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

FORM 10-K

(Mark One)
☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2019

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from ___ to ___

Commission file number 001-34785

XpresSpa Group, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**20-4988129**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
254 West 31st Street, 11th Floor **New York, NY**	**10001**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: (212) 309-7549

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, par value $0.01 per share	XSPA	The Nasdaq Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "*large accelerated filer*," "*accelerated filer*," "*smaller reporting company*," and "*emerging growth company*" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
		Emerging growth company	☐

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant (without admitting that any person whose shares are not included in such calculation is an affiliate), as of June 28, 2019, the last business day of the registrant's most recently completed second quarter, was $5,398,950 computed by reference to the closing sale price of $1.94 per share on the Nasdaq Stock Market LLC on June 28, 2019.

As of April 13, 2020, 86,500,160 shares of the registrant's common stock are outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Certain information required by Part III will be included in an amendment to this Annual Report on Form 10-K.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These statements relate, among other matters, to our anticipated financial performance, future revenues or earnings, business prospects, projected ventures, new products and services, anticipated market performance and similar matters.

These risks and uncertainties, many of which are beyond our control, include, but are not limited to, the following:

- our ability to continue as a going concern;
- the adverse effects of public health epidemics, including the recent coronavirus outbreak, on our business, results of operations and financial condition;
- the decision by our Board of Directors to potentially pursue a restructuring in the event that our process to identify and evaluate potential business alternatives is not successful;
- our material weakness related to our internal control over financial reporting;
- constraints associated with our outstanding indebtedness;
- the impact of our business and asset acquisitions on our operations and operating results including our ability to realize the expected value and benefits of such acquisitions;
- our ability to develop and offer new products and services;
- our ability to raise additional capital to fund our operations and business plan and the effects that such financing may have on the value of the equity instruments held by our stockholders;
- general economic conditions and level of consumer and corporate spending on health and wellness and travel;
- our ability to secure new locations, maintain existing ones, and ensure continued customer traffic at those locations;
- our ability to hire a skilled labor force and the costs associated with that labor;
- our ability to accurately forecast the costs associated with opening new retail locations and maintaining existing ones and the revenue derived from our retail locations;
- performance by our Airport Concession Disadvantaged Business Enterprise partners on obligations set forth in our joint venture agreements;
- our ability to protect our confidential information and customers' financial data and other personal information;
- failure or disruption to our information technology systems;
- our ability to retain key members of our management team;
- the loss of, or an adverse change with regard to, one or more of our significant suppliers, distributors, vendors or other business relationships;
- unexpected events and trends in the health and wellness and travel industries;
- market acceptance, quality, pricing, availability and useful life of our products and/or services, as well as the mix of our products and services sold;
- competitive conditions within our industries;
- our compliance with laws and regulations in the jurisdictions in which we do business and any changes in such laws and regulations;
- lawsuits, claims, and investigations that may be filed against us and other events that may adversely affect our reputation; and
- our ability to protect and maintain our intellectual property rights.

Forward-looking statements may appear throughout this Annual Report on Form 10-K, including, without limitation, the following sections: Item 1 "Business," Item 1A "Risk Factors," and Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations." The statements contained herein that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Forward-looking statements are often identified by the use of words such as, but not limited to, "anticipates," "believes," "can," "continues," "could," "estimates," "expects," "intends," "may," "will," "will be," "will continue," "will likely result," "plans," "predicts," "projects," "seeks," "should," "future," "targets," "continue," "would," or the negative of such terms, and similar or comparable terminology or expressions or variations intended to identify forward-looking statements. These statements are based on current expectations and assumptions based on information currently available to us. Such forward-looking statements are subject to risks, uncertainties, assumptions (that may never materialize or may prove incorrect) and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. These forward-looking statements are not guarantees of future performance, and actual results may vary materially from the results and expectations discussed. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in our Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and in this Annual Report on Form 10-K, and in particular, the risks discussed under the caption "Risk Factors" in Item 1A of this report and those discussed in other documents we file with the Securities and Exchange Commission ("SEC"). The forward-looking statements set forth herein speak only as of the date of this report. We undertake no obligation to revise or publicly release the results of any revision to these forward-looking statements to reflect events or circumstances that may arise after the date of such forward-looking statements, except as required by law. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements.

All references in this Annual Report on Form 10-K to "we," "us" and "our" refer to *XpresSpa Group, Inc. (prior to January 5, 2018, known as "FORM Holdings Corp.")*, a Delaware corporation, and its consolidated subsidiaries unless the context requires otherwise.

PART I

ITEM 1. BUSINESS

Overview

On January 5, 2018, we changed our name to XpresSpa Group, Inc. ("XpresSpa Group" or the "Parent") from FORM Holdings Corp. We rebranded to XpresSpa Group to align our corporate strategy to build a pure-play health and wellness services company, which commenced following our acquisition of XpresSpa Holdings, LLC ("Holdings" or "XpresSpa") on December 23, 2016 (XpresSpa Group, Inc. and Holdings consolidated is referred to as the "Company").

As a result of the transition to a pure-play health and wellness services company, we currently have one operating segment that is also our sole reporting unit, XpresSpa, the leading airport retailer of spa services. XpresSpa offers travelers premium spa services, including massage, nail and skin care, as well as spa and travel products. XpresSpa is a well-recognized airport spa brand with 51 locations, consisting of 46 domestic and 5 international locations as of December 31, 2019. During 2019 and 2018, XpresSpa generated $48,515,000 and $50,094,000 in revenue, respectively. In 2019 and 2018, approximately 82% of XpresSpa's total revenue in both years was generated by services, primarily massage and nailcare. In 2019 and 2018, retail products and travel accessories accounted for 15% and 16%, respectively, of revenue and 3% and 2%, respectively, was other revenue.

On July 8, 2019, we entered into an amended and restated product sale and marketing agreement, with Calm, Inc. ("Calm"), a company that has developed the leading app for sleep, meditation and relaxation. The agreement primarily allows for the display, marketing, promotion, offer for sale and sale of Calm's products in each of our branded stores worldwide. The agreement will remain in effect until July 31, 2021, unless terminated earlier in accordance with the terms of the agreement, and automatically renews for successive terms of six months unless either party provides written notice of termination no later than thirty days prior. On October 30, 2019, we entered into the second amendment to the agreement with Calm, which provides for the addition of other Calm branded products available for sale in XpresSpa spas.

On October 30, 2019, we signed a strategic partnership with Persona™, a Nestlé Health Science company and leading personalized vitamin subscription program, to offer Persona's products in all of our domestic airport locations with our staff trained on the products by Persona's nutritionists. Customers are able to purchase three different nutrition packs designed especially for travelers to support relaxation, immunity or jet lag, with customers receiving an exclusive discount on their first order. XpresSpa launched Persona in its airport locations in December 2019.

We own certain patent portfolios, which, in prior years we monetized through sales and licensing agreements. During the year ended December 31, 2018, we determined that our intellectual property operating segment was no longer an area of focus for us and, as such, is no longer reflected as a separate operating segment, as it has not generated any material revenues or operating costs.

In March 2018, we completed the sale of Group Mobile Int'l LLC ("Group Mobile"). This entity was previously included in our technology operating segment. The results of operations for Group Mobile are presented in the consolidated statements of operations and comprehensive loss as consolidated net loss from discontinued operations.

Our Strategy and Outlook

XpresSpa is a leading airport retailer of spa services and related products. XpresSpa was created for travelers to address the stress and idle time spent at the airport, allowing travelers to spend this time relaxing and focusing on personal care and wellness. We believe that XpresSpa is well positioned to benefit from consumers' growing interest in health and wellness and increasing demand for spa services and related wellness products. It is a well-recognized and popular airport spa brand with a dominant market share in the United States, nearly three times the number of domestic locations as its closest competitor. Globally, it provides approximately one million services and products per year to its customers. As of December 31, 2019, XpresSpa operated 51 total locations in 25 airports, in three countries including the United States, Netherlands and United Arab Emirates. Key services and products offered include:

- massage services for the neck, back, feet and whole body;
- nail care, such as pedicures, manicures and polish changes;
- travel products, such as neck pillows, blankets and massage tools; and
- new offerings through its strategic partnerships, such as sleep, meditation and relaxation therapies with Calm.com, vitamin and nutrition products through Persona, cryotherapy services, NormaTec compression services, and Dermalogica personal care services and retail products.

For over 15 years, increased security requirements have led travelers to spend more time at the airport. In addition, in anticipation of the long and often stressful security lines, travelers allow for more time to get through security and, as a result, often experience increased downtime prior to boarding. Consequently, travelers at large airport hubs have idle time in the terminal after passing through security.

Recent Developments

Effects of Coronavirus on Business

On March 11, 2020, the World Health Organization declared the outbreak of the Coronavirus ("COVID-19"), which continues to spread throughout the U.S. and the world, as a pandemic. The outbreak is having an impact on the global economy, resulting in rapidly changing market and economic conditions. Similar to many businesses in the travel sector, our business has been materially adversely impacted by the recent COVID-19 outbreak and associated restrictions on travel that have been implemented. Effective March 24, 2020, we temporarily closed all global spa locations, largely due to the categorization of our spa locations by local jurisdictions as "non-essential services". We intend to reopen our spa locations and resume normal operations once restrictions on non-essential services are lifted and airport traffic returns to sufficient levels to support our operations.

On March 25, 2020, we announced that during such period as we remain unable to reopen our spa locations for normal operations, we were advancing conversations with certain COVID-19 testing partners to develop a model for testing in U.S. airports.

The temporary closing of our global spa operations has had a materially adverse impact on our cash flows from operations and caused a liquidity crisis. As a result, management has concluded that there was a long-lived asset impairment triggering event during the first quarter of 2020, which will result in management performing an impairment evaluation of certain of our long-lived asset balances (primarily leasehold improvements and right of use lease assets totaling approximately $16,318,000 as of December 31, 2019). This could lead to us recording an impairment charge during the first quarter of 2020. The full extent to which COVID-19 will impact our results will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of the virus and the actions to contain or treat its impact.

We are currently seeking sources of capital to help fund our business operations during the COVID-19 crisis. We have been able to secure financing during 2020 totaling gross proceeds of approximately $9,440,000 by obtaining a cash advance on our accounts receivable balances, a loan from our senior secured lender, B3D, LLC ("B3D"), and through common stock offerings (see further discussion below). Depending on the impact of the COVID outbreak on our operations and cash position, we may need to obtain additional financing. If we need to obtain additional financing in the future and are unsuccessful, we may be required to curtail or terminate some or all of our business operations and cause our Board of Directors to possibly pursue a restructuring, which may include a reorganization or bankruptcy under Federal bankruptcy laws, or a dissolution, liquidation and/or winding up of the Company.

CEO Transition

On February 8, 2019, Edward Jankowski resigned as our Chief Executive Officer and as a director.

Effective as of February 11, 2019, Douglas Satzman was appointed by our Board of Directors as our Chief Executive Officer and as a director to fill the position vacated by Mr. Jankowski.

Evaluation and Right Sizing of the Portfolio

Among the first initiatives of Mr. Satzman was a critical evaluation of the profitability and strategic fit of the portfolio of spas. Consequently, a determination was made to close nine underperforming and strategically mismatched spas, or approximately 20% of the spa portfolio, while focusing efforts and capital on the performing spas, renovations of existing spas and expansion of the spa portfolio into new airports and terminals.

See "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations - Recent Developments and Liquidity and Going Concern" sections in this Annual Report on Form 10-K for further discussion.

Competition

XpresSpa operated 51 locations, which includes 46 domestic locations and 5 international locations as of December 31, 2019. Our domestic units operate within many of the largest and most heavily trafficked airports in the United States. The balance of the domestic market is highly fragmented and is represented largely by small, privately-owned entities. The largest domestic competitor operates 15 locations in nine airports in the United States.

Our Market

Airport retailers differ significantly from traditional retailers. Unlike traditional retailers, airport retailers benefit from a steady and largely predictable flow of traffic from a constantly changing customer base. Airport retailers also benefit from "dwell time," the period after travelers have passed through airport security and before they board an aircraft. For over 15 years, increased security requirements have led travelers to spend more time at the airport. In addition, in anticipation of the long and often stressful security lines, travelers allow for more time to get through security and, as a result, often experience increased downtime prior to boarding.

XpresSpa was developed to address the stressful and idle time spent at the airport, allowing travelers to spend this time productively, by relaxing and focusing on personal care and wellness. We believe that XpresSpa is well positioned to benefit from consumers' growing interest in health and wellness and increasing demand for spa services and related wellness products.

In addition, a confluence of microeconomic events has created favorable conditions for the expansion of retail concepts at airports, in particular, retail concepts that attract higher spending from air travelers. The competition for airplane landings has forced airports to lower landing fees, which in turn has necessitated augmenting their retail offerings to offset budget shortfalls. Infrastructure projects at airports across the country, again intended to make an airport more desirable to airlines, require funding from bond issuances that in turn rely upon, in part, the expected minimum rent guarantees and expected income from concessionaires.

Equally as important to the industry growth is XpresSpa's flexible, valuable and desirable retail format and footprint within the airport retail segment. XpresSpa opens multiple locations annually, which have ranged in size from 200 square feet to 2,600 square feet, with a typical size of approximately 800 square feet. XpresSpa is able to adapt its operating model to almost any size location available in space constrained airports. This increased flexibility compared to other retail concepts allows XpresSpa to operate multiple stores within an airport, from which it enjoys synergies due to shared labor between stores.

XpresSpa believes that its operating metrics represent an attractive return on invested capital and, as a result, is pursuing new locations at airports and terminals around the country. Historically, XpresSpa has won the majority of all requests for proposal ("RFP") in which it has participated.

Normal market conditions and behavior have been negatively impacted by the recent outbreak of COVID-19. On March 11, 2020, the World Health Organization declared the outbreak a pandemic. The outbreak is having an impact on the global economy, resulting in rapidly changing market and economic conditions. Similar to many businesses in the travel sector, our business has been materially adversely impacted by the recent COVID-19 outbreak and associated restrictions on travel that have been implemented. Effective March 24, 2020, we temporarily closed all global spa locations, largely due to the categorization of our spa locations by local jurisdictions as "non-essential services". We believe the market conditions will return to normal and we intend to reopen our spa locations and resume normal operations once the restrictions on non-essential services are lifted and airport traffic returns to sufficient levels to support our operations.

Regulation

Our operations are subject to a range of laws and regulations adopted by national, regional and local authorities from the various jurisdictions in which we operate, including those relating to, among others, licensing (e.g., massage, nail, and cosmetology), public health and safety and fire codes. Failure to obtain or retain required licenses and approvals, including those related to licensing, public health and safety and fire codes, would adversely affect our operations. Although we have not experienced, and do not anticipate, significant problems obtaining required licenses, permits or approvals, any difficulties, delays or failures in obtaining such licenses, permits or approvals could delay or prevent the opening, or adversely impact the viability, of our operations.

Airport authorities in the United States frequently require that our airport concessions meet minimum Airport Concession Disadvantaged Business Enterprise ("ACDBE") participation requirements. The Department of Transportation's ("DOT") ACDBE program is implemented by recipients of DOT Federal Financial Assistance, including airport agencies that receive federal funding. The ACDBE program is administered by the Federal Aviation Administration ("FAA"), state and local ACDBE certifying agencies and individual airports. The ACDBE program is designed to help ensure that small firms owned and controlled by socially and economically disadvantaged individuals can compete for airport contracting and concession opportunities in domestic passenger service airports. The ACDBE regulations require that airport recipients establish annual ACDBE participation goals, review the scope of anticipated large prime contracts throughout the year, and establish contract specific ACDBE participation goals. We generally meet the contract specific goals through an agreement providing for co-ownership of the retail location with a disadvantaged business enterprise. Frequently, and within the guidelines issued by the FAA, we may lend money to ACDBEs in connection with concession agreements in order to help the ACDBE fund the capital investment required under a concession agreement. The rules and regulations governing the certification of ACDBE participation in airport concession agreements are complex, and ensuring ongoing compliance is costly and time consuming. Further, if we fail to comply with the minimum ACDBE participation requirements in our concession agreements, we may be held responsible for breach of contract, which could result in the termination of a concession agreement and monetary damages. See "Item 1A. Risk Factors – Risks Related to our Business Operations – Failure to comply with minimum airport concession disadvantaged business enterprise participation goals and requirements could lead to lost business opportunities or the loss of existing business."

We are subject to the Fair Labor Standards Act, the Immigration Reform and Control Act of 1986, the Occupational Safety and Health Act, the Family and Medical Leave Act, the Affordable Care Act, the Healthcare Insurance Portability and Accountability Act and various federal and state laws governing matters such as minimum wages, overtime, unemployment tax rates, workers' compensation rates, citizenship requirements and other working conditions. We are also subject to the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in public accommodations and employment, which may require us to design or modify our concession locations to make reasonable accommodations for disabled persons.

We are also subject to certain truth-in-advertising, general customs, consumer and data protection, product safety, workers' health and safety and public health rules that govern retailers in general, as well as the merchandise sold within the various jurisdictions in which we operate.

The continued listing standards of Nasdaq provide, among other things, that a company may be delisted if the bid price of its stock drops below $1.00 for a period of 30 consecutive business days or if stockholders' equity is less than $2,500,000. As of December 31, 2019, our stockholders' equity balance was in a deficit position. On January 2, 2020, we received a deficiency letter from The Nasdaq Stock Market which provided us a grace period of 180 calendar days, or until June 30, 2020, to regain compliance with the minimum bid price requirement.

Employees

As of March 15, 2020, we had approximately 507 full-time and 221 part-time employees. XpresSpa had approximately 10 employees in San Francisco International Airport, who are represented by a labor union and are covered by a collective bargaining agreement. XpresSpa had approximately 24 employees in Los Angeles International Airport, who are represented by a labor union and are covered by a collective bargaining agreement. We consider our relationships with our employees to be good.

Effective March 24, 2020, we temporarily closed all global locations and furloughed the majority of its employees, largely due to the categorization of our spa locations by local jurisdictions as "non-essential services" in connection with the outbreak of COVID-19. We intend on reinstating the furloughed employees when restrictions related to non-essential services are relaxed and/or eliminated.

Corporate Information

On January 5, 2018, we changed our name to XpresSpa Group, Inc. from FORM Holdings Corp. as part of a rebranding that aligned our corporate strategy to build a pure-play health and wellness services company. Our Common Stock, par value $0.01 per share, which was previously listed under the trading symbol "FH" on the Nasdaq Capital Market, has been listed under the trading symbol "XSPA" since January 8, 2018. Our principal executive offices are located at 254 West 31st Street, 11th Floor, New York, New York 10001. Our telephone number is (212) 309-7549 and our website address is *www.xpresspagroup.com*. We also operate the website *www.xpresspa.com*. References in this Annual Report on Form 10-K to our website address does not constitute incorporation by reference of the information contained on the website. We make our filings with the Securities and Exchange Commission, or the SEC, including our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, other reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, and amendments to the foregoing reports, available free of charge on or through our website as soon as reasonably practicable after we file these reports with, or furnish such reports to, the SEC. In addition, we post the following information on our website:

- our corporate code of conduct and our insider trading compliance manual; and
- charters for our audit committee, compensation committee, and nominating and corporate governance committee.

The public may read and copy any materials that we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Also, the SEC maintains an Internet website that contains reports, proxy and information statements, and other information regarding issuers, including us, that file electronically with the SEC. The public can obtain any documents that we file with the SEC at *http://www.sec.gov*.

ITEM 1A. RISK FACTORS

Our business, financial condition, results of operations and the trading price of our Common Stock could be materially adversely affected by any of the following risks as well as the other risks highlighted elsewhere in this Annual Report on Form 10-K. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may materially affect our business, financial condition and results of operations.

Risks Related to our Financial Condition and Capital Requirements

Our independent registered public accounting firm has expressed substantial doubt as to our ability to continue as a going concern.

The audited financial statements included in this Annual Report on Form 10-K have been prepared assuming that we will continue as a going concern and do not include any adjustments that might result if we cease to continue as a going concern. The report of our independent registered public accounting firm on our financial statements for the years ended December 31, 2019 and 2018 included an explanatory paragraph indicating that there is substantial doubt about our ability to continue as a going concern. Our auditors' doubts are based on our recurring losses from operations and working capital deficiency. The inclusion of a going concern explanatory paragraph in future reports of our independent auditors may make it more difficult for us to secure additional financing or enter into strategic relationships on terms acceptable to us, if at all, and may materially and adversely affect the terms of any financing that we might obtain.

The recent COVID-19 outbreak was declared a pandemic by the World Health Organization on March 11, 2020 and has rapidly spread to the United States and many other parts of the world and may continue to adversely affect our business operations, employee availability, financial condition, liquidity and cash flow for an extended period of time.

The COVID-19 outbreak is having an impact on the global economy, resulting in rapidly changing market and economic conditions. Similar to many businesses in the travel sector, our business has been materially adversely impacted by the recent COVID-19 outbreak due to the restrictions on travel that have been implemented. Effective March 24, 2020, we temporarily closed all global spa locations, largely due to the categorization of our spa locations by local jurisdictions as "non-essential services" in connection with the outbreak of COVID-19. This has had a materially adverse impact on our cash flows from operations and caused a liquidity crisis. Ongoing significant reductions in business related activities could result in further loss of sales and profits and other material adverse effects. The extent of the impact of COVID-19 on our business, financial results, liquidity and cash flows will depend largely on future developments, including new information that may emerge concerning the severity and action taken to contain or prevent further spread within the U.S. and the related impact on consumer confidence and spending, all of which are highly uncertain and cannot be predicted. As the outbreak of COVID-19 continues to spread rapidly in the U.S. and globally, related government and private sector responsive actions may continue to adversely affect our business operations. It is impossible to predict the effect and ultimate impact of the COVID-19 pandemic as the situation is rapidly evolving. If the COVID-19 outbreak continues and persists for an extended period of time, we expect there will be significant and material disruptions to our operations, which will have a material adverse effect on our business, financial condition and results of operations.

If our process to identify and evaluate potential business alternatives, including identifying appropriate financing, is not successful, our Board of Directors may decide to pursue a restructuring, which may include a reorganization or bankruptcy under Federal bankruptcy laws, or a dissolution, liquidation and/or winding up of our Company.

There can be no assurance that the process to identify and evaluate potential business alternatives, including identifying appropriate financing, will result in a successful alternative for our business. If no transactions with respect to potential business alternatives are identified and completed, our Board of Directors may decide to pursue a restructuring, which may include a reorganization or bankruptcy under Federal bankruptcy laws, or a dissolution, liquidation and/or winding up of the Company. If our Board of Directors were to approve and recommend, and our stockholders were to approve, a dissolution and liquidation of our Company, we would be required under Delaware corporate law to pay our outstanding obligations, as well as to make reasonable provisions for contingent and unknown obligations, prior to making any distributions in liquidation to our stockholders. Our commitments and contingent liabilities may include (i) obligations under our employment agreements with certain members of management that provide for severance and other payments following a termination of employment occurring for various reasons, including a change in control of our Company, (ii) various claims and legal actions arising in the ordinary course of business and (iii) non-cancelable lease obligations. As a result of this requirement, a portion of our assets may need to be reserved pending the resolution of such obligations. In addition, we may be subject to litigation or other claims related to a dissolution and liquidation of our Company. If a dissolution and liquidation were pursued, our Board of Directors, in consultation with its advisors, would need to evaluate these matters and make a determination about a reasonable amount to reserve. Accordingly, holders of our secured and unsecured debt and our Common Stock may lose their entire investment in the event of a reorganization, bankruptcy, liquidation, dissolution or winding up of our Company.

In connection with the preparation of our annual financial statements for the year ended December 31, 2019, we identified a material weakness in our internal control over financial reporting. Any failure to maintain effective internal control over financial reporting could have a material adverse effect on our results of operations and financial position.

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with U.S. generally accepted accounting principles. In connection with our audit of the year ended December 31, 2019, we identified a material weakness in our internal controls over our financial close and reporting process. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected and corrected on a timely basis. Our management has concluded that additional formal procedures need to be put in place in the financial close and reporting process to ensure that appropriate reviews occur on all financial reporting analysis in a timely manner. We also concluded that we did not maintain a sufficient complement of corporate employee personnel with appropriate levels of accounting and controls knowledge and experience commensurate with our financial reporting requirements to appropriately analyze, record and disclose accounting matters completely and accurately. As this deficiency created a reasonable possibility that a material misstatement would not have been prevented or detected in a timely basis, management concluded that the control deficiency represented a material weakness and accordingly our internal control over financial reporting was not effective as of December 31, 2019.

We are still considering the full extent of the procedures to implement in order to remediate the material weakness described above. Our preliminary remediation plan, complimented by our existing outsourced internal audit procedures, includes implementing a more robust review process, an increase in the supervision and monitoring of the financial reporting processes and our accounting personnel, and implementing better controls over calculations, analysis and conclusions associated with non-routine transactions at a more precise level.

We cannot assure you that any of our remedial measures will be effective in resolving this material weakness. If our management is unable to conclude that we have effective internal control over financial reporting, or to certify the effectiveness of such controls, or if additional material weaknesses in our internal controls are identified in the future, we could be subject to regulatory scrutiny and a loss of public confidence, which could have a material adverse effect on our business and our stock price. In addition, if we do not maintain adequate financial and management personnel, processes and controls, we may not be able to manage our business effectively or accurately report our financial performance on a timely basis, which could adversely affect our results of operations and financial condition.

Our business and financial condition could be constrained by XpresSpa's outstanding debt, including the impact of the receipt of an explanatory paragraph with respect to our financial statements for the years ended December 31, 2019 and 2018, indicating that there is substantial doubt about our ability to continue as a going concern.

XpresSpa is obligated under a credit agreement and convertible secured promissory note payable to B3D, LLC ("B3D") of approximately $3,547,000 as of April 13, 2020, with a maturity date of May 31, 2021 (the "Senior Secured Note"). The Senior Secured Note accrues interest of 9.0% per annum. XpresSpa is obligated to make periodic interest payments on such debt obligations in cash, shares of our Common Stock, or a combination thereof. While we do not anticipate failing to make any such payments, the failure to do so may result in the default of loan obligations, leading to financial and operational hardship. XpresSpa has granted B3D a security interest in all of its tangible and intangible personal property to secure its obligations under the Senior Secured Note. The Senior Secured Note is an outstanding obligation of XpresSpa but is guaranteed by us.

As discussed above and elsewhere in this Annual Report on Form 10-K, the report of our independent registered public accounting firm on our financial statements for the years ended December 31, 2019 and 2018 includes an explanatory paragraph indicating that there is substantial doubt about our ability to continue as a going concern. The receipt of this explanatory paragraph with respect to our financial statements for the years ended December 31, 2019 and 2018 will result in a breach of a covenant under the Senior Secured Note which, if unremedied for a period of 30 days after the date hereof, will constitute an event of default under the Senior Secured Note. Upon the occurrence of an event of default under the Senior Secured Note, B3D may, among other things, declare the Senior Secured Note and all accrued and unpaid interest thereon and all other amounts owing under the Senior Secured Note to be due and payable.

The Company is also obligated under an unsecured subordinated note to Calm of approximately $2,500,000. The Calm Note will mature on May 31, 2022, and bears interest at a rate of 5% per annum, subject to increase in the event of default. The Calm Note is convertible at any time, in whole or in part, at the option of Calm into shares of Series E Preferred Stock at a conversion price equal to $0.27125 per share after giving effect to certain anti-dilution adjustments. Interest on the Calm Note is payable in arrears and may be paid in cash, shares of Series E Preferred Stock or a combination thereof.

If we fail to meet certain conditions under the terms of our outstanding indebtedness, we will be obligated to repay in cash any principal amount, interest and any other sum that remains outstanding. If the maturity date of our indebtedness is accelerated as a result of an event of default, the outstanding principal amount, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the holder's election, immediately due and payable in cash.

We may not be able to raise additional capital. Moreover, additional financing may have an adverse effect on the value of the equity instruments held by our stockholders.

We will need additional funds to respond to business opportunities and challenges, including our ongoing operating expenses, protection of our assets, development of new lines of business and enhancement of our operating infrastructure. While we will need to seek additional funding, we may not be able to obtain financing on acceptable terms, or at all. In addition, the terms of our financings may be dilutive to, or otherwise adversely affect, holders of our Common Stock. We may also seek additional funds through arrangements with collaborators or other third parties. We may not be able to negotiate arrangements on acceptable terms, if at all. If we are unable to obtain additional funding on a timely basis, we may be required to curtail or terminate some or all of our business plans. Any such financing that we undertake will likely be dilutive to our current stockholders.

Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.

As of December 31, 2019, our estimated aggregate total net operating loss carryforwards ("NOLs") were $182,327,000 for U.S. federal purposes, expiring 20 years from the respective tax years to which they relate, and $31,401,000 for U.S. federal purposes with an indefinite life due to new regulations in the Tax Cuts and Jobs Act of 2017. Our ability to utilize our NOLs may be limited under Section 382 of the Internal Revenue Code. The limitations apply if an ownership change, as defined by Section 382, occurs. Generally, an ownership change occurs when certain stockholders increase their aggregate ownership by more than 50 percentage points over their lowest ownership percentage in a testing period (typically three years). Additionally, the Tax Reform Act of 1986 imposed substantial restrictions on the utilization of NOL and tax credits in the event of an ownership change of a corporation. Thus, the Company's ability to utilize all such NOL and credit carryforwards may be limited. Future changes in stock ownership may also trigger an ownership change and, consequently, a Section 382 limitation.

The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") was enacted on March 27, 2020 and includes favorable changes to tax law and incentives for businesses impacted by COVID-19. However, we do not anticipate the income tax law changes and incentives will have a material impact on our results of operations or financial position.

Global economic and market conditions may adversely affect our business, financial condition and operating results.

Our business plan depends significantly on worldwide economic conditions and our success is dependent on consumer spending, which is sensitive to economic downturns, inflation and any associated rise in unemployment, decline in consumer confidence, adverse changes in exchange rates, increase in interest rates, increase in the price of oil, deflation, direct or indirect taxes or increase in consumer debt levels. As a result, economic downturns may have a material adverse impact on our business, financial condition and results of operations. Moreover, uncertainty about global economic conditions poses a risk as businesses and individuals may postpone spending in response to tighter credit, negative financial news and declines in income or asset values. This could have a negative effect on corporate and individual spending on health and wellness and travel. These factors, taken together or individually, could cause material harm to our business, financial condition and results of operations.

Risks Related to our Business Operations

XpresSpa is reliant on international and domestic airplane travel, and the time that airline passengers spend in United States airports post-security. A decrease in airline travel, a decrease in the desire of customers to buy spa services and products, or decreased time spent in airports would negatively impact XpresSpa's operations.

XpresSpa depends upon a large number of airplane travelers with the propensity for health and wellness, and in particular spa treatments and products, spending significant time post-security clearance check points.

If the number of airline travelers decreases, if the time that these travelers spend post-security decreases, and/or if travelers ability or willingness to pay for XpresSpa's products and services diminishes, this could have an adverse effect on XpresSpa's growth, business activities, cash flow, financial condition and results of operations. Some reasons for these events could include:

- the impact of a public health epidemic, including the novel coronavirus ("COVID-19"), which has interfered and may continue to interfere with our ability, or the ability of our employees, workers, contractors, suppliers and other business partners to perform our and their respective responsibilities and obligations relative to the conduct of our business. A public health epidemic, including the coronavirus, poses the risk of disruptions from the temporary closure of third-party suppliers and manufacturers, restrictions on the shipment of our products, restrictions on our employees' and other service providers' ability to travel, the decreased willingness or ability of our customers to travel or to utilize our services and shutdowns that may be requested or mandated by governmental authorities. The extent to which the coronavirus impacts our results will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of the coronavirus and the actions to contain the coronavirus or treat its impact, among others;

- the temporary closure of our spa locations, largely due to the categorization of such spa locations by local jurisdictions as "non-essential services" in connection with the recent outbreak of COVID-19;

- terrorist activities (including cyber-attacks) impacting either domestic or international travel through airports where XpresSpa operates, causing fear of flying, flight cancellations, or an economic downturn, or any other event of a similar nature, even if not directly affecting the airline industry, may lead to a significant reduction in the number of airline passengers;

- a decrease in business spending that impacts business travel, such as a recession;

- a decrease in consumer spending that impacts leisure travel, such as a recession or a stock market downturn or a change in consumer lending regulations impacting available credit for leisure travel;

- an increase in airfare prices that impacts the willingness of air travelers to fly, such as an increase in oil prices or heightened taxation from federal or other aviation authorities;

- severe weather, ash clouds, airport closures, natural disasters, strikes or accidents (airplane or otherwise), causing travelers to decrease the amount that they fly and any of these events, or any other event of a similar nature, even if not directly affecting the airline industry, may lead to a significant reduction in the number of airline passengers;

- scientific studies that malign the use of spa services or the products used in spa services, such as the impact of certain chemicals and procedures on health and wellness; or

- streamlined security screening checkpoints, which could decrease the wait time at checkpoints and therefore the time air travelers budget for spending time at the airport.

Further, any disruption to, or suspension of services provided by airlines and the travel industry as a result of financial difficulties, labor disputes, construction work, increased security, changes to regulations governing airlines, mergers and acquisitions in the airline industry and challenging economic conditions causing airlines to reduce flight schedules or increase the price of airline tickets could negatively affect the number of airline passengers.

Additionally, the threat of terrorism and governmental measures in response thereto, such as increased security measures, recent executive orders in the United States impacting entry into the United States and changing attitudes towards the environmental impacts of air travel may in each case reduce demand for air travel and, as a result, decrease airline passenger traffic at airports.

The effect that these factors would have on our business depends on their magnitude and duration, and a reduction in airline passenger numbers will result in a decrease in our sales and may have a materially adverse impact on our business, financial condition and results of operations.

Our success will depend in part on relationships with third parties. Any adverse changes in these relationships could adversely affect our business, financial condition, or results of operations.

Our success is dependent on our ability to maintain and renew our existing business relationships and to establish new business relationships. There can be no assurance that our management will be able to maintain such business relationships or enter into or maintain new business contracts and other business relationships, on acceptable terms, if at all. The failure to maintain important business relationships could have a material adverse effect on our business, financial condition, or results of operations.

We rely on a limited number of distributors and suppliers for certain of our products, and events outside our control may disrupt our supply chain, which could result in an inability to perform our obligations under our concession agreements and ultimately cause us to lose our concessions.

We rely on a small number of suppliers for our products. As a result, these distributors may have increased bargaining power and we may be required to accept less favorable purchasing terms. In the event of a dispute with a supplier or distributor, the delivery of a significant amount of merchandise may be delayed or cancelled, or we may be forced to purchase merchandise from other suppliers on less favorable terms. Such events could cause turnover to fall or costs to increase, adversely affecting our business, financial condition and results of operations. In particular, we have publicized our sale of certain brands of products in our stores – our failure to sell these brands may adversely affect our business.

Further, damage or disruption to our supply chain due to any of the following could impair our ability to sell our products: adverse weather conditions or natural disaster, government action, fire, terrorism, cyber-attacks, the outbreak or escalation of armed hostilities, pandemics, industrial accidents or other occupational health and safety issues, strikes and other labor disputes, customs or import restrictions or other reasons beyond our control or the control of our suppliers and business partners. Failure to take adequate steps to mitigate the likelihood or potential impact of such events, or to effectively manage such events if they occur, could adversely affect our business, financial condition and results of operations, as well as require additional resources to restore our supply chain.

XpresSpa's operating results may fluctuate significantly due to certain factors, some of which are beyond its control.

XpresSpa's operating results may fluctuate from period to period significantly because of several factors, including:

- the timing and size of new unit openings, particularly the launch of new terminals;
- passenger traffic and seasonality of air travel;
- changes in the price and availability of supplies;
- macroeconomic conditions, nationally locally and internationally;
- changes in consumer preferences and competitive conditions;
- expansion to new markets and new locations; and
- increases in infrastructure costs, including those costs associated with the build-out of new concession locations and renovating existing concession locations.

XpresSpa's operating results may fluctuate significantly as a result of the factors discussed above. Accordingly, results for any period are not necessarily indicative of results to be expected for any other period or for any year.

XpresSpa's expansion into new airports or off-airport locations may present increased risks due to its unfamiliarity with those areas.

XpresSpa's growth strategy depends upon expanding into markets where it has little or no meaningful operating experience. Those locations may have demographic characteristics, consumer tastes and discretionary spending patterns that are different from those in the markets where its existing operations are located. As a result, new airport terminal and/or off-airport operations may be less successful than existing concession locations in current airport terminals. XpresSpa may find it more difficult in new markets to hire, motivate and keep qualified employees who can project its vision, passion and culture. XpresSpa may also be unfamiliar with local laws, regulations and administrative procedures, including the procurement of spa services retail licenses, in new markets which could delay the build-out of new concession locations and prevent it from achieving its target revenues on a timely basis. Operations in new markets may also have lower average revenues or enplanements than in the markets where XpresSpa currently operates. Operations in new markets may also take longer to ramp up and reach expected sales and profit levels, and may never do so, thereby negatively affecting XpresSpa's results of operations.

XpresSpa's growth strategy is highly dependent on its ability to successfully identify and open new XpresSpa locations.

XpresSpa's growth strategy primarily contemplates expansion through procuring new XpresSpa locations and opening new XpresSpa stores and kiosks. Implementing this strategy depends on XpresSpa's ability to successfully identify new store locations. XpresSpa will also need to assess and mitigate the risk of any new store locations, to open the stores on favorable terms and to successfully integrate their operations with ours. XpresSpa may not be able to successfully identify opportunities that meet these criteria, or, if it does, XpresSpa may not be able to successfully negotiate and open new stores on a timely basis. If XpresSpa is unable to identify and open new locations in accordance with its operating plan, XpresSpa's revenue growth rate and financial performance may fall short of our expectations.

Our profitability depends on the number of airline passengers in the terminals in which we have concessions. Changes by airport authorities or airlines that lower the number of airline passengers in any of these terminals could affect our business, financial condition and results of operations.

The number of airline passengers that visit the terminals in which we have concessions is dependent in part on decisions made by airlines and airport authorities relating to flight arrivals and departures. A decrease in the number of flights and resulting decrease in airline passengers could result in fewer sales, which could lower our profitability and negatively impact our business, financial condition and results of operations. Concession agreements generally provide for a minimum annual guaranteed payment ("MAG") payable to the airport authority or landlord regardless of the amount of sales at the concession. Currently, the majority of our concession agreements provide for a MAG that is either a fixed dollar amount or an amount that is variable based upon the number of travelers using the airport or other location, retail space used, estimated sales, past results or other metrics. If there are fewer airline passengers than expected or if there is a decline in the sales per airline passenger at these facilities, we will nonetheless be required to pay the MAG or fixed rent and our business, financial condition and results of operations may be materially adversely affected.

Furthermore, the exit of an airline from a market or the bankruptcy of an airline could reduce the number of airline passengers in a terminal or airport where we operate and have a material adverse impact on our business, financial condition and results of operations.

We may not be able to execute our growth strategy to expand and integrate new concessions or future acquisitions into our business or remodel existing concessions. Any new concessions, future acquisitions or remodeling of existing concessions may divert management resources, result in unanticipated costs, or dilute the ownership of our stockholders.

Part of our growth strategy is to expand and remodel our existing facilities and to seek new concessions through tenders, direct negotiations or other acquisition opportunities. In this regard, our future growth will depend upon a number of factors, such as our ability to identify any such opportunities, structure a competitive proposal and obtain required financing and consummate an offer. Our growth strategy will also depend on factors that may not be within our control, such as the timing of any concession or acquisition opportunity.

We must also strategically identify which airport terminals and concession agreements to target based on numerous factors, such as airline passenger numbers, airport size, the type, location and quality of available concession space, level of anticipated competition within the terminal, potential future growth within the airport and terminal, rental structure, financial return and regulatory requirements. We cannot provide assurance that this strategy will be successful.

In addition, we may encounter difficulties integrating expanded or new concessions or any acquisitions. Such expanded or new concessions or acquisitions may not achieve anticipated turnover and earnings growth or synergies and cost savings. Delays in the commencement of new projects and the refurbishment of concessions can also affect our business. In addition, we will expend resources to remodel our concessions and may not be able to recoup these investments. A failure to grow successfully may materially adversely affect our business, financial condition and results of operations.

In particular, new concessions and acquisitions, and in some cases future expansions and remodeling of existing concessions, could pose numerous risks to our operations, including that we may:

- have difficulty integrating operations or personnel;
- incur substantial unanticipated integration costs;
- experience unexpected construction and development costs and project delays;
- face difficulties associated with securing required governmental approvals, permits and licenses (including construction permits) in a timely manner and responding effectively to any changes in federal, state or local laws and regulations that adversely affect our costs or ability to open new concessions;
- have challenges identifying and engaging local business partners to meet ACDBE requirements in concession agreements;
- not be able to obtain construction materials or labor at acceptable costs;
- face engineering or environmental problems associated with our new and existing facilities;
- experience significant diversion of management attention and financial resources from our existing operations in order to integrate expanded, new or acquired businesses, which could disrupt our ongoing business;
- lose key employees, particularly with respect to acquired or new operations;
- have difficulty retaining or developing acquired or new business customers;
- impair our existing business relationships with suppliers or other third parties as a result of acquisitions;
- fail to realize the potential cost savings or other financial benefits and/or the strategic benefits of acquisitions, new concessions or remodeling; and
- incur liabilities from the acquired businesses and we may not be successful in seeking indemnification for such liabilities.

In connection with acquisitions or other similar investments, we could incur debt or amortization expenses related to intangible assets, suffer asset impairments, assume liabilities or issue stock that would dilute the percentage of ownership of our then-current stockholders. We may not be able to complete acquisitions or integrate the operations, products, technologies or personnel gained through any such acquisition, which may have a materially adverse impact on our business, financial condition and results of operations.

If the estimates and assumptions we use to determine the size of our market are inaccurate, our future growth rate may be impacted.

Market opportunity estimates and growth forecasts are subject to uncertainty and are based on assumptions and estimates that may not prove to be accurate. The estimates and forecasts in this Annual Report on Form 10-K relating to the size and expected growth of the travel retail market may prove to be inaccurate. Even if the market in which we compete meets our size estimates and forecasted growth, our business could fail to grow at similar rates, if at all. The principal assumptions relating to our market opportunity include projected growth in the travel retail market and our share of the market. If these assumptions prove inaccurate, our business, financial condition and results of operations could be adversely affected.

Our business requires substantial capital expenditures and we may not have access to the capital required to maintain and grow our operations.

Maintaining and expanding our operations in our existing and new retail locations is capital intensive. Specifically, the construction, redesign and maintenance of our retail space in airport terminals where we operate, technology costs, and compliance with applicable laws and regulations require substantial capital expenditures. We may require additional capital in the future to fund our operations and respond to potential strategic opportunities, such as investments, acquisitions and expansions.

We must continue to invest capital to maintain or to improve the success of our concessions and to meet refurbishment requirements in our concessions. Decisions to expand into new terminals could also affect our capital needs. Our actual capital expenditures in any year will vary depending on, among other things, the extent to which we are successful in renewing existing concessions and winning additional concession agreements.

We cannot provide assurance that we will be able to maintain our operating performance, generate sufficient cash flow, or have access to sufficient financing to continue our operations and development activities at or above our present levels, and we may be required to defer all or a portion of our capital expenditures. Our business, financial condition and results of operations may be materially adversely affected if we cannot make such capital expenditures.

XpresSpa currently relies on a skilled, licensed labor force to provide spa services, and the supply of this labor force is finite. If XpresSpa cannot hire adequate staff for its locations, it will not be able to operate.

As of March 15, 2020, XpresSpa had approximately 507 full-time and 221 part-time employees in its locations. Excluding some dedicated retail staff, the majority of these employees are licensed to perform spa services, and hold such licenses as masseuses, nail technicians, aestheticians, barbers and master barbers. The demand for these licensed technicians has been increasing as more consumers gravitate to health and wellness treatments such as spa services. XpresSpa competes not only with other airport-based spa companies but with spa companies outside of the airport for this skilled labor force. In addition, all staff hired by XpresSpa must pass the background checks and security clearances necessary to work in airport locations. If XpresSpa is unable to attract and retain qualified staff to work in its airport locations, its ability to operate will be impacted negatively.

Effective March 24, 2020, we temporarily closed all global locations and furloughed the majority of our employees, largely due to the categorization of such spa locations by local jurisdictions as "non-essential services" in connection with the outbreak of COVID-19. We intend on reinstating the furloughed employees when restrictions related to non-essential services are relaxed and/or eliminated, but there can be no assurances that such employees will return to our locations in a timely manner or at all.

Our business is subject to various laws and regulations, and changes in such laws and regulations, or failure to comply with existing or future laws and regulations, could adversely affect us.

We are subject to various laws and regulations in the United States, Netherlands and United Arab Emirates that affect the operation of our concessions. The impact of current laws and regulations, the effect of changes in laws or regulations that impose additional requirements and the consequences of litigation relating to current or future laws and regulations, or our inability to respond effectively to significant regulatory or public policy issues, could increase our compliance and other costs of doing business and, therefore, have an adverse impact on our results of operations.

Failure to comply with the laws and regulatory requirements of governmental authorities could result in, among other things, revocation of required licenses, administrative enforcement actions, fines and civil and criminal liability. In addition, certain laws may require us to expend significant funds to make modifications to our concessions in order to comply with applicable standards. Compliance with such laws and regulations can be costly and can increase our exposure to litigation or governmental investigations or proceedings.

XpresSpa's labor force could unionize, putting upward pressure on labor costs.

Currently, XpresSpa stores in two airports have a labor force which is unionized. Major players in labor organization, and in particular "Unite Here!" which represents approximately 45,000 employees in the airport concessions and airline catering industries, could target XpresSpa locations for its unionization efforts. In the event of the successful unionization of all of XpresSpa's labor force, XpresSpa would likely incur additional costs in the form of higher wages, more benefits such as vacation and sick leave, and potentially also higher health care insurance costs.

XpresSpa competes for new locations in airports and may not be able to secure new locations.

XpresSpa participates in the highly competitive and lucrative airport concessions industry, and as a result competes for retail leases with a variety of larger, better capitalized concessions companies as well as smaller, mid-tier and single unit operators. Frequently, an airport includes a spa concept within its retail product set and, in those instances, XpresSpa competes primarily with BeRelax, Terminal Getaway, Massage Bar and 10 Minute Manicure.

We may not be able to predict accurately or fulfill customer preferences or demands.

We derive a significant amount of our revenue from the sale of massage, cosmetic and luxury products which are subject to rapidly changing customer tastes. The availability of new products and changes in customer preferences has made it more difficult to predict sales demand for these types of products accurately. Our success depends in part on our ability to predict and respond to quickly changing consumer demands and preferences, and to translate market trends into appropriate merchandise offerings. Additionally, due to our limited sales space relative to other retailers, the proper selection of salable merchandise is an important factor in revenue generation. We cannot provide assurance that our merchandise selection will correspond to actual sales demand. If we are unable to predict or rapidly respond to sales demand or to changing styles or trends, or if we experience inventory shortfalls on popular merchandise, our revenue may be lower, which could have a materially adverse impact on our business, financial condition and results of operations.

XpresSpa's leases may be terminated, either for convenience by the landlord or as a result of an XpresSpa default.

XpresSpa has store locations and kiosks in a number of airports in which the landlord, with prior written notice to XpresSpa, can terminate XpresSpa's lease, including for convenience or as necessary for airport purposes or operations. If a landlord elects to terminate a lease at an airport, XpresSpa may have to shut down one or more store locations at that airport.

Additionally, XpresSpa leases have numerous provisions governing the operation of XpresSpa's stores. Violation of one or more of these provisions, even unintentionally, may result in the landlord finding that XpresSpa is in default of the lease. Violation of lease provisions may result in fines and, in some cases, termination of a lease.

XpresSpa's ability to operate depends on the traffic patterns of the terminals in which it operates, and the cessation or disruption of air traveler traffic in these terminals would negatively impact XpresSpa's addressable market.

XpresSpa depends on a high volume of air travelers in its terminals. It is possible that a terminal in which XpresSpa operates could become subject to a lower volume of air travelers, which would significantly impact traffic near and around XpresSpa locations and therefore its total addressable market. Lower volume in a terminal could be caused by:

- terminal construction that results in the temporary or permanent closure of a unit, or adversely impacts the volume or pattern of traffic flows within an airport;
- an airline utilizing an airport in which XpresSpa operates could abandon that airport or an individual terminal in favor of other airports or terminals, or because it is contracting operations; or
- adverse weather conditions could cause damage to the terminal or airport in which XpresSpa operates, resulting in the temporary or permanent closure of a unit.

We are dependent on our local partners.

Our local partners, including our ACDBE partners, maintain ownership interests in certain of our locations. Our participation in these operating entities differs from market to market. While the precise terms of each relationship vary, our local partners may have control over certain portions of the operations of these concessions. The stores are operated pursuant to the applicable joint venture agreement governing the relationship between us and our local partner. Generally, these agreements also provide that strategic decisions are to be made by a committee comprised of us and our local partner. These concessions involve risks that are different from the risks involved in operating a concession independently, and include the possibility that our local partners:

- are in a position to take action contrary to our instructions, our requests, our policies, our objectives or applicable laws;
- take actions that reduce our return on investment;
- go bankrupt or are otherwise unable to meet their capital contribution obligations;
- have economic or business interests or goals that are or become inconsistent with our business interests or goals; or
- take actions that harm our reputation or restrict our ability to run our business.

Failure to comply with minimum airport concession disadvantaged business enterprise participation goals and requirements could lead to lost business opportunities or the loss of existing business.

Pursuant to ACDBE participation requirements, XpresSpa is often required to meet, or use good faith efforts to meet, certain minimum ACDBE participation requirements when bidding on or submitting proposals for new concession contracts. If XpresSpa is unable to find and/or partner with an appropriate ACDBE, XpresSpa may lose opportunities to open new locations. In addition, a number of XpresSpa's existing leases contain minimum ACDBE participation requirements which require the ACDBE to own a significant portion of the business being operated under those leases. The level of ACDBE participation requirements may affect XpresSpa's profitability and/or its ability to meet financial forecasts.

Further, if XpresSpa fails to comply with the minimum ACDBE participation requirements, XpresSpa may be held responsible for a breach of contract, which could result in the termination of a lease and impairment of XpresSpa's ability to bid on or obtain future concession contracts. To the extent that XpresSpa leases are terminated and XpresSpa is required to shut down one or more store locations, there could be a material adverse impact to its business and results of operations.

Continued minimum wage increases could negatively impact XpresSpa's cost of labor.

XpresSpa compensates its licensed technicians via a formula that includes commissions. As a result, an increase in the minimum wage could increase XpresSpa's cost of labor and have an adverse impact on our business, financial condition and results of operations.

Information technology systems failure or disruption, or changes to information technology related to payment systems, could impact our day-to-day operations.

Our information technology systems are used to record and process transactions at our point-of-sale interfaces and to manage our operations. These systems provide information regarding most aspects of our financial and operational performance, statistical data about our customers, our sales transactions and our inventory management. Fire, natural disasters, power-loss, telecommunications failure, break-ins, terrorist attacks (including cyber-attacks), computer viruses, electronic intrusion attempts from both external and internal sources and similar events or disruptions may damage or impact our information technology systems at any time. These events could cause system interruption, delays or loss of critical data and could disrupt our acceptance and fulfillment of customer orders, as well as disrupt our operations and management. For example, although our point-of-sales systems are programmed to operate and process customer orders independently from the availability of our central data systems and even of the network, if a problem were to disable electronic payment systems in our stores, credit card payments would need to be processed manually, which could result in fewer transactions. Significant disruption to systems could have a material adverse impact on our business, financial condition and results of operations.

We also continually enhance or modify the technology used for our operations. We cannot be sure that any enhancements or other modifications we make to our operations will achieve the intended results or otherwise be of value to our customers. Future enhancements and modifications to our technology could consume considerable resources. We may be required to enhance our payment systems with new technology, which could require significant expenditures. If we are unable to maintain and enhance our technology to process transactions, we may experience a materially adverse impact on our business, financial condition and results of operations.

If XpresSpa is unable to protect its customers' credit card data and other personal information, XpresSpa could be exposed to data loss, litigation and liability, and its reputation could be significantly harmed.

Privacy protection is increasingly demanding, and the use of electronic payment methods and collection of other personal information, including order history, travel history and other preferences, exposes XpresSpa to increased risk of privacy and/or security breaches as well as other risks. The majority of XpresSpa's sales are by credit or debit cards. Additionally, XpresSpa collects and stores personal information from individuals, including its customers and employees.

In the future, XpresSpa may experience security breaches in which credit and debit card information or other personal information is stolen. Although XpresSpa uses secure private networks to transmit confidential information, third parties may have the technology or know-how to breach the security of the customer information transmitted in connection with credit and debit card sales, and its security measures and those of technology vendors may not effectively prohibit others from obtaining improper access to this information. The techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently and are often difficult to detect for long periods of time, which may cause a breach to go undetected for an extensive period of time. Advances in computer and software capabilities, new tools, and other developments may increase the risk of such a breach. Further, the systems currently used for transmission and approval of electronic payment transactions, and the technology utilized in electronic payments themselves, all of which can put electronic payment at risk, are determined and controlled by the payment card industry, not by XpresSpa. In addition, contractors, or third parties with whom XpresSpa does business or to whom XpresSpa outsources business operations may attempt to circumvent its security measures in order to misappropriate such information and may purposefully or inadvertently cause a breach involving such information. If a person is able to circumvent XpresSpa's security measures or those of third parties, he or she could destroy or steal valuable information or disrupt XpresSpa's operations. XpresSpa may become subject to claims for purportedly fraudulent transactions arising out of the actual or alleged theft of credit or debit card information, and XpresSpa may also be subject to lawsuits or other proceedings relating to these types of incidents. Any such claim or proceeding could cause XpresSpa to incur significant unplanned expenses, which could have an adverse effect on its business or results of operations. Further, adverse publicity resulting from these allegations could significantly harm its reputation and may have a material adverse effect on it. Although XpresSpa carries cyber liability insurance to protect against these risks, there can be no assurance that such insurance will provide adequate levels of coverage against all potential claims.

Negative social media regarding XpresSpa could result in decreased revenues and impact XpresSpa's ability to recruit workers.

XpresSpa's affinity among consumers is highly dependent on their positive feelings about the brand, its customer service and the range and quality of services and products that it offers. A negative customer experience that is posted to social media outlets and is distributed virally could tarnish XpresSpa's brand and its customers may opt to no longer engage with the brand.

XpresSpa employs people in multiple different jurisdictions, and the employment laws of those jurisdictions are subject to change. In addition, its services are regulated through government-issued operating licenses. Noncompliance with applicable laws could result in employee lawsuits or legal action taken by government authorities.

XpresSpa must comply with a variety of employment and business practices laws across the United States, Netherlands and United Arab Emirates. XpresSpa monitors the laws governing its activities, but in the event it does not become aware of a new regulation or fails to comply with a regulation, it could be subject to disciplinary action by governing bodies and potentially employee lawsuits.

XpresSpa is not currently cash flow positive and will depend on funding to open new locations. In the event that capital is unavailable, XpresSpa will not be able to open new locations.

Throughout its operating history, XpresSpa has not generated sufficient cash from operations to fund its new store development. As a result, it will be dependent upon additional funding for its new location growth until such time as it can produce enough cash to profitably fund its own location growth.

XpresSpa sources, develops and sells products that may result in product liability defense costs and product liability payments.

XpresSpa's products contain ingredients that are deemed to be safe by the United States Federal Drug Administration and the Federal Food, Drug and Cosmetics Act. However, there is no guarantee that these ingredients will not cause adverse health effects to some consumers given the wide range of ingredients and allergies amongst the general population. XpresSpa may face substantial product liability exposure for products it sells to the general public or that is uses in its services. Product liability claims, regardless of their merits, could be costly and divert management's attention, and adversely affect XpresSpa's reputation and the demand for its products and services. XpresSpa to date has not been named as a defendant in any product liability action.

We have commenced legal proceedings and/or licensing discussions with security, content distribution and/or telecommunications companies. We expect that licensing discussions may be time consuming and may either, absent any litigation we initiate, fail to lead to a license, or may result in litigations commenced by the potential licensee.

To license or otherwise monetize the patent assets that we own, we have commenced legal proceedings and/or attempted to commence licensing discussions with a number of companies, during the course of which we allege that such companies infringe one or more of our patents. The future viability of our licensing program is highly dependent on the outcome of these discussions, and there is a risk that we may be unable to achieve the results we desire from such negotiations and be forced either to accept minimal royalties or commence litigations against the alleged infringer. In addition, the recipients of our licensing overtures have substantially more resources than we do, which could make our licensing efforts more difficult. Furthermore, due to changes in the approach to patent laws around the world it has become much easier for potential licensees to commence proceedings to revoke or otherwise nullify our patents in lieu of engaging in bona fide licensing discussions. There is a real risk that any potential licensee we approach would rather commence proceedings to revoke our patents than engage in any licensing discussions whatsoever.

