompanying Proxy Statement; and

such other matters as may be properly brought before the meeting or any adjournment thereof.

If you held shares of our common stock (other than shares acquired under the securities purchase agreement, as described in the accompanying Proxy Statement) at the close of business on \_\_\_\_\_, 2005, the record date for the meeting, you are entitled to notice of, and to vote at, the meeting or any adjournment thereof. The stock transfer books will not be closed.

We would like you to attend the meeting in person, but understand that you may not be able to do so. For your convenience, and to ensure that your shares are represented and voted according to your wishes, we have enclosed a proxy card for you to use. Please vote, sign and date the proxy card and return it to us as soon as possible. We have provided you with a postage-paid envelope to return your proxy card. If you attend the meeting in person, you may revoke your proxy and vote in person. We look forward to hearing from you.

By Order of the Board of Directors,

RONALD A. WOESSNER  
*Senior Vice President, General Counsel & Secretary*

Dallas, Texas  
September \_\_\_\_\_, 2005

**YOUR VOTE IS IMPORTANT.**  
**Please vote early even if you plan to attend the special meeting.**

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**QUESTIONS AND ANSWERS**

Although we encourage you to read the enclosed Proxy Statement in its entirety, we include this Question and Answer section to provide some background information and brief answers to several questions you might have about the enclosed proposal. In this Proxy Statement, we refer to Zix Corporation as the Company, Zix, ZixCorp, we, or us.

**Q. Why did I receive this Proxy Statement?**

A. On or about [redacted], 2005, we began mailing this Proxy Statement and accompanying proxy card to everyone who (i) was a holder of our shares of common stock on the record date for the meeting, which is at the close of business on [redacted], 2005 and (ii) was entitled to vote on the Proposal described below. We prepared this Proxy Statement to let our shareholders know when and where we will hold a special shareholders meeting. This proxy statement:

[redacted] provides you with information about the proposal that will be discussed and voted on at the meeting, and

[redacted] provides you with certain updated information about our company.

**Q. What proposal are shareholders being asked to consider at the upcoming Special Meeting?**

A. We are seeking approval of a proposal that would allow us to complete the issuance of shares of our common stock and related warrants to purchase shares of our common stock in the private placement we closed on August 9, 2005. On that date, we agreed to sell and issue to certain purchasers (the Purchasers) under a securities purchase agreement (the Securities Purchase Agreement) an aggregate of 10,503,862 units. Each unit consists of (i) one share of our common stock, par value \$0.01 per share, and (ii) a related warrant to purchase 0.33 of one share of our common stock. Under Nasdaq rules (as further described below), we could not, without the approval of our shareholders, issue more than 6.5 million shares of our common stock (or 19.99% of our issued and outstanding shares immediately prior to the execution of the Securities Purchase Agreement). Due to these limitations, we issued only an aggregate of 6,302,318 shares of common stock and related warrants to purchase an additional 2,079,767 shares of our common stock to the Purchasers at the closing of the Securities Purchase Agreement in exchange for proceeds of approximately \$15.8 million (\$14.67 million in net proceeds to us after transaction fees of \$1.13 million). In this Proxy Statement, we refer to the shares of common stock we already issued to Purchasers at the closing of the Securities Purchase Agreement as Firm Shares and the related warrants as Firm Warrants, and when describing both the Firm Shares and Firm Warrants, we refer to them as the Firm Securities.

We are now seeking shareholder approval to issue the balance of the shares and warrants that the Purchasers agreed to purchase from us (i.e., an aggregate of 4,201,544 shares of common stock and related warrants to purchase 1,386,507 additional shares of our common stock. In this Proxy Statement, we refer to the additional shares to be issued to the Purchasers if our shareholders approve the issuance as the Excess Shares and the additional warrants as the Excess Warrants, and when describing both shares and warrants, we refer to them as the Excess Securities. We refer to this proposal as the Proposal throughout this Proxy Statement.

Pursuant to an Escrow Agreement, dated as of August 9, 2005, between us and JPMorgan Chase Bank, N.A., approximately \$10.5 million of funds relating to the Excess Securities were placed into escrow pending approval by our shareholders of the issuance of the Excess Securities. While held in escrow, the escrowed funds will accrue interest, payable by us, at a rate of 7.0% per annum.

If the Proposal is approved by our shareholders, we will issue the Excess Securities to the Purchasers as promptly as practicable following such approval. Upon such issuance, we will receive escrowed funds, totaling approximately \$9.75 million (net of transaction fees and expenses).

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If the Proposal is not approved by our shareholders, we will not be allowed to issue the Excess Securities and the funds held in escrow will be returned to the Purchasers.

Regardless of whether shareholder approval is obtained, we will be obligated to pay interest on the escrowed funds to the Purchasers at a rate of 7.0% per annum until the date the funds are released from escrow.

**Q. For which part of the private placement is Zix seeking shareholder approval?**

- A. Zix is seeking shareholder approval of the Proposal for the issuance to the Purchasers of the Excess Securities. Zix is not seeking shareholder approval for the private placement of Firm Shares and Firm Warrants issued to the Purchasers at the closing of the Securities Purchase Agreement.

**Q. Why is Zix seeking shareholder approval for the issuance of the Excess Securities?**

- A. We are subject to the rules of the Nasdaq Stock Market, Inc. because our common stock is listed on the Nasdaq National Market. These rules require us to obtain shareholder approval for any issuance or sale of common stock, or securities convertible into or exercisable for common stock, that is (i) equal to 20% or more of our outstanding common stock before such issuance or sale and (ii) at a price per share below the greater of book or market value at the time of such issuance or sale. These rules apply to the Excess Shares because:  
the purchase price of the units (each consisting of one share of common stock and a warrant to purchase 0.33 of one share of common stock) issued at the closing of the Securities Purchase Agreement, and that we intend to issue following shareholder approval, is \$2.50 per unit (except for units purchased by certain of our officers and directors, which were issued or will be issued at a purchase price of \$2.99 per unit), which is below the \$2.94 per share closing price of our common stock on Nasdaq on August 8, 2005, the last day our common stock traded on Nasdaq before we entered into the Securities Purchase Agreement; and

the shares of common stock that we have issued or intend to issue pursuant to the Securities Purchase Agreement (including the Excess Shares) will comprise, in total, approximately 32.25% of the shares of our common stock outstanding immediately prior to August 9, 2005.

For the above reasons, on the closing date of the Securities Purchase Agreement, we were only able to issue shares of our common stock representing up to 19.99% of our common stock outstanding on the date of the Securities Purchase Agreement and now we are required under Nasdaq National Market rules to obtain shareholder approval prior to issuing the Excess Securities.

In addition, under the Securities Purchase Agreement, we agreed to seek, and use our best efforts to obtain, the approval of our shareholders to issue the Excess Securities to the Purchasers no later than November 22, 2005. This Proxy Statement has been prepared pursuant to our obligations to the Purchasers under the Securities Purchase Agreement.

**Q. Why does Zix need to issue the Excess Securities?**

- A. As of June 30, 2005, we had unrestricted cash and cash equivalents of \$7.7 million. Prior to the private placement described in this Proxy Statement, we had taken certain actions to reduce our cash requirements, including cost reductions, sale of two product lines and amendments to the terms of our \$20 million principal amount of convertible notes held by two institutional investors. In addition, the Company has chosen to continue to invest in the eHealth (e-prescription) market, which is a developing market, requiring us to make significant cash investments in order to develop the business. Based on this strategic decision to continue investing in the eHealth market, our anticipated cash requirements would have been greater than our balance of unrestricted cash and cash equivalents that were on hand at June 30, 2005.



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Consequently, our management and Board of Directors determined that we should seek additional working capital to improve our cash position and fund our continuing investments in the eHealth market. The alternatives to securing additional working capital would have been a change in our business model, substantially scaled back investments in eHealth or significant disposition of business assets. Based on our stock price and the state of the capital markets, our management and Board of Directors, in consultation with our investment banking firm, C.E. Unterberg, Towbin LLC, determined that a private placement of our publicly-traded common stock (commonly referred to as a PIPE financing), targeting private venture capital investors and other institutional investors, had a higher likelihood of success, could be consummated promptly and would provide us better terms than alternate financing transactions.

At the closing of the Securities Purchase Agreement on August 9, 2005, we completed the issuance of the Firm Securities and received net proceeds of approximately \$14.67 million. Assuming the approval of the Proposal, we would promptly issue the Excess Securities and receive approximately \$9.75 million in additional net proceeds (after fees and expenses). We may also receive an additional \$10.5 million in aggregate gross proceeds if and when all warrants (including the Excess Warrants) are exercised in full (assuming an exercise price of \$3.04 per share and no net exercise).

**Q. What if the Proposal is not approved?**

- A. If the Proposal does not receive shareholder approval, the earlier issuance of the Firm Securities to the Purchasers at the closing of the Securities Purchase Agreement will not be affected, but the issuance and sale of the Excess Securities to the Purchasers will not occur. Specifically, the Excess Securities will not be issued, the funds relating to the Excess Securities that currently are held in escrow will be returned to the Purchasers and we will not receive approximately \$9.75 million in net proceeds from the issuance of the Excess Securities.

Our current liquidity and capital resources are limited. If the Proposal fails and we do not receive the proceeds from the Excess Securities, meeting our working capital needs under a continuation of the current business model would prove difficult beyond June 30, 2006 and could significantly harm our ability to achieve our intended business objectives. We could be forced to further augment our cash position through additional cost reduction measures, sales of non-core assets, additional financings or a combination of these actions. Should we have to seek additional funds to replace the funds under a failed Proposal vote, there can be no assurances that these funds could be obtained on terms that are as favorable to us as the terms of the Excess Securities; therefore, our business model might have to be altered. Any of these adverse events could substantially diminish the value of our common stock and thus your investment in our shares.

**Q. Will the issuance of the Excess Securities dilute our shareholders' ownership interest in Zix?**

- A. Our shareholders will incur immediate and significant dilution of their percentage of stock ownership in Zix if the Proposal is approved and the Excess Securities are issued. The table below illustrates the incremental impact that the issuance of the Excess Securities will have upon the number of shares of our common stock outstanding (assuming no additional issuances of shares of our common stock):

	<b>Number of Shares Outstanding Prior to Issuance</b>	<b>Shares</b>	<b>Warrants*</b>
Issuance of Firm Securities on August 9, 2005:	32,573,744	6,302,318	2,079,767

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	(As of August 8, 2005)	(Firm Shares)	(Firm Warrants)
Issuance of Excess Securities:	38,876,062	4,201,544	1,386,507
	(After issuance of Firm Shares)	(Excess Shares)	(Excess Warrants)

\* The Firm Warrants and Excess Warrants reflected in this table are not exercisable until February 9, 2006.

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Shareholders immediately prior to the issuance of the Excess Securities will incur dilution in their percentage ownership of our common stock upon the consummation of the issuance of the Excess Shares, of approximately 9.75%, or 12.01% assuming exercise in full of the both Firm Warrants and the Excess Warrants.

However, as explained above in the answer to the question "What if the Proposal is not approved?" failure to issue the Excess Securities could significantly harm our business and the value of our common stock, and the value of your investment in our common stock could be substantially diminished.

**Q. Why have I received more than one proxy statement?**

- A. If you received more than one proxy statement, your shares are probably registered differently or are in more than one account. Please vote each proxy card that you receive.