We anticipate that any legal proceedings could continue for several years. While we endeavor, where possible, to engage counsel on a full or partial contingency basis, proceedings may commence that fall outside of contingency arrangements with counsel and may require significant expenditures for legal fees and other expenses. Disputes regarding the assertion of patents and other intellectual property rights are highly complex and technical. Once initiated, we may be forced to litigate against other parties in addition to the originally named defendants. Our adversaries may allege defenses and/or file counterclaims for, among other things, revocation of our patents or file collateral litigations in an effort to avoid or limit liability and damages for patent infringement. If such actions by our adversaries are successful, they may preclude our ability to derive licensing revenue from the patents being asserted.

There is a risk that we may be unable to achieve the results we desire from such litigation, which may harm our business. In addition, the defendants in these litigations have substantially more resources than we do, which could make our litigation efforts more difficult.

There is a risk that a court will find our patents invalid, not infringed or unenforceable and/or that the USPTO or other relevant patent offices in various countries will either invalidate the patents or materially narrow the scope of their claims during the course of a reexamination, opposition or other such proceeding. In addition, even with a positive trial court verdict, the patents may be invalidated, found not infringed or rendered unenforceable on appeal. This risk may occur either presently or from time to time in connection with future litigations we may bring.

Patent litigation is inherently risky, and the outcome is uncertain. Some of the parties that we believe infringe on our patents are large and well-financed by companies with substantially greater resources than ours. We believe that these parties may devote a substantial amount of resources in an attempt to avoid or limit a finding that they are liable for infringing on our patents or, in the event liability is found, to avoid or limit the amount of associated damages. In addition, there is a risk that these parties may file reexaminations or other proceedings with the USPTO or other government agencies in the United States or abroad in an attempt to invalidate, narrow the scope or render unenforceable the patents we own. In addition, as part of our ongoing legal proceedings, the validity and/or enforceability of our patents-in-suit is often challenged in a court or an administrative proceeding.

We may not be able to successfully monetize our patents and, thus, we may fail to realize all of the anticipated benefits of acquisitions from third parties.

There is no assurance that we will be able to successfully monetize the patent portfolios that we acquired from third parties. The patents we acquired could fail to produce anticipated benefits or could have other adverse effects that we currently do not foresee.

In addition, the acquisition of a patent portfolio is subject to a number of risks, including, but not limited to the following:

- There is a significant time lag between acquiring a patent portfolio and recognizing revenue from those patent assets, if at all. During that time lag, material costs are likely to be incurred that would have a negative effect on our results of operations, cash flows and financial position.

- The integration of a patent portfolio is a time consuming and expensive process that may disrupt our operations. If our integration efforts are not successful, our results of operations could be harmed. In addition, we may not achieve anticipated synergies or other benefits from such acquisition.

Therefore, there is no assurance that we will be able to monetize an acquired patent portfolio and recoup our investment.

We and our subsidiaries have been, are, and may become involved in litigation that could divert management's attention and harm our businesses.

Litigation often is expensive and diverts management's attention and resources, which could adversely affect our businesses. We may be exposed to claims against us even if no wrongdoing has occurred. Responding to such claims, regardless of their merit, can be time consuming, costly to defend, disruptive to our management's attention and to our resources, damaging to our reputation and brand, and may cause us to incur significant expenses. Even if we are indemnified against such costs, the indemnifying party may be unable to uphold its contractual obligations.

New legislation, regulations or court rulings related to enforcing patents could harm our business and operating results.

Intellectual property is the subject of intense scrutiny by the courts, legislatures and executive branches of governments around the world. Various patent offices, governments or intergovernmental bodies may implement new legislation, regulations or rulings that impact the patent enforcement process, or the rights of patent holders and such changes could negatively affect licensing efforts and/or litigations. For example, limitations on the ability to bring patent enforcement claims, limitations on potential liability for patent infringement, lower evidentiary standards for invalidating patents, increases in the cost to resolve patent disputes and other similar developments could negatively affect our ability to assert our patent or other intellectual property rights.

It is impossible to determine the extent of the impact of any new laws, regulations or initiatives that may be proposed, or whether any of the proposals will become enacted as laws. Compliance with any new or existing laws or regulations could be difficult and expensive, affect the manner in which we conduct our business and negatively impact our business, prospects, financial condition and results of operations.

Our failure or inability to protect the trademarks or other proprietary rights we use or claims of infringement by us of rights of third parties, could adversely affect our competitive position or the value of our brands.

We believe that our trademarks and other proprietary rights are important to our success and our competitive position. However, any actions that we take to protect the intellectual property we use may not prevent unauthorized use or imitation by others, which could have an adverse impact on our image, brand or competitive position. If we commence litigation to protect our interests or enforce our rights, we could incur significant legal fees. We also cannot provide assurance that third parties will not claim infringement by us of their proprietary rights. Any such claim, whether or not it has merit, could be time consuming and distracting for our management, result in costly litigation, cause changes to existing retail concepts or delays in introducing retail concepts, or require us to enter into royalty or licensing agreements. As a result, any such claim could have a material adverse impact on our business, financial condition and results of operations.

Future acquisitions or business opportunities could involve unknown risks that could harm our business and adversely affect our financial condition and results of operations.

We have in the past, and may in the future, acquire businesses or make investments, directly or indirectly through our subsidiaries, that involve unknown risks, some of which will be particular to the industry in which the investment or acquisition targets operate, including risks in industries with which we are not familiar or experienced. Although we intend to conduct appropriate business, financial and legal due diligence in connection with the evaluation of future investment or acquisition opportunities, there can be no assurance that our due diligence investigations will identify every matter that could have a material adverse effect on us. We may be unable to adequately address the financial, legal and operational risks raised by such investments or acquisitions, especially if we are unfamiliar with the relevant industry. The realization of any unknown risks could expose us to unanticipated costs and liabilities and prevent or limit us from realizing the projected benefits of the investments or acquisitions, which could adversely affect our financial condition, liquidity, results of operations, and trading price.

Anti-takeover provisions of Delaware law, provisions in our charter and bylaws, and our stockholder rights plan could prevent or frustrate attempts by stockholders to change our Board of Directors or current management and could delay, discourage or make more difficult a third-party acquisition of control of us.

We are a Delaware corporation and, as such, certain provisions of Delaware law could prevent or frustrate attempts by stockholders to change the Board of Directors or current management, or could delay, discourage or make more difficult a third-party acquisition of control of us, even if the change in control would be beneficial to stockholders or the stockholders regard it as such. We are subject to the provisions of Section 203 of the Delaware General Corporation Law ("DGCL"), which prohibits certain "business combination" transactions (as defined in Section 203) with an "interested stockholder" (defined in Section 203 as a 15% or greater stockholder) for a period of three years after a stockholder becomes an "interested stockholder," unless the attaining of "interested stockholder" status or the transaction is pre-approved by our Board of Directors, the transaction results in the attainment of at least an 85% ownership level by an acquirer or the transaction is later approved by our Board of Directors and by our stockholders by at least a $66^{2}/_{3}$ percent vote of our stockholders other than the "interested stockholder," each as specifically provided in Section 203.

Our certificate of incorporation and our bylaws, each as currently in effect, also contain certain provisions that may delay, discourage or make more difficult a third-party acquisition of control of us. Such provisions include a provision that any vacancies on our Board of Directors may only be filled by a majority of the directors then serving, although not a quorum, and not by the stockholders and the ability of our Board of Directors to issue preferred stock, without stockholder approval, that could dilute the stock ownership of a potential unsolicited acquirer and hinder an acquisition of control of us that is not approved by our Board of Directors, including through the use of preferred stock in connection with a stockholder rights plan.

We have also adopted a stockholder rights plan in the form of a Section 382 Rights Plan, designed to help protect and preserve our substantial tax attributes primarily associated with our NOLs under Section 382 of the Internal Revenue Code and research tax credits under Sections 382 and 383 of the Internal Revenue Code and related United States Treasury regulations, which was approved by our stockholders in December 2016 and expires in March 2022. Although this is not the purpose of the Section 382 Rights Plan, it could have the effect of making it uneconomical for a third party to acquire us on a hostile basis.

These provisions of the DGCL, our certificate of incorporation and bylaws, and our Section 382 Rights Plan may delay, discourage or make more difficult certain types of transactions in which our stockholders might otherwise receive a premium for their shares over the current market price, and might limit the ability of our stockholders to approve transactions that they think may be in their best interest.

Our confidential information may be disclosed by other parties.

We routinely enter into non-disclosure agreements with other parties, including but not limited to vendors, law firms, parties with whom we are engaged in negotiations, and employees. However, there exists a risk that those other parties will not honor their contractual obligations to not disclose our confidential information. This may include parties who breach such obligations in the context of confidential settlement offers and/or negotiations. In addition, there exists a risk that, upon such breach and subsequent dissemination of our confidential information, third parties and potential licensees may seek to use such confidential information to their advantage and/or to our disadvantage including in legal proceedings in which we are involved. Our ability to act against such third parties may be limited, as we may not be in privity of contract with such third parties.

Risks Related to our Capital Stock

Stock prices can be volatile, and this volatility may depress the price of our Common Stock.

The stock market has experienced significant price and volume fluctuations, which have affected the market price of many companies in ways that may have been unrelated to those companies' operating performance. Furthermore, we believe that our stock price may reflect certain future growth and profitability expectations. If we fail to meet these expectations, then our stock price may significantly decline, which could have an adverse impact on investor confidence. We believe that various factors may cause the market price of our Common Stock to fluctuate, perhaps substantially, including, among others, the following:

- the effects that COVID-19 might have on our results of operations and financial position;
- additions to or departures of our key personnel;
- announcements of innovations by us or our competitors;
- announcements by us or our competitors of significant contracts, acquisitions, strategic partnerships, capital commitments, or new technologies;
- new regulatory pronouncements and changes in regulatory guidelines;
- developments or disputes concerning our patents and efforts in licensing and/or enforcing our patents;
- lawsuits, claims, and investigations that may be filed against us, and other events that may adversely affect our reputation;
- changes in financial estimates or recommendations by securities analysts; and
- general and industry-specific economic conditions.

Future sales of our shares of Common Stock by our stockholders could cause the market price of our Common Stock to drop significantly, even if our business is otherwise performing well.

As of April 13, 2020, we have 86,500,160 shares of Common Stock issued and outstanding, excluding shares of Common Stock issuable upon exercise of warrants, options or restricted stock units, or preferred stock on an as-converted basis. As shares saleable under Rule 144 are sold or as restrictions on resale lapse, the market price of our Common Stock could drop significantly if the holders of shares of restricted stock sell them or are perceived by the market as intending to sell them. This decline in our stock price could occur even if our business is otherwise performing well.

The exercise of a substantial number of warrants or options by our security holders may have an adverse effect on the market price of our Common Stock.

Should our warrants outstanding as of April 13, 2020 be exercised, there would be an additional 27,009,331 shares of Common Stock eligible for trading in the public market. The incentive equity instruments granted to our management, employees, directors and consultants are subject to acceleration of vesting of 75% and 100% (according to the agreement signed with each grantee) upon a subsequent change of control. Such securities, if exercised, will increase the number of issued and outstanding shares of our Common Stock. Therefore, the sale of the shares of Common Stock underlying the warrants and options could have an adverse effect on the market price for our securities and/or on our ability to obtain future financing.

We have no current plans to pay dividends on our Common Stock, and our investors may not receive funds without selling their stock.

We have not declared or paid any cash dividends on our Common Stock, nor do we expect to pay any cash dividends on our Common Stock for the foreseeable future. Investors seeking cash dividends should not invest in our Common Stock for that purpose. We currently intend to retain any additional future earnings to finance our operations and growth and, therefore, we have no plans to pay cash dividends on our Common Stock at this time. Any future determination to pay cash dividends on our Common Stock will be at the discretion of our Board of Directors and will be dependent on our earnings, financial condition, operating results, capital requirements, any contractual restrictions, and other factors that our Board of Directors deems relevant.

Accordingly, our investors may have to sell some or all of their Common Stock in order to generate cash from their investment. You may not receive a gain on your investment when you sell our Common Stock and may lose the entire amount of your investment.

We may fail to meet publicly announced financial guidance or other expectations about our business, which would cause our stock to decline in value.

From time to time, we provide preliminary financial results or forward-looking financial guidance, to our investors. Such statements are based on our current views, expectations and assumptions that may not prove to be accurate and may vary from actual results and involve known and unknown risks and uncertainties that may cause actual results, performance, achievements or share prices to be materially different from any future results, performance, achievements or share prices expressed or implied by such statements. Such risks and uncertainties include the risk factors contained herein. If we fail to meet our projections and/or other financial guidance for any reason, our stock price could decline.

The market price of our Common Stock historically has been and likely will continue to be highly volatile.

The market price for our shares of Common Stock historically has been highly volatile, and the market for our shares has from time to time experienced significant price and volume fluctuations, based both on our operating performance and for reasons that appear to be unrelated to our operating performance. The market price of our shares of Common Stock may fluctuate significantly in response to a number of factors, including:

- the impact of COVID-19 on our business, financial condition, results of operations and cash flows;
- the level of our financial resources;
- our ability to develop and introduce new products and services;
- developments concerning our intellectual property rights generally or those of us or our competitors;
- our ability to raise additional capital to fund our operations and business plan and the effects that such financing may have on the value of the equity instruments held by our stockholders;
- our ability to retain key personnel;
- general economic conditions and level of consumer and corporate spending on health and wellness, and travel;
- our ability to hire a skilled labor force and the costs associated;
- our ability to secure new retail locations, maintain existing ones, and ensure continued customer traffic at those locations;
- changes in securities analysts' estimates of our financial performance or deviations in our business and the trading price of our Common Stock from the estimates of securities analysts;
- our ability to protect our customers' financial data and other personal information;
- the loss of one or more of our significant suppliers;
- unexpected trends in the health and wellness and travel industries and potential technology and service obsolescence;
- market acceptance, quality, pricing, availability and useful life of our products and/or services, as well as the mix of our products and services sold; and
- lawsuits, claims, and investigations that may be filed against us and other events that may adversely affect our reputation.

Our failure to meet the continued listing requirements of The Nasdaq Capital Market could result in a delisting of our Common Stock.

The continued listing standards of Nasdaq provide, among other things, that a company may be delisted if the bid price of its stock drops below $1.00 for a period of 30 consecutive business days or if stockholders' equity is less than $2,500,000. As of December 31, 2019, our stockholders' equity balance was in a deficit position. On January 2, 2020, we received a deficiency letter from The Nasdaq Stock Market which provided us a grace period of 180 calendar days, or until June 30, 2020, to regain compliance with the minimum bid price requirement. If we fail to regain compliance on or prior to June 30, 2020, we may be eligible for an additional 180-day compliance period. Additionally, if we fail to comply with any other continued listing standards of Nasdaq, our Common Stock will also be subject to delisting. If that were to occur, our Common Stock would be subject to rules that impose additional sales practice requirements on broker-dealers who sell our securities. The additional burdens imposed upon broker-dealers by these requirements could discourage broker-dealers from effecting transactions in our Common Stock. This would significantly and negatively affect the ability of investors to trade our securities and would significantly and negatively affect the value and liquidity of our Common Stock. These factors could contribute to lower prices and larger spreads in the bid and ask prices for our Common Stock. If we seek to implement a reverse stock split in order to remain listed on The Nasdaq Capital Market, the announcement and/or implementation of a reverse stock split could significantly negatively affect the price of our Common Stock.

While we have exercised diligent efforts to maintain the listing of our Common Stock on Nasdaq, there can be no assurance that we will be able to continue to meet the continuing listing requirements of The Nasdaq Capital Market. If we are unable to meet the continuing listing requirements, Nasdaq may take steps to delist our Common Stock. Such a delisting would likely have a negative effect on the price of our Common Stock and would impair your ability to sell or purchase our Common Stock when you wish to do so. Further, if we were to be delisted from The Nasdaq Capital Market, our Common Stock would cease to be recognized as covered securities and we would be subject to regulation in each state in which we offer our securities.

Delisting from Nasdaq could adversely affect our ability to raise additional financing through the public or private sale of equity securities, would significantly affect the ability of investors to trade our securities and would negatively affect the value and liquidity of our Common Stock. Delisting could also have other negative results, including the potential loss of confidence by employees, the loss of institutional investor interest and fewer business development opportunities.

Our Common Stock has historically traded in low volumes. We cannot predict whether an active trading market for our Common Stock will ever develop. Even if an active trading market develops, the market price of our Common Stock may be significantly volatile.

Historically, our Common Stock has experienced a lack of consistent trading liquidity. In the absence of an active trading market you may have difficulty buying and selling our Common Stock at all or at the price you consider reasonable; and market visibility for shares of our Common Stock may be limited, which may have a depressive effect on the market price for shares of our Common Stock and on our ability to raise capital or make acquisitions by issuing our Common Stock.

If we raise additional capital in the future, stockholders' ownership in us could be diluted.

Any issuance of equity we may undertake in the future to raise additional capital could cause the price of our shares to decline or require us to issue shares at a price that is lower than that paid by holders of our shares in the past, which would result in previously issued shares being dilutive. If we obtain funds through a credit facility or through the issuance of debt or preferred securities, these securities would likely have rights senior to rights as a holder of Common Stock, which could impair the value of our shares.

If we exercise the option to repay the Series E preferred stock (the "Series E Preferred Stock") in Common Stock rather than cash, such repayment may result in the issuance of a large number of shares of Common Stock which may have a negative effect on the trading price of our Common Stock as well as a dilutive effect.

Pursuant to the terms of the shares of Series E Preferred Stock, on the seven-year anniversary of the initial issuance date of the shares of Series E Preferred Stock (which is November 14, 2025 in the case the 645,161 shares of Series E Preferred Stock issued on November 14, 2018 and December 28, 2025 in the case of the 322,581 shares of Series E Preferred Stock issued on December 28, 2018), we may repay each share of Series E Preferred Stock, at our option, in cash, by delivery of shares of Common Stock or through any combination thereof. If we elect to make a payment, or any portion thereof, in shares of Common Stock, the Base Shares will be based on the Base Price plus the Premium Shares, calculated as follows: (i) if the Base Price is greater than $180.00, no Premium Shares shall be issued, (ii) if the Base Price is greater than $140.00 and equal to or less than $180.00, an additional number of shares equal to 5% of the Base Shares shall be issued, (iii) if the Base Price is greater than $120.00 and equal to or less than $140.00, an additional number of shares equal to 10% of the Base Shares shall be issued, (iv) if the Base Price is greater than $100.00 and equal to or less than $120.00, an additional number of shares equal to 20% of the Base Shares shall be issued and (v) if the Base Price is less than or equal to $100.00, an additional number of shares equal to 25% of the Base Shares shall be issued. Accordingly, if the volume weighted average price per share of our Common Stock is below $180.00 per share as of the time of repayment and we exercise the option to make such repayment in shares of our Common Stock, a large number of shares of our Common Stock may be issued to the holders of shares of Series E Preferred Stock upon maturity which may have a negative effect on the trading price of our Common Stock.

On November 14, 2025 or December 28, 2025, as applicable, upon the maturity of the Series E Preferred Stock, when determining whether to repay the Series E Preferred Stock in cash or shares of Common Stock, we expect to consider a number of factors, including our cash position, the price of our Common Stock and our capital structure at such time. Because we do not have to make a determination as to which option to elect until 2023, it is impossible to predict whether it is more or less likely to repay in cash, stock or a portion of each.

The potential issuance of a large number of shares of Common Stock upon the conversion of our Series F Convertible Preferred Stock (the "Series F Preferred Stock") may have a negative effect on the trading price of our Common Stock as well as a dilutive effect.

Each share of Series F Preferred Stock is convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the stated value of the Series F Preferred Stock (plus any accrued but unpaid dividends) by the Series F conversion price in effect at the time of conversion. The Series F conversion price was initially equal to $2.00 per share but was subsequently reduced to $0.175 per share. As of April 13, 2020, there were 1,531 shares of Series F Preferred Stock outstanding, which were convertible into 874,858 shares of Common Stock. The issuance of a large number of shares of Common Stock upon conversion of the Series F Preferred Stock could cause substantial dilution to our existing stockholders and could depress the market price of our Common Stock.

Having availed ourselves of scaled disclosure available to smaller reporting companies, we cannot be certain if such reduced disclosure will make our Common Stock less attractive to investors.

Under Section 12b-2 of the Exchange Act, a "smaller reporting company" is a company that is not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent company that is not a smaller reporting company, and has a public float of less than $250 million and annual revenues of less than $100 million during the most recently completed fiscal year. Similar to emerging growth companies, smaller reporting companies are permitted to provide simplified executive compensation disclosure in their filings; they are exempt from the provisions of Section 404(b) of the Sarbanes-Oxley Act requiring that independent registered public accounting firms provide an attestation report on the effectiveness of internal controls over financial reporting; and they have certain other decreased disclosure obligations in their SEC filings, including, among other things, only being required to provide two years of audited financial statements in annual reports. Decreased disclosure in our SEC filings as a result of our having availed ourselves of scaled disclosure may make it harder for investors to analyze our results of operations and financial prospects.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

As of December 31, 2019, XpresSpa had 51 Company-operated stores in 25 airports, in the United States, Netherlands and United Arab Emirates. All of the stores as of that date were leased, typically with one or two renewal options after the initial term. Economic terms vary by type and location of store and, on average, the lease terms are 5-8 years with several stores operating on a month-to-month basis.

In October 2019, we relocated our Global Support Center from 780 Third Avenue to 254 West 31st Street in New York City. The sublease expires in September 2023. The new Global Support Center houses all corporate employees. We believe that our facility is adequate to accommodate our business needs.

ITEM 3. LEGAL PROCEEDINGS

Litigation and legal proceedings

Certain of our outstanding legal matters include speculative claims for substantial or indeterminate amounts of damages. We regularly evaluate developments in our legal matters that could affect the amount of any potential liability and makes adjustments as appropriate. Significant judgment is required to determine both the likelihood of there being any potential liability and the estimated amount of a loss related to our legal matters.

With respect to our outstanding legal matters, based on our current knowledge, our management believes that the amount or range of a potential loss will not, either individually or in the aggregate, have a material adverse effect on our business, consolidated financial position, results of operations or cash flows. However, the outcome of such legal matters is inherently unpredictable and subject to significant uncertainties. We evaluated the outstanding legal matters and assessed the probability and likelihood of the occurrence of liability. Based on management's estimates, we have recorded a liability of approximately $1,800,000 for all outstanding legal matters as of December 31, 2019 which is included in *"Accounts payable, accrued expenses and other current liabilities"* in the consolidated balance sheet.

Our expenses legal fees in the period in which they are incurred.

Cordial

Effective October 2014, XpresSpa terminated its former Airport Concession Disadvantaged Business Enterprise ("ACDBE") partner, Cordial Endeavor Concessions of Atlanta, LLC ("Cordial"), in several store locations at Hartsfield-Jackson Atlanta International Airport.

Cordial filed a series of complaints with the City of Atlanta, both before and after the termination, in which Cordial alleged, among other things, that the termination was not valid and that XpresSpa unlawfully retaliated against Cordial when Cordial raised concerns about the joint venture. In response to the numerous complaints it received from Cordial, the City of Atlanta required the parties to engage in two mediations.

After the termination of the relationship with Cordial, XpresSpa sought to substitute two new ACDBE partners in place of Cordial.

In April 2015, Cordial filed a complaint with the United States Federal Aviation Administration ("FAA"), which oversees the City of Atlanta with regard to airport ACDBE programs, and, in December 2015, the FAA instructed that the City of Atlanta review XpresSpa's request to substitute new partners in lieu of Cordial and Cordial's claims of retaliation. In response to the FAA instruction, pursuant to a corrective action plan approved by the FAA, the City of Atlanta held a hearing in February 2016 and ruled in favor of XpresSpa such substitution and claims of retaliation. Cordial submitted a further complaint to the FAA claiming that the City of Atlanta was biased against Cordial and that the City of Atlanta's decision was wrong. In August 2016, the parties met with the FAA. On October 4, 2016, the FAA sent a letter to the City of Atlanta directing that the City of Atlanta retract previous findings on Cordial's allegations and engage an independent third party to investigate issues previously decided by Atlanta. The FAA also directed that the City of Atlanta determine monies potentially due to Cordial.

On January 3, 2017, XpresSpa filed a lawsuit in the Supreme Court of the State of New York, County of New York, against Cordial and several related parties. The lawsuit alleges breach of contract, unjust enrichment, breach of fiduciary duty, fraudulent inducement, fraudulent concealment, tortious interference, and breach of good faith and fair dealing. XpresSpa is seeking damages, declaratory judgment, rescission/termination of certain agreements, disgorgement of revenue, fees and costs, and various other relief. On February 21, 2017, the defendants filed a motion to dismiss. On March 3, 2017, XpresSpa filed a first amended complaint against the defendants. On April 5, 2017, Cordial filed a motion to dismiss. On September 12, 2017, the Court held a hearing on the motion to dismiss. On November 2, 2017, the Court granted the motion to dismiss which was entered on November 13, 2017. On December 22, 2017, XpresSpa filed a notice of appeal, and on September 24, 2018, XpresSpa perfected its appellate rights and submitted a brief to the Supreme Court of New York, First Department appellate court. Oral arguments on the appeal are expected to take place during early 2019. Oral argument on the appeal went forward on March 20, 2019, and the Company expects the court to rule on the appeal in the coming months.

On March 30, 2018, Cordial filed a lawsuit against XpresSpa, a subsidiary of XpresSpa, and several additional parties in the Superior Court of Fulton County, Georgia, alleging the violation of Cordial's civil rights, tortious interference, breach of fiduciary duty, civil conspiracy, conversion, retaliation, and unjust enrichment. Cordial has threated to seek punitive damages, attorneys' fees and litigation expenses, accounting, indemnification, and declaratory judgment as to the status of the membership interests of XpresSpa and Cordial in the joint venture and Cordial's right to profit distributions and management fees from the joint venture. On May 3, 2018, the Court issued an order extending the time for the defendants to respond to Cordial's lawsuit until June 25, 2018. On May 4, 2018, the defendants moved the lawsuit to the United States District Court for the Northern District of Georgia. On June 5, 2018, the Court granted an extension of time for the defendants' response until August 17, 2018. On August 9, 2018, the Court granted an additional extension of time for the defendants' response until September 7, 2018, and thereafter provided another extension pending the Court's consideration of XpresSpa's Motion to Stay all action in the Georgia lawsuit, pending resolution of the New York lawsuit and the FAA action. On October 29, 2018, XpresSpa's Motion to Stay was denied. Prior to resolution of the Motion to Stay, Cordial filed a Motion for Temporary Restraining Order ("TRO Motion"), seeking to enjoin the defendants and specifically XpresSpa, from, among other things, distributing any cash flow, net profits, or management fees, or otherwise expending resources beyond necessary operating expenses. XpresSpa filed an opposition and, in a decision entered December 26, 2018, the Court denied Cordial's TRO Motion entirely. Defendants filed a Motion to Dismiss the Complaint in its entirety on November 20, 2018, which is pending decision by the Court.

A Director's Determination was issued by the FAA in connection with the Part 16 Complaint ("Part 16 Proceeding") filed by Cordial against the City of Atlanta ("City") in 2017 ("Director's Determination"). The Company and Cordial were not parties to the FAA action, and had no opportunity to present evidence or otherwise be heard in such action. The Director's Determination concluded that the City was not in compliance with certain Federal obligations concerning the federal government's ACDBE program, including relating to the City's oversight of the Joint Venture Operating Agreement between Clients and Cordial, Cordial's termination, and Cordial's retaliation and harassment claims, and the City was ordered to achieve compliance in accordance with the Director's Determination. The Director's Determination does not constitute a Final Agency Decision and it is not subject to judicial review, pursuant to 14 CFR § 16.247(b)(2). Because the Company is not a party to the Part 16 Proceeding, the Company would not be considered "a party adversely affected by the Director's Determination" with a right of appeal to the FAA Assistant Administrator for Civil Rights.

On August 7, 2019, the Company filed a response, advising the U.S. District Court that: (i) the Company is not party to the FAA proceeding and therefore had no opportunity to present evidence or otherwise be heard in such action; (ii) as non-party, the Company is not bound by the Director's Determination; and (iii) the FAA cannot dictate the interpretation or enforceability of the contract between Cordial and the Company, which is the subject of the U.S. District Court action initiated by Cordial and the New York State Court action initiated by the Company.