**Q. How do I vote if I am not planning to attend the special meeting?**

- A. In addition to voting in person at the meeting, you may mark your selections on the enclosed proxy card, date and sign the card and return the card in the enclosed postage-paid envelope.

Please understand that voting by any means other than voting in person at the meeting has the effect of appointing Richard D. Spurr, our Chief Executive Officer, President and Chief Operating Officer, and Bradley C. Almond, our Vice President of Finance and Administration, Chief Financial Officer and Treasurer, as your proxies. They will be required to vote on the Proposal described in this Proxy Statement exactly as you have voted. However, if any other matter requiring a shareholder vote is properly raised at the meeting, then Messrs. Spurr and Almond will be authorized to use their discretion to vote on such issues on your behalf.

We encourage you to vote now even if you plan to attend the Special Meeting in person. If your shares are in a brokerage account, you may receive different voting instructions from your broker.

**Q. What if I want to change my vote?**

- A. You may revoke your vote on the Proposal at any time before the Special Meeting for any reason. To revoke your vote before the meeting, write to our Secretary, Ronald A. Woessner, at 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960. You may also come to the meeting and change your vote in writing.

**Q. What vote is necessary to approve the Proposal?**

- A. The affirmative vote of a majority of the shares of our common stock represented, in person or by proxy, and entitled to vote at the meeting is required to approve the Proposal. Pursuant to Nasdaq requirements, shares of common stock issued in the first part of the private placement (*i.e.*, the Firm Shares) are not entitled to vote on the Proposal.

**Q. How are abstentions and broker non-votes treated?**

- A. Any shareholder that is present at the Special Meeting, either in person or by proxy, but who abstains from voting, will still be counted for purposes of determining whether a quorum exists. An abstention would have the same effect as a vote against the Proposal. If you sign your proxy card but do not specify how you want to vote on the Proposal, then your shares will be voted FOR the Proposal.

Brokers who hold shares in street name do not have the authority to vote on the Proposal without receiving instructions from the beneficial owner of the shares. In accordance with our bylaws, broker non-votes will be considered present for purposes of calculating a quorum but will not be deemed to be entitled to vote for purposes of determining whether shareholder approval of the Proposal has been obtained. Therefore, broker non-votes will not be included in the tabulation of the voting results and will have no effect with respect to the approval of the Proposal.

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**Q. Where can I find additional information? Who can help answer my questions?**

A: You should carefully review the entire Proxy Statement, which contains important information regarding the Proposal, before voting on the Proposal. We filed a current report on Form 8-K with the Securities and Exchange Commission on August 9, 2005, and an amendment to such Form 8-K on August 10, 2005, which contain a summary of the private placement and attach each of the relevant agreements as exhibits. The Securities Purchase Agreement and Form of Warrant are also attached for your convenience as Annexes to this Proxy Statement. We strongly encourage you to carefully review the Form 8-K, as amended, and the exhibits thereto describing the private placement. The section under the heading *Where You Can Find Additional Information*, beginning on page 22 of this Proxy Statement, describes additional sources from which to obtain this Proxy Statement, our public filings under the Securities Exchange Act of 1934, as amended (including the Form 8-K described above), and other information about Zix.

If you would like copies of the Form 8-K, as amended, described above (including the exhibits thereto), additional copies of this Proxy Statement or other documents that we have filed with the SEC that are incorporated by reference into this Proxy Statement, free of charge, or if you have questions about the Proposal or the procedures for voting your shares, you should contact: Zix Corporation, Attention: Bradley C. Almond, Vice President and Chief Financial Officer, 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204, Telephone: (214) 370-2000.

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**ZIX CORPORATION**  
**PROXY STATEMENT FOR THE SPECIAL MEETING OF SHAREHOLDERS**  
**TO BE HELD , 2005**  
**INFORMATION CONCERNING SOLICITATION AND VOTING**

**General**

The enclosed Proxy is solicited on behalf of the Board of Directors (the Board of Directors or the Board ) of Zix Corporation, a Texas corporation ( Zix ), at a Special Meeting of Shareholders to be held on , 2005, at 10:00 a.m. (registration to begin at 9:30 a.m.), Central Time, and at any adjournment, continuation or postponement of the meeting, referred to throughout this Proxy Statement as the Special Meeting, for the purposes set forth herein and in the accompanying Notice of Special Meeting of Shareholders. The Special Meeting will be held at Cityplace Conference Center, Room, 2711 North Haskell Avenue, Dallas, Texas 75204.

These proxy solicitation materials were first mailed or given to all shareholders entitled to vote at the meeting on or about , 2005.

**Purpose of Special Meeting**

As described above, the purpose of the Special Meeting is to obtain approval for the Proposal and such other business as may properly come before the meeting, including any adjournment or postponement thereof.

**Vote Required**

The affirmative vote of the holders of a majority of the common stock present in person or represented by proxy and entitled to vote at the Special Meeting will be required to approve the Proposal. Pursuant to Nasdaq requirements, shares of common stock issued in the first part of the private placement (*i.e.*, the Firm Shares) are not entitled to vote on the Proposal.

**Record Date and Shares Outstanding**

Only shareholders who owned shares of our common stock at the close of business on , 2005, referred to in this Proxy Statement as the Record Date, are entitled to notice of, and to vote at, the Special Meeting. In addition, pursuant to Nasdaq requirements, shares of common stock issued in the first part of the private placement transaction (*i.e.*, the Firm Shares) are not entitled to vote on the Proposal. Therefore, each share of common stock outstanding on the Record Date (other than the Firm Shares) is entitled to one vote on the matter to be voted on at the Special Meeting. As of , 2005, shares of Zix s common stock were outstanding and entitled to vote.

**Revocability of Proxies**

You may revoke your Proxy at any time before it is exercised. Execution of the Proxy will not in any way affect your right to attend the Special Meeting in person. Revocation may be made prior to the meeting by written revocation or through a duly executed proxy bearing a later date sent to Zix Corporation, Attention: Ronald A. Woessner, Secretary, 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204; or your Proxy may be revoked personally at the Special Meeting by written notice to the Secretary at the Special Meeting prior to the voting of the Proxy. Any revocation sent to Zix must include the shareholder s name and must be received prior to the meeting to be effective.

**How Your Proxy Will Be Voted**

In the absence of specific instructions to the contrary, shares represented by properly executed proxies received by Zix, including unmarked proxies, will be voted to approve the Proposal. In addition, if any other matters properly come before the meeting, it is the intention of the persons named in the enclosed Proxy to

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vote the shares they represent as directed by the Board of Directors. We have not received notice of any other matters that may properly be presented at the Special Meeting.

### **Quorum**

The presence, in person or by proxy, of the holders of a majority of the outstanding shares of Zix's common stock entitled to vote at the Special Meeting is necessary to constitute a quorum at the Special Meeting. As there were shares outstanding and entitled to vote at the Special Meeting as of the Record Date, we will need at least shares present in person or by proxy at the Special Meeting for a quorum to exist.

### **Dissenters' Rights**

Under Texas law, shareholders are not entitled to dissenters' rights with respect to the Proposal.

### **Voting**

#### *Tabulation*

Votes of shareholders entitled to vote who are present at the Special Meeting in person or by proxy and abstentions are counted as present or represented at the meeting for purposes of determining whether a quorum exists. For the Proposal, the affirmative vote of a majority of the shares of common stock entitled to vote and present in person or represented by proxy at the Special Meeting is necessary for approval.

#### *Abstentions*

Abstentions occur when a shareholder entitled to vote and present in person or represented by proxy affirmatively votes to abstain. Votes in abstention are considered present for purposes of calculating a quorum but do not count as a vote FOR or AGAINST any matter. While abstentions do not count as a vote FOR or AGAINST, they have the same effect as a negative vote on the Proposal because abstentions will be included in tabulations of the shares of common stock entitled to vote for purposes of determining whether the Proposal has been approved.

#### *Broker Non-Votes*

A broker non-vote occurs when a nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have the discretionary voting power with respect to that item and has not received instructions from the beneficial owner. Under applicable rules, brokers who hold shares in street name do not have the authority to vote on the Proposal without receiving instructions from the beneficial owner of the shares. In accordance with our bylaws, broker non-votes will be considered present for purposes of calculating a quorum but will not be deemed to be entitled to vote for purposes of determining whether stockholder approval of the Proposal has been obtained. Therefore, broker non-votes will not be included in the tabulation of the voting results and will have no effect with respect to the approval of the Proposal.

### **Solicitation of Proxies**

This solicitation is being made by mail on behalf of our Board of Directors. We will bear the expense of the preparation, printing and mailing of the enclosed Proxy, Notice of Special Meeting and this Proxy Statement and any additional material relating to the meeting that may be furnished to our shareholders by our Board subsequent to the furnishing of this Proxy Statement. We have engaged Georgeson Shareholder to assist in the solicitation of proxy materials from shareholders at a fee of approximately \$17,000 plus reimbursement of reasonable out-of-pocket expenses. Proxies may also be solicited without additional compensation by our officers or employees by telephone, facsimile transmission, e-mail or personal interview. We will reimburse banks and brokers who hold shares in their name or custody, or in the name of nominees for others, for their out-of-pocket expenses incurred in forwarding copies of the proxy materials to those persons

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for whom they hold such shares. To obtain the necessary representation of shareholders at the meeting, supplementary solicitations may be made by mail, telephone, facsimile transmission, e-mail or personal interview by our officers or employees, without additional compensation, or selected securities dealers. We anticipate that the cost of such supplementary solicitations, if any, will not be material.

**Shareholders Proposals**

If you would like to submit a proposal to be included in next year's annual proxy statement, you must submit your proposal in writing so that we receive it no later than December 16, 2005. We will include your proposal in our next annual proxy statement if it is a proposal that we would be required to include in our proxy statement pursuant to the rules of the SEC. Under Rule 14a-8 of the Securities Exchange Act of 1934, as amended (the Exchange Act), proposals of shareholders must conform to certain requirements as to form and may be omitted from the proxy materials in certain circumstances. To avoid unnecessary expenditures of time and money, you are urged to review this rule and, if questions arise, consult legal counsel prior to submitting a proposal to us.

The SEC rules also establish a different deadline for submission of shareholder proposals that are not intended to be included in our next annual proxy statement. If a shareholder intends to submit a proposal at the next annual meeting of shareholders and the proposal is not intended to be included in our proxy statement relating to such meeting, the shareholder must have given proper notice no later than March 1, 2005. If a shareholder gives notice of such a proposal after the deadline, the proxy holders will be allowed to use their discretionary voting authority to vote against the shareholder proposal when and if the proposal is raised at the next annual meeting.

All notices of proposals, whether or not to be included in our proxy materials, should be directed to our Secretary, Ronald A. Woessner, at our principal executive offices at 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960.

**Householding of Proxy Materials**

The SEC has adopted rules that permit companies and intermediaries (e.g., brokers) to satisfy the delivery requirements for proxy statements and annual reports with respect to two or more shareholders sharing the same address by delivering a single proxy statement addressed to those shareholders and enclosing separate proxy cards for each shareholder. This process, which is commonly referred to as householding, potentially eliminates some duplicative mailings to shareholders and reduces our mailing costs.