In response to the numerous complaints it received from Cordial, the City of Atlanta required the parties to engage in mediation.

On November 22, 2019, a Mutual Release and Settlement Agreement (the "Settlement Agreement") and a Confidential Payment Agreement (the "Payment Agreement") were executed by the applicable parties, except the City of Atlanta, and are pending the requisite approval by the FAA of the terms of the Settlement Agreement.

The Settlement Agreement is ultimately expected to be executed in 2020, by and among Cordial Endeavor Concessions of Atlanta, LLC, Shelia Edwards, Steven A. White, the City of Atlanta, XpresSpa Holdings, LLC, XpresSpa Atlanta Terminal A, LLC, Azure Services, LLC, Adra Wilson, Meme Marketing & Communications LLC, Melanie Hutchinson, Kenja Parks, and Bernard Parks, Jr.

The requisite approval from the FAA has been obtained and the Leases have been executed by the Company. However, the condition precedent that an operating agreement between the Company and Cordial is finalized and executed has not yet been satisfied. Based on this, management has determined that the matter may not be completely resolved, at least to the extent of one or more of the Settling Parties seeking to enforce the terms of the Settlement Agreement, and thus resulting in a continuation of the litigation.

The Company continues to be involved in settlement negotiations seeking to resolve all pending matters with Cordial and the city of Atlanta, and those negotiations are continuing.

In re Chen et al.

In March 2015, four former XpresSpa employees who worked at XpresSpa locations in John F. Kennedy International Airport and LaGuardia Airport filed a putative class and collective action wage-hour litigation in the United States District Court, Eastern District of New York. *In re Chen et al.*, CV 15-1347 (E.D.N.Y.). Plaintiffs claim that they and other spa technicians around the country were misclassified as exempt commissioned salespersons under Section 7(i) of the federal Fair Labor Standards Act ("FLSA"). Plaintiffs also assert class claims for unpaid overtime on behalf of New York spa technicians under the New York Labor Law, and discriminatory employment practices under New York State and City laws. On July 1, 2015, the plaintiffs moved to have the court authorize notice of the FLSA misclassification claim sent to all employees in the spa technician job classification at XpresSpa locations around the country in the last three years. Defendants opposed the motion. On February 16, 2016, the Magistrate Judge assigned to the case issued a Report & Recommendation, recommending that the District Court Judge grant the plaintiffs' motion. On March 1, 2016, the defendants filed Opposition to the Magistrate Judge's Report & Recommendation, arguing that the District Court Judge should reject the Magistrate Judge's findings. On September 23, 2016, the court ruled in favor of the plaintiffs and conditionally certified the class. The parties held a mediation on February 28, 2017 and reached an agreement on a settlement in principle. On September 6, 2017, the parties entered into a settlement agreement. On September 15, 2017, the parties filed a motion for settlement approval with the Court. XpresSpa subsequently paid the agreed-upon settlement amount to the settlement claims administrator to be held in escrow pending a fairness hearing and final approval by the Court. On March 30, 2018, the Court entered a Memorandum and Order denying the motion without prejudice to renewal due to questions and concerns the Court had about certain settlement terms. On April 24, 2018, the parties jointly submitted a supplemental letter to the Court advocating for the fairness and adequacy of the settlement and appeared in Court on April 25, 2018 for a hearing to discuss the settlement terms in greater detail with the assigned Magistrate Judge. At the conclusion of the hearing, the Court still had questions about the adequacy and fairness of the settlement terms, and the Judge asked that the parties jointly submit additional information to the Court addressing the open issues. The parties submitted such information to the Court on May 18, 2018 and are awaiting the Court's ruling on the open issues.

On August 21, 2019, the Court issued an Order denying the parties' motion for preliminary approval of the revised settlement, as the Court still had concerns about several of the settlement terms. At the December 6, 2019 Status Conference with the Court, the Court reiterated its denial of preliminary approval of the proposed settlement agreement. The Court instructed a notice of pendency to be disseminated to putative collective members, who will then have a 60-day window to decide whether to participate in the case. The notice of pendency was sent out in February 2020 and putative collective members had until April 3, 2020 to return a Consent to Join the case. As of April 3, 2020, 304 individuals had joined the case.

Binn et al v. FORM Holdings Corp. et al.

On November 6, 2017, Moreton Binn and Marisol F, LLC, former stockholders of XpresSpa, filed a lawsuit against FORM Holdings Corp. ("FORM) and its directors in the United States District Court for the Southern District of New York. The lawsuit alleged violations of various sections of the Securities Exchange Act of 1934 ("Exchange Act"), material omissions and misrepresentations (negligent and fraudulent), fraudulent omission, expropriation, breach of fiduciary duties, aiding and abetting, and unjust enrichment in the defendants' conduct related to the Company's acquisition of XpresSpa, and sought rescission of the transaction, damages, equitable and injunctive relief, fees and costs, and various other relief. On January 17, 2018, the defendants filed a motion to dismiss the complaint. On February 7, 2018, the plaintiffs amended their complaint. On February 28, 2018, the defendants filed a motion to dismiss the amended complaint. By March 30, 2018, the motion to dismiss was fully briefed. On August 7, 2018, the Court ruled on the defendants' motion, dismissing eight of the plaintiffs' ten claims and denying the defendants' motion to dismiss with respect to the two remaining claims, related to the Exchange Act. On October 30, 2018, the Court ordered that the plaintiffs could file an amended complaint, and, in response, the defendants could move for summary judgment. Consistent with the Court's Order, on November 16, 2018, the plaintiffs filed a second amended complaint, modifying their allegations, and asserting claims pursuant to the Exchange Act and the Securities Act of 1933, as well as bringing a breach of contract claim. On December 17, 2018, the defendants filed a motion for summary judgment seeking dismissal of all claims. On February 1, 2019, the plaintiffs opposed defendant's motion, requested discovery and cross-moved for partial summary judgement filed an opposition to defendants' motion and a counter motion for partial summary judgment. Defendants' summary judgement motion and plaintiff's cross-motion for partial summary judgment were fully briefed as of March 15, 2019. On April 29, 2019, an emergency hearing was held before the Court in which the plaintiff sought a temporary restraining order and preliminary injunction to preclude acceleration of the maturity on the Senior Secured Note. The Court entered a temporary restraining order, while allowing parties the opportunity to brief the issue.

On May 21, 2019, the Court granted the defendant's motion for summary judgement in full, dismissing all claims in the action. On July 3, 2019, the plaintiffs filed a notice of appeal in the United States Court of Appeals for the second circuit. The Company and its directors continue to believe that this action is without merit and intend to defend the appeal vigorously. On July 1, 2019, the Court held oral argument on Binn's motion for preliminary injunction. After hearing argument by both sides, the Court deferred action and ordered that the temporary restraining order remain in place. On July 23, 2019, the Court denied the plaintiffs' request for a preliminary injunction and vacated the temporary restraining order. On September 13, 2019, plaintiffs filed their appellate brief in the Second Circuit. As of December 13, 2019, plaintiffs' appeal was fully briefed. Oral argument has been scheduled for May 4, 2020.

Binn, et al. v. Bernstein et al.

On June 3, 2019, a third suit was commenced in the United States District Court for the Southern District of New York against FORM, five of its directors, as well as Rockmore, the Company's previous senior secured lender and a senior executive of the lender. Although this action is brought by Morton Binn and Marisol F, LLC, it is asserted derivatively on behalf of the Company. Plaintiffs assert eight causes of action, including that certain individual defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, by making false statements concerning, *inter alia*, the merger and the independence of FORM's board of directors and the valuation of the Company's lease portfolio. Plaintiffs also assert common law claims for breach of fiduciary duty, corporate waste, unjust enrichment, faithless servant doctrine, and aiding and abetting certain of the directors' alleged breaches of fiduciary duty. The Company and its directors believe that this action is without merit and intend to file a motion to dismiss and defend the action vigorously.

The defendants filed a motion to dismiss on October 23, 2019. The court heard oral argument on the defendants' motion to dismiss on January 22, 2020 and has not yet ruled on the motion.

Kainz v. FORM Holdings Corp. et al.

On March 20, 2019, a second suit was commenced in the United States District Court for the Southern District of New York against FORM, seven of its directors and former directors, as well as a managing director of Mistral Equity Partners ("Mistral"). The individual plaintiff, a shareholder of XpresSpa Holdings, LLC at the time of the merger in December 2016, alleges that the defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 by making false statements concerning, *inter alia*, the merger and the independence of FORM's board of directors, violated Section 12(2) of the Securities Act of 1933, breached the merger agreement by making false and misleading statements concerning the merger and fraudulently induced the plaintiff into signing the joinder agreement related to the merger. On May 8, 2019, the Company and its directors and the managing director of Mistral filed a motion to dismiss the complaint. On June 5, 2019, plaintiff opposed the motion and filed a cross-motion for a partial stay. Defendants' motion to dismiss was fully briefed as of June 19, 2019.

On November 13, 2019, the matter was dismissed in its entirety. On December 12, 2019, plaintiff filed a motion for reconsideration to vacate the order and judgment, dismissing the action, and for leave to amend the complaint. The motion was fully briefed as of February 6, 2020. On April 1, 2020, the Court denied plaintiff's motion in full. Plaintiff had 30 days to file a notice of appeal. On April 10, 2020, plaintiff filed a notice of appeal to the United States Court of Appeals for the Second Circuit. We and our directors continue to believe that this action is without merit and intend to defend the appeal.

Route1

On or about May 23, 2018, Route1 Inc., Route1 Security Corporation (together, "Route1") and Group Mobile Int'l, LLC ("Group Mobile") commenced a legal proceeding against the Company in the Ontario Superior Court of Justice.

Route1 and Group Mobile seek damages in relation to alleged breaches of a Membership Purchase Agreement entered into between Route1 and the Company on or about March 7, 2018, pursuant to which Route1 acquired the Company's 100% membership interest in Group Mobile. All capitalized terms not otherwise defined herein have the meanings ascribed to them in the Agreement.

The Plaintiffs allege that the Company: (i) failed to ensure all Tax Returns were true, correct and compliant in all respects and that all Taxes had been paid in full; (ii) failed to ensure that all inventory of Group Mobile had been priced in accordance with GAAP and consisted of a quality and quantity that was materially usable and salable in the Ordinary Course of Business; (iii) failed to ensure that Group Mobile's Most Recent Balance Sheet was materially complete and correct and prepared in accordance with GAAP; (iv) failed to record all liabilities on Group Mobile's Most Recent Balance Sheet; and (v) failed to deliver the agreed upon amount of Net Working Capital, and/or pay the Shortfall, to Route1. The litigation is at an early stage, and it is not yet possible to assess the likelihood of success and/or liability.

The Company counterclaimed against the Plaintiffs for amounts owed to the Company in relation to the sale of Excluded Inventory and is seeking damages thereon.

The Company delivered a draft amended counterclaim to the Plaintiffs on or around November 2019 seeking, among other things, damages. The Company is seeking the Plaintiffs' consent to amend its counterclaim. Examinations for discovery are scheduled to take place in Toronto, Canada on June 9th and 10th, 2020. The parties currently expect to attend a one-day mediation in Toronto on May 7, 2020.

Rodger Jenkins v. XpresSpa Group, Inc.

In March 2019, Rodger Jenkins filed a lawsuit against the Company in the United States District Court for the Southern District of New York. The lawsuit alleges breach of contract of the stock purchase agreement related to the Company's acquisition of Excalibur Integrated Systems, Inc. and seeks specific performance, compensatory damages and other fees, expenses and costs. On or about January 3, 2020, the court granted the plaintiffs' motion to amend their pleading to increase their total demand.

The Company has denied the material allegations of the complaint and is currently defending the action. Efforts to settle the parties' dispute at a court-ordered mediation in March 2020 were not successful. The action is currently scheduled for a bench trial on May 18, 2020.

Intellectual Property and Other Matters

The Company is engaged in litigation related to certain of the intellectual property that it owns, for which no liability is recorded, as the Company does not expect a material negative outcome.

In addition to those matters specifically set forth herein, the Company and its subsidiaries are involved in various other claims and legal actions that arise in the ordinary course of business. The Company does not believe that the ultimate resolution of these actions will have a material adverse effect on the Company's financial position, results of operations, liquidity, or capital resources. However, a significant increase in the number of these claims, or one or more successful claims under which the Company incurs greater liabilities than the Company currently anticipates, could materially adversely affect the Company's business, financial condition, results of operations and cash flows.

In the event that an action is brought against the Company or one of its subsidiaries, the Company will investigate the allegation and vigorously defend itself.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information

Our Common Stock, par value $0.01 per share, has been listed under the trading symbol "XSPA" since January 8, 2018.

In February 2019, the Company filed a certificate of amendment to its amended and restated certificate of incorporation with the Secretary of State of the State of Delaware to effect a 1-for-20 reverse stock split of shares of our Common Stock.

Stockholders

As of April 13, 2020, we had 115 stockholders of record of the 86,500,160 outstanding shares of our Common Stock. This does not reflect persons or entities that hold their stock in nominee or "street" name through various brokerage firms.

Dividend Policy

We have never declared or paid any cash dividends on our capital stock, and do not anticipate paying any cash dividends on our capital stock in the foreseeable future. We currently intend to retain future earnings, if any, to finance our operations and to expand our business. Any future determination to pay cash dividends will be at the discretion of our Board of Directors and will be dependent upon our financial condition, operating results, capital requirements and other factors that our Board of Directors considers appropriate.

Issuer Purchases of Equity Securities
None.

Unregistered Sales of Equity Securities
None.

ITEM 6. SELECTED FINANCIAL DATA

Not required as we are a smaller reporting company as defined by Item 10 of Regulation S-K.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Unless otherwise stated, dollar amounts are provided in thousands, except share and per share data.

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with, and is qualified in its entirety by, our consolidated financial statements (including notes to the consolidated financial statements) and the other consolidated financial information appearing elsewhere in this Annual Report on Form 10-K. In addition to historical financial information, the following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Some of the information contained in this discussion and analysis, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. Actual results and timing of events could differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Overview

On January 5, 2018, we changed our name to XpresSpa Group, Inc. ("XpresSpa Group" or the "Company") from FORM Holdings Corp. Our Common Stock, par value $0.01 per share, has been listed under the trading symbol "XSPA" on the Nasdaq Capital Market since January 8, 2018. Rebranding to XpresSpa Group aligned our corporate strategy to build a pure-play health and wellness services company, which we commenced following our acquisition of XpresSpa Holdings, LLC ("XpresSpa") on December 23, 2016.

As a result of the transition to a pure-play health and wellness services company, we currently have one operating segment that is also our sole reporting unit, XpresSpa, a leading airport retailer of spa services. XpresSpa is a well-recognized airport spa brand with 51 locations, consisting of 46 domestic and 5 international locations as of December 31, 2019. XpresSpa offers travelers premium spa services, including massage, nail and skin care, as well as spa and travel products. During 2019, approximately 82% of XpresSpa's total revenue was generated by services, primarily massage and nailcare, 15% was generated by retail products, primarily travel accessories and 3% other revenue.

We own certain patent portfolios, which we, in prior years, monetized through sales and licensing agreements. During the year ended December 31, 2018, we determined that our former intellectual property operating segment would no longer be an area of focus and, as such, will no longer operate as a separate operating segment, as it is not expected to generate any material revenues or operating costs.

In October 2017, we completed the sale of FLI Charge, Inc. ("FLI Charge") and in March 2018, we completed the sale of Group Mobile Int'l LLC ("Group Mobile"). These two entities previously comprised our technology operating segment. The results of operations for FLI Charge and Group Mobile are presented in the consolidated statements of operations and comprehensive loss as consolidated net loss from discontinued operations for the year ended December 31, 2018.

Recent Developments

Effects of Coronavirus on Business

On March 11, 2020, the World Health Organization declared the outbreak of the novel coronavirus ("COVID-19"), which continues to spread throughout the U.S. and the world, as a pandemic. The outbreak is having an impact on the global economy, resulting in rapidly changing market and economic conditions. Similar to many businesses in the travel sector, our business has been materially adversely impacted by the recent COVID-19 outbreak and associated restrictions on travel that have been implemented. Effective March 24, 2020, we temporarily closed all global spa locations, largely due to the categorization of our spa locations by local jurisdictions as "non-essential services". We intend to reopen our spa locations and resume normal operations once restrictions on non-essential services are lifted and airport traffic returns to sufficient levels to support our operations. On March 25, 2020, we announced that, during such period as we remain unable to reopen our spa locations for normal operations, we were advancing conversations with certain COVID-19 testing partners to develop a model for testing in U.S. airports.

The temporary closing of our global spa operations has had a materially adverse impact on our cash flows from operations and caused a liquidity crisis. As a result, management has concluded that there was a long-lived asset impairment triggering event during the first quarter of 2020, which will result in management performing an impairment evaluation of certain of its long-lived asset balances (primarily leasehold improvements and right of use lease assets totaling approximately $16,318 as of December 31, 2019). This could lead to us recording an impairment charge during the first quarter of 2020. The full extent to which COVID-19 will impact our results will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of the virus and the actions to contain or treat its impact.

We are currently seeking sources of capital to help fund our business operations during the COVID-19 crisis. We have been able to secure financing during the first quarter of 2020 totaling gross proceeds of approximately $9,440 by obtaining a cash advance on our accounts receivable balances, a loan from our senior secured lender, B3D, LLC ("B3D"), and through common stock offerings (see discussion below). Depending on the impact of the COVID-19 outbreak on our operations and cash position we may need to obtain additional financing. If we need to obtain additional financing in the future and are unsuccessful, we may be required to curtail or terminate some or all of our business operations and cause our Board of Directors to possibly pursue a restructuring, which may include a reorganization or bankruptcy under Federal bankruptcy laws, or a dissolution, liquidation and/or winding up of the Company. Accordingly, holders of our secured and unsecured debt and common stock may lose their entire investment in the event of a reorganization, bankruptcy, liquidation, dissolution or winding up of the Company.

Liquidity and Going Concern

As of December 31, 2019, we had approximately $2,184 of cash and cash equivalents, total current assets of approximately $3,933. Our total current liabilities balance, which includes primarily accounts payable, accrued expenses, and the current portion of operating lease liabilities was $16,220 as of December 31, 2019. The working capital deficiency was $12,287 as of December 31, 2019, compared to a working capital deficiency of $10,899 as of December 31, 2018. The increase in the working capital deficiency was primarily due to the reduction in cash and other current asset balances from 2018 and the inclusion of a portion of lease liability of $3,669 in current liabilities in 2019 but not in 2018, partially offset by the refinancing and recapitalization transactions the Company completed in July of 2019, which are discussed in the notes to the consolidated financial statements.

While we have aggressively reduced operating and overhead expenses, and while we continue to focus on our overall profitability, we have continued to generate negative cash flows from operations, and we expect to incur net losses for the foreseeable future, especially considering the negative impact COVID-19 will have on our liquidity and financial position. As discussed elsewhere in this Annual Report on Form 10-K, the report of our independent registered public accounting firm on our financial statements for the years ended December 31, 2019 and 2018 includes an explanatory paragraph indicating that there is substantial doubt about our ability to continue as a going concern. The audited consolidated financial statements included in this Annual Report on Form 10-K have been prepared assuming that we will continue as a going concern and do not include any adjustments that might result if we cease to continue as a going concern.

We have taken actions to improve our overall cash position and access to liquidity through debt and equity financings, by exploring valuable strategic partnerships, right-sizing our corporate structure, and stream-lining our operations. These actions improve our overall cash position and assist with our liquidity needs; however, there can be no assurance that these actions will be sufficient.

Credit Cash Funding Advance

On January 9, 2020, fifteen of our wholly owned subsidiaries (the “CC Borrowers”) entered into an accounts receivable advance agreement (the “CC Agreement”) with CC Funding, a division of Credit Cash NJ, LLC (the “CC Lender”). Pursuant to the terms of the CC Agreement, the CC Lender agreed to make an advance of funds in the amount of $1,000 for aggregate fees of $160, for a total repayment amount of $1,160 (the “Collection Amount”). The Borrowers agreed to repay the Collection Amount on or before the 12-month anniversary of the funding date of the advance by authorizing the CC Lender to retain a fixed daily repayment amount. The advance of funds is secured by substantially all of the assets of the CC Borrowers, including CC Borrowers’ existing and future accounts receivable and other rights to payment, including accounts receivable arising out of the CC Borrowers’ acceptance or other use of any credit cards, charge cards, debit cards or similar forms of payments. The funds received from advances may be used in the ordinary course of business consistent with past practices. The CC Agreement additionally includes certain stated events of default, upon which the Lender is entitled to increase the fixed daily payments made to the Lender and to increase the interest rate. As a result of the COVID-19 pandemic and closing of our spas on March 24, 2020, we have entered into a revised, reduced repayment amount equal to $10 per week versus approximately $31 per week.

As compensation for the consent of existing creditor B3D to the Agreement described above, on January 9, 2020, XpresSpa Holdings, LLC, (“XpresSpa Holdings”) our wholly-owned subsidiary, entered into a fifth amendment (the “Fifth Credit Agreement Amendment”) to its existing Credit Agreement with B3D in order to, among other provisions, (i) amend and restate its existing convertible promissory note (the “B3D Note”) in order to increase the principal amount owed to B3D from $7,000 to $7,150, which additional $150 in principal and any interest accrued thereon will be convertible, at B3D’s option, into shares of our Common Stock subject to receipt of the approval of our stockholders in accordance with applicable law and the rules and regulations of the Nasdaq Stock Market and (ii) provide for the advance payment of 291,669 shares of Common Stock in satisfaction of the interest payable pursuant to the B3D Note for the months of October, November and December 2020.

B3D Senior Secured Loan

On March 6, 2020, XpresSpa Holdings, entered into a sixth amendment (the “Sixth Credit Agreement Amendment”) to its existing credit agreement with B3D in order to, among other provisions, (i) amend and restate the B3D Note in order to increase the principal amount owed to B3D from $7,150 to $7,900, which additional $750 in principal (consisting of $500 in new funding discussed below and $250 in unfunded principal) and any interest accrued thereon will be convertible, at B3D’s option, into shares of our Common Stock; provided, however, that the additional $750 in principal and any interest accrued thereon shall neither be convertible into Common Stock or interest payable in Common Stock prior to receipt of the approval of our stockholders in accordance with applicable law and the rules and regulations of the Nasdaq Stock Market and (ii) decrease the conversion rate under the B3D Note from $2.00 per share to $0.56 per share, pursuant to the authority of our Board of Directors to voluntarily reduce the conversion rate in its discretion, which was previously approved by our stockholders on October 2, 2019.

In connection with the Sixth Credit Agreement Amendment and B3D Note, B3D agreed to provide us with $500 in additional funding and to submit conversion notices to convert (i) an aggregate of $375 in principal to Common Stock on March 6, 2020 and (ii) an additional aggregate of $375 in principal to Common Stock on or prior to March 27, 2020.

Common Stock Offerings and Warrant Exchange

On March 19, 2020, we entered into a Securities Purchase Agreement (the "First Purchase Agreement") with certain purchasers named therein, pursuant to which we agreed to issue and sell, in a registered direct offering, (i) 4,153,383 shares of our Common Stock, at an offering price of $0.175 per share and (ii) an aggregate of 2,132,333 pre-funded warrants exercisable for shares of Common Stock (the "First Pre-Funded Warrants") at an offering price of $0.165 per First Pre-Funded Warrant (the offering of the shares of Common Stock and the First Pre-Funded Warrants, the "First Offering"). We received gross proceeds of approximately $1,100 in connection with the First Offering, before deducting financial advisory consultant fees and related offering expenses. The First Pre-Funded Warrants were sold to the purchasers to the extent that a purchaser's subscription of shares of Common Stock in the First Offering would otherwise result in the purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% of our outstanding Common Stock immediately following the consummation of the Offering, in lieu of shares of Common Stock. Each First Pre-Funded Warrant represented the right to purchase one share of Common Stock at an exercise price of $0.01 per share. The First Pre-Funded Warrants were exercised in full in March 2020.

On March 19, 2020, we entered into separate Warrant Exchange Agreements (the "Exchange Agreements") with the holders of certain existing warrants (the "Exchanged Warrants") to purchase shares of Common Stock. The Exchanged Warrants were originally issued (i) pursuant to a securities purchase agreement, dated as of May 15, 2018, and in connection with a related consent and (ii) in connection with that certain Agreement and Plan of Merger by and among the Company (formerly known as FORM Holdings Corp.), FHXMS, LLC, XpresSpa Holdings, LLC and Mistral XH Representative, LLC, as representative of the unitholders, dated October 25, 2016, as subsequently amended. Pursuant to the Exchange Agreements, on the closing date and subject to (i) the receipt of approval of our stockholders as required by the applicable rules and regulations of the Nasdaq Stock Market and (ii) the receipt of approval of our stockholders to increase our authorized shares, the holders of Exchanged Warrants would exchange each Exchanged Warrant for a number of shares of Common Stock (the "New Shares") equal to the product of (i) the number of shares of Common Stock underlying such Exchanged Warrants (based on a formula related to the closing price of the Common Stock at the time of the closing of the Exchange as further detailed in the Exchange Agreement) and (ii) 1.5 (the "Exchange"). To the extent any holder of Exchanged Warrants would otherwise beneficially own in excess of any beneficial ownership limitation applicable to such holder after giving effect to the Exchange, that holder's Exchanged Warrants shall be exchanged for a number of New Shares issuable to the holder without violating the applicable beneficial ownership limitation and the remainder of the holder's Exchanged Warrants shall automatically convert into pre-funded warrants to purchase the number of shares of Common Stock equal to the number of shares of Common Stock in excess of the applicable beneficial ownership limitation. The closing is expected to take place on the first business day on which the conditions to the closing are satisfied or waived, subject to satisfaction of customary closing conditions.

On March 25, 2020, we entered into a Securities Purchase Agreement (the "Second Purchase Agreement") with certain purchasers, pursuant to which we agreed to issue and sell, in a registered direct offering, (i) 7,450,000 shares of our Common Stock, at an offering price of $0.20 per share and (ii) an aggregate of 1,500,000 pre-funded warrants exercisable for shares of Common Stock (the "Second Pre-Funded Warrants") at an offering price of $0.19 per Second Pre-Funded Warrant (the offering of the shares of Common Stock and the Second Pre-Funded Warrants, the "Second Offering"). We received gross proceeds of approximately $1,790 in connection with the Second Offering, before deducting financial advisory consultant fees and related offering expenses. The Second Pre-Funded Warrants are being sold to the purchasers to the extent that a purchaser's subscription of shares of Common Stock in the Second Offering would not otherwise result in the purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% (or, in certain cases, 9.99%) of our outstanding Common Stock immediately following the consummation of the Second Offering, in lieu of shares of Common Stock. Each Second Prefunded Warrant represented the right to purchase one share of Common Stock at an exercise price of $0.01 per share. The Second Pre-Funded Warrants were exercised in full in March 2020.

On March 27, 2020, we entered into a Securities Purchase Agreement (the "Third Purchase Agreement") with certain purchasers named therein, pursuant to which we agreed to issue and sell, in a registered direct offering, (i) 7,895,000 shares of our Common Stock, at an offering price of $0.20 per share and (ii) an aggregate of 2,105,000 pre-funded warrants exercisable for shares of Common Stock (the "Third Pre-Funded Warrants") at an offering price of $0.19 per Third Pre-Funded Warrant (the offering of the shares of Common Stock and the Pre-Funded Warrants, the "Offering"). We received gross proceeds of approximately $2,000 in connection with the Third Offering, before deducting financial advisory consultant fees and related offering expenses. The Third Pre-Funded Warrants are being sold to the purchasers to the extent that a purchaser's subscription of shares of Common Stock in the Offering would otherwise result in the purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% (or, in certain cases, 9.99%) of our outstanding Common Stock immediately following the consummation of the Third Offering, in lieu of shares of Common Stock. Each Third Prefunded Warrant represents the right to purchase one share of Common Stock at an exercise price of $0.01 per share. The Third Pre-Funded Warrants were exercised in full in March and April 2020.