For this Special Meeting, a number of brokers with account holders who are shareholders of Zix will be householding our proxy materials. A single proxy statement will be delivered to multiple shareholders sharing an address unless contrary instructions have been received from the affected shareholders. Once you have received notice from your broker that they will be householding communications to your address, householding will continue until you are notified otherwise or until you revoke your consent. If, at any time, you no longer wish to participate in householding and would prefer to receive a separate proxy statement and annual report, please notify your broker, direct your written request to Zix Corporation, Attention: Ronald A. Woessner, Secretary, 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204 or contact Ronald A. Woessner at (214) 370-2000. Shareholders who currently receive multiple copies of the proxy statement at their address and would like to request householding of their communications should contact their broker.

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The following table sets forth the shares of our common stock beneficially owned by (1) each of our directors, (2) our executive officers, (3) all of our directors and executive officers as a group, and (4) all persons known by us to beneficially own more than 5% of our outstanding stock.

<b>Beneficial Owner(2)</b>	<b>Amount and Nature of Beneficial Ownership(1)</b>	
	<b>Number of Common Stock Shares Beneficially Owned(3)</b>	<b>Percentage of Total Common Stock Shares Outstanding(3)</b>
Amaranth LLC(4) c/o Amaranth Advisors L.L.C. One American Lane Greenwich, Connecticut 06831	1,400,958	3.6%
Bradley C. Almond(5)	113,557	*
George W. Haywood(6) c/o Cronin & Vris, LLP 380 Madison Avenue, 24th Floor New York, New York 10017	4,716,203	12.1%
Michael E. Keane(7)	258,014	*
Charles N. Kahn III(8)	8,258	*
James S. Marston(7)	260,514	*
David J. Robertson(7)	202,083	*
John A. Ryan(9)	1,485,309	3.7%
Antonio R. Sanchez, Jr.(10) Post Office Box 2986 Laredo, Texas 78044	2,640,896	6.7%
Antonio R. Sanchez III(11)	477,366	1.2%
Paul E. Schlosberg(7)	6,250	*
Richard D. Spurr(12)	588,097	1.5%
Dr. Ben G. Streetman(7)	207,706	*
Ronald A. Woessner(13)	73,485	*
All directors and executive officers as a group (11 persons)(14)	3,680,639	8.7%

\* Denotes ownership of less than 1%.

(1) Reported in accordance with the beneficial ownership rules of the Securities and Exchange Commission. Unless otherwise noted, each shareholder listed in the table has both sole voting and sole investment power over the common stock shown as beneficially owned, subject to community property laws where applicable.

(2) Unless otherwise noted, the address for each beneficial owner is c/o Zix Corporation, 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960.

- (3) Percentages are based on the total number of shares of our common stock outstanding at August 31, 2005, which was 39,194,218. Shares of our common stock that were not outstanding but could be acquired upon exercise of an option or other convertible security within 60 days of August 31, 2005 are deemed outstanding for the purpose of computing the percentage of outstanding shares beneficially owned by a particular person. However, such shares are not deemed to be outstanding for the purpose of computing the percentage of outstanding shares beneficially owned by any other person. The number of shares beneficially owned does not include the Excess Shares or shares issuable upon exercise of the Firm Warrants or Excess Warrants.

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- (4) Excludes 900,000 Excess Shares that may be issued to Amulet Limited upon shareholder approval of the issuance of the Excess Securities and warrants exercisable for 245,025 shares that were reported as beneficially owned by Amaranth LLC on a Schedule 13G filed jointly by Amaranth LLC, Amaranth Advisors L.L.C and Nicholas M. Maounis on August 19, 2005. If the Excess Shares were included, the percentage of our common stock beneficially owned by Amaranth LLC would be 5.8%. Includes 1,398,658 shares held by Amaranth LLC through Amulet Limited, its wholly-owned subsidiary. Amaranth Advisors L.L.C., the trading advisor for Amulet Limited, exercises dispositive powers with respect to the shares, and voting and/or dispositive power with respect to the common stock underlying the warrants. Amaranth Advisors L.L.C. has designated authorized signatories who will sign on behalf of Amulet Limited. Nicholas M. Maounis is the managing member of Amaranth Advisors L.L.C. Each of Amaranth Securities L.L.C and Amaranth Global Securities Inc. is a broker-dealer registered pursuant to Section 15(b) of the Exchange Act and is a member of the National Association of Securities Dealers, Inc. (the NASD ). Each such broker-dealer may be deemed to be an affiliate of Amaranth LLC. Neither of such broker-dealers, however, is authorized by the NASD to engage in securities offerings either as an underwriter or as a selling group participant and neither of such broker-dealers actually engages in any such activity. Amaranth LLC, through Amulet Limited, also holds \$10 million principal amount of our convertible promissory notes and warrants covering 536,673 shares of our common stock. As of August 31, 2005, the convertible notes have a conversion price of \$5.59 and the warrants have an exercise price of \$5.59, both of which may be adjusted in certain events. We have agreed to redeem \$2.5 million principal amount of the convertible notes with shares of our common stock by October 31, 2005 and an additional \$2.5 million principal amount of the convertible notes with shares of our common stock by December 31, 2005 at (i) 105% of the principal amount, plus accrued interest and (ii) a redemption rate that will require that we issue shares of our common stock valued at a 10% discount to the daily volume weighted average price ( VWAP ) of our common stock for a specified number of trading days preceding the applicable redemption date. On August 31, 2005, these \$5.25 million mandatory redemptions would be payable with approximately 2.4 million shares of our common stock using a VWAP of approximately \$2.43 per share. For more information on Amaranth LLC s convertible note holdings, see our Registration Statement on Form S-3 (File No. 333-124318).
- (5) Includes 100,000 shares that Mr. Almond has the right to acquire under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 31, 2005.
- (6) As reported in Mr. Haywood s most recent Form 4, filed August 11, 2005. Includes (i) 41,500 shares that are owned by family members of Mr. Haywood, (ii) 115,000 shares owned by the estate of a family member for which Mr. Haywood is executor and has voting power and (iii) 199,556 shares of common stock currently issuable to him upon exercise of certain warrants. Does not include 320,000 Excess Shares that may be issued to Mr. Haywood upon shareholder approval of the issuance of the Excess Securities. If such Excess Shares were included, the percentage of our common stock beneficially owned by Mr. Haywood would be 12.8%.
- (7) This individual has the right to acquire these shares under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 31, 2005.
- (8) Includes 6,250 shares that Mr. Kahn has the right to acquire under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 31, 2005.
- (9) Includes (i) 1,050,000 shares that Mr. Ryan has the right to acquire under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 31, 2005 and (ii) 66,518 shares currently issuable upon exercise of certain warrants.
- (10) As reported in Mr. Sanchez s most recent Schedule 13D/ A filed August 11, 2005. Includes (i) 1,883,770 shares held by Mr. Sanchez, Jr. directly, (ii) 9,375 shares held by family members of Mr. Sanchez, Jr., (iii) 91,123 shares held by trusts for which he serves as trustee or co-trustee, (iv) 523,592 shares held by

SANTIG, Ltd., a family limited partnership for which he owns and controls the managing general partner, Sanchez Management Corporation, and (v) 133,036 shares currently issuable to Mr. Sanchez, Jr. and SANTIG, Ltd. upon exercise of certain warrants. Mr. Sanchez, Jr. is a former director and father of current director Antonio R. Sanchez III. Does not include 80,000 Excess

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Shares that may be issued to Mr. Sanchez, Jr. upon shareholder approval of the issuance of the Excess Securities. If such Excess Shares were included, the percentage of our common stock beneficially owned by Mr. Sanchez, Jr. would be 7.0%.

- (11) Includes (i) 187,068 shares held by Mr. Sanchez III directly, (ii) 170,121 shares held by a trust for which he serves as co-trustee, along with 44,345 shares issuable to the trust upon exercise of certain warrants and (iii) 75,832 shares that he has the right to acquire under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 31, 2005. Mr. Sanchez III is the son of Antonio R. Sanchez, Jr., a former director.
- (12) Includes 574,240 shares that Mr. Spurr has the right to acquire these shares under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 31, 2005.
- (13) Includes 59,374 shares that Mr. Woessner has the right to acquire under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 31, 2005 and 2,500 shares held by a trust for which Mr. Woessner serves as trustee.
- (14) Includes 2,800,263 and 110,863 shares of our common stock that the group has the right to acquire under outstanding stock options and warrants, respectively, that are currently exercisable or that become exercisable within 60 days of August 31, 2005.

**PROPOSAL:**

**APPROVAL OF ISSUANCE OF EXCESS SECURITIES**

**Background and Reasons for the Private Placement Including the Issuance of the Excess Securities**

*General.*

On August 9, 2005, we entered into the Securities Purchase Agreement with the Purchasers, pursuant to which we agreed to sell to the Purchasers an aggregate of 10,503,862 units, each consisting of (i) one share of our common stock, par value \$0.01 per share, and (ii) a related warrant to purchase 0.33 of one share of our common stock. The units were sold for a purchase price of \$2.50 per unit, except in the case of units purchased by our officers and directors, which were sold at a purchase price of \$2.99 per unit. Due to Nasdaq limitations (as described below), we issued only the Firm Securities (consisting of an aggregate of 6,302,318 shares of common stock and related warrants to purchase 2,079,767 shares of our common stock) to the Purchasers at the closing of the Securities Purchase Agreement in exchange for total net proceeds of approximately \$14.67 million.

Assuming the Proposal is approved, we will issue the Excess Securities and receive approximately \$9.75 million in additional proceeds, net of fees and our expenses (for a total of \$24.42 million in aggregate net proceeds from the private placement transaction). Such fees and expenses (totalling approximately \$1.863 million) include (i) investment banking fees, (ii) legal fees, (iii) accounting fees, (iv) SEC filing fees and (v) other fees and expenses. We may also receive up to an additional \$10.5 million in aggregate proceeds if and when all warrants issued to the Purchasers in the private placement are exercised in full (assuming an exercise price of \$3.04 and no net exercise of warrants, as described below in Terms of the Private Placement ).

*Board of Directors Determination*

In reaching their unanimous decision to approve the private placement, including the issuance of the Excess Securities, and in determining that the private placement was fair to, and in the best interests of, us and our shareholders, our Board of Directors carefully considered many factors, the most important of which are set forth below:

As of June 30, 2005, we had unrestricted cash and cash equivalents of \$7.7 million. Prior to the private placement described in this Proxy Statement, we had taken certain actions to reduce our cash requirements, including cost reductions, sale of two product lines and amendments to the terms of our

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\$20 million principal amount of convertible notes held by two institutional investors. In addition, the Company has chosen to continue to invest in the eHealth (e-prescription) market, which is a developing market requiring us to make significant cash investments in order to develop the business. Based on this strategic decision to continue investing in the eHealth market, our anticipated cash requirements would have been greater than our balance of unrestricted cash and cash equivalents that were on hand at June 30, 2005.

In June 2005, we engaged a financial advisor and investment bank, C.E. Unterberg, Towbin LLC ( CEUT ), to help us identify financing alternatives. Based on our stock price and the state of the capital markets and the advice of CEUT, our management and our Board of Directors agreed that a private placement, structured as a PIPE transaction, targeting private venture capital investors and other institutional investors, had a higher likelihood of success, would be concluded more quickly and would provide us better terms than alternative financing transactions.

Given the cash requirements of our business, our Board of Directors determined to proceed with the private placement (including the issuance of the Excess Securities) on the terms contained in the Securities Purchase Agreement.

*Use of Proceeds*

The proceeds received from the issuance of the Excess Securities will be used to fund operations under our current business model, including to fund the Company's continuing investments in the eHealth (e-prescription) market. In particular, the proceeds will be used in a focused effort to maintain and take advantage of what we believe to be an early mover position in the eHealth market as the market develops and continues to grow.

**Terms of the Private Placement**

*General*

The closing of the Securities Purchase Agreement occurred on August 9, 2005. At the closing of the Securities Purchase Agreement, we issued an aggregate of 6,302,318 units (each consisting of one share of common stock and a warrant to purchase 0.33 of one share of our common stock) at a price of \$2.50 per unit, except in the case of units purchased by our officers and directors, which were sold for a purchase price of \$2.99 per unit, for aggregate net proceeds of approximately \$14.67 million. We are requesting in the Proposal that the shareholders approve the issuance by Zix of the Excess Securities, consisting of an additional 4,201,544 units (totaling 4,201,544 shares of our common stock and warrants exercisable for 1,386,507 additional shares of our common stock at an exercise price of \$3.04 per share) for aggregate net proceeds of approximately \$9.75 million. The sale of common stock and warrants in the private placement is intended to be exempt from the registration requirements of the Securities Act of 1933, as amended, and we expect to rely upon the Regulation D safe harbor provisions. We have set forth below the major terms of the private placement.

To ensure that shareholder approval would not be required for the Firm Securities, the number of Firm Shares was capped at 19.99% of our issued and outstanding shares immediately prior to the execution of the Securities Purchase Agreement. In effecting such cap, we required each participating Purchaser to cut back, on a pro rata basis, the number of shares of common stock and warrants to purchase our common stock that were issued at the closing of the Securities Purchase Agreement, such that the aggregate number of shares of common stock issued at the closing of the Securities Purchase Agreement did not exceed the 19.99% threshold. The funds relating to the Excess Securities were placed into escrow pending shareholder approval of the issuance of the Excess Securities.

The Securities Purchase Agreement and a Form of Warrant are provided for your reference as Annexes A and B, respectively, to this Proxy Statement. These documents were also included as exhibits to our Form 8-K filed on August 9, 2005, as subsequently amended on August 10, 2005. On August 9, 2005, we also entered into an Escrow Agreement with JPMorgan Chase Bank, N.A., as escrow agent, pursuant to which

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the funds in respect of the Excess Securities are to be held in escrow pending shareholder approval. The Escrow Agreement was also included as an exhibit to our Form 8-K filed on August 9, 2005.

**THIS SUMMARY OF THE TERMS OF THE PRIVATE PLACEMENT IS INTENDED TO PROVIDE YOU WITH BASIC INFORMATION CONCERNING THE TRANSACTION; HOWEVER, IT IS NOT A SUBSTITUTE FOR REVIEWING THE SECURITIES PURCHASE AGREEMENT AND THE FORM OF WARRANT IN THEIR ENTIRETY, WHICH WE HAVE INCLUDED AS ANNEXES A AND B, RESPECTIVELY, TO THIS PROXY STATEMENT. YOU SHOULD READ THIS SUMMARY IN CONJUNCTION WITH THE ANNEXES.**

*Terms of the Securities Purchase Agreement Applicable to the Issuance of the Excess Securities*

*Excess Securities to be Issued to Purchasers.* Subject to obtaining the approval of our shareholders, we will issue an additional 4,201,544 shares of common stock and related warrants to purchase 1,386,507 shares of common stock, for an aggregate purchase price of approximately \$10.5 million (\$9.75 million net of transaction expenses). We have agreed to issue the Excess Securities as units, each consisting of one share of common stock and a warrant to purchase 0.33 of one share of common stock, at a purchase price of \$2.50 per unit (except in the case of units issued to our officers and directors, which we have agreed to issue for a purchase price of \$2.99 per unit). The warrants may be exercised at any time from February 9, 2006 through August 9, 2010 at an exercise price of \$3.04 per share. We currently expect the issuance of such Excess Securities to take place promptly following this Special Meeting.

*Special Meeting Obligations.* Under the Securities Purchase Agreement, we are required to seek, and use our best efforts to obtain, our shareholders' approval of the issuance of the Excess Securities on or before November 22, 2005 (the 105th day following the closing of the Securities Purchase Agreement). In satisfying such obligations, we are required to call the Special Meeting and were required to prepare and file a preliminary form of this Proxy Statement no later than 30 days after the closing date of the Securities Purchase Agreement. Our Board of Directors has also agreed to recommend approval of the issuance of the Excess Securities by our shareholders. Under the Securities Purchase Agreement, we agreed to mail and distribute this Proxy Statement to our shareholders at least 30 days prior to the date of the Special Meeting, actively solicit proxies to vote for the Proposal and retain a proxy solicitation firm to assist in the solicitation.

*Registration Obligations and Liquidated Damages.* No later than 30 business days after the closing of the Securities Purchase Agreement (the Required Filing Date), we are required, at our expense, to file with the Securities and Exchange Commission (the SEC) a registration statement with respect to the resale of the shares of common stock (A) issued pursuant to the private placement (including the Firm Shares and the Excess Shares), and (B) issuable upon exercise of the warrants issued pursuant to the private placement (including the Firm Warrants and the Excess Warrants). We are required to use commercially reasonable efforts to cause such registration statement to be declared effective by the SEC no later than the 120th day following the closing date of the Securities Purchase Agreement (or if we receive notification from the SEC that the registration statement will receive no action or review from the SEC, within five business days after such notification) (the Required Effective Date), and, subject to our right to suspend the resale of stock under the registration statement in certain circumstances, we are required to maintain the effectiveness of this registration statement until the earlier of (1) the second anniversary of the effective date of the registration statement, (2) the date on which all such shares have been sold thereunder or (3) the date on which all such shares become eligible for resale pursuant to Rule 144(k) promulgated under the Securities Act of 1933, as amended (the Securities Act); provided, however, that if any Purchaser is an affiliate of Zix (as defined in Rule 144(a)(1) of the Securities Act) on the second anniversary of the effective date of the registration statement, the applicable time period to maintain the effectiveness of the registration statement will be the third anniversary of the effective date of the registration statement. If the registration statement (a) is not filed by the Required Filing Date, (b) is not declared effective by the Required Effective Date, or (c) once effective, ceases to be effective and available to the Purchasers in the private placement for any continuous period that exceeds 15 days, Zix is required to pay the investors in the private placement a cash payment as liquidated damages and not as a penalty. This cash payment is calculated as 1% per month (pro-rata on a 30 day basis) of the aggregate purchase price paid by the Purchasers in the private placement (or, in the case



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of a lapse of effectiveness of the registration statement for any continuous period that exceeds 15 days, 1% per month (pro-rata on a 30 day basis) of the total purchase price of the purchased securities purchased and still held by the Purchasers).

*Terms of the Warrants*

*Exercise Period.* Each of the Excess Warrants to be issued in the private placement will be exercisable from February 9, 2006 through August 9, 2010 and can be exercised in cash or, in certain situations, pursuant to a net exercise provision (as described below).

*Methods of Exercise.* The warrants may be exercised in cash at all times during the exercise period, whereby the holders of the warrants deliver the certificates representing the warrants to Zix and the then-applicable exercise price for the warrants in exchange for the shares issuable thereunder. In addition, the warrants contain a net exercise provision. If there is no effective registration statement registering the resale of the shares issuable upon exercise of the warrants, the net exercise provision allows the holder to receive shares of common stock equal to the value of the warrant without paying the exercise price in cash, but rather with the shares underlying the warrant.

*Exercise Price, Adjustment to Exercise Price and Number of Shares.* The exercise price of the Warrants is initially \$3.04 per share. The exercise price of, and the number of shares issuable pursuant to, the warrants are subject to customary anti-dilution adjustments in certain events, including certain mergers, consolidations, sales of substantially all of the assets of Zix, subdivision or combination of shares of Zix, stock dividends and other distributions of Zix.

*Registration Rights.* The warrants and the shares of our common stock issuable upon exercise of the warrants are not registered under the Securities Act or any state securities laws. Zix has granted registration rights to the Purchasers for the shares of common stock issuable upon the exercise of the warrants. Such registration rights are described in more detail above under the heading Terms of the Securities Purchase Agreement Applicable to the Issuance of the Excess Securities Registration Obligations and Liquidated Damages above on page 16.

*Terms of the Escrow Agreement*

Pursuant to the Escrow Agreement entered into as of August 9, 2005, between us and JPMorgan Chase Bank, N.A., as escrow agent, approximately \$10.5 million of funds relating to the Excess Securities to be issued to the Purchasers under the Securities Purchase Agreement were placed into escrow pending approval by our shareholders of the issuance of the Excess Securities to the Purchasers. While held in escrow, the escrowed funds will accrue interest, payable by us, at a rate of 7.0% per annum.

If our shareholders approve the consummation of the issuance of the Excess Securities, we will receive the escrowed funds in exchange for the issuance of the Excess Securities. If our shareholders do not approve such issuance, the funds will be returned to the Purchasers. Under the terms of the Securities Purchase Agreement and the Escrow Agreement, we will be required to pay the required interest amount to the Purchasers whether or not shareholder approval is obtained.

**Conditions to Consummating the Issuance of the Excess Securities**

Under the terms of the Securities Purchase Agreement that govern the private placement, our obligation to issue the Excess Securities pursuant to the private placement is subject only to the condition that our shareholders approve the issuance of such securities.

**Shareholder Approval and Nasdaq National Market Rules**

We are subject to the rules of the Nasdaq Stock Market, Inc. because our common stock is listed on the Nasdaq National Market. These rules require us to obtain shareholder approval for any issuance or sale of common stock, or securities convertible into or exercisable for common stock, that is (i) equal to 20% or more

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of our outstanding common stock before such issuance or sale and (ii) at a price per share below the greater of book or market value at the time of such issuance or sale. These rules apply to the Excess Shares because:

the purchase price of the units (each consisting of one share of common stock and a warrant to purchase 0.33 of one share of our common stock) issued and sold at the closing of the Securities Purchase Agreement, and that we intend to issue and sell following shareholder approval, is \$2.50 per unit (except for units purchased by certain of our officers and directors, which were sold or will be sold at a purchase price of \$2.99 per unit), which is below \$2.94 per share, the closing price of our common stock on Nasdaq on August 8, 2005, the last day our common stock traded on Nasdaq before we entered into the Securities Purchase Agreement; and

the shares of common stock that we have issued or intend to issue and sell pursuant to the Securities Purchase Agreement (including the Excess Shares) will comprise, in total, approximately 32.25% of the shares of our common stock outstanding immediately prior to August 9, 2005.

For the above reasons, we are required under Nasdaq National Market rules to obtain shareholder approval prior to issuing and selling the Excess Securities.

**Dilutive Effect**

Our shareholders will incur immediate and significant dilution of their percentage of stock ownership in Zix if the Proposal is approved and the Excess Securities are issued. This means that our current shareholders will own a smaller percentage interest in Zix as a result of the issuance of the Excess Securities.

The table below illustrates the incremental impact that the issuance of the Excess Securities will have upon the number of shares of our common stock outstanding (assuming no additional issuances of shares of our common stock):

	<b>Number of Shares Outstanding Prior to Issuance</b>	<b>Shares</b>	<b>Warrants*</b>
Issuance of Firm Securities on August 9, 2005:	32,573,744 (As of August 8, 2005)	6,302,318 (Firm Shares)	2,079,767 (Firm Warrants)
Issuance of Excess Securities:	38,876,062 (After issuance of Firm Shares)	4,201,544 (Excess Shares)	1,386,507 (Excess Warrants)

\* The Firm Warrants and Excess Warrants reflected in this table are not exercisable until February 9, 2006.