On April 6, 2020, we entered into a Securities Purchase Agreement (the "Fourth Purchase Agreement") with certain purchasers named therein, pursuant to which we agreed to issue and sell, in a registered direct offering, (i) 12,418,179 shares of Common Stock, at an offering price of $0.22 per share and (ii) an aggregate of 1,445,454 pre-funded warrants exercisable for shares of Common Stock (the "Fourth Pre-Funded Warrants") at an offering price of $0.21 per Fourth Pre-Funded Warrant (the offering of the shares of Common Stock and the Fourth Pre-Funded Warrants, the "Fourth Offering"). We received gross proceeds of approximately $3,050 in connection with the Fourth Offering, before deducting financial advisory consultant fees and related offering expenses. The Fourth Pre-Funded Warrants were sold to the purchasers to the extent that a purchaser's subscription of shares of Common Stock in the Fourth Offering would otherwise result in the purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% (or, in certain cases, 9.99%) of our outstanding Common Stock immediately following the consummation of the Fourth Offering, in lieu of shares of Common Stock. Each Fourth Prefunded Warrant represented the right to purchase one share of Common Stock at an exercise price of $0.01 per share.

Calm Private Placement and Collaboration Agreement

Calm Private Placement

On July 8, 2019, we entered into a securities purchase agreement (the "Calm Purchase Agreement") with Calm.com ("Calm") pursuant to which we agreed to sell (i) an aggregate principal amount of $2,500 in an unsecured convertible note due 2022 (the "Calm Note"), which is convertible into shares of Series E Convertible Preferred Stock (the "Series E Preferred Stock") and (ii) warrants to purchase 937,500 shares of our Common Stock, at an exercise price of $2.00 per share (the "Calm Warrants") (collectively, the "Calm Private Placement").

The Calm Note is an unsecured subordinated obligation of ours. Unless earlier converted or redeemed, the Calm Note will mature on May 31, 2022. The Calm Note bears interest at a rate of 5% per annum, subject to increase in the event of default to the lesser of 18% per annum or the maximum rate permitted under applicable law. The Calm Note is convertible at any time, in whole or in part, at the option of Calm into shares of Series E Preferred Stock at a conversion price equal to $0.27125 per share, after giving effect to certain anti-dilution adjustments, except that no shares of Series E Preferred Stock could be issued as payment of interest or in connection with anti-dilution protection or voluntary reduction of the conversion price until receipt of shareholder approval, which approval was obtained on October 2, 2019. Interest on the Calm Note is payable in arrears beginning on the last day of each February, May, August and November. We may elect to pay interest in cash, shares of Series E Preferred Stock or a combination thereof.

On April 17, 2020, we entered into an amended and restated the Calm Note in order to provide, among other items, that Calm shall not have the right to convert the shares of Series E Preferred Stock issued in connection with the Calm Note into shares of Common Stock to the extent that such conversion would cause Calm to beneficially own in excess of the Beneficial Ownership Limitation, initially defined as 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of the Series E Preferred Stock.

The Calm Warrants entitle Calm to purchase an aggregate of 937,500 shares of Common Stock. The Calm Warrants are exercisable beginning six months from the date of issuance, have a term of five years and feature an exercise price equal to $0.175 per share after giving effect to certain anti-dilution adjustments.

See Note 10, *"Long-term Notes and Convertible Notes"*, to the consolidated financial statements for discussion of the accounting for the Calm Private Placement.

Calm Collaboration Agreement

On July 8, 2019, we entered into an Amended and Restated Product Sale and Marketing Agreement with Calm (the "Amended and Restated Collaboration Agreement"), which replaced the parties' previous Product Sale and Marketing Agreement. The Amended and Restated Collaboration Agreement primarily relates to the display, marketing, promotion, offer for sale and sale of Calm's products in each of our branded stores worldwide. The Amended and Restated Collaboration Agreement will remain in effect until July 31, 2021, unless terminated earlier in accordance with the Amended and Restated Collaboration Agreement, and automatically renews for successive terms of six months unless either party provides written notice of termination no later than thirty days prior to any such automatic renewal of the Amended and Restated Collaboration Agreement. On October 30, 2019, we and Calm entered into an amendment to the Amended and Restated Collaboration Agreement which provides for the addition of certain Calm branded products.

Amendment to Certificate of Designation of Series E Convertible Preferred Stock

On July 8, 2019, we filed a certificate of amendment to the Certificate of Designation of Series E Convertible Preferred Stock (the "Series E COD Amendment") with the State of Delaware to (i) increase the number of authorized shares of Series E Preferred Stock to 2,397,060 and (ii) upon receipt of Shareholder Approval, reduce the conversion price to $2.00. The Series E COD Amendment was approved by our Board of Directors and we obtained shareholder approval of the Series E COD Amendment on October 2, 2019. See Note 11, *"Preferred Stock and Warrants"* to the consolidated financial statements for further discussion.

B3D Transaction and Senior Secured Note

On July 8, 2019, Holdings entered into the fourth amendment (the "Credit Agreement Amendment") to its existing Credit Agreement with B3D, LLC ("B3D") (the "Senior Secured Note" or the "B3D Note") in order to, among other provisions, (i) extend the maturity date to May 31, 2021, (ii) reduce the applicable interest rate to 9.0%, and (iii) to amend and restate certain other provisions relating to its 11.24% Senior Secured Note. As consideration for these and other modifications the principal amount owed to B3D was increased to $7.0 million. Principal and any interest accrued thereon are convertible, at B3D's option, into Common Stock subject to receipt of shareholder approval, which was obtained on October 2, 2019 (the "B3D Transaction").

B3D Note

The B3D Note is a senior secured and guaranteed obligation of Holdings, secured by the personal property of the parent company of Holdings (XpresSpa Group, Inc.) and Holdings' wholly owned subsidiaries. Unless earlier converted or redeemed, the B3D Note will mature on May 31, 2021. The B3D Note bears interest at a rate of 9.00% per annum, calculated on a monthly basis. Interest only is payable in arrears on the last business date of each month (the "Monthly Interest"). At the option of Holdings, under certain conditions all or any portion of the Monthly Interest that is payable may be paid in shares of our Common Stock. At the option of B3D, all or any portion of the outstanding principal amount of the B3D Note, plus any accrued and unpaid interest thereon, shall be convertible into our Common Stock at a conversion price equal to $0.175 per share after giving effect to certain anti-dilution adjustments.

See Note 10, *"Long-term Notes and Convertible Notes"*, to the consolidated financial statements for discussion of the accounting for the B3D Transaction and B3D Note.

On August 22, 2019, we entered into an amendment to the B3D Note. Among other provisions, the amendment provided that B3D shall not have the right to convert the B3D Note into shares of Common Stock to the extent that such conversion would cause B3D to beneficially own in excess of the applicable beneficial ownership limitation initially defined as 4.99% of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of the B3D Note.

Series D Convertible Preferred Stock Amendment and December 2016 Warrant Amendment

Series D Convertible Preferred Stock Amendment

On July 8, 2019, we filed a certificate of amendment to the Certificate of Designation of Series D Convertible Preferred Stock (the "Series D COD Amendment") with the State of Delaware to, upon receipt of shareholder approval, reduce the conversion price to $2.00 and provide for automatic conversion of the Series D Convertible Preferred Stock (the "Series D Preferred Stock") into shares of Common Stock. The Series D COD Amendment was approved by our Board and we obtained shareholder approval on October 2, 2019. In connection with the approval of the Series D COD Amendment, on October 4, 2019 all issued and outstanding shares of our Series D Preferred Stock were converted into 12,772,500 shares of our Common Stock except to the extent that any holder of Series D Preferred Stock would otherwise beneficially own in excess any beneficial ownership limitation applicable to such holder after giving effect to the conversion, in which case such holder's Series D Preferred Stock converted automatically into warrants to purchase the number of shares of our Common Stock equal to the number of shares of Common Stock into which the holder's Series D Preferred Stock would otherwise have converted.

December 2016 Warrant Amendment

On July 8, 2019, we entered into an amendment to certain outstanding warrants issued in December 2016 (the "December 2016 Warrants") to the holders of our Series D Preferred Stock (the "December 2016 Warrant Amendment") to provide for (i) a reduction in the price to convert to Common Stock to $2.00, (ii) certain anti-dilution price protection and (iii) voluntary reduction of the conversion price by us in our discretion. We obtained shareholder approval in connection with the December 2016 Warrant Amendment on October 2, 2019. The December 2016 Warrants were recorded as an equity instrument at December 31, 2016. As such, no adjustment to the consolidated financial statements was made as a result of the change in the conversion price.

May 2018 SPA Amendment, Series F Preferred Stock and Series B Preferred Stock

May 2018 SPA Amendment

On May 15, 2018, in a private placement offering, we issued (i) 5% Secured Convertible Notes (the "5% Secured Convertible Notes") convertible into Common Stock at $12.40 per share, due November 2019, (ii) May 2018 Class A Warrants to purchase 357,863 shares of Common Stock (the "May 2018 Class A Warrants") and (iii) Class B Warrants to purchase 178,932 shares of Common Stock (the "May 2018 Class B Warrants").

On June 27, 2019, we entered into the Third Amendment Agreement to the 5% Secured Convertible Notes (the "Third Amendment") whereby the holders of the 5% Convertible Notes agreed to convert their notes then held into Common Stock. The Third Amendment reduced the conversion price of the 5% Convertible Notes to Common Stock from $12.40 per share to $2.48 per share. As a result of the reduction in the conversion price, we recorded debt conversion expense of $1,584 to account for the additional consideration paid over what was agreed to in the original 5% Secured Convertible Notes agreement. The expense is reflected in *"Other non-operating income (expense), net"* in the consolidated statement of operations and comprehensive loss. The 5% Secured Convertible Notes holders converted their remaining outstanding principal balances plus accrued interest into 586,389 shares of Common Stock and 356 ,772 Class A Warrants (the "June 2019 Class A Warrants"). The June 2019 Class A Warrants had an exercise price of $0.01 and are otherwise identical in form and substance to our existing May 2018 Class A Warrants.

We had an independent third party perform an appraisal of the June 2019 Class A Warrants as of June 30, 2019. The June 2019 Class A Warrants were assigned an initial appraised value of $689. The value of these warrants was recorded as a derivative liability on the consolidated balance sheet and is marked to market at the end of each reporting period. The expense of $689 is included in *"Other non-operating income (expense), net"* in the consolidated statement of operations and comprehensive loss in the second quarter of 2019 and is included in our current period year end results.

The June 2019 Class A Warrants were converted into 354,502 shares of Common Stock in July 2019.

On July 8, 2019, we entered into an amendment (the "May 2018 SPA Amendment") to our Securities Purchase Agreement, dated as of May 15, 2018, by and between us and the purchasers party thereto (the "May 2018 SPA"), to provide for, among other provisions, (i) an update to certain definitions, including the definition of an "Exempt Issuance," (ii) the waiver of certain provisions regarding restrictions on subsequent equity sales and participation in subsequent financings, (iii) the removal of certain of such provisions upon receipt of shareholder approval (obtained on October 2, 2019), (iv) the amendment to certain provisions of the May 2018 Class A Warrants issued pursuant to the May 2018 SPA to modify certain provisions in connection with a Notice Failure (as such term is defined in the May 2018 Class A Warrants), and the reduction in the exercise price of the May 2018 Class A Warrants issuable pursuant to anti-dilution price protection contained in such May 2018 Class A Warrants to $2.00 per share following receipt of shareholder approval, which approval was obtained on October 2, 2019, (v) the cancellation of all outstanding May 2018 Class B Warrants and (vi) the establishment of a new class of preferred stock, designated Series F Convertible Preferred Stock, par value $0.01 per share (the "Series F Preferred Stock") and the issuance of 8,996 shares of such Series F Preferred Stock to the parties to the May 2018 SPA Amendment, which are convertible into Common Stock upon receipt of shareholder approval, which approval was obtained on October 2, 2019.

Certificate of Designation of Series F Preferred Stock

In connection with the May 2018 SPA Amendment, on July 8, 2019, we filed with the Secretary of State of the State of Delaware a Certificate of Designation of Preferences, Rights and Limitations of Series F Convertible Preferred Stock (the "Series F Certificate of Designation") establishing and designating the rights, powers and preferences of the Series F Preferred Stock. We designated 9,000 shares of Series F Preferred Stock. The Series F Convertible Preferred Stock was recorded at its fair value on July 8, 2019 of $1,131 in our consolidated balance sheet. See Note 11. "*Preferred Stock and Warrants*" for further discussion.

Material Weakness in Internal Controls over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with U.S. generally accepted accounting principles. In connection with our audit of the year ended December 31, 2019, we identified a material weakness in our internal controls over our financial close and reporting process. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected and corrected on a timely basis. Our management has concluded that the financial close and reporting process needs additional formal procedures to ensure that appropriate reviews occur on all financial reporting analysis in a timely manner. We also concluded that we did not maintain a sufficient complement of corporate personnel with appropriate levels of accounting and controls knowledge and experience commensurate with our financial reporting requirements to appropriately analyze, record and disclose accounting matters completely and accurately. As these deficiencies created a reasonable possibility that a material misstatement would not be prevented or detected in a timely basis, management concluded that the control deficiencies represented a material weakness and, accordingly, our internal control over financial reporting was not effective as of December 31, 2019.

We are still considering the full extent of the procedures to implement in order to remediate the material weakness described above. Our preliminary remediation plan includes implementing a more robust review process, and an increase in the supervision and monitoring of the financial reporting processes and our accounting personnel. We will ensure that corporate accounting personnel have the level of accounting and controls knowledge and experience commensurate with our financial reporting requirements by instituting a training program for all accounting personnel on a regular basis on proper internal control procedures over financial reporting. The preliminary remediation plan also includes implementing controls over calculations, analysis and conclusions associated with non-routine transactions at a more precise level. We will also allocate additional resources to the corporate accounting function, which may include the use of independent consultants with sufficient expertise to assist in the preparation and review of certain non-recurring transactions, timely review of the account reconciliations and the preparation of quarterly and year end reporting. Lastly we will automate, where possible and practical, account analysis and calculations currently being done manually by better utilizing our current general ledger accounting system. Where cost effective, we will outsource any manual processes that are time consuming and complex so as to free up accounting personnel to spend more time preparing and reviewing account analysis.

CEO Transition

On February 8, 2019, Edward Jankowski resigned as Chief Executive Officer of the Company and as a director of the Company. Mr. Jankowski's resignation was not as a result of any disagreement with the Company on any matters related to the Company's operations, policies or practices. Mr. Jankowski received termination benefits including $375 payable in equal installments over a twelve-month term which commenced on February 13, 2019 and COBRA continuation coverage paid in full by the Company for up to a maximum of twelve months.

Effective as of February 11, 2019, Douglas Satzman was appointed by the Company's Board of Directors as the Chief Executive Officer of the Company and as a director of the Company to fill the position vacated by Mr. Jankowski.

Among the first initiatives of Mr. Satzman was a critical evaluation of the profitability and strategic fit of the portfolio of spas. Consequently, a determination was made to close nine underperforming and strategically mismatched spas, or approximately 20% of the spa portfolio, while focusing efforts and capital on the performing spas, renovations of existing spas and expansion of the spa portfolio into new airports and terminals.

Relocation of Corporate Headquarters and Global Support Team

On October 21, 2019, the Company relocated its corporate office functions and its Global Support Center in New York City from 780 Third Avenue to 254 W 31st Street. The new XpresSpa Global Support Center houses all corporate employees and the move yielded a cost reduction in occupancy expenses of approximately $360 annually.

Reverse Stock Split

On February 22, 2019, we filed a certificate of amendment to our amended and restated certificate of incorporation with the Secretary of State of the State of Delaware to effect a 1-for-20 reverse stock split of our shares of Common Stock. Such amendment and ratio were previously approved by our stockholders and board of directors, respectively.

As a result of the reverse stock split, every twenty (20) shares of our pre-reverse split Common Stock were combined and reclassified into one (1) share of Common Stock. Proportionate voting rights and other rights of Common Stockholders were affected by the reverse stock split. Stockholders who would have otherwise held a fractional share of Common Stock received payment in cash in lieu of any such resulting fractional shares of Common Stock as the post-reverse split amounts of Common Stock were rounded down to the nearest full share. Such cash payment in lieu of a fractional share of Common Stock was calculated by multiplying such fractional interest in one share of Common Stock by the closing trading price of our Common Stock on February 22, 2019 and rounded to the nearest cent. No fractional shares were issued in connection with the reverse stock split.

Our Common Stock began trading on the Nasdaq Capital Market on a post-reverse split basis at the open of business on February 25, 2019.

Dispositions

On October 20, 2017, we sold FLI Charge to a group of private investors and FLI Charge management, who now own and operate FLI Charge. In February 2019, the Company entered into an agreement to release FLI Charge's obligation to pay any royalties on FLI Charge's perpetual gross revenues with regard to conductive wireless charging, power, or accessories, and to cancel its warrants exercisable in FLI Charge in exchange for cash proceeds of $1,100 which were received in full on February 15, 2019 and is included in *Other revenue* in the consolidated statement of operations and comprehensive loss for the year ended December 31, 2019.

On March 22, 2018, we sold Group Mobile to a third party. We have not provided any continued management or financing support to FLI Charge or Group Mobile. See Note 17, *"Discontinued Operations"*, to the consolidated financial statements for further discussion.

Rebranding

On January 5, 2018, we changed our name to XpresSpa Group, Inc. from FORM Holdings Corp, which aligned our corporate strategy to build a pure-play health and wellness services company. Our Common Stock, par value $0.01 per share, which had previously been listed under the trading symbol "FH" on the Nasdaq Capital Market, has been listed under the trading symbol "XSPA" since January 8, 2018.

Sale of Patents

In January 2018, we sold certain patents to Crypto Currency Patent Holdings Company LLC, a unit of Marathon Patent Group, Inc. ("Marathon"), for approximately $1,250 comprised of $250 in cash and 250,000 shares of Marathon Common Stock valued at approximately $1,000 (the "Marathon Common Stock") at the time of the transaction. The Marathon Common Stock was subject to a lockup period (the "Lockup Period") which commenced on the Transaction Date and ended on July 11, 2018, subject to a leak-out provision. On December 31, 2018, the Company determined based on its evaluation of its investment that certain of Marathon's unrealized losses represented an other-than-temporary impairment and the Company recognized an impairment charge of $148 for the year ended December 31, 2018, equal to the excess of carrying value over fair value. Also, during the year ended December 31, 2018, the Company sold 205,646 shares of Marathon Common Stock, with a carrying value of $279, for net proceeds of $200. During the year ended December 31, 2019, the Company sold its remaining shares of Marathon Common Stock of $23, for net proceeds of $14.

Our Strategy and Outlook

XpresSpa regularly measures comparable store sales, which it defines as current period sales from stores opened more than 12 months compared to those same stores' sales in the prior year period ("Comp Store Sales"). The measurement of Comp Store Sales on a daily, weekly, monthly, quarterly and year-to-date basis provides an additional perspective on XpresSpa's total sales growth when considering the influence of new unit contribution. A reconciliation between Comp Store Sales and total revenue as reported on the financial statements is presented below:

	2019			2018			%
	Comp Store	Non-Comp Store	Total	Comp Store	Non-Comp Store	Total	
Revenue	$ 46,254	$ 2,261	$ 48,515	$ 44,959	$ 5,135	$ 50,094	2.9%

Comp Store Sales increased 2.9% during the year ended December 31, 2019 as compared to the same period in 2018. As of December 31, 2019, XpresSpa had 51 open locations; during the year, XpresSpa opened four new locations, and closed nine underperforming locations while having 56 open locations as of December 31, 2018. The increase in Comp Store sales was due to an increase in traffic, an increase in average ticket price per customer and an increase in the sale of new products (Calm products, and Persona subscriptions and vitamin packs).

We plan to grow XpresSpa by continuing to focus on spa-level productivity and leveraging retail partnerships to increase units per transaction, which will contribute to the growth of the Comp Store Sales and through the opening of new locations. On March 25, 2020, we announced that, during such period as we remain unable to reopen our spa locations for normal operations due to the COVID-19 outbreak, we were advancing conversations with certain COVID-19 testing partners to develop a model for testing in U.S. airports.

Full-Year 2019 and 2018 Adjusted EBITDA Loss

	Years ended December 31,	
Revenue:	**2019**	**2018**
Services	$ 39,989	$ 41,163
Products	7,320	8,131
Other	1,206	800
Total revenue	48,515	50,094
Cost of sales		
Labor	22,847	24,369
Occupancy	7,831	8,118
Product and other operating costs	7,176	6,964
Total cost of sales	37,854	39,451
Store margin	10,661	10,643
Store margin as a % of total revenue	22.0%	21.2%
Depreciation and amortization	6,124	7,398
Impairment/disposal of assets	6,090	2,100
Goodwill impairment	—	19,630
General and administrative	14,319	16,240
Total operating expenses	64,387	84,819
Loss from continuing operations	(15,872)	(34,725)
Interest expense	(2,900)	(1,827)
Other non-operating income (expense), net	(1,904)	643
Loss from continuing operations before income taxes	(20,676)	(35,909)
Income tax benefit	146	(278)
Net loss from continuing operations	(20,530)	(35,631)
Loss from discontinued operations, net of income taxes	—	(1,115)
Net loss	(20,530)	(36,746)
Net income attributable to noncontrolling interests	(693)	(459)
Net loss attributable to common shareholders	$ (21,223)	$ (37,205)
Loss from continuing operations	$ (15,872)	$ (34,725)
Add back:		
Depreciation and amortization	6,124	7,398
Impairment/disposal of assets	6,090	2,100
Goodwill impairment	—	19,630
One-time costs	—	2,018
Stock-based compensation expense	335	916
Adjusted EBITDA loss	$ (3,323)	$ (2,663)

We use GAAP and non-GAAP measurements to assess the trends in our business. With respect to XpresSpa, we review its Adjusted EBITDA, a non-GAAP measure, which we define as earnings before interest, tax, depreciation and amortization expense, excluding merger and acquisition, integration and one-time costs and stock-based compensation.

Adjusted EBITDA is a supplemental measure of financial performance that is not required by, or presented in accordance with, GAAP. Reconciliations of operating loss from continuing operations for the Company for the years ended December 31, 2019 and 2018 to Adjusted EBITDA loss are presented in the tables above.

We consider Adjusted EBITDA to be an important indicator for the performance of our business, but not a measure of performance or liquidity calculated in accordance with U.S. GAAP. We have included this non-GAAP financial measure because management utilizes this information for assessing our performance and liquidity, and as an indicator of our ability to make capital expenditures and finance working capital requirements. We believe that Adjusted EBITDA is a measurement that is commonly used by analysts and some investors in evaluating the performance and liquidity of companies such as us. In particular, we believe that it is useful for analysts and investors to understand this indicator because it excludes transactions not related to our core cash operating activities. We believe that excluding these transactions allows investors to meaningfully analyze the performance of our core cash operations. Adjusted EBITDA should not be considered in isolation or as an alternative to cash flow from operating activities or as an alternative to operating income or as an indicator of operating performance or any other measure of performance derived in accordance with GAAP. In evaluating our performance as measured by Adjusted EBITDA, we recognize and consider the limitations of this measurement. Adjusted EBITDA does not reflect our obligations for the payment of income taxes, interest expense, or other obligations such as capital expenditures. Accordingly, Adjusted EBITDA is only one of the measurements that management utilizes.

Results of Operations

Revenue

We recognize revenue from the sale of XpresSpa products and services when the services are rendered at our stores and from the sale of products at the time products are purchased at our stores or online (usually by credit card), net of discounts and applicable sales taxes. Accordingly, we recognize revenue for our single performance obligation related to both in-store and online sales at the point at which the service has been performed or the control of the merchandise has passed to the customer. Revenues from the XpresSpa retail and e-commerce businesses are recorded at the time goods are shipped. We exclude all sales taxes assessed to our customers. Sales taxes assessed on revenues are included in accounts payable, accrued expenses and other current liabilities in the consolidated balance sheets until remitted to state agencies.

Other revenue includes one-time intellectual property licenses as well as the sale of certain of our intellectual property. Revenue from patent licensing is recognized when we transfer promised intellectual property rights to purchasers in an amount that reflects the consideration to which we expect to be entitled in exchange for those intellectual property rights. During the year ended December 31, 2018, we determined that our intellectual property operating segment was no longer an area of focus for us and, as such, is no longer reflected as a separate operating segment, as it is not expected to generate any material revenues or operating costs.

Cost of sales

Cost of sales consists of store-level costs. Store-level costs include all costs that are directly attributable to the store operations and include:

- payroll and related benefits for store operations and store-level management;
- rent, percentage rent and occupancy costs;
- the cost of merchandise;
- freight, shipping and handling costs;
- production costs;
- inventory shortage and valuation adjustments, including purchase price allocation increase in fair values which was recorded as part of acquisition; and
- costs associated with sourcing operations.

Cost of sales associated with revenue from intellectual property mainly includes expenses incurred in connection with the Company’s patent licensing and enforcement activities, patent-related legal expenses paid to external patent counsel (including contingent legal fees), licensing and enforcement related research, consulting and other expenses paid to third parties, as well as related internal payroll expenses.

Depreciation and amortization

Property and equipment is stated at cost, net of accumulated depreciation. Depreciation is calculated on a straight-line basis over the estimated useful lives of the assets. The useful lives of our property and equipment is based on estimates of the period over which we expect the assets to be of economic benefit to us. Our property and equipment assets primarily consist of leasehold improvements to our stores and are amortized over the shorter of the useful life of the asset or the term of the lease.

Amortization of our intangible assets are recognized on a straight-line basis over the remaining useful life of the intangible assets.

Impairment/disposal of assets

We test our long-lived assets (which primarily includes property and equipment and right of use lease asset) for impairment on at least an annual basis or whenever circumstances indicate that the carrying amount may not be recoverable. Long-lived assets are tested for impairment at the lowest level at which there are identifiable operating cash flows. An impairment loss is recognized if the carrying amount of a fixed asset (asset group) is not recoverable and exceeds its fair value.

Impairment charges related to our amortized, intangible assets are recorded when an impairment indicator exists and the carrying amount of the related asset exceeds its fair value.

General and administrative

General and administrative expenses include management and administrative personnel, public and investor relations, overhead/office costs, insurance legal fees, accounting fees and various other professional fees, as well as sales and marketing costs and stock-based compensation for management and administrative personnel.

Non-operating income (expense)

Non-operating income (expense) includes transaction gains (losses) from foreign exchange rate differences, bank charges, as well as fair value adjustments related to our derivative liabilities. The value of these derivative liabilities is highly influenced by assumptions used in its valuation, as well as by our stock price as of the period end (revaluation date).

Income taxes

As of December 31, 2019, deferred tax assets generated from our activities in the United States were offset by a valuation allowance because realization depends on generating future taxable income, which, in our estimation, is not more likely than not to be generated before such net operating loss carryforwards expire.

Year ended December 31, 2019 compared to the year ended December 31, 2018

Revenue

	Year ended December 31,		
	2019	**2018**	**Change**
Services	$ 39,989	$ 41,163	$ (1,174)
Products	7,320	8,131	(811)
Other	1,206	800	406
Total revenue	$ 48,515	$ 50,094	$ (1,579)

During the year ended December 31, 2019, total revenues decreased $1,579, or 3.2%, mainly due to the decrease in the number of spas open during the year as compared to the comparable prior year period. The Company closed nine stores during the year ended December 31, 2019, all of which were unprofitable. During 2019, we generated 82% of our revenues from services, 15% of our revenues from retail sales and 3% from other revenue. We plan to grow XpresSpa's revenue through a combination of increases in sales at our existing XpresSpa locations and the addition of new locations.

In 2017, we sold FLI Charge, a wholly-owned subsidiary, to a group of private investors and FLI Charge management. In February 2019, we entered into an agreement to release FLI Charge's obligation to pay any royalties on FLI Charge's perpetual gross revenues with regard to conductive wireless charging, power, or accessories, and to cancel its warrants exercisable in FLI Charge in exchange for cash proceeds of $1,100, which were received in full on February 15, 2019 and is included in *"Other revenue"* in the consolidated statement of operations and comprehensive loss for the year ended December 31, 2019.

During the year ended December 31, 2018, we sold certain of our patents for consideration which included $250 and 250,000 shares of Common Stock in Marathon Patent Group, Inc. that were fair valued at $450, which amounts were included in *Other revenue* in our consolidated statement of operations and comprehensive loss for the year ended December 31, 2018.

Cost of sales

	Year ended December 31,		
	2019	**2018**	**Change**
Cost of sales	$ 37,854	$ 39,451	$ (1,597)

The decrease in cost of sales of $1,597, or 4.0%, was due to the decrease in revenues, as we have experienced a decrease associated with labor and benefits. We had 51 open locations as of December 31, 2019, and 56 open locations as of December 31, 2018. The largest component in the cost of sales are labor costs at the store-level, as our associates receive commission-based compensation as well as additional incentives based on individual and store performance. Cost of sales also includes rent and related occupancy costs, which are primarily also a percentage of sales, as well as product costs directly associated with the procurement of retail inventory and other operating costs.