Shareholders immediately prior to the issuance of the Excess Securities will incur dilution in their percentage ownership of our common stock upon the consummation of the issuance of the Excess Shares, of approximately 9.75%, or 12.01% assuming exercise in full of the Firm Warrants and the Excess Warrants.

**Table of Contents****Interests of Certain Persons in the Issuance of the Excess Securities**

Some of the Purchasers in the private placement are officers and directors of Zix. Units issued to our officers and directors in the private placement were sold for a purchase price of \$2.99 per unit (each unit consisting of one share of common stock and a warrant to purchase up to 0.33 of one share of our common stock), which is equal to (i) \$2.94 per share, the closing market price of one share of our common stock on August 8, 2005 (the day immediately prior to the closing of the Securities Purchase Agreement) plus (ii) \$0.05 attributable to the warrant to purchase 0.33 of one share of our common stock (or approximately an additional \$0.125 per whole share of our common stock as required under Nasdaq rules). All other Purchasers in the private placement purchased units at a price of \$2.50 per unit. The following table sets forth the beneficial ownership of each such officer and/or director who is participating in the private placement in our common stock immediately prior to the issuance of the Excess Securities, the number of Excess Shares and Excess Warrants that such officer and/or director will own after the issuance of the Excess Securities, and the beneficial ownership of such officer and/or director immediately following the issuance of the Excess Securities:

Officers/Directors Participating in the Private Placement	Beneficial Ownership				
	Prior to Issuance of Excess Securities(5)	Excess Shares	Excess Warrants	After Issuance of Excess Shares(6)	Percentage of Shares Outstanding(6)(7)
Bradley C. Almond(1)	113,557	1,338	441	114,895	*
Charles N. Kahn III(2)	8,258	1,338	441	9,596	*
Antonio Sanchez III(3)	477,366	13,378	4,414	490,744	1.2%
Richard D. Spurr(4)	588,097	6,690	2,207	594,787	1.5%

\* Less than 1%.

- (1) Includes 100,000 shares that Mr. Almond has the right to acquire under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 31, 2005.
- (2) Includes 6,250 shares that Mr. Kahn has the right to acquire under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 31, 2005.
- (3) Includes (i) 187,068 shares held by Mr. Sanchez III directly, (ii) 170,121 shares held by a trust for which he serves as co-trustee, along with 44,345 shares issuable to the trust upon exercise of certain warrants and (iii) 75,832 shares that he has the right to acquire under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 31, 2005. Mr. Sanchez III is the son of Antonio R. Sanchez, Jr., a former director.
- (4) Includes 574,240 shares that Mr. Spurr has the right to acquire under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 31, 2005.
- (5) Does not include the number of shares issuable upon exercise of the Firm Warrants, which will not be exercisable within 60 days of August 31, 2005. Firm Warrants exercisable for 663 shares, 663 shares, 6,623 shares and

3,312 shares were issued to Messrs. Almond, Kahn, Sanchez and Spurr, respectively, and will become exercisable on February 9, 2006.

- (6) Does not include number of shares issuable to each applicable person upon exercise of Firm Warrants and Excess Warrants. The Firm Warrants and Excess Warrants will not be exercisable within 60 days of August 31, 2005.
- (7) Percentages are based on the total number of shares of our common stock outstanding at August 31, 2005, which was 39,194,218. Shares of our common stock that were not outstanding but could be acquired upon exercise of an option or other convertible security within 60 days of August 31, 2005 are deemed outstanding for the purpose of computing the percentage of outstanding shares beneficially owned by a particular person. However, such shares are not deemed to be outstanding for the purpose of computing the percentage of outstanding shares beneficially owned by any other person.

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**Recommendation of the Board of Directors**

**OUR BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE APPROVAL OF THIS PROPOSAL.  
OTHER MATTERS**

Zix knows of no other matters that will be presented for consideration at the Special Meeting. If any other matters properly come before the Special Meeting, it is the intention of the persons named in the accompanying form of Proxy and voting instructions to vote the shares they represent as the Board of Directors may recommend. Discretionary authority with respect to such other matters is granted by the execution of the enclosed Proxy.

**DOCUMENTS INCORPORATED BY REFERENCE**

We furnish our shareholders with annual reports containing audited financial statements and other appropriate reports. We also file annual, quarterly and special reports, proxy statements and other information with the SEC. Instead of repeating information that we have already filed with the SEC, we are allowed to incorporate by reference in this Proxy Statement information contained in those documents we have filed with the SEC.

The information incorporated by reference is considered a part of this Proxy Statement, and all information appearing in this Proxy Statement is qualified in its entirety by the information incorporated herein by reference. Information in this Proxy Statement updates and, in some cases, supersedes information incorporated by reference from documents that we have filed with the SEC prior to the date of this Proxy Statement, while information that we file later with the SEC will automatically supplement, update and, in some cases, supersede the information in this Proxy Statement.

The following documents and information we previously filed with the SEC are incorporated by reference into this Proxy Statement:

our Annual Report on Form 10-K for our fiscal year ended December 31, 2004;

our Current Reports on Form 8-K filed on March 4, 2003, February 10, 2005 (reported under Item 5.02), March 17, 2005, March 29, 2005, April 14, 2005, June 9, 2005, July 26, 2005, August 4, 2005 and August 9, 2005, and a Form 8-K/ A filed on August 10, 2005 (in each case, to the extent filed and not furnished); and

our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2005 and June 30, 2005.

In addition, any documents that we file with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, after the date of this Proxy Statement and before the date of the special meeting are incorporated by reference into and deemed a part of this Proxy Statement from the date of filing of those documents.

At your request, we will provide you, without charge, a copy of any of the documents we have incorporated by reference into this prospectus but not delivered with the prospectus (other than exhibits to such documents, unless those exhibits are specifically incorporated by reference into the documents that this prospectus incorporates). If you would like more information, write or call:

Bradley C. Almond  
Vice President and Chief Financial Officer  
Zix Corporation  
2711 North Haskell Avenue, Suite 2200, LB 36  
Dallas, Texas 75204-2960  
Telephone: (214) 370-2000

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**WHERE YOU CAN FIND MORE INFORMATION**

You may read and copy any reports, statements or other information that Zix files with the SEC directly from the SEC. You may either:

read and copy any materials we have filed with the SEC at the SEC's Public Reference Room maintained at 100 F Street, N.E., Washington, D.C. 20549; or

visit the SEC's Internet site at <http://www.sec.gov>, which contains reports, proxy and information statements, and other information regarding us and other issuers that file electronically with the SEC.

You may obtain more information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

You should rely only on the information contained (or incorporated by reference) in this Proxy Statement. We have not authorized anyone to provide you with information that is different from what is contained in this Proxy Statement. This Proxy Statement is dated \_\_\_\_\_, 2005. You should not assume that the information contained in this Proxy Statement is accurate as of any date other than that date (or as of an earlier date if so indicated in this Proxy Statement).

**PLEASE DATE, SIGN AND RETURN THE PROXY CARD AT YOUR EARLIEST CONVENIENCE IN THE ENCLOSED ENVELOPE. NO POSTAGE IS REQUIRED FOR MAILING IN THE UNITED STATES. WE WOULD APPRECIATE THE PROMPT RETURN OF YOUR PROXY CARD, AS IT WILL SAVE THE EXPENSE OF FURTHER MAILINGS.**

By Order of the Board of Directors,

Ronald A. Woessner  
*Senior Vice President, General Counsel and Secretary*

Dallas, Texas  
September \_\_\_\_\_, 2005

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## ANNEX A

**SECURITIES PURCHASE AGREEMENT**

This Securities Purchase Agreement (this *Agreement* ) is made and entered into as of August 9, 2005 (the *Execution Date* ), by and among Zix Corporation, a Texas corporation (the *Company* ), and each of the purchasers listed on Schedule A attached hereto (collectively, the *Purchasers* and individually, a *Purchaser* ).

**RECITALS**

WHEREAS, the Company desires to sell to the Purchasers, and the Purchasers desire to purchase from the Company, up to an aggregate of 10,503,862 units (each a *Unit* ), each Unit consisting of one share of common stock, par value \$.01 per share, of the Company ( *Common Stock* ) and a five year warrant (a *Warrant* ) to purchase one-third of one share of Common Stock, on the terms and conditions set forth in this Agreement; and

WHEREAS, the Company and each Purchaser are executing and delivering this Agreement in reliance upon an exemption from securities registration afforded by Regulation D ( *Regulation D* ) as promulgated by the Securities and Exchange Commission (the *SEC* ) under the Securities Act of 1933, as amended (the *Securities Act* ).

NOW, THEREFORE, in consideration of the foregoing, the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. AGREEMENT TO PURCHASE AND SELL STOCK.**

(a) Company Authorization. The Company's Board of Directors has authorized the issuance and sale, pursuant to the terms and conditions of this Agreement, of up to 10,503,862 shares of Common Stock (the *Purchased Shares* ) and up to 3,466,274 Warrants, substantially in the form attached hereto as Exhibit A. Each Warrant shall be exercisable to purchase the number of shares of Common Stock set forth thereon at a price of \$3.04 per share of Common Stock (the *Purchased Warrants* and together with the Purchased Shares, the *Purchased Securities* ). Subject to their terms and conditions, the Purchased Warrants shall be exercisable at any time and from time to time from and after the six-month anniversary of the Closing Date through and including August 9, 2010.

(b) Agreement to Purchase and Sell Securities.

(i) Subject to the terms and conditions of this Agreement, each Purchaser, severally and not jointly, agrees to purchase, and the Company agrees to sell to each Purchaser, at the Closing (as defined below), that number of Units (including the Firm Units and Excess Units, each as defined below) set forth opposite such Purchaser's name on Schedule A attached hereto. The purchase price of each Unit shall be \$2.50 (the *Per Unit Price* ), except in the case of each Unit purchased by a director or officer of the Company which shall be \$2.99 (the *Insider Per Unit Price* ) and each shall be payable as hereafter set forth.

(ii) Notwithstanding anything to the contrary in this Agreement, on the Closing Date, no more than 6,302,318 Units representing 6,302,318 shares of Common Stock (the *Firm Shares* ) and associated Warrants (the *Firm Warrants* ), and together with the Firm Shares, the *Firm Units* ) shall be issued to the Purchasers prior to the Company obtaining shareholder approval to issue to the Purchasers the shares of Common Stock in excess of the Firm Units in accordance with the requirements of NASDAQ Rule 4350(i) and Section 5(d) hereto (the *Shareholder Approval* ). Prior to obtaining the Shareholder Approval, the Units to be purchased by the Purchasers (including the Warrants thereto) representing Purchased Shares in excess of the Firm Units (the *Excess Units* ) shall not be issued to the Purchasers and instead the proceeds in respect of such Excess Units (the *Excess Funds* ) shall be deposited into

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escrow, in accordance with the terms of an escrow agreement, substantially in the form of Exhibit D hereto (the *Escrow Agreement* ). The Excess Funds shall accrue interest from and including the day following the Closing Date to and excluding the date of release in accordance with the terms of the Escrow Agreement at a rate of 7.0% per annum (computed on the basis of a 365-day year). If the Company obtains the Shareholder Approval prior to the Shareholder Approval Date (as defined below), the Excess Funds shall be released to the Company in accordance with the Escrow Agreement, and the Excess Units shall be issued to each of the Purchasers in the amounts set forth on Schedule A hereto, along with such Purchaser's pro rata share of accrued interest on the Excess Funds to such date, which shall be payable in cash. If the Company does not obtain the Shareholder Approval prior to the Shareholder Approval Date (as defined below), the Excess Funds shall be returned to each of the Purchasers in accordance with the terms of the Escrow Agreement, along with such Purchaser's pro rata share of accrued interest on the Excess Funds to such date. If the Excess Funds accrue earnings or interest in escrow at a rate less than the rate required by this Section 1(b)(ii), the Company shall promptly pay to the Purchasers any shortfall amount.

(c) *Use of Proceeds*. The Company intends to use the net proceeds from the sale of the Purchased Securities for working capital and general corporate purposes as determined by the Company from time to time.

(d) *Obligations Several, Not Joint*. The obligations of each Purchaser under this Agreement are several and not joint with respect to the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under this Agreement. The decision of each of the Purchasers to purchase the Purchased Securities pursuant to this Agreement has been made by such Purchaser independently of any other Purchaser. Nothing contained herein, and no action taken by any Purchaser pursuant hereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement. Each Purchaser shall be entitled to independently protect and enforce such Purchaser's rights, including, without limitation, the rights arising out of this Agreement, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose.

**2. CLOSING.** The purchase and sale of the Purchased Securities shall take place at the offices of Baker Botts L.L.P., 2001 Ross Avenue, Dallas, Texas 75201, at 2:00 p.m. Dallas, Texas time, on August 9, 2005, or at such other time and place as the Company and Purchasers representing a majority of the Purchased Securities to be purchased, mutually agree upon (which time and place are referred to in this Agreement as the *Closing* ). At the Closing, against delivery of full payment for the Purchased Securities sold hereunder by wire transfer of immediately available funds in accordance with the Company's instructions; the Company shall issue and deliver to each Purchaser (i) one or more stock certificates registered in the name of each Purchaser (or in such nominee name(s) as designated by such Purchaser in the Stock Certificate and Warrant Questionnaire, attached hereto as Appendix I (the *Stock Certificate Questionnaire* ), representing the number of Firm Shares set forth opposite the appropriate Purchaser's name on Schedule A hereto, and bearing the legend set forth in Section 4(k)(i) herein and (ii) the number of Firm Warrants set forth opposite the appropriate Purchaser's name on Schedule A hereto, and bearing the legend set forth in Section 4(k)(ii); *provided, however*, that the Company may furnish to each Purchaser a facsimile copy of the warrant representing the Firm Warrant and of the stock certificate(s) representing the Firm Shares purchased by such Purchaser no later than the next Business Day following the Closing Date, with the original warrant and original stock certificate(s) to be delivered to such Purchaser by overnight courier no later than the third (3rd) Business Day following the Closing Date. Closing documents, other than the warrants representing the Firm Warrants and the stock certificates representing the Firm Shares, may be delivered by facsimile on the Closing Date, with original signature pages subsequently sent by overnight courier.

For purposes of this Agreement, *Closing Date* means the date of the Closing, and *Business Day* means any day except Saturday, Sunday and any day which shall be a federal legal holiday or a day on which

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banking institutions in the State of New York are authorized or required by law or other governmental action to close.

**3. REPRESENTATIONS, WARRANTIES AND CERTAIN AGREEMENTS OF THE COMPANY.** The Company hereby represents and warrants to each Purchaser that, except as set forth in the SEC Documents (as defined below) and in the Disclosure Letter attached hereto as Exhibit B (the *Disclosure Letter*):

(a) *Organization Good Standing and Qualification.* The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas and has all corporate power and authority required to (i) own, operate and occupy its properties and to carry on its business as presently conducted and (ii) enter into this Agreement and the other agreements, instruments and documents contemplated hereby, and to consummate the transactions contemplated hereby and thereby. The Company is qualified to do business and is in good standing in each jurisdiction in which the failure to so qualify would have a Material Adverse Effect. As used in this Agreement, *Material Adverse Effect* means a material adverse effect on, or a material adverse change in, the business, operations, financial condition, results of operations, assets or liabilities of the Company and the Subsidiaries (as defined below), taken as a whole.

(b) *Capitalization.* The capitalization of the Company is as follows:

(i) The authorized capital stock of the Company consists of 175,000,000 shares of Common Stock, \$.01 par value per share, and 10,000,000 shares of preferred stock, par value \$1.00 per share ( *Preferred Stock* ).

(ii) As of June 30, 2005, the issued and outstanding capital stock of the Company consisted of 32,424,929 shares of Common Stock and no shares of Preferred Stock. The shares of issued and outstanding capital stock of the Company have been duly authorized and validly issued, are fully paid and nonassessable and have not been issued in violation of or are not otherwise subject to any preemptive or other similar rights.

(iii) As of June 30, 2005, the Company had 10,110,617 shares of Common Stock reserved for issuance upon exercise of options granted under the Company's stock option plans.

(iv) As of June 30, 2005, the Company had outstanding options for 8,211,325 shares of Common Stock.

(v) As of June 30, 2005, the Company had 3,755,370 issued and outstanding warrants for the purchase of shares of Common Stock.

With the exception of the foregoing in this Section 3(b), there are no outstanding subscriptions, options, warrants, convertible or exchangeable securities or other rights to purchase shares of Common Stock or other securities of the Company, or rights that would trigger any anti-dilution or similar adjustments to any securities of the Company, granted to or by the Company, and there are no commitments, plans or arrangements to issue any shares of Common Stock or any security convertible into or exchangeable for Common Stock.

(c) *Subsidiaries.* Except for the Company's subsidiaries listed in the SEC documents (the *Subsidiaries*), the Company does not own any capital stock of, assets comprising the business of, obligations of, or any other interest (including any equity or partnership interest) in, any person or entity. The Company owns, directly or indirectly, all of the issued and outstanding shares of stock in each of the Subsidiaries. Each of the Subsidiaries is duly organized and validly existing in good standing under the laws of its respective state of incorporation. Each of the Subsidiaries has full power and authority to own, operate and occupy its properties and to conduct its business as presently conducted and is registered or qualified to do business and in good standing in each jurisdiction in which it owns or leases property or transacts business and where the failure to be so qualified would have a Material Adverse Effect.

(d) *Due Authorization.* All corporate actions on the part of the Company necessary for the authorization, execution, delivery and performance of all obligations of the Company under this Agreement, including

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the authorization, issuance, reservation for issuance and delivery of all the Purchased Securities being sold under this Agreement and the Common Stock issuable upon exercise of the Purchased Warrants (the **Warrant Shares** ), have been taken and no further consent or authorization of the Company, the Company's board of directors (the **Board of Directors** ) or the Company's stockholders is required (other than the Shareholder Approval), and this Agreement constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except (i) as may be limited by (1) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (2) the effect of rules of law governing the availability of equitable remedies and (ii) as rights to indemnity or contribution may be limited under federal or state securities laws or by principles of public policy thereunder.

(e) Valid Issuance of the Purchased Securities.

(i) Purchased Shares. The Purchased Shares have been duly authorized and, when issued and delivered to each Purchaser against payment therefor in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable and will be free and clear from all liens, claims and encumbrances with respect to the issuance of such Purchased Shares and will not be subject to any pre-emptive rights or similar rights.

(ii) Purchased Warrants. The Purchased Warrants to be issued pursuant to this Agreement have been duly authorized and, when issued and delivered to each Purchaser against payment therefor in accordance with the terms of this Agreement, will be validly issued and will be free and clear from all liens, claims and encumbrances with respect to the issuance of such Purchased Warrants and will not be subject to any pre-emptive rights or similar rights.

(iii) Warrant Shares. The issuance of the Warrant Shares issued or issuable from time to time upon the exercise of the Purchased Warrants have been, and at all times prior to such exercise, will be, duly authorized and duly reserved for issuance upon such exercise and payment of the exercise price of the Purchased Warrants and, when issued and delivered to each Purchaser upon exercise against payment therefor in accordance with the terms of the Warrant, will be validly issued, fully paid and non-assessable and will be free and clear from all liens, claims and encumbrances with respect to the issuance of such Warrant Shares and will not be subject to any pre-emptive rights or similar rights.

(f) Compliance with Securities Laws. Subject to the accuracy of the representations made by the Purchasers in Section 4 hereof, the Purchased Securities will be issued and sold to the Purchasers in compliance with (i) the exemption in Rule 506 of Regulation D promulgated under the Securities Act from the registration and prospectus delivery requirements of the Securities Act and (ii) applicable exemptions from the registration and qualification requirements of all applicable securities laws of the states of the United States.

(g) Governmental Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, or notice to, any federal, state or local governmental authority or self regulatory agency on the part of the Company is required in connection with the issuance and sale of the Purchased Securities to the Purchasers by the Company or the consummation of the other transactions contemplated by this Agreement, except (i) such filings as have been made prior to the date hereof, (ii) the filings under applicable securities laws required to comply with the Company's registration obligations under Section 5(a) of this Agreement and (iii) such additional post-Closing filings as may be required to comply with applicable state and federal securities laws, including, but not limited to, the filing of a Form D relating to the sale of the Purchased Securities pursuant to Regulation D.

(h) Non-Contravention. Assuming the accuracy of the representations and warranties made by the Purchasers in Section 4 hereof, the execution, delivery and performance of this Agreement by the Company, and the consummation by the Company of the transactions contemplated hereby (including the issuance of the Purchased Securities and the Warrant Shares), do not: (i) contravene or conflict with the articles of incorporation, as amended (the **Articles of Incorporation** ), or bylaws, as amended (the **Bylaws** ), of the Company or of any Subsidiary; (ii) constitute a violation of any provision of any federal, state, local or foreign



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law, rule, regulation, order or decree applicable to the Company or any Subsidiary; or (iii) constitute a default (with or without the passage of time or giving of notice or both) or require any consent under, give rise to any right of termination, cancellation or acceleration of, or result in the creation or imposition of any lien, claim or encumbrance on any asset of the Company or the Subsidiaries under, any material contract to which the Company or the Subsidiaries is a party or any permit, license or similar right relating to the Company or the Subsidiaries or by which the Company or the Subsidiaries may be bound or affected, except in the case of clauses (ii) and (iii), for such violations, breaches or defaults as would not be reasonably likely to have a Material Adverse Effect.

(i) Litigation. Except as set forth in the SEC Documents, there is no action, suit, proceeding, claim, arbitration or investigation ( *Action* ) pending or, to the Company's knowledge, threatened: (i) against the Company or any Subsidiary, their properties or assets, or any officer, director or employee of the Company or any Subsidiary in connection with such officer's, director's or employee's relationship with, or actions taken on behalf of, the Company or any Subsidiary, that would be reasonably likely to have a Material Adverse Effect, or (ii) that seeks to prevent, enjoin, alter, challenge or delay the transactions contemplated by this Agreement. The Company is not a party to, nor subject to the provisions of, any order, writ, injunction, judgment or decree of any court or government agency or instrumentality that would reasonably be expected to prevent, enjoin, alter, challenge or delay the consummation of the transactions contemplated by this Agreement or would be reasonably likely to have a Material Adverse Effect. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the Securities Act or the Securities Exchange Act of 1934, as amended ( the *Exchange Act* ).