Cost of sales also decreased as a result of the impact of initiatives taken by management to streamline processes and reduce store-level costs.

Depreciation and amortization

	Year ended December 31,		
	2019	**2018**	**Change**
Depreciation and amortization	$ 6,124	$ 7,398	$ (1,274)

During the year ended December 31, 2019, depreciation and amortization expense decreased $1,277, or 17.2%, compared to the depreciation and amortization expense recorded during the year ended December 31, 2018. The decrease was primarily due to the decrease in the number of stores open during the year ended December 31, 2019 compared to the year ended December 31, 2018. Fewer locations resulted in lower amortization of leasehold improvements. Depreciation and amortization expense also decreased as a result of the impairment and disposal of fixed assets during the year ended December 31, 2019.

Impairment/disposal of assets

	Year ended December 31,		
	2019	2018	Change
Impairment/disposal of assets	$ 6,090	$ 2,100	$ 3,990

We completed an assessment of our property and equipment and right of use lease assets for impairment as of December 31, 2019. Based upon the results of the impairment test, we recorded an impairment expense of approximately $3,060. The expense was primarily related to the impairment of leasehold improvements made to certain locations and right of use lease assets where management determined that the locations discounted future cash flow was not enough to support the carrying value of the leasehold improvements and right of use lease assets over the remaining lease term. The impairment expense represents the excess of the carrying value of the leasehold improvements and right of use lease assets over the estimated future discounted cash flows. Management calculated the future cash flow of each location using a present value income approach. The sum of expected cash flow for the remainder of the lease term for each location was present valued at a discount rate of 9.0%, which represents the current borrowing rate of our note payable to B3D. We believe that this rate incorporates the time value of money and an appropriate risk premium.

In the second quarter of 2019, we impaired our investment in Route1, which we received from the disposition of Group Mobile in March 2018, due to an under performance of operating results. We recorded an impairment charge of $1,141, which is included in *"Impairment/disposal of assets"* on the consolidated statement of operations and comprehensive loss for the year ended December 31, 2019.

In July 2019, the lease for our location in the World Trade Center in New York was terminated. As a result, we disposed of all assets (primarily leasehold improvements) at that location, which resulted in a charge of approximately $620, included in *"Impairment/disposal of assets"* on the consolidated statement of operations and comprehensive loss for the year ended December 31, 2019.

In the third quarter of 2019, we recorded an impairment loss on our FLI Charge cost method investment, which we received from the disposition of FLI Charge in October 2017, of approximately $47 which is included in *"Impairment/disposal of assets"* on our consolidated statements of operations and comprehensive loss for the year ended December 31, 2019.

We assessed our investment in InfoMedia Services Limited ("InfoMedia") for impairment at December 31, 2019 as InfoMedia was to have obtained financing to fund continuing operations and a new product during 2019 but was unable to obtain the financing. We believe this represents a triggering event and determined we should write off our investment in InfoMedia and recorded an impairment expense of $787, which is included in *"Impairment/disposal of assets"* on our statement of operations and comprehensive loss for the year ended December 31, 2019.

We expensed approximately $231 of pre-opening costs incurred during 2019 that had been capitalized in anticipation of opening new spas, that we later determined were not viable. We also wrote off approximately $109 related to a previous asset disposition, which was ultimately deemed not realizable as of December 31, 2019. These charges are included in the *"Impairment/disposition of assets"* line in the consolidated statement of operations and comprehensive loss for the year ended December 31, 2019.

During the year ended December 31, 2019, the impairment/disposal of assets balance also includes an $85 write down of patent assets that were no longer expected to generate cash flow for us.

During the year ended December 31, 2018, we recorded a $2,100 expense for impairment of fixed assets in locations where we have obligations under long-term leases.

Goodwill impairment

	Year ended December 31,		
	2019	2018	Change
Goodwill impairment	$ —	$ 19,630	$ (19,630)

During the year ended December 31, 2018, we recorded of goodwill impairment expense.

On January 5, 2018, we changed our name to XpresSpa Group as part of a rebranding effort to align our corporate strategy to build a pure-play health and wellness services company, which we commenced following our acquisition of XpresSpa on December 23, 2016. Following the subsequent sale of Group Mobile on March 22, 2018, which was the only remaining component of our technology operating segment, our management made the decision that our intellectual property operating segment would no longer be an area of focus and would no longer operate as a separate operating segment as it is not expected to generate any material revenues. This completed our transition into a pure-play health and wellness company with only one operating segment, consisting of our XpresSpa business.

During the first quarter of fiscal year 2018, our stock price declined from an opening price of $27.20 on January 2, 2018 to $14.40 on March 29, 2018. Subsequently, on April 19, 2018, we entered into a separation agreement with our Chief Executive Officer regarding his resignation as Chief Executive Officer and as our Director.

These events were identified by our management as triggering events requiring that goodwill be tested for impairment as of March 31, 2018. In addition to our rebranding efforts to become a pure-play health and wellness services company, our stock price continued to decline even after the announcement of the new Chief Executive Officer. As the stock price had not rebounded, we determined that the impairment related to the three-month period ended March 31, 2018.

We performed testing on the estimated fair value of goodwill and, as a result, we recorded an impairment charge of $19,630 to reduce the carrying value of goodwill to its fair value, which was determined to be zero.

The impairment to goodwill was a result of the structural changes to the Company, including completion of the transition from a holding company to become a pure-play health and wellness company and the change in executive management.

General and administrative

	Year ended December 31,		
	2019	2018	Change
General and administrative	$ 14,319	$ 16,240	$ (1,921)

During the year ended December 31, 2019, general and administrative expenses decreased by $1,921, or 11.8%. This decrease was due primarily to a reduction in management personnel salaries and benefits of approximately $2,400, an overall reduction in corporate overhead expenses and lower professional fees compared to the 2018 period where we incurred professional fees related to the sale of our Group Mobile division in March 2018 of approximately $500, and a reduction in stock-based compensation expense of $581 from $916 for the year ended December 31, 2018 to $335 for the year ended December 31, 2019. The reduction was partially offset by a litigation accrual of $1,400 related to ongoing legal disputes. See Note 19, *"Commitments and Contingencies,"* to the consolidated financial statements for further discussion. The decrease in salaries and benefits included severance costs of $350 recorded in 2018, and the decrease in professional fees included one-time project costs of $359 related to the buildout and implementation of a business analytics tool recorded in 2018, both of which did not recur in 2019.

Interest expense

	Year ended December 31,		
	2019	2018	Change
Interest expense	$ 2,900	$ 1,827	$ 1,073

Interest expense increased $1,073, or 58.7%, due primarily to an increase in the accretion of interest expense associated with the Calm Note and the B3D Note of approximately $1,000.

Non-operating income (expense), net

	Year ended December 31,		
	2019	2018	Change
Non-operating income (expense), net	$ (1,904)	$ 643	$ (2,547)

Non-operating (expense), net primarily includes, gain or loss on the revaluation of derivative liabilities, certain bank transaction fees and related costs and other non-operating income and expenses.

The following is a summary of the transactions included in non-operating income (expense), net for the years ended December 31, 2019 and 2018:

	Year ended December 31,	
	2019	2018
Gain on revaluation of warrants and conversion options	$ 2,170	$ 1,520
Debt conversion expense related to conversion of 5% Secured Convertible Notes	(1,584)	—
Issuance of Series F Preferred Stock, net of issuance costs	(1,131)	—
Issuance of warrants	(689)	(64)
Bank fees and other financing expenses	(408)	(594)
Issuance of common stock in lieu of cash payments on debt	(105)	(145)
Other	(157)	(74)
Total non-operating income (expense), net	$ (1,904)	$ 643

Included in non-operating income (expense), net for the year ended December 31, 2019 is expense (net of issuance costs) of $1,131 for the issuance of 8,996 shares of Series F Convertible Preferred Stock, which represents the fair value of the shares as of the date issued.

On June 27, 2019, we entered into the Third Amendment Agreement to the 5% Secured Convertible Notes (the "Third Amendment") whereby the holders of the 5% Secured Convertible Notes agreed to convert their notes then held into Common Stock.

The Third Amendment reduced the conversion price of the 5% Secured Convertible Notes to Common Stock from $12.40 per share to $2.48 per share. As a result of the reduction in the conversion price, we recorded a debt conversion expense of $1,584 to account for the additional consideration paid over what was agreed to in the original note agreement.

The non-operating expenses for the year ended December 31, 2019, were partially offset by a $2,170 gain on the revaluation of the conversion feature and warrants related to the Calm Private Placement and the revaluation of the conversion feature related to the issuance of the B3D Note.

See the notes to the consolidated financial statements for additional information on the above transactions.

Non-operating income (expense) will be affected by the adjustments to the fair value of our derivative instruments, which could fluctuate materially from period to period. Fair value of these derivative instruments depends on a variety of assumptions, such as estimations regarding triggering of down-round protection and estimated future share price. An estimated increase in the price of our Common Stock would increase the value of the warrants and thus result in a loss on our statements of operations.

Discontinued Operations

In March 2018, we completed the sale of Group Mobile, which was previously a component of our technology operating segment. The results of operations for Group Mobile are presented in the consolidated statements of operations and comprehensive loss as consolidated net loss from discontinued operations.

Income Taxes

As of December 31, 2019, our estimated aggregate total NOLs were $182,327 for U.S. federal purposes, expiring 20 years from the respective tax years to which they relate, and $31,401 for U.S. federal purposes with an indefinite life due to new regulations in the Tax Act of 2017. The NOL amounts are presented before Internal Revenue Code, Section 382 limitations. The Tax Reform Act of 1986 imposed substantial restrictions on the utilization of NOL and tax credits in the event of an ownership change of a corporation. Thus, our ability to utilize all such NOL and credit carryforwards may be limited. The CARES Act was enacted on March 27, 2020 and provides favorable changes to tax law for businesses impacted by COVID-19. However, we do not anticipate the income tax law changes will materially benefit us.

We did not have any material unrecognized tax benefits as of December 31, 2019. We do not expect to record any additional material provisions for unrecognized tax benefits within the next year.

Liquidity and Capital Resources

Effective March 24, 2020, we temporarily closed all global spa locations, largely due to the categorization of such spa locations by local jurisdictions as “non-essential services” in connection with the recent COVID-19 outbreak. We intend to reopen our spa locations and resume normal operations once such restrictions are lifted and airport traffic returns to sufficient levels to support such operations. On March 25, 2020, we announced that, during such period as we remain unable to reopen our spa locations for normal operations, we were advancing conversations with certain COVID-19 testing partners to develop a model for testing in U.S. airports.

Similar to many businesses in the travel sector, our business has been materially adversely impacted by the recent coronavirus outbreak and associated restrictions on travel that have been implemented. The extent to which the coronavirus continues to impact our results will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of the coronavirus and the actions to contain the coronavirus or treat its impact, among others.

As the coronavirus has spread, we have seen a material decline in demand across all our locations and this has resulted in a materially adverse impact on our cash flows from operations and has caused an immediate liquidity crisis. We are currently seeking sources of capital to help fund our business operations during the COVID-19 crisis. We have been able to secure financing in the first quarter of 2020 totaling approximately $9,440 by obtaining a cash advance on our accounts receivable balances, an additional loan from our senior secured lender, B3D and through common stock offerings (See Recent Developments above). Depending on the impact of the COVID-19 outbreak on our operations and cash position we may need to obtain additional financing. If we need to obtain additional financing in the future and are unsuccessful, we may be required to curtail or terminate some or all of our business operations and cause our Board of Directors to decide to pursue a restructuring, which may include a reorganization or bankruptcy under Federal bankruptcy laws, or a dissolution, liquidation and/or winding up of the Company. Accordingly, holders of our common stock may lose their entire investment in the event of a reorganization, bankruptcy, liquidation, dissolution or winding up of the Company.

As of December 31, 2019, we had approximately $2,184 of cash and cash equivalents and total current assets of $3,933. Our total current liabilities balance, which primarily includes accounts payable, accrued expenses, and the current portion of operating lease liabilities was $16,220 as of December 31, 2019. The working capital deficiency was $12,287 as of December 31, 2019, compared to a working capital deficiency of $10,899 as of December 31, 2018. The increase in the working capital deficiency was primarily due to the reduction in cash and other current asset balances from 2018 and the classification of a current portion of lease liability of $3,669 in current liabilities in 2019 but not in 2018, partially offset by the refinancing and recapitalization transactions the Company completed in July of 2019, which are discussed in detail in *Management’s Discussion and Analysis of Financial Condition and Results of Operations* in this Annual Report on Form 10-K and disclosed in the notes to the consolidated financial statements.

Our primary liquidity and capital requirements are for current and new XpresSpa locations. During the year ended December 31, 2019, we incurred $2,275 of capital expenditures, paid $714 in debt issuance costs associated with the B3D Note and the Calm Note, paid $735 of interest on the debt, distributed $1,197 to noncontrolling interests, and used $113 in operations. This was offset by the receipt of $2,500 in gross proceeds from the Calm Private Placement. We expect to utilize our cash and cash equivalents, along with cash flows from operations, to provide capital to support the growth of our business, primarily through opening new XpresSpa locations, maintaining our existing XpresSpa locations and supporting corporate functions.

While we aggressively reduced operating and corporate overhead expenses in order to stream-line our operations, improve our cash position, and improve our overall profitability, we continue to generate negative cash flows from operations, and we expect to continue to incur net losses in the foreseeable future. We have begun to take other actions to improve our access to liquidity by exploring strategic partnerships and identifying and evaluating potential business alternatives; however, there can be no assurance that these actions will be sufficient. The audited consolidated financial statements included in this Annual Report on Form 10-K have been prepared assuming that we will continue as a going concern and do not include any adjustments that might result if we cease to continue as a going concern.

As discussed above and elsewhere in this Annual Report on Form 10-K, the report of our independent registered public accounting firm on our financial statements for the years ended December 31, 2019 and 2018 includes an explanatory paragraph indicating that there is substantial doubt about our ability to continue as a going concern. The audited financial statements included in this Annual Report on Form 10-K have been prepared assuming that we will continue as a going concern and do not include any adjustments that might result if we cease to continue as a going concern.

We expect that the actions taken in 2019 and during the first quarter of 2020 will enhance our liquidity and financial position. If we continue to experience operating losses, and we are not able to generate additional liquidity through the actions described above or through some combination of other actions, we may not be able to access additional funds and we might need to secure additional sources of funds, which may or may not be available to us. Additionally, a failure to generate additional liquidity could negatively impact our access to inventory or services that are important to the operation of our business. We cannot reasonably predict with any certainty that the results of actions already taken in 2019 and during the first quarter of 2020 will be successful. If the actions already taken are not successful and if no transactions with respect to potential business alternatives are identified and completed, our Board of Directors may possibly pursue a restructuring, which may include a reorganization or bankruptcy under Federal bankruptcy laws, or a dissolution,

liquidation and/or winding up of the Company. If our Board of Directors were to approve and recommend, and our stockholders were to approve, a dissolution and liquidation of our Company, we would be required under Delaware corporate law to pay our outstanding obligations, as well as to make reasonable provisions for contingent and unknown obligations, prior to making any distributions in liquidation to our stockholders. Our commitments and contingent liabilities may include (i) obligations under our employment agreements with certain members of management that provide for severance and other payments following a termination of employment occurring for various reasons, including a change in control of our Company, (ii) various claims and legal actions arising in the ordinary course of business and (iii) non-cancelable lease obligations. As a result of this requirement, a portion of our assets may need to be reserved pending the resolution of such obligations. In addition, we may be subject to litigation or other claims related to a dissolution and liquidation of our Company. If a dissolution and liquidation were pursued, our Board of Directors, in consultation with its advisors, would need to evaluate these matters and make a determination about a reasonable amount to reserve. Accordingly, holders of our Common Stock may lose their entire investment in the event of a reorganization, bankruptcy, liquidation, dissolution or winding up of our Company.

Cash flows

	Year ended December 31,		
	2019	2018	Change
Net cash used in operating activities	$ (113)	$ (6,566)	$ 6,453
Net cash used in investing activities	$ (2,275)	$ (1,866)	$ (409)
Net cash provided by financing activities	$ 1,165	$ 5,644	$ (4,479)

Operating activities

During the year ended December 31, 2019, net cash used in operating activities was $113, as compared to net cash used in operating activities in 2018 of $6,566. The decrease in net cash used in operating activities was primarily due to the timing of payments of accounts payable and certain accrued expenses and to our cost cutting measures and reduced cash used in our daily operations.

Investing activities

During the year ended December 31, 2019, net cash used in investing activities totaled $2,275, compared to net cash used in investing activities during the year ended December 31, 2018 of $1,866. Cash used in 2019 was used to acquire primarily leasehold improvements for new store openings and renovations to existing stores. In 2018, the cash used was partially reduced by $800 received in January 2018 related to the sale of FLI Charge, $250 received from the sale of one of our patents, and $200 received from the sale of 205,646 shares of Marathon Common Stock.

We expect that net cash used in investing activities will increase as we intend to continue to open new stores and develop supporting infrastructure and systems.

Financing activities

During the year ended December 31, 2019, net cash provided by financing activities totaled $1,165 compared to $5,644 during the comparable prior year period. Included in the net cash provided by financing activities in 2019 were the proceeds from the issuance of the Calm Note of $2,500 that was partially offset by distributions to noncontrolling interests and payments of debt issuance costs. During the year ended December 31, 2018, the Company received proceeds from the issuance of convertible notes and warrants of $4,350 and proceeds from the sale of our Series E Preferred Stock of $3,000.

Off-Balance Sheet Arrangements

We have no obligations, assets or liabilities that would be considered off-balance sheet arrangements. We do not participate in transactions that create relationships with unconsolidated entities or financial partnerships, often referred to as variable interest entities, which would have been established for the purpose of facilitating off-balance sheet arrangements.

Critical Accounting Estimates

We believe the following accounting estimates to be the most critical estimates we used in preparing our consolidated financial statements for the year ended December 31, 2019.

Long-lived assets (not including amortizable intangible assets)

Long-lived assets are tested for impairment at the lowest level at which there are identifiable operating cash flows, which is at the individual spa location for the XpresSpa business. The Company's long-lived assets consist primarily of leasehold improvements and right to use lease assets for each of its locations (considered the asset group). The Company reviews its long-lived assets for recoverability yearly or sooner if events or changes in circumstances indicate that the carrying value of long-lived assets may not be recoverable. If indicators are present, the Company performs a recoverability test by comparing the sum of the estimated undiscounted future cash flows attributable to the asset group in question to its carrying amount. An impairment loss is recognized if it is determined that the long-lived asset group is not recoverable and is calculated based on the excess of the carrying amount of the long-lived asset group over the long-lived asset groups fair value. The Company estimates the fair value of long-lived assets using a present value income approach. Future cash flow was calculated based on forecasts over the estimated remaining useful life of the asset group, which for each of the Company's spa locations, is the remaining term of the operating lease. The Company uses its existing borrowing rate as the discount rate since it expects that this rate incorporates not only the time value of money but also the expectations regarding future cash flows and an appropriate risk premium.

The estimates used to calculate future cash flows are subjective in nature and involve uncertainties and matters of significant judgments and therefore cannot be determined with precision. Changes in assumptions could significantly affect the estimated fair value of each asset group. The Company will calculate the future cash flow using what it believes to be the most predictable of several scenarios. Typically, the changes in assumptions run under different business scenarios would not result in a material change in the assessment of the potential impairment or the impairment amount of a locations long-lived asset group. But if these estimates or related assumptions were to change materially the Company may be required to record an impairment charge (see Note 6, *Property and Equipment* and Note 9, *Leases* to the consolidated financial statements for the impairment assessment performed as of December 31, 2019).

Intangible assets

Intangible assets include trade names, customer relationships, and technology, which were acquired as part of the acquisition of XpresSpa in December 2016 and are recorded based at the estimated fair value in purchase price allocation. Intangible assets also include purchased patents. The intangible assets are amortized over their estimated useful lives, which are periodically evaluated for reasonableness. The balance of intangible assets was approximately $6,800 as of December 31, 2019, which primarily represents the balance of trade names acquired as part of the acquisition of XpresSpa.

Our intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. In assessing the recoverability of our intangible assets, we must make estimates and assumptions regarding future cash flows and other factors to determine the fair value of the respective assets. These estimates and assumptions could have a significant impact on whether an impairment charge is recognized and also the magnitude of any such charge. Fair value estimates are made at a specific point in time, based on relevant information. These estimates are subjective in nature and involve uncertainties and matters of significant judgments and therefore cannot be determined with precision. Changes in assumptions could significantly affect the estimates. If these estimates or material related assumptions change in the future, we may be required to record impairment charges related to its intangible assets.

Fair value measurements

Our derivative liabilities are measured at fair value. Such liabilities are classified within Level 3 of the fair value hierarchy because they are valued using the Monte-Carlo model (as these warrants include down-round protection clauses), which utilize significant inputs that are unobservable in the market. The inputs to estimate the fair value of our derivative liabilities are the current market price of our Common Stock, the exercise price of the warrant, the warrants' remaining expected term, the volatility of our Common Stock price, our assumptions regarding the probability and timing of a down-round protection triggering event and the risk-free interest rate.

The fair value measurements of the derivative warrant liabilities are evaluated by management to ensure that changes are consistent with expectations of management based upon the sensitivity and nature of the related inputs. Significant changes in any of those inputs in isolation can result in a significant change in the fair value measurement. Generally, an increase in the market price of our Common Stock, an increase in the volatility of our Common Stock, an increase in the remaining term of the warrants, or an increase of a probability of a down-round triggering event would each result in a directionally similar change in the estimated fair value of our derivative warrant liabilities. Such changes would increase the associated liability while decreases in these assumptions would decrease the associated liability. An increase in the risk-free interest rate or a decrease in the positive differential between the warrants' exercise price and the market price of our Common Stock would result in a decrease in the estimated fair value measurement of the warrants and thus a decrease in the associated liability. We have not, and do not plan to, declare dividends on our Common Stock and, as such, there is no change in the estimated fair value of the derivative warrant liabilities due to the dividend assumption. Had we made different assumptions about the inputs noted above, the recorded gain or loss, our net loss and net loss per share amounts could have been significantly different.

Income taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is provided for the amount of deferred tax assets that, based on available evidence, are not more likely than not to be realized. Tax benefits related to excess deductions on stock-based compensation arrangements are recognized when they reduce taxes payable.

In assessing the need for a valuation allowance, we look at cumulative losses in recent years, estimates of future taxable earnings, feasibility of tax planning strategies, the ability to realize tax benefit carryforwards, and other relevant information. Valuation allowances related to deferred tax assets can be impacted by changes to tax laws, changes to statutory tax rates and future taxable earnings. Ultimately, the actual tax benefits to be realized will be based upon future taxable earnings levels, which are very difficult to predict. In the event that actual results differ from these estimates in future periods, we will be required to adjust the valuation allowance.

Significant judgment is required in evaluating our federal, state and foreign tax positions and in the determination of our tax provision. Despite management's belief that our liability for unrecognized tax benefits is adequate, it is often difficult to predict the final outcome or the timing of the resolution of any particular tax matters. We may adjust these accruals as relevant circumstances evolve, such as guidance from the relevant tax authority, our tax advisors, or resolution of issues in the courts. Our tax expense includes the impact of accrual provisions and changes to accruals that it considers appropriate. These adjustments are recognized as a component of income tax expense entirely in the period in which new information is available. We record interest related to unrecognized tax benefits in interest expense and penalties in the accompanying consolidated statements of operations and comprehensive loss as general and administrative expenses.

We recognize the effect of income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs.

Recently adopted accounting pronouncements

ASU No. 2016-02, Leases (Topic 842), as amended

This standard and its amendments provide new guidance related to accounting for leases and supersedes GAAP on lease accounting with the intent to increase transparency. This standard requires operating leases to be recorded on the balance sheet as assets and liabilities and requires disclosure of key information about leasing arrangements. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the statement of operations and comprehensive loss.

On January 1, 2019, the Company adopted ASU 2016-02 on a prospective basis, beginning on January 1, 2019, using the optional transition method. The Company applied the transition options permitted by ASU 2018-11 and elected the package of practical expedients to alleviate certain operational and reporting complexities related to the adoption, one of which was not to recognize a right of use asset or lease liability for leases with a term of 12 months or less. See Note 9. "*Leases*" for further discussion. The Company recorded right of use assets and lease liabilities for its operating leases of $10,809 upon adoption of ASU 2016-02.

ASU No. 2018-02, Income Statement – Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income

This standard provides guidance on the reclassification of certain tax effects from accumulated other comprehensive income to retained earnings in the period in which the effects of the change in the U.S. federal corporate income tax rate in the Tax Cuts and Jobs Act is recorded. The new standard is effective for the fiscal year beginning after December 15, 2018. The Company adopted this standard on January 1, 2019. Adoption of this standard did not have a material impact on the Company's consolidated financial statements.

Recently issued accounting pronouncements

ASU No. 2016-13, Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments

This standard changes the impairment model for most financial assets that are measured at amortized cost and certain other instruments, including trade receivables, from an incurred loss model to an expected loss model and adds certain new required disclosures. Under the expected loss model, entities will recognize estimated credit losses to be incurred over the entire contractual term of the instrument rather than delaying recognition of credit losses until it is probable the loss has been incurred. The new standard is effective for the fiscal year beginning after December 15, 2019, with early adoption permitted. Based upon the outstanding balance of the Company's trade receivables and its positive collection history, the Company's management does not believe that the adoption of this standard will have a material impact on its consolidated financial position and results of operations.

ASU No. 2018-13, Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement

This amendment provides updates to the disclosure requirements on fair value measures in Topic 820 which includes the changes in unrealized gains and losses in other comprehensive income for recurring Level 3 fair value measurements, the option of additional quantitative information surrounding unobservable inputs and the elimination of disclosures around the valuation processes for Level 3 measurements. The new standard is effective for the fiscal year beginning after December 15, 2019. The Company's management does not believe that the adoption of this standard will have a material impact on its consolidated financial position and results of results of operations.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not required as we are a smaller reporting company.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Our consolidated financial statements required by this Item are set forth in Item 15 beginning on page F-1 of this Annual Report on Form 10-K.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as defined in Rule 13a-15(e) promulgated under the Exchange Act that are designed to ensure that information required to be disclosed in Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer (Principal Financial and Accounting Officer), as appropriate, to allow timely decisions regarding required disclosure.

Report of Management on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) promulgated under the Exchange Act as a process designed by, or under the supervision of, our principal executive officer and principal financial and accounting officer and effected by our Board of Directors, management, and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on the financial statements.

Because of our inherent limitations, our internal control over financial reporting may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2019. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control – Integrated Framework (2013 Framework).*

Based on our evaluation, management concluded that our internal control over financial reporting was not effective as of December 31, 2019 due to a material weakness in our internal controls over our financial close and reporting process. A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected and corrected on a timely basis. As this deficiency created a reasonable possibility that a material misstatement would not be prevented or detected in a timely basis, management concluded that the control deficiency represented a material weakness and accordingly our internal control over financial reporting was not effective as of December 31, 2019. Management concluded that additional formal procedures should be implemented in the financial close and reporting process to ensure that appropriate and timely reviews occur on all financial reporting analysis. Management also concluded that we did not have a sufficient complement of corporate personnel with appropriate levels of accounting and controls knowledge and experience commensurate with our financial reporting requirements to appropriately analyze, record and disclose accounting matters completely and accurately.

The material weakness in our internal control over financial reporting resulted in proposed audit adjustments to the Company's consolidated financial statements in the areas of lease accounting, long-lived asset impairment and accrued liabilities accounting as of and for the year ended December 31, 2019.

Remediation Plan for Material Weakness in Internal Control over Financial Reporting

We are still considering the full extent of the procedures to implement in order to remediate the material weakness described above. The current remediation plan includes a more robust review process, and an increase in the supervision and monitoring of the financial reporting processes and our accounting personnel. We will ensure that accounting personnel have the level of accounting and controls knowledge and experience commensurate with our financial reporting requirements by instituting a formal training program for all accounting personnel on a regular basis on internal control procedures over financial reporting. The current remediation plan also includes implementing controls over calculations, analysis and conclusions associated with non-routine transactions at a more precise level. We will also allocate additional resources to the corporate accounting function, which may include the use of independent consultants with sufficient expertise to assist in the preparation and review of certain non-recurring transactions and timely review of the account reconciliations

Lastly we will automate, where possible and practical, all account analysis and calculations currently being done manually by better utilizing our current general ledger accounting system. Where cost effective, we will outsource any manually processes that are time consuming to free up accounting personnel to spend more time preparing and reviewing account analysis.

We cannot assure you that any of our remedial measures will be effective in resolving this material weakness. If our management is unable to conclude that we have effective internal control over financial reporting, or to certify the effectiveness of such controls, or if additional material weaknesses in our internal controls are identified in the future, which could result in material misstatements of future annual or interim consolidated financial statements that may not be prevented or detected. We could also be subject to regulatory scrutiny and a loss of public confidence, which could have a material adverse effect on our business and our stock price. In addition, if we do not maintain adequate financial and management personnel, processes and controls, we may not be able to manage our business effectively or accurately report our financial performance on a timely basis, which could cause a decline in our common stock price and adversely affect our results of operations and financial condition

Changes in Internal Control over Financial Reporting

Based on our evaluation, management concluded that our internal control over financial reporting was not effective as of December 31, 2019 due to a material weakness in our internal control over our financial close and reporting process. Management concluded that we did not have a sufficient complement of corporate personnel with appropriate levels of accounting and controls knowledge and experience commensurate with our financial reporting requirements to appropriately analyze, record and disclose accounting matters completely and accurately. As a result of this evaluation, the Principal Accounting Officer extensively used outside consultants who possessed the appropriate levels of accounting and controls knowledge.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information called for by this Item will be included in an amendment to this Annual Report on Form 10-K to be filed with the SEC and is incorporated by reference in this Item 10.

ITEM 11. EXECUTIVE COMPENSATION

Information called for by this Item will be included in an amendment to this Annual Report on Form 10-K to be filed with the SEC and is incorporated by reference in this Item 11.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information called for by this Item will be included in an amendment to this Annual Report on Form 10-K to be filed with the SEC ” and is incorporated by reference in this Item 12.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information called for by this Item will be included in an amendment to this Annual Report on Form 10-K to be filed with the SEC and is incorporated by reference in this Item 13.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Information called for by this Item will be included in an amendment to this Annual Report on Form 10-K to be filed with the SEC and is incorporated by reference in this Item 14.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)(1) *Consolidated Financial Statements.* For the financial statements included in this Annual Report on Form 10-K, see “Index to the Financial Statements” on page F-1.

(a)(2) *Consolidated Financial Statement Schedules.* All schedules are omitted because they are not applicable or because the required information is included in the financial statements or notes thereto.

(a)(3) *Exhibits.* The following exhibits are filed as part of, or incorporated by reference into, this Annual Report on Form 10-K.

Exhibits Index

Exhibit No.	Description
2.1	Agreement and Plan of Merger by and among FORM Holdings Corp., FHXMS, LLC, XpresSpa Holdings, LLC, the unitholders of XpresSpa who are parties thereto and Mistral XH Representative, LLC, as representative of the unitholders, dated as of August 8, 2016 (incorporated by reference to Exhibit 2.1 to our Current Report on Form 8-K filed with the SEC on August 8, 2016)
2.2	Amendment No. 1 to Agreement and Plan of Merger by and among FORM Holdings Corp., FHXMS, LLC, XpresSpa Holdings, LLC and Mistral XH Representative, LLC, as representative of the unitholders, dated September 8, 2016 (incorporated by reference to Exhibit 2.1 to our Current Report on Form 8-K filed with the SEC on September 9, 2016)
2.3	Amendment No. 2 to Agreement and Plan of Merger by and among FORM Holdings Corp., FHXMS, LLC, XpresSpa Holdings, LLC and Mistral XH Representative, LLC, as representative of the unitholders, dated October 25, 2016 (incorporated by reference to Exhibit 2.1 to our Current Report on Form 8-K filed with the SEC on October 25, 2016)
3.1*	Amended and Restated Certificate of Incorporation
3.2	Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2 to our Annual Report on Form 10-K filed with the SEC on April 1, 2019)
4.1	Form of Warrant (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on October 16, 2015)
4.2	Form of Warrant (incorporated by reference from Exhibit 10.3 to our Current Report on Form 8-K filed with the SEC on May 4, 2015)
4.3	Section 382 Rights Agreement, dated as of March 18, 2016, between Vringo, Inc. and American Stock Transfer & Trust Company, LLC, which includes the Form of Certificate of Designation of Series C Junior Participating Preferred Stock as Exhibit A, the Form of Right Certificate as Exhibit B and the Summary of Rights to Purchase Preferred Stock as Exhibit C (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on March 21, 2016)
4.4	Amendment to Section 382 Rights Agreement, dated March 18, 2019, between the Company and American Stock Transfer & Trust Company, LLC (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on March 22, 2019)
4.5	Form of Warrant to Purchase Shares of Common Stock of FORM Holdings Corp. (incorporated by reference from Annex F to our Registration Statement on Form S-4 filed with the SEC on October 26, 2016)
4.6	Form of Secured Convertible Note (incorporated by reference from Exhibit 4.1 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018)
4.7	Amendment to Secured Convertible Note (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on June 27, 2019)
4.8	Second Amended and Restated Convertible Promissory Note, dated as of July 8, 2019 (incorporated by reference from Exhibit 4.3 to our Current Report on Form 8-K filed with the SEC on July 8, 2019)
4.9	Third Amended and Restated Convertible Promissory Note, dated as of January 9, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on January 14, 2020)
4.10	Fourth Amended and Restated Convertible Promissory Note, dated as of March 6, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on March 6, 2020)

4.11	Form of Class A Warrant (incorporated by reference from Exhibit 4.2 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018)
4.12	Form of Class B Warrant (incorporated by reference from Exhibit 4.3 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018)
4.13	Form of First Amendment to Warrant to Purchase Common Stock, dated as of May 16, 2019 (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on May 17, 2019)
4.14	Form of Second Amendment to Warrant to Purchase Common Stock, dated as of June 17, 2019 (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on June 17, 2019)
4.15	Unsecured Convertible Note due May 31, 2022 (incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on July 8, 2019)
4.16	Warrant to Purchase Common Stock in favor of Calm.com, Inc., dated as of July 8, 2019 (incorporated by reference to Exhibit 4.2 to our Current Report on Form 8-K filed with the SEC on July 8, 2019)
4.17	Form of December 2016 Warrant Amendment, dated as of July 8, 2019 (incorporated by reference from Exhibit 4.4 to our Current Report on Form 8-K filed with the SEC on July 8, 2019)
4.18	Form of Pre-Funded Warrant to Purchase Common Stock, dated March 19, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on March 19, 2020)
4.19	Form of Pre-Funded Warrant to Purchase Common Stock, dated March 25, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on March 25, 2020)
4.20	Form of Pre-Funded Warrant to Purchase Common Stock, dated March 27, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on March 27, 2020)
4.21	Form of Pre-Funded Warrant to Purchase Common Stock, dated April 6, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on April 7, 2020)
4.22*	Description of the Registrant's Securities
4.23	Amended and Restated Calm Note, dated as of April 17, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on April 17, 2020).
10.1†	Vringo, Inc. 2012 Employee, Director and Consultant Equity Incentive Plan, as amended (incorporated by reference from Appendix C of our Proxy Statement on Schedule 14A (DEF 14A) filed with the SEC on September 25, 2015)
10.2†	Form of Management Option Agreement (incorporated by reference from our Registration Statement on Form S-1 filed on March 29, 2010).
10.3†	Form of Stock Option Agreement (incorporated by reference from our Registration Statement on Form S-8 filed on July 26, 2012)
10.4†	Form of Restricted Stock Unit Agreement (incorporated by reference from our Registration Statement on Form S-8 filed on July 26, 2012)
10.5	Form of Indemnification Agreement, dated January 31, 2013, by and between Vringo, Inc. and each of its Directors and Executive Officer (incorporated by reference from our Annual Report on Form 10-K for the period ended December 31, 2012 filed on March 21, 2013)

10.6†	FORM Holdings Corp. 2012 Employee, Director and Consultant Equity Incentive Plan, as amended (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on November 28, 2016)
10.7†	Independent Director's Agreement, by and between FORM Holdings Corp. and Andrew R. Heyer, dated as of December 23, 2016 (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on December 23, 2016)
10.8†	Executive Employment Agreement, dated January 20, 2017, by and between FORM Holdings Corp. and Edward Jankowski (incorporated by reference from Exhibit 10.2 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2017)
10.9	Credit Agreement dated as of April 22, 2015, by and between XpresSpa Holdings, LLC and Rockmore Investment Master Fund Ltd (incorporated by reference from Exhibit 10.1 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.10	First Amendment to Credit Agreement and Conditional Waiver dated as of August 8, 2016, by and between XpresSpa Holdings, LLC and Rockmore Investment Master Fund Ltd (incorporated by reference from Exhibit 10.2 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.11	Second Amendment to Credit Agreement dated as of May 10, 2017, by and between XpresSpa Holdings, LLC and B3D, LLC (incorporated by reference from Exhibit 10.3 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.12	Third Amendment to Credit Agreement dated as of May 14, 2018, by and between XpresSpa Holdings, LLC and B3D, LLC (incorporated by reference from Exhibit 10.4 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.13	Fourth Amendment to Credit Agreement, dated as of July 8, 2019, by and between XpresSpa Holdings LLC and B3D, LLC (incorporated by reference from Exhibit 10.3 to our Current Report on Form 8-K filed with the SEC on July 8, 2019)
10.14	Registration Rights Agreement, dated as of July 8, 2019, by and between the Company and B3D, LLC (incorporated by reference from Exhibit 10.4 to our Current Report on Form 8-K filed with the SEC on July 8, 2019)
10.15	Amendment to Second Amended and Restated Convertible Promissory Note, dated August 22, 2019, by and between XpresSpa Holdings LLC and B3D, LLC (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on August 26, 2019)
10.16	Fifth Amendment to Credit Agreement, dated as of January 9, 2020, by and between XpresSpa Holdings LLC and B3D, LLC (incorporated by reference from Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on January 14, 2020)
10.17	Sixth Amendment to Credit Agreement, dated as of March 6, 2020, by and between XpresSpa Holdings LLC and B3D, LLC (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on March 6, 2020)
10.18	Form of Securities Purchase Agreement, dated May 15, 2018, by and among the Company and the Investors (incorporated by reference from Exhibit 10.8 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).

10.19	Form of Registration Rights Agreement, dated May 15, 2018, by and among the Company and the Investors (incorporated by reference from Exhibit 10.9 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.20	Amendment to Securities Purchase Agreement and Class A Warrants and Class B Warrants, dated as of July 8, 2019, by and between the Company and the purchasers party thereto (incorporated by reference from Exhibit 10.5 to our Current Report on Form 8-K filed with the SEC on July 8, 2019)
10.21	Product Sale and Marketing Agreement, dated November 12, 2018, by and between the Company and Calm.com, Inc. (incorporated by reference to Exhibit 10.28 to our Annual Report on Form 10-K filed with the SEC on April 1, 2019)
10.22	Amendment to Amended and Restated Product Sale and Marketing, dated as of October 30, 2019, by and between the Company and Calm.com, Inc. (incorporated by reference from Exhibit 10.8 to our Quarterly Report on Form 10-Q filed with the SEC on November 14, 2019)
10.23†	Separation Agreement between the Company and Mr. Edward Jankowski, dated March 14, 2019 (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on March 15, 2019).
10.24†	Non-Disclosure Agreement between the Company and Mr. Edward Jankowski, dated March 14, 2019 (incorporated by reference from Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on March 15, 2019).
10.25	Securities Purchase Agreement, dated as of July 8, 2019, by and between the Company and Calm.com, Inc. (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on July 8, 2019)
10.26	Registration Rights Agreement, dated as of July 8, 2019, by and between the Company and Calm.com, Inc. (incorporated by reference from Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on July 8, 2019)
10.27	Amendment No. 3 to Agreement and Plan of Merger, dated as of October 1, 2019, by and between the Company, XpresSpa Holdings, LLC, and Mistral XH Representative, LLC, as representative of the unitholders of the Company (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on October 3, 2019)
10.28	Form of Accounts Receivable Advance, dated as of January 9, 2020, by and between certain subsidiaries of the Company and CC Funding, a division of Credit Cash NJ, LLC (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on January 14, 2020)
10.29	Securities Purchase Agreement, date as of March 19, 2020, by and between the Company and the purchasers party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on March 19, 2020)
10.30	Form of Exchange Agreement, date as of March 19, 2020 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the SEC on March 19, 2020)
10.31	Voting Agreement, date as of March 19, 2020, by and between the Company and Mistral Spa Holdings LLC (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the SEC on March 19, 2020)

10.32	Securities Purchase Agreement, date as of March 25, 2020, by and between the Company and the purchasers party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on March 25, 2020)
10.33	Securities Purchase Agreement, date as of March 27, 2020, by and between the Company and the purchasers party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on March 27, 2020)
10.34	Securities Purchase Agreement, date as of April 6, 2020, by and between the Company and the purchasers party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on April 7, 2020)
21*	Subsidiaries of XpresSpa Group, Inc.
23.1*	Consent of CohnReznick LLP, independent registered public accounting firm
31.1*	Certification of Principal Executive Officer and Principal Financial Officer pursuant to Exchange Act, Rules 13a – 14(a) and 15d – 14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32**	Certifications of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document

* Filed herewith.

** Furnished herewith.

† Management contract or compensatory plan or arrangement.

†† Certain portions have been omitted pursuant to a confidential treatment request. Omitted information has been filed separately with the SEC.

ITEM 16. FORM 10-K SUMMARY

None.

Exhibit XpresSpa Group, Inc. and Subsidiaries
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

The Board of Directors and
Stockholders of XpresSpa Group, Inc.:

Opinion on the Consolidated Financial Statements
We have audited the accompanying consolidated balance sheets of XpresSpa Group, Inc. and subsidiaries (the Company) as of December 31, 2019 and 2018, and the related consolidated statements of operations and comprehensive loss, changes in stockholders' equity (deficit) and cash flows for the years then ended, and the related notes (collectively referred to as the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2019, in conformity with accounting principles generally accepted in the United States of America.

Substantial Doubt about the Company's Ability to Continue as a Going Concern
The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, based on its projections, the Company anticipates that during 2020, it will not have sufficient capital to repay its current obligations. Furthermore, the Company's recurring losses from operations, working capital deficiency and stockholders' deficit raises substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion
These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ CohnReznick LLP

We have served as the Company's auditor since 2015.

Jericho, New York
April 20, 2020

XpresSpa Group, Inc. and Subsidiaries
CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share data)

	December 31, 2019	December 31, 2018
Current assets		
Cash and cash equivalents	$ 2,184	$ 3,403
Inventory	647	782
Other current assets	1,102	1,574
Total current assets	3,933	5,759
Restricted cash	451	487
Property and equipment, net	8,064	11,795
Intangible assets, net	6,783	9,167
Operating lease right of use assets, net	8,254	—
Other assets	1,239	3,376
Total assets	$ 28,724	$ 30,584
Current liabilities		
Accounts payable, accrued expenses and other current liabilities	$ 12,551	$ 8,172
Current portion of operating lease liabilities	3,669	—
Senior secured note	—	6,500
Convertible notes, net	—	1,986
Total current liabilities	16,220	16,658
Long-term liabilities		
Senior secured note, net	4,580	—
Convertible note, net	1,182	—
Derivative liabilities	3,137	476
Operating lease liabilities	5,826	—
Other liabilities	315	315
Total liabilities	31,260	17,449
Commitments and contingencies (see Note 19)		
Stockholders' equity/(deficit)*		
Series A Convertible Preferred Stock, $0.01 par value per share; 6,968 shares authorized; 6,673 issued and none outstanding	—	—
Series C Junior Preferred stock, $0.01 par value per share; 300,000 shares authorized; none issued and outstanding	—	—
Series D Convertible Preferred Stock, $0.01 par value per share, 500,000 shares authorized; 425,750 shares issued and outstanding at December 31, 2018 with a liquidation value of $20,436. None at December 31, 2019	—	4
Series E Convertible Preferred Stock, $0.01 par value per share, 2,397,060 shares authorized; 977,865 and 967,742 shares issued and outstanding at December 31, 2019 and 2018, respectively, with a liquidation value of $3,031 and $3,000, respectively	10	10
Series F Convertible Preferred Stock, $0.01 par value per share, 9,000 shares authorized; 8,996 shares issued and outstanding at December 31, 2019 and none at December 31, 2018 with a liquidation value of $900	—	—
Common Stock, $0.01 par value per share 150,000,000 shares authorized; 15,472,171 and 1,761,802 shares issued and outstanding as of December 31, 2019 and 2018, respectively	489	352
Additional paid-in capital	301,681	295,904
Accumulated deficit	(308,136)	(286,913)
Accumulated other comprehensive loss	(283)	(251)
Total stockholders' equity/(deficit) attributable to common stockholders	(6,239)	9,106
Noncontrolling interests	3,703	4,029
Total stockholders' equity (deficit)	(2,536)	13,135
Total liabilities and stockholders' equity (deficit)	$ 28,724	$ 30,584

*2018 share amounts were adjusted to reflect the impact of the 1:20 reverse stock split that became effective on February 22, 2019.

The accompanying notes form an integral part of these consolidated financial statements.

XpresSpa Group, Inc. and Subsidiaries
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(In thousands, except share and per share data)

	For the years ended December 31,	
	2019	**2018**
Revenue		
Services	$ 39,989	$ 41,163
Products	7,320	8,131
Other	1,206	800
Total revenue	48,515	50,094
Cost of sales		
Labor	22,847	24,369
Occupancy	7,831	8,118
Products and other operating costs	7,176	6,964
Total cost of sales	37,854	39,451
Depreciation and amortization	6,124	7,398
Impairment/disposal of assets	6,090	2,100
Goodwill impairment	—	19,630
General and administrative	14,319	16,240
Total operating expenses	64,387	84,819
Operating loss from continuing operations	(15,872)	(34,725)
Interest expense	(2,900)	(1,827)
Other non-operating income (expense), net	(1,904)	643
Loss from continuing operations before income taxes	(20,676)	(35,909)
Income tax benefit	146	278
Loss from continuing operations	(20,530)	(35,631)
Loss from discontinued operations net of income taxes	—	(1,115)
Net loss	(20,530)	(36,746)
Net income attributable to noncontrolling interests	(693)	(459)
Net loss attributable to common shareholders	$ (21,223)	$ (37,205)
Loss from continuing operations	$ (20,530)	$ (35,631)
Other comprehensive loss from continuing operations	(32)	(177)
Comprehensive loss from continuing operations	(20,562)	(35,808)
Other comprehensive loss from discontinued operations	—	(1,115)
Comprehensive loss	$ (20,562)	$ (36,923)
Loss per share*		
Loss per share from continuing operations	$ (4.33)	$ (24.83)
Loss per share from discontinued operations	—	(0.77)
Total basic and diluted net loss per share	$ (4.33)	$ (25.60)
Weighted-average number of shares outstanding during the year*		
Basic	4,903,331	1,453,635
Diluted	4,903,331	1,453,635

*2018 per share and weighted-average number of shares were adjusted to reflect the impact of the 1:20 reverse stock split that became effective on February 22, 2019.

The accompanying notes form an integral part of these consolidated financial statements.

XpresSpa Group, Inc. and Subsidiaries
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)
(In thousands)

	Preferred stock	Common stock	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Total Company equity (deficit)	Non-controlling interests	Total equity (deficit)
December 31, 2018	$ 14	$ 352	$ 295,904	$ (286,913)	$ (251)	$ 9,106	$ 4,029	$ 13,135
Issuance of common stock for repayment of interest	—	2	815	—	—	817	—	817
Stock-based compensation	—	—	104	—	—	104	—	104
Net income (loss) for the period	—	—	—	(2,973)	—	(2,973)	129	(2,844)
Foreign currency translation	—	—	—	—	(21)	(21)	—	(21)
Distributions to noncontrolling interests	—	—	—	—	—	—	(166)	(166)
March 31, 2019	14	354	296,823	(289,886)	(272)	7,033	3,992	11,025
Conversion of senior notes and warrants into common shares	—	6	3,488	—	—	3,494	—	3,494
Stock-based compensation	—	—	127	—	—	127	—	127
Foreign currency translation	—	—	—	—	(170)	(170)	—	(170)
Net income (loss) for the period	—	—	—	(6,338)	—	(6,338)	245	(6,093)
Contributions from noncontrolling interests	—	—	—	—	—	—	16	16
Distributions to noncontrolling interests	—	—	—	—	—	—	(174)	(174)
June 30, 2019	14	360	300,438	(296,224)	(442)	4,146	4,079	8,225
Issuance of Series F Preferred Stock, net	—	—	1,131	—	—	1,131	—	1,131
Stock-based compensation	—	—	35	—	—	35	—	35
Exercise of June 2019 Class A Warrants into common stock	—	3	(3)	—	—	—	—	—
Foreign currency translation	—	—	—	—	82	82	—	82
Net income (loss) for the period	—	—	—	(4,844)	—	(4,844)	210	(4,634)
Distributions to noncontrolling interests	—	—	—	—	—	—	(302)	(302)
September 30, 2019	14	363	301,601	(301,068)	(360)	550	3,987	4,537
Conversion of Series D Preferred Stock into common shares, net	(4)	110	(101)	—	—	5	—	5
Issuance of common shares to pay interest on borrowings	—	2	103	—	—	105	—	105
Stock-based compensation	—	—	69	—	—	69	—	69
Exercise of warrants into common stock	—	14	(14)	—	—	—	—	—
Foreign currency translation	—	—	—	—	77	77	—	77
Net income (loss) for the period	—	—	—	(7,068)	—	(7,068)	109	(6,959)
Payment of withholding taxes on RSUs	—	—	23	—	—	23	—	23
Contributions from noncontrolling interests	—	—	—	—	—	—	162	162
Distributions to noncontrolling interests	—	—	—	—	—	—	(555)	(555)
December 31, 2019	$ 10	$ 489	$ 301,681	$ (308,136)	$ (283)	$ (6,239)	$ 3,703	$ (2,536)

The accompanying notes form an integral part of these consolidated financial statements.

XpresSpa Group, Inc. and Subsidiaries
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)
(In thousands)

	Preferred stock	Common stock	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Total Company equity	Non-controlling interests	Total equity(deficit)
December 31, 2017	$ 4	$ 265	$ 290,396	$ (249,708)	$ (74)	$ 40,883	$ 4,956	$ 45,839
Vesting of restricted stock units	—	1	(1)	—	—	—	—	—
Stock-based compensation	—	—	312	—	—	312	—	312
Net income (loss) for the period	—	—	—	(23,933)	—	(23,933)	83	(23,850)
Foreign currency translation	—	—	—	—	(66)	(66)	—	(66)
Contributions from noncontrolling interests	—	—	—	—	—	—	—	—
Distributions to noncontrolling interests	—	—	—	—	—	—	(220)	(220)
March 31, 2018	4	266	290,707	(273,641)	(140)	17,196	4,819	22,015
Vesting of restricted stock units	—	5	(5)	—	—	—	—	—
Issuance of equity warrants	—	—	64	—	—	64	—	64
Stock-based compensation	—	—	259	—	—	259	—	259
Net income (loss) for the period	—	—	—	(3,523)	—	(3,523)	177	(3,346)
Foreign currency translation	—	—	—	—	(136)	(136)	—	(136)
Contributions from noncontrolling interests	—	—	—	—	—	—	76	76
Distributions to noncontrolling interests	—	—	—	—	—	—	(920)	(920)
June 30, 2018	4	271	291,025	(277,164)	(276)	13,860	4,152	18,012
Stock-based compensation	—	—	194	—	—	194		194
Issuance of common stock for repayment of debt and interest	—	48	770	—	—	818	—	818
Net income (loss) for the period	—	—	—	(3,187)	—	(3,187)	122	(3,065)
Foreign currency translation	—	—	—	—	(3)	(3)		(3)
Contributions from noncontrolling interests	—	—	—	—	—	—	43	43
Distributions to noncontrolling interests	—	—	—	—	—	—	(244)	(244)
September 30, 2018	4	319	291,989	(280,351)	(279)	11,682	4,073	15,755
Stock-based compensation	—	—	151	—	—	151	—	151
Issuance of Series E Convertible Preferred Stock	10	—	2,990	—	—	3,000	—	3,000
Vesting of restricted stock units								
Issuance of common stock for repayment of debt and interest	—	28	532	—	—	560	—	560
Issuance of common stock for services		5	242			247		247
Net income (loss) for the period	—	—	—	(6,562)	—	(6,562)	77	(6,485)
Foreign currency translation	—	—	—	—	28	28		28
Contributions from noncontrolling interests	—	—	—	—	—	—	131	131
Distributions to noncontrolling interests	—	—	—		—	—	(252)	(252)
December 31, 2018	$ 14	$ 352	$ 295,904	$ (286,913)	$ (251)	$ 9,106	$ 4,029	$ 13,135

The accompanying notes form an integral part of these consolidated financial statements.

XpresSpa Group, Inc. and Subsidiaries
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	For the years ended December 31,	
	2019	**2018**
Cash flows from operating activities		
Consolidated net loss	$ (20,530)	$ (36,746)
Consolidated net loss from discontinued operations	—	(1,115)
Consolidated net loss from continuing operations	(20,530)	(35,631)
Adjustments to reconcile consolidated net loss from continuing operations to net cash used in operating activities:		
Items included in consolidated net loss not affecting cash flows		
Depreciation and amortization	6,124	7,398
Impairment/disposal of long-lived assets	4,106	2,100
Revaluation of warrants and conversion options	(2,170)	(1,520)
Debt conversion expense	1,584	—
Impairment of cost investments	1,984	—
Issuance of Series F Convertible Preferred Stock	1,131	—
Amortization of debt discount and debt issuance costs	1,031	986
Stock-based compensation	335	916
Issuance of warrants	689	64
Accretion of interest	958	—
Issuance of shares of Common Stock for services	—	247
Issuance of Common Stock for payment of interest	105	310
Impairment of goodwill	—	19,630
Gain on the sale of patents	—	(450)
Changes in assets and liabilities		
Decrease in inventory	136	377
Decrease (increase) in other assets, net	644	(1,835)
Increase (decrease) in accounts payable, accrued expenses and other current liabilities	3,760	(604)
Decrease in other liabilities	—	(55)
Net cash used in operating activities – continuing operations	(113)	(8,067)
Net cash provided by operating activities – discontinued operations	—	1,501
Net cash used in operating activities	(113)	(6,566)
Cash flows from investing activities		
Acquisition of property and equipment	(2,275)	(3,031)
Acquisition of software	—	(85)
Proceeds from the sale of subsidiary	—	800
Proceeds from the sale of cost method investment	—	200
Proceeds from sale of patents	—	250
Net cash used in investing activities – continuing operations	(2,275)	(1,866)
Net cash used in investing activities – discontinued operations	—	—
Net cash used in investing activities	(2,275)	(1,866)
Cash flows from financing activities		
Proceeds from the issuance of note to Calm	2,500	—
Proceeds from convertible notes and warrants	—	4,350
Debt issuance costs	(714)	(320)
Issuance of shares of Series E Convertible Preferred Stock	—	3,000
Additional borrowing from B3D	500	—
Payments on 5% Convertible Notes	(129)	—
Contributions from noncontrolling interests	178	250
Distributions to noncontrolling interests	(1,197)	(1,636)
Other	27	—
Net cash provided by financing activities – continuing operations	1,165	5,644
Net cash provided by financing activities – discontinued operations	—	—
Net cash provided by financing activities	1,165	5,644
Effect of exchange rate changes	(32)	(177)
Decrease in cash, cash equivalents and restricted cash	(1,255)	(2,965)
Cash, cash equivalents, and restricted cash at beginning of the year	3,890	6,855
Cash, cash equivalents, and restricted cash at end of the year	$ 2,635	$ 3,890
Cash paid during the year for		
Interest	$ 735	$ 731
Income taxes	$ 124	$ —
Non-cash investing and financing transactions		
Debt discount related to issuance of convertible notes	$ 4,142	$ 1,962
Conversion of senior notes and warrants into Common Stock	$ 3,494	$ —
Issuance of Series F Convertible Preferred Stock	$ 1,131	$ —
Issuance of shares of Common Stock to pay debt and interest	$ 817	$ 1,368
Conversion of Series D Convertible Preferred Stock to Common Stock	$ 110	$ —
Conversion/exercise of warrants into Common Stock	$ 17	$ —

Non-cash acquisition of cost method investment	$	—	$	2,075
Non-cash acquisition of construction-in-progress	$	—	$	228

The accompanying notes form an integral part of these consolidated financial statements.