(j) Compliance with Law and Charter Documents. The Company is not in violation or default of any provisions of the Articles of Incorporation or the Bylaws. The Company is currently in compliance with all applicable statutes, laws, rules, regulations and orders of the United States of America and all states thereof, foreign countries and other governmental bodies and agencies having jurisdiction over the Company's business or properties, except for any instance of non-compliance that has not had, and would not reasonably be expected to have, a Material Adverse Effect. Neither the Company nor any Subsidiary is in default (and there exists no condition which, with or without the passage of time or giving of notice or both, would constitute a default) in any material respect in the performance of any bond, debenture, note or any other evidence of indebtedness in any indenture, mortgage, deed of trust or any other material agreement or instrument to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary is bound or by which the properties of the Company or any Subsidiary is bound, which default would be reasonably likely to have a Material Adverse Effect or which would be reasonably likely to have a Material Adverse Effect on the transactions contemplated by this Agreement.

(k) Material Non-Public Information. The Company has not provided, and will not provide, to the Purchasers any material non-public information other than information related to the transactions contemplated by this Agreement, all of which information shall be disclosed by the Company pursuant to Section 9(m) hereof.

(l) SEC Documents.

(1) Reports. The Company has filed in a timely manner all reports, schedules, forms, statements and other documents required to be filed by it with the Securities and Exchange Commission (the *SEC* ) pursuant to the reporting requirements of the Exchange Act and the rules and regulations promulgated thereunder. The Company has made available to the Purchasers prior to the date hereof copies of its Annual Report on Form 10-K for the fiscal year ended December 31, 2004, as amended (the *Form 10-K* ), its quarterly report on Form 10-Q for the fiscal quarter ended March 31, 2005 (the *Form 10-Q* ), and any Current Report on Form 8-K for events occurring since December 31, 2004 ( *Form 8-Ks* ) filed or furnished by the Company with the SEC (the Form 10-K, the Form 10-Q and the Form 8-Ks are collectively referred to herein as the *SEC Documents* ). Each of the SEC Documents, as of the respective dates thereof (or, if amended or superseded by a filing or submission, as the case may be, prior to the Closing Date, then on the date of such filing or submission, as the case may be),

(1) did not contain any untrue statement of a material fact nor omit to state a material fact

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necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading and (2) complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder applicable to such SEC Document.

(2) Sarbanes-Oxley. The Chief Executive Officer and the Chief Financial Officer of the Company have signed, and the Company has furnished to the SEC, all certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002. Such certifications contain no qualifications or exceptions to the matters certified therein (other than such qualifications or exceptions that are permitted under the Exchange Act and the rules promulgated thereunder) and have not been modified or withdrawn; and neither the Company nor any of its officers has received notice from any governmental entity questioning or challenging the accuracy, completeness, form or manner of filing or submission of such certifications. Without limiting the foregoing, the Company is in compliance with any applicable requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder, as amended, that are currently in effect.

(3) Financial Statements. The consolidated financial statements of the Company included in the SEC Documents (1) comply as to form in all material respects with the rules and regulations of the SEC with respect thereto as were in effect at the time of filing and (2) present fairly, in all material respects, in accordance with United States generally accepted accounting principles ( *GAAP* ), consistently applied, the consolidated financial position of the Company as of the dates indicated therein, and the consolidated results of its operations and cash flows for the periods therein specified, subject, in the case of unaudited consolidated financial statements for interim periods, to normal, immaterial year-end audit adjustments.

(m) Absence of Certain Changes Since the Balance Sheet Date. Except as disclosed in the SEC Documents, since the filing of the Company's most recent Form 10-K with the SEC, the business and operations of the Company and the Subsidiaries have been conducted in the ordinary course consistent with past practice, and there has not been:

(i) any declaration, setting aside or payment of any dividend or other distribution of the assets of the Company with respect to any shares of capital stock of the Company or any repurchase, redemption or other acquisition by the Company or any Subsidiary of the Company of any outstanding shares of the Company's capital stock;

(ii) any damage, destruction or loss to the Company's or any Subsidiary's business or assets, whether or not covered by insurance, except for such occurrences, individually and collectively, that have not had, and would not reasonably be expected to have, a Material Adverse Effect;

(iii) any waiver by the Company or any Subsidiary of a valuable right or of a material debt owed to it, except for such waivers, individually and collectively, that have not had, and would not reasonably be expected to have, a Material Adverse Effect;

(iv) any material change or amendment to, or any waiver of any material right under a material contract or arrangement by which the Company, any Subsidiary or any of their assets or properties is bound or subject;

(v) any transaction between the Company or any Subsidiary, on the one hand, and any of its officers or directors, on the other hand, that would be required to be disclosed pursuant to Item 404(a), (b) or (c) of Regulation S-K of the SEC;

(vi) any change by the Company in its accounting principles, methods or practices or in the manner in which it keeps its accounting books and records, except any such change required by a change in GAAP or by the SEC; or

(vii) any other event or condition, either individually or collectively, that has had, or would be reasonably likely to have, a Material Adverse Effect.



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(n) **Intellectual Property**. The Company and its Subsidiaries own or possess sufficient rights to use all patents, patent rights, inventions, trade secrets, know-how, trademarks, service marks, trade names, licenses, copyrights or other information (collectively, **Intellectual Property** ) which are used to conduct their businesses as currently conducted, except where the failure to own or possess such sufficient rights would not reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect. Neither the Company nor any Subsidiary has received any written notice of, and has no actual knowledge of, any infringement of or conflict with asserted rights of others with respect to any Intellectual Property which, either individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would reasonably be expected to have a Material Adverse Effect, and to the Company's and each of the Subsidiaries' knowledge, none of the patent rights owned or licensed by the Company or the Subsidiaries are unenforceable or invalid.

(o) **Registration Rights**. Except as provided in **Section 5** herein, effective upon the Closing, the Company is not currently subject to any agreement providing any person or entity any rights (including piggyback registration rights) to have any securities of the Company registered with the SEC or registered or qualified with any other governmental authority that have not previously been satisfied.

(p) **Title to Property and Assets**. The properties and assets of the Company and the Subsidiaries are owned by the Company or the Subsidiaries free and clear of all mortgages, deeds of trust, liens, charges, encumbrances and security interests, except for (i) statutory liens for the payment of current taxes that are not yet delinquent and (ii) liens, encumbrances and security interests that arise in the ordinary course of business and do not in any material respect affect the business of the Company and the Subsidiaries as currently conducted. With respect to the property and assets it leases, each of the Company and the Subsidiaries is in compliance with such leases in all material respects.

(q) **Taxes**. The Company and the Subsidiaries have filed or have valid extensions of the time to file all necessary federal, state, and foreign income and franchise tax returns due prior to the date hereof or have requested extensions thereof (except in any case in which the failure to so file would not reasonably be expected to have a Material Adverse Effect) and has paid or accrued all taxes due.

(r) **Internal Accounting Controls**. The Company and each of the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(s) **Market**. The Company has not taken and will not take, directly or indirectly, any action designed to, or that might reasonably be expected to cause or result in, stabilization or manipulation of the price of the Common Stock of the Company to facilitate the sale or resale of the Purchased Securities.

(t) **Investment Company**. The Company is not an investment company within the meaning of such term under the Investment Company Act of 1940, as amended.

(u) **Application of Anti-Takeover Provisions**. There is no control share acquisition, business combination, poison pill or other similar anti-takeover provision under the Company's Articles of Incorporation (or similar charter documents) that would become applicable to the Purchasers as a result of the issuance of the Company Shares and Warrant Shares.

(v) **General Solicitation**. Neither the Company nor any other Person (as defined below) authorized by the Company to act on its behalf has engaged in a general solicitation or general advertising (within the meaning of Regulation D) of investors with respect to offers or sales of the Purchased Securities. For purposes of this Agreement, **Person** means an individual or corporation, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

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(w) *Registration Statement Matters*. The Company currently meets the eligibility requirements for use of a Form S-3 Registration Statement for the resale of the Registrable Shares (as defined below) by the Purchasers. Assuming the completion and timely delivery of the Registration Statement/ Suitability Questionnaire, attached hereto as Appendix II (the *Registration Statement Questionnaire* ), by each Purchaser to the Company, the Company is not aware of any facts or circumstances that would prohibit or delay the preparation and filing of a registration statement with respect to the Registrable Shares.

(x) *No Integrated Offering*. Neither the Company, nor any Affiliate (as hereafter defined) of the Company, nor any person acting on its behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Purchased Securities to be integrated with prior offerings by the Company for purposes of the Securities Act, any applicable state securities laws or any applicable stockholder approval provisions, nor will the Company take any action or steps that would cause the offering of the Purchased Securities to be integrated with other offerings.

For purposes of this Agreement, an *Affiliate* of any specified Person means any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, *control* means the power to direct the management and policies of such person or firm, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

(y) *Trading and Registration Matters*. The Common Stock of the Company is eligible for trading on The NASDAQ National Market under the ticker symbol ZIXI . The Company has taken no action designed to terminate, or likely to have the effect of terminating, the listing of the Common Stock on the NASDAQ National Market.

#### **4. REPRESENTATIONS, WARRANTIES AND CERTAIN AGREEMENTS OF THE PURCHASERS.**

Each Purchaser, severally and not jointly, hereby represents and warrants to the Company, and agrees that:

(a) *Organization*. Such Purchaser has all corporate, limited liability company, partnership, trust or individual, as the case may be, power and authority required to enter into this Agreement and the other agreements, instruments and documents contemplated hereby, and to consummate the transactions contemplated hereby and thereby.

(b) *Due Authorization*. All corporate, limited liability company, partnership, trust or individual, as the case may be, action on the part of such Purchaser necessary for the authorization, execution, delivery of and the performance of all obligations of such Purchaser under this Agreement have been taken and no further consent or authorization of such Purchaser is necessary, and this Agreement constitutes such Purchaser's legal, valid and binding obligation, enforceable in accordance with its terms, except (i) as may be limited by (1) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (2) the effect of rules of law governing the availability of equitable remedies and (ii) as rights to indemnity or contribution may be limited under federal or state securities laws or by principles of public policy thereunder.

(c) *Non-Contravention*. The execution, delivery and performance of this Agreement by such Purchaser, and the consummation by such Purchaser of the transactions contemplated hereby, do not: (i) contravene or conflict with the organizational documents of such Purchaser; or (ii) constitute a violation of any provision of any federal, state, local or foreign law, rule, regulation, order or decree applicable to such Purchaser, except in the case of clause (ii), for such violations, breaches or defaults as would not be reasonably likely to have a material adverse effect on such Purchaser.

(d) *Litigation*. There is no Action pending to which such Purchaser is a party that is reasonably likely to prevent, enjoin, alter or delay the transactions contemplated by this Agreement.

(e) *Purchase for Own Account*. The Purchased Securities are being acquired for investment for such Purchaser's own account, not as a nominee or agent, in the ordinary course of business, and not with a view to the public resale or distribution thereof within the meaning of the Securities Act. Such Purchaser also

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represents that it has not been formed for the specific purpose of acquiring the Purchased Securities. Such Purchaser does not have any agreement or understanding, direct or indirect, with any other Person to sell or otherwise distribute the Purchased Securities. Notwithstanding the foregoing, the parties hereto acknowledge such Purchaser's right at all times to sell or otherwise dispose of all or any part of such securities in compliance with applicable federal and state securities laws and as otherwise contemplated by this Agreement.

(f) Investment Experience. Such Purchaser understands that the purchase of the Purchased Securities involves substantial risk. Such Purchaser has experience as an investor in securities of companies and acknowledges that it can bear the economic risk of its investment in the Purchased Securities and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of this investment in the Purchased Securities and protecting its own interests in connection with this investment.

(g) Accredited Purchaser Status. Such Purchaser is an accredited investor within the meaning of Regulation D promulgated under the Securities Act.

(h) Reliance Upon Purchaser's Representations. Such Purchaser understands that the sale of the Purchased Securities to it will not be registered under the Securities Act on the ground that such issuance and sale will be exempt from registration under the Securities Act, and that the Company's reliance on such exemption is based on each Purchaser's representations set forth herein.

(i) Receipt of Information. Such Purchaser has (i) had access to the Company's SEC Documents and (ii) has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the sale of the Purchased Securities and the business, properties, prospects and financial condition of the Company and to obtain any additional information requested and has received and considered all information it deems relevant to make an informed decision to purchase the Purchased Securities.

(j) Restricted Securities and Restrictions on Transfer.

(i) Such Purchaser understands that the Purchased Securities and the Warrant Shares have not been registered under the Securities Act and will not sell, offer to sell, assign, pledge, hypothecate or otherwise transfer any of the Purchased Securities or the Warrant Shares (except as permitted in Section 4(k) below) unless (A) pursuant to an effective registration statement under the Securities Act, (B) such Purchaser provides a reasonably acceptable legal opinion to the Company, to the effect that a sale, assignment, pledge, hypothecation or other transfer of the Purchased Securities or the Warrant Shares, as the case may be, may be made without registration under the Securities Act and the transferee agrees to be bound by the terms and conditions of this Agreement, (C) such Purchaser provides the Company a no action letter from the SEC to the effect that the transfer of the Purchased Securities or the Warrant Shares, as the case may be, without registration will not result in a recommendation by the Staff of the SEC that enforcement action be taken with respect thereto, (D) such Purchaser provides the Company with reasonable assurances (in the form of seller and broker representation letters) that the Purchased Securities or the Warrant Shares, as the case may be, can be sold pursuant to Rule 144 promulgated under the Securities Act ( **Rule 144** ), (E) such Purchaser provides the Company with reasonable assurances (in the form of seller representation letters) that the Purchased Securities or the Warrant Shares, as the case may be, can be sold pursuant to Rule 144(k) promulgated under the Securities Act following the applicable holding period or (F) pursuant to any other exception contained in the Securities Act provided that the Purchaser provides a reasonably acceptable legal opinion to the Company. Notwithstanding anything to the contrary contained in this Agreement, including but not limited to in Section 5(c)(i) below, such Purchaser may transfer the Purchased Securities or the Warrant Shares to its Affiliates provided that (X) such Purchaser provides the Company with a reasonably acceptable legal opinion, (Y) such Affiliate is an accredited investor within the meaning of Regulation D and (Z) each such Affiliate agrees to be bound by the terms and conditions of this Agreement, and in particular, confirms to the Company that all of the representations set forth in Section 4 of this Agreement are true and correct as to such Affiliate as of the date of the transfer to such Affiliate.

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(ii) Prior to any proposed transfer pursuant to clause (B), (C), (D), (E) or (F) in Section 4(j)(i) above, such Purchaser shall give written notice to the Company of such Purchaser's intention to effect such transfer. Each such notice shall describe the manner and circumstances of the proposed transfer in sufficient detail, and shall be accompanied by the applicable legal opinion, no action letter or seller and broker representation letters.

(iii) Notwithstanding the foregoing provisions of this Section 4(j), no registration statement, legal opinion or no action letter shall be necessary for a transfer of the Purchased Securities or the Warrant Shares (A) by a Purchaser that is a partnership to a partner of such partnership or a retired partner of such partnership who retires after the date of this Agreement, (B) by a Purchaser that is a limited liability company to a member of such limited liability company, (C) by a Purchaser that is a partnership or limited liability company to the estate of any partner, retired partner, or member thereof or (D) by any partner or member of a Purchaser that is a partnership or limited liability company by gift, will or intestate succession to such partner or member's spouse or to the siblings, lineal descendants, ancestors of such partner or member or his or her spouse.

(k) Legends.

(i) Such Purchaser agrees that, to the extent necessary, the certificates for the Purchased Shares and the Warrant Shares shall bear the following legend:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE SECURITIES ACT) OR ANY APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE SOLD OR TRANSFERRED UNLESS (I) A REGISTRATION STATEMENT COVERING SUCH SECURITIES IS EFFECTIVE UNDER THE SECURITIES ACT OR (II) THE TRANSACTION IS EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT AND, IF THE COMPANY REQUESTS, AN OPINION SATISFACTORY TO THE COMPANY TO SUCH EFFECT HAS BEEN RENDERED BY COUNSEL.

Certificates evidencing the Purchased Shares and the Warrant Shares shall not contain any legend, (i) while a registration statement (including the Registration Statement) covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Purchased Shares or the Warrant Shares pursuant to Rule 144, (iii) if such Purchased Shares or the Warrant Shares are eligible for sale under Rule 144(k) or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the Staff of the SEC). The Company shall cause its counsel to issue a legal opinion to the Company's transfer agent promptly after the date on which the Registration Statement is declared effective (the *Effective Date*) if such legal opinion is required by the Company's transfer agent to effect the removal of the legend hereunder. If all or any portion of a Purchased Warrant is exercised at a time when there is an effective registration statement to cover the resale of the Warrant Shares, such Warrant Shares shall be issued free of all legends. The Company agrees that following the Effective Date or at such time as such legend is no longer required under this Section 4(k), it will, no later than five (5) Business Days following the delivery by a Purchaser to the Company or to the Company's transfer agent of a certificate representing Purchased Shares or the Warrant Shares, as the case may be, issued with a restrictive legend, deliver or cause to be delivered to such Purchaser a certificate representing such Purchased Shares or the Warrant Shares, as the case may be, that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to any transfer agent of the Company that enlarge the restrictions on transfer set forth in Section 4(j) or this Section 4(k).

Each Purchaser, severally and not jointly with the other Purchasers, agrees that the removal of the restrictive legend from certificates representing the Purchased Shares or the Warrant Shares as set forth in this Section 4(k) is predicated upon such Purchaser's covenant that such Purchaser only will sell any Purchased Shares or Warrant Shares pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom.

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In addition, such Purchaser agrees that the Company may place stop transfer orders with its transfer agent with respect to such certificates in order to implement the restrictions on transfer set forth in this Agreement. The appropriate portion of the legend and the stop transfer orders will be removed promptly upon delivery to the Company of such satisfactory evidence as reasonably may be required by the Company that such legend or stop transfer orders are not required to ensure compliance with the Securities Act.

(ii) Such Purchaser agrees that the Purchased Warrants shall bear the following legend:

THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE SECURITIES ACT ) OR ANY APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE SOLD OR TRANSFERRED UNLESS (I) A REGISTRATION STATEMENT COVERING SUCH SECURITIES IS EFFECTIVE UNDER THE SECURITIES ACT OR (II) THE TRANSACTION IS EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT AND, IF THE COMPANY REQUESTS, AN OPINION SATISFACTORY TO THE COMPANY TO SUCH EFFECT HAS BEEN RENDERED BY COUNSEL.

(l) Questionnaires. Such Purchaser has completed or caused to be completed the Stock Certificate Questionnaire and the Registration Statement Questionnaire for use in preparation of the Registration Statement (as defined in Section 5(a) below), and the answers to such questionnaires are true and correct as of the date of this Agreement; *provided*, that such Purchaser shall be entitled to update such information by providing written notice thereof to the Company before the effective date of the Registration Statement.

(m) Restrictions on Short Sales. Neither such Purchaser nor any Affiliate of such Purchaser which (i) had knowledge of the transactions contemplated hereby, (ii) has or shares discretion relating to such Purchaser's investments or trading or information concerning such Purchaser's investments, including in respect of the Purchased Securities, or (iii) is subject to such Purchaser's review or input concerning such Affiliate's investments or trading, has or will, directly or indirectly, during the period beginning on the date on which C.E. Unterberg, Towbin, financial advisor to the Company, first contacted such Purchaser regarding the transactions contemplated by this Agreement until the time of the filing of the Current Report of Form 8-K required by Section 9(m), engage in (1) any short sales (as such term is defined in Rule 3b-3 promulgated under the Exchange Act) of the Common Stock, including, without limitation, the maintaining of any short position with respect to, establishing or maintaining a put equivalent position (within the meaning of Rule 16a-1(h) under the Exchange Act) with respect to, entering into any swap, derivative transaction or other arrangement (whether any such transaction is to be settled by delivery of Common Stock, other securities, cash or other consideration) that transfers to another, in whole or in part, any economic consequences or ownership, or otherwise dispose of, any of the Purchased Securities or the Warrant Shares by such Purchaser or (2) any hedging transaction which establishes a net short position with respect to the Purchased Securities (clauses (1) and (2) together, a **Short Sale** ); except for (A) Short Sales by such Purchaser or Affiliate of such Purchaser which was, prior to the date on which such Purchaser was first contacted by C.E. Unterberg, Towbin regarding the transactions contemplated by this Agreement, a market maker for the Common Stock, provided that such Short Sales are in the ordinary course of business of such Purchaser or Affiliate of such Purchaser and are in compliance with the Securities Act, the rules and regulations of the Securities Act and such other securities laws as may be applicable, (B) Short Sales by such Purchaser or an Affiliate of such Purchaser which by virtue of the procedures of such Purchaser are made without knowledge of the transactions contemplated by this Agreement or (C) Short Sales by the Purchaser or an Affiliate of such Purchaser to the extent that such Purchaser or Affiliate of such Purchaser is acting in the capacity of a broker-dealer executing unsolicited third-party transactions.

(n) Independent Investment. Such Purchaser has not agreed to act with any other Purchaser for the purpose of acquiring, holding or disposing of any of the Purchased Securities or the Warrant Shares for purposes of Section 13(d) of the Exchange Act, and such Purchaser is acting independently with respect to its investment in the Purchased Securities.

(o) Confidentiality. Such Purchaser agrees to use any information it receives in the course of and in connection with the transactions contemplated under this Agreement for the sole purpose of evaluating a



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possible investment in the Purchased Securities and such Purchaser hereby acknowledges that it is prohibited from reproducing or distributing any such information, this Agreement, or any other offering materials provided by the Company or any of its Affiliates in connection with such Purchaser's consideration of its investment in the Company, in whole or in part, or divulging or discussing any of their contents except to its advisors and representatives for the purpose of evaluating such investment. The foregoing agreements shall not apply to any information that (i) is or becomes publicly available through no fault of such Purchaser, (ii) was already known to such Purchaser prior to its disclosure by the Company or any of its Affiliates to the Purchaser, as evidenced by documentation or other evidence reasonably satisfactory to the Company, (iii) is or becomes available to such Purchaser on a non-confidential basis from a source other than the Company or any of its Affiliates (so long as such Purchaser is not aware such disclosure is in breach of a confidentiality obligation to the Company), (iv) is independently developed by such Purchaser's personnel without access to or use of the confidential information received from the Company or any of its Affiliates, as evidenced by documentation or other evidence reasonably satisfactory to the Company or (v) is legally required to be disclosed by such Purchaser under operation of law or judicial or other governmental order; *provided, however*, that if the Purchaser is requested or ordered to disclose any such information pursuant to any court or other governmental order or any other applicable legal pr