Note 1. General

Overview

On January 5, 2018, the Company changed its name to XpresSpa Group, Inc. ("XpresSpa Group" or the "Company") from FORM Holdings Corp. The Company's common stock, par value $0.01 per share (the "Common Stock"), which had previously been listed under the trading symbol "FH" on the Nasdaq Capital Market, has been listed under the trading symbol "XSPA" since January 8, 2018. Rebranding to XpresSpa Group aligned the Company's corporate strategy to build a pure-play health and wellness services company, which the Company commenced following its acquisition of XpresSpa Holdings, LLC ("XpresSpa") on December 23, 2016.

As a result of the transition to a pure-play health and wellness services company, the Company currently has one operating segment that is also its sole reporting unit, XpresSpa. XpresSpa is a well-recognized, leading airport retailer of spa services and related products. As of December 31, 2019, XpresSpa operated 51 total locations in 25 airports, in three countries including the United States, Netherlands and United Arab Emirates. Services and products include:

- massage services for the neck, back, feet and whole body;
- nail care, such as pedicures, manicures and polish changes;
- travel products, such as neck pillows, blankets and massage tools; and
- new offerings, such as cryotherapy services, NormaTec compression services, and Dermalogica personal care services and retail products.

During 2019 and 2018, XpresSpa generated $48,515 and $50,094 of revenue, respectively. In 2019 and 2018, approximately 82% of XpresSpa's total revenue was generated by services, primarily massage and nailcare, 15% and 16%, respectively, was generated by retail products, primarily luxury travel products and accessories and 3% and 2%, respectively, was other revenue.

For over 15 years, increased security requirements have led travelers to spend more time at the airport. In addition, in anticipation of the long and often stressful security lines, travelers allow for more time to get through security and, as a result, often experience increased downtime prior to boarding. Consequently, travelers at large airport hubs have idle time in the terminal after passing through security.

XpresSpa was developed to address the stress and idle time spent at the airport, allowing travelers to spend this time productively, by relaxing and focusing on personal care and wellness. XpresSpa is well positioned to benefit from consumers' growing interest in health and wellness and increasing demand for spa services and related wellness products.

In addition, a confluence of microeconomic events has created favorable conditions for the expansion of retail concepts at airports, in particular retail concepts that attract higher spending from air travelers. The competition for airplane landings has forced airports to lower landing fees, which in turn has necessitated augmenting their retail offerings to offset budget shortfalls. Infrastructure projects at airports across the country, intended to make an airport more desirable to airlines, require funding from bond issuances that in turn rely upon, in part, the expected minimum rent guarantees and expected income from concessionaires.

The Company owns certain patent portfolios, which, in prior years, it monetized through sales and licensing agreements. During the year ended December 31, 2018, the Company determined that its former intellectual property operating segment would no longer be an area of focus and, as such, will no longer operate as a separate operating segment, as it no longer generates any material revenues or operating costs.

In March 2018, the Company completed the sale of Group Mobile Int'l LLC ("Group Mobile"). This entity was previously included in the Company's technology operating segment. The results of operations for Group Mobile are presented in the consolidated statements of operations and comprehensive loss as net loss from discontinued operations.

Recent Developments

Effects of Coronavirus on Business

On March 11, 2020, the World Health Organization declared the outbreak of the Coronavirus ("COVID-19"), which continues to spread throughout the U.S. and the world, a pandemic. The outbreak is having an impact on the global economy, resulting in rapidly changing market and economic conditions. Similar to many businesses in the travel sector, our business has been materially adversely impacted by the recent COVID-19 outbreak and associated restrictions on travel that have been implemented. Effective March 24, 2020, the Company temporarily closed all global spa locations, largely due to the categorization of its spa locations by local jurisdictions as "non-essential services". The Company intends to reopen its spa locations and resume normal operations once restrictions on non-essential services are lifted and airport traffic returns to sufficient levels to support its operations. On March 25, 2020, the Company announced that, during such period as it remains unable to reopen its spa locations for normal operations, it was advancing conversations with certain COVID-19 testing partners to develop a model for testing in U.S. airports.

The temporary closing of the Company's global spa operations has had a materially adverse impact on its cash flows from operations and caused a liquidity crisis. As a result, management has concluded that there was a long-lived asset impairment triggering event during the first quarter of 2020, which will result in management performing an impairment evaluation of certain of its long-lived asset balances (primarily leasehold improvements and right of use lease assets totaling approximately $16,318 as of December 31, 2019). This could lead to the Company recording an impairment charge during the first quarter of 2020. The full extent to which COVID-19 will impact the Company's results will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of the virus and the actions to contain or treat its impact.

The Company is currently seeking sources of capital to help fund its business operations during the COVID-19 crisis. It has been able to secure financing during the first quarter of 2020 totaling gross proceeds of approximately $9,440 by obtaining a cash advance on its accounts receivable balances, a loan from its senior secured lender, B3D, LLC ("B3D"), and through common stock offerings (see Note 20, *Subsequent Events*). Depending on the impact of the COVID outbreak on the Company's operations and cash position, it may need to obtain additional financing. If the Company needs to obtain additional financing in the future and is unsuccessful, it may be required to curtail or terminate some or all of its business operations and cause its Board of Directors to possibly pursue a restructuring, which may include a reorganization or bankruptcy under Federal bankruptcy laws, or a dissolution, liquidation and/or winding up of the Company. Accordingly, holders of the Company's secured and unsecured debt and common stock may lose their entire investment in the event of a reorganization, bankruptcy, liquidation, dissolution or winding up of the Company.

Liquidity and Going Concern

As of December 31, 2019, the Company had approximately $2,184 of cash and cash equivalents, and total current assets of approximately $3,933. The Company's total current liabilities balance, which includes primarily accounts payable, accrued expenses, and the current portion of operating lease liabilities was approximately $16,220 as of December 31, 2019. The working capital deficiency was $12,287 as of December 31, 2019, compared to a working capital deficiency of $10,899 as of December 31, 2018. The increase in the working capital deficiency was primarily due to the reduction in cash and other current asset balances from 2018 and the classification of a current portion of lease liability of $3,669 in current liabilities in 2019 but not in 2018, partially offset by the refinancing and recapitalization transactions the Company completed in July of 2019, which are discussed in in the notes to these consolidated financial statements.

While the Company has aggressively reduced operating and overhead expenses, and while it continues to focus on its overall profitability, it has continued to generate negative cash flows from operations, and it expects to incur net losses for the foreseeable future, especially considering the negative impact COVID-19 will have on its liquidity and financial position. As discussed elsewhere in this Annual Report on Form 10-K, the report of the Company's independent registered public accounting firm on the Company's financial statements for the years ended December 31, 2019 and 2018 includes an explanatory paragraph indicating that there is substantial doubt about the Company's ability to continue as a going concern.

The Company has taken actions to improve its overall cash position and access to liquidity through debt and equity financings, by exploring valuable strategic partnerships, right sizing its corporate structure and streamlining its operations. These actions are intended to improve the Company's overall cash position and assist with its liquidity needs, however there can be no assurance that these actions will be sufficient.

These audited financial statements have been prepared assuming that the Company will continue as a going concern and do not include any adjustments that might result if we cease to continue as a going concern.

Material Weakness in Internal Controls over Financial Reporting

Based on management's evaluation under the framework in Internal Control-Integrated Framework, the Company's Chief Executive Officer and Principal Financial Officer concluded that the Company's internal control over financial reporting was not effective as of December 31, 2019 due to a material weakness in its internal controls over its financial close and reporting process and have concluded that the financial close and reporting process needs additional formal procedures to ensure that appropriate reviews occur on all financial reporting analysis. Management also concluded that the Company did not maintain a sufficient complement of corporate personnel with appropriate levels of accounting and controls knowledge and experience commensurate with its financial reporting requirements to appropriately analyze, record and disclose accounting matters completely and accurately. This deficiency created a reasonable possibility that a material misstatement would not be prevented or detected in a timely basis. Management concluded that the control deficiency represented a material weakness and, accordingly, that the Company's internal control over financial reporting was not effective as of December 31, 2019.

The material weakness in our internal control over financial reporting resulted in proposed audit adjustments to the Company's consolidated financial statements in the areas of lease accounting, long-lived asset impairment and accrued liabilities accounting as of and for the year ended December 31, 2019.

The Company is still considering the full extent of the procedures to implement in order to remediate the material weakness described above. The current remediation plan includes a more robust review process, and an increase in the supervision and monitoring of the financial reporting processes and the Company's accounting personnel.

Note 2. Accounting and Reporting Policies

(a) Basis of presentation and principles of consolidation

The accompanying consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America ("U.S. GAAP"). The consolidated financial statements include the accounts of the Company, all entities that are wholly owned by the Company, and all entities in which the Company has a controlling financial interest. All significant intercompany balances and transactions have been eliminated in consolidation.

(b) Use of estimates

The preparation of the accompanying consolidated financial statements in conformity with U.S. GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the consolidated financial statements and the reported amounts of revenues and expenses for the periods presented. Actual results may differ from such estimates. Significant items subject to such estimates and assumptions include the Company's intangibles assets, the useful lives of the Company's intangible assets, the valuation of the Company's derivative warrant liabilities, the valuation of stock-based compensation, deferred tax assets and liabilities, income tax uncertainties, and other contingencies.

(c) Translation into United States dollars

The Company conducts certain transactions in foreign currencies, which are recorded at the exchange rate as of the transaction date. All exchange gains and losses occurring from the remeasurement of monetary balance sheet items denominated in non-dollar currencies are included in non-operating income (expense) in the consolidated statements of operations and comprehensive loss.

Accounts of the foreign subsidiaries of XpresSpa are translated into United States dollars. Assets and liabilities have been translated primarily at year end exchange rates and revenues and expenses have been translated at average monthly rates for the year. The translation adjustments arising from the use of different exchange rates are included as foreign currency translation within the consolidated statements of operations and comprehensive loss and consolidated statements of changes in stockholders' equity (deficit).

(d) Cash and cash equivalents

The Company maintains cash in checking accounts with financial institutions. The Company has established guidelines relating to diversification and maturities of its investments in order to minimize credit risk and maintain high liquidity of funds. Cash equivalents include amounts due from third-party financial institutions for credit and debit card transactions which typically settle in less than five days.

(e) Derivative instruments

The Company recognizes all derivative instruments as either assets or liabilities in the consolidated balance sheets at their respective fair values. The Company's derivative instruments are revalued at each reporting date, with changes in the fair value of the instruments included in the consolidated statements of operations and comprehensive loss as non-operating income (expense). The Company reviews the terms of features embedded in non-derivative instruments to determine if such features require bifurcation and separate accounting as derivative financial instruments. Equity-linked derivative instruments are evaluated in accordance with FASB Accounting Standard Codification ("ASC") 815-40, *"Contracts in an Entity's Own Equity,"* to determine if such instruments are indexed to the Company's own stock and qualify for classification in equity.

(f) Inventory

All inventory is valued at the lower of cost or net realizable value. Cost is determined using a weighted-average cost method. Inventory is included in current assets in the consolidated balance sheets.

(g) Intangible assets

Intangible assets include trade names, customer relationships, and technology, which were acquired as part of the acquisition of XpresSpa in December 2016 and were recorded based on the estimated fair value in purchase price allocation. The intangible assets are amortized over their estimated useful lives, which are periodically evaluated for reasonableness. Gain or loss on dispositions of intangible assets is reflected in general and administrative expense in the consolidated statements of operations and comprehensive loss.

The Company's intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. In assessing the recoverability of the Company's intangible assets, the Company must make estimates and assumptions regarding future cash flows and other factors to determine the fair value of the respective assets. These estimates and assumptions could have a significant impact on whether an impairment charge is recognized and also the magnitude of any such charge. Fair value estimates are made at a specific point in time, based on relevant information. These estimates are subjective in nature and involve uncertainties and matters of significant judgments and therefore cannot be determined with precision. Changes in assumptions could significantly affect the estimates. If these estimates or material related assumptions change in the future, the Company may be required to record impairment charges related to its intangible assets.

(h) Long-lived assets (other than intangible assets)

Property and equipment is recorded at historical cost and primarily consists of leasehold improvements, furniture and fixtures, and other operating equipment. Depreciation is calculated on a straight-line basis over the estimated useful lives of the assets. Leasehold improvements are depreciated over the lesser of the lease term or economic useful life. Maintenance and repairs are charged to expense, and renovations or improvements that extend the service lives of the Company's assets are capitalized over the lesser of the extension period or life of the improvement.

The right of use asset on the Company's consolidated balance sheet represents a lessee's right to use an asset over the life of a lease. The asset is calculated as the initial amount of the lease liability, plus any lease payments made to the lessor before the lease commencement date, plus any initial direct costs incurred, minus any lease incentives received. The amortization period for the right of use asset is from the lease commencement date to the earlier of the end of the lease term or the end of the useful life of the asset.

Long-lived assets are tested for impairment at the lowest level at which there are identifiable operating cash flows, which is at the individual spa location for the XpresSpa business. The Company's long-lived assets consist primarily of leasehold improvements and right to use lease assets for each of its locations (considered the asset group). The Company reviews its long-lived assets for recoverability yearly or sooner if events or changes in circumstances indicate that the carrying value of long-lived assets may not be recoverable. If indicators are present, the Company performs a recoverability test by comparing the sum of the estimated undiscounted future cash flows attributable to the asset group in question to its carrying amount. An impairment loss is recognized if it is determined that the long-lived asset group is not recoverable and is calculated based on the excess of the carrying amount of the long-lived asset group over the long-lived asset groups fair value. The Company estimates the fair value of long-lived assets using present value income approach. Future cash flow was calculated based on forecasts over the estimated remaining useful life of the asset group, which for each of the Company's spa locations, is the remaining term of the operating lease. The Company uses its existing borrowing rate as the discount rate since it expects that this rate incorporates not only the time value of money but also the expectations regarding future cash flows and an appropriate risk premium.

The estimates used to calculate future cash flows are subjective in nature and involve uncertainties and matters of significant judgments and therefore cannot be determined with precision. Changes in assumptions could significantly affect the estimated fair value of each asset group. The Company will calculate the future cash flow using what it believes to be the most predictable of several scenarios. Typically, the changes in assumptions run under different business scenarios would not result in a material change in the assessment of the potential impairment or the impairment amount of a locations long-lived asset group. But if these estimates or related assumptions were to change materially, the Company may be required to record an impairment charge (see Note 6, *Property and Equipment* and Note 9, *Leases)*, for the impairment assessment performed related to those long-lived assets as of December 31, 2019).

(i) Goodwill

Goodwill is an asset representing the future economic benefits arising from other assets acquired in a business combination that are not individually identified and separately recognized.

Goodwill is reviewed for impairment at least annually, and when triggering events occur, in accordance with the provisions of Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") *Topic 350, Intangibles – Goodwill and Other*. The Company evaluates goodwill impairment at the reporting unit level and performs its annual goodwill impairment test as of December 31.

As of December 31, 2018, the Company's goodwill was fully impaired. See *Note 8. Intangible Assets and Goodwill* for further details on the assessment and conclusion on the goodwill impairment recorded during the year ended December 31, 2018.

(j) Lease liabilities

The Company's lease liabilities are determined by calculating the present value of all future lease payments using the rate implicit in the lease if it can be readily determined, or the lessee's incremental borrowing rate. The Company uses it incremental borrowing rate to determine the present value of future lease payments as the rate implicit in its leases could not be readily determined.

Certain leases provide for contingent rents that are not measurable at inception. These contingent rents are primarily based on a percentage of sales that are in excess of a predetermined level and/or rent increase based on a change in the consumer price index or fair market value. These amounts are excluded from the calculation of the right of use asset and lease liability under ASC 842. Minimum rent under these leases is included in the determination of rent expense when it is probable that the expense has been incurred and the amount can be reasonably estimated.

(k) Restricted cash and other assets

Restricted cash, which is listed as a separate line item in the consolidated balance sheets, represents balances at financial institutions to secure bonds and letters of credit as required by the Company's various lease agreements. Other assets include cost basis investments.

(l) Revenue recognition

The Company recognizes revenue from the sale of XpresSpa products and services at the point of sale, net of discounts and applicable sales taxes. Revenues from the XpresSpa wholesale and e-commerce businesses are recorded at the time goods are shipped. Accordingly, the Company recognizes revenue for its single performance obligation related to both in-store and online sales at the point at which the service has been performed or the control of the merchandise has passed to the customer. The Company excludes all sales taxes assessed to its customers. Sales taxes assessed on revenues are included in accounts payable, accrued expenses and other current liabilities in the consolidated balance sheets until remitted to the state agencies.

Other revenue includes one-time intellectual property licenses as well as the sale of certain of our intellectual property. Revenue from patent licensing is recognized when the Company transfers promised intellectual property rights to purchasers in an amount that reflects the consideration to which it expects to be entitled in exchange for those intellectual property rights. During the year ended December 31, 2018, the Company determined that its intellectual property operating segment will no longer be an area of focus and, as such, will no longer be reflected as a separate operating segment, as it was not expected to generate any material revenues or operating costs.

(m) Gift cards and customer rewards program

XpresSpa offers no-fee, non-expiring gift cards to its customers. No revenue is recognized upon issuance of a gift card and a liability is established for the gift card's cash value. The liability is relieved, and revenue is recognized upon redemption by the customer. As the gift cards have no expiration date, there is no provision for reduction in the value of unused card balances.

In addition, XpresSpa maintains a rewards program in which customers earn loyalty points, which can be redeemed for future services. Loyalty points are rewarded upon joining the loyalty program, for customer birthdays, and based upon customer spending. When a customer redeems loyalty points, the Company recognizes revenue for the redeemed cash value and reduces the related loyalty program liability. On June 1, 2018, the Company adopted a formal expiration policy whereby any loyalty members with inactivity for an 18-month period will forfeit any unused loyalty rewards. The costs associated with gift cards and reward points are accrued as the rewards are earned by the cardholder and are included in accounts payable, accrued expenses and other current liabilities in the consolidated balance sheets until remitted to the state agencies.

(n) Segment reporting

The Company's continuing operating segments are defined as components of an enterprise about which separate financial information is available that is regularly evaluated by the enterprise's chief operating decision maker ("CODM") in deciding how to allocate resources and in assessing performance. As a result of the Company's transition to a pure-play health and wellness services company, it currently has one operating segment that is also its sole reporting unit, XpresSpa.

During the year ended December 31, 2018, the Company determined that its former intellectual property operating segment would no longer be an area of focus and, as such, will no longer operate as a separate operating segment, as it is not expected to generate any material revenues or operating costs.

(o) Pre-opening costs

Pre-opening and start-up activity costs, which include rent and occupancy, supplies, advertising, and other direct expenses incurred prior to the opening of a new store, are expensed in the period in which they are incurred.

(p) Cost of sales

Cost of sales consists of store-level costs. Store-level costs include all costs that are directly attributable to the store operations and include:

- payroll and related benefits for store operations and store-level management;
- rent, percentage rent and occupancy costs;
- the cost of merchandise;
- freight, shipping and handling costs;
- production costs;
- inventory shortage and valuation adjustments, including purchase price allocation increase in fair values which was recorded as part of acquisition; and
- costs associated with sourcing operations.

(q) Stock-based compensation

Stock-based compensation is recognized as an expense in the consolidated statements of operations and comprehensive loss and such cost is measured at the grant-date fair value of the equity-settled award. The fair value of stock options is estimated as of the date of grant using the Black-Scholes-Merton ("Black-Scholes") option-pricing model. The fair value of Restricted Stock Units ("RSUs") is calculated as of the date of grant using the grant date closing share price multiplied by the number of RSUs granted. The expense is recognized on a straight-line basis, over the requisite service period. The Company uses the simplified method to estimate the expected term of options due to insufficient history and high turnover in the past. Expected volatility is estimated based on a weighted average historical volatility of the Company and comparable entities with publicly traded shares. The risk-free rate for the expected term of the option is based on the United States Treasury yield curve as of the date of grant.

(r) Income taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is provided for the amount of deferred tax assets that, based on available evidence, are not more likely than not to be realized. Tax benefits related to excess deductions on stock-based compensation arrangements are recognized when they reduce taxes payable.

In assessing the need for a valuation allowance, the Company looks at cumulative losses in recent years, estimates of future taxable earnings, feasibility of tax planning strategies, the ability to realize tax benefit carryforwards, and other relevant information. Valuation allowances related to deferred tax assets can be impacted by changes to tax laws, changes to statutory tax rates and future taxable earnings. Ultimately, the actual tax benefits to be realized will be based upon future taxable earnings levels, which are very difficult to predict. In the event that actual results differ from these estimates in future periods, the Company will be required to adjust the valuation allowance.

Significant judgment is required in evaluating the Company's federal, state, local, and foreign tax positions and in the determination of its tax provision. Despite management's belief that the Company's liability for unrecognized tax benefits is adequate, it is often difficult to predict the final outcome or the timing of the resolution of any particular tax matters. The Company may adjust these accruals as relevant circumstances evolve, such as guidance from the relevant tax authority, its tax advisors, or resolution of issues in the courts. The Company's tax expense includes the impact of accrual provisions and changes to accruals that it considers appropriate. These adjustments are recognized as a component of income tax expense entirely in the period in which new information is available. The Company records interest related to unrecognized tax benefits in interest expense and penalties in the consolidated statements of operations and comprehensive loss as general and administrative expenses.

The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs.

(s) Noncontrolling interests

Noncontrolling interests represent the noncontrolling holders’ percentage share of earnings or losses from the subsidiaries, in which the Company holds a majority, but less than 100%, ownership interest and the results of which are included in the Company’s consolidated statements of operations and comprehensive loss. Net earnings attributable to noncontrolling interests represents the proportionate share of the noncontrolling holders' ownership in certain subsidiaries of XpresSpa.

(t) Net loss per common share

Basic net loss per share is computed by dividing the net loss attributable to common shareholders for the period by the weighted-average number of shares of Common Stock outstanding during the period. Diluted net loss per share is computed by dividing the net loss attributable to the Company for the period by the weighted-average number of shares of Common Stock plus dilutive potential Common Stock considered outstanding during the period. However, as the Company generated net losses in all periods presented, some potentially dilutive securities that relate to the continuing operations, including certain warrants and stock options, were not reflected in diluted net loss per share because the impact of such instruments was anti-dilutive.

(u) Commitments and contingencies

Liabilities for loss contingencies arising from assessments, estimates or other sources are recorded when it is probable that a liability has been incurred and the amount can be reasonably estimated. Legal costs expected to be incurred in connection with a loss contingency are expensed as incurred.

(v) Reclassification

Certain balances have been reclassified to conform to the current year presentation, including impairment/disposal of assets, presentation of discontinued operations and assets and liabilities held for disposal with respect to the Company’s Group Mobile business.

(w) Fair value measurements

The Company measures fair value in accordance with FASB ASC 820-10, *Fair Value Measurements and Disclosures*. FASB ASC 820-10 clarifies that fair value is an exit price, representing the amount that would be received by selling an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability. As a basis for considering such assumptions, FASB ASC 820-10 establishes a three-tier value hierarchy, which prioritizes the inputs used in the valuation methodologies in measuring fair value:

Level 1: Unadjusted quoted prices in active markets for identical assets or liabilities accessible to the reporting entity at the measurement date.

Level 2: Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.

Level 3: Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at measurement date.

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

(x) Recently adopted accounting pronouncements

ASU No. 2016-02, Leases (Topic 842), as amended

This standard and its amendments provide new guidance related to accounting for leases and supersedes GAAP on lease accounting with the intent to increase transparency. This standard requires operating leases to be recorded on the balance sheet as assets and liabilities and requires disclosure of key information about leasing arrangements. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the statement of operations and comprehensive loss.

On January 1, 2019, the Company adopted ASU 2016-02 on a retrospective basis, beginning on January 1, 2019, using the optional transition method. The Company applied the transition options permitted by ASU 2018-11 and elected the package of practical expedients to alleviate certain operational and reporting complexities related to the adoption, one of which was not to recognize a right of use asset or lease liability for leases with a term of 12 months or less. See Note 9, *Leases* for further discussion. The Company recorded right of use assets and lease liabilities for its operating leases of $10,809 upon adoption of ASU 2016-02.

ASU No. 2018-02, Income Statement – Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income

This standard provides guidance on the reclassification of certain tax effects from accumulated other comprehensive income to retained earnings in the period in which the effects of the change in the U.S. federal corporate income tax rate in the Tax Cuts and Jobs Act is recorded. The new standard is effective for the fiscal year beginning after December 15, 2018. The Company adopted this standard on January 1, 2019. Adoption of this standard did not have a material impact on the Company’s consolidated condensed financial statements.

(y) Recently issued accounting pronouncements

ASU No. 2016-13, Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments

This standard changes the impairment model for most financial assets that are measured at amortized cost and certain other instruments, including trade receivables, from an incurred loss model to an expected loss model and adds certain new required disclosures. Under the expected loss model, entities will recognize estimated credit losses to be incurred over the entire contractual term of the instrument rather than delaying recognition of credit losses until it is probable the loss has been incurred. The new standard is effective for the fiscal year beginning after December 15, 2019, with early adoption permitted. Based upon the outstanding balance of the Company’s trade receivables and its positive collection history, the Company’s management does not believe that the adoption of this standard will have a material impact on its consolidated financial position and results of operations.

ASU No. 2018-13, Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement

This amendment provides updates to the disclosure requirements on fair value measures in Topic 820 which includes the changes in unrealized gains and losses in other comprehensive income for recurring Level 3 fair value measurements, the option of additional quantitative information surrounding unobservable inputs and the elimination of disclosures around the valuation processes for Level 3 measurements. The new standard is effective for the fiscal year beginning after December 15, 2019. The Company’s management does not believe that the adoption of this standard will have a material impact on its consolidated financial position and results of results of operations.

Note 3. Net Loss per Share of Common Stock

The table below presents the computation of basic and diluted net losses per common share:

	For the years ended December 31,	
	2019	2018
Basic numerator:		
Net loss from continuing operations attributable to common shareholders	$ (21,223)	$ (36,090)
Net loss from discontinued operations attributable to common shareholders	—	(1,115)
Net loss attributable to common shareholders	$ (21,223)	$ (37,205)
Basic denominator:		
Basic shares of Common Stock outstanding*	4,903,331	1,453,635
Basic loss per share of Common Stock from continuing operations	$ (4.33)	$ (24.83)
Basic loss per share of Common Stock from discontinued operations	—	(0.77)
Basic net loss per share of Common Stock	$ (4.33)	$ (25.60)
Diluted numerator:		
Net loss from continuing operations attributable to shares of Common Stock	$ (21,223)	$ (36,090)
Net loss from discontinued operations attributable to shares of Common Stock	—	(1,115)
Net loss attributable to the Company	$ (21,223)	$ (37,205)
Diluted denominator:		
Diluted shares of Common Stock outstanding*	4,903,331	1,453,635
Diluted loss per share of Common Stock from continuing operations	$ (4.33)	$ (24.83)
Diluted loss per share of Common Stock from discontinued operations	—	(0.77)
Diluted net loss per share of Common Stock	$ (4.33)	$ (25.60)
Net loss per share data presented excludes from the calculation of diluted net loss the following potentially dilutive securities, as they had an anti-dilutive impact*:		
Both vested and unvested options outstanding to purchase an equal number of shares of Common Stock of the Company	137,892	101,979
Vested and unvested RSUs to issue an equal number of shares of Common Stock of the Company	—	17,750
Warrants to purchase an equal number of shares of Common Stock of the Company	3,388,115	703,670
Preferred stock on an as converted basis	1,965,491	6,364,328
Conversion feature of debt	4,750,000	217,500
Total number of potentially dilutive instruments, excluded from the calculation of net loss per share	10,241,498	7,405,227

Reverse Stock Split

On February 22, 2019, the Company filed a certificate of amendment to its amended and restated certificate of incorporation with the Secretary of State of the State of Delaware to effect a 1-for-20 reverse stock split of the Company's shares of Common Stock. Such amendment and ratio were previously approved by the Company's stockholders and Board of Directors.

As a result of the reverse stock split, every twenty (20) shares of the Company's pre-reverse split Common Stock were combined and reclassified into one (1) share of Common Stock. Stockholders who would have otherwise held a fractional share of Common Stock received payment in cash in lieu of any such resulting fractional shares of Common Stock as the post-reverse split amounts of Common Stock were rounded down to the nearest full share. No fractional shares were issued in connection with the reverse stock split.

*All December 31, 2018 share amounts have been adjusted to reflect the impact of the 1:20 reverse stock split.

Note 4. Cash, Cash Equivalents, and Restricted Cash

	December 31,	
	2019	2018
Cash denominated in United States dollars	$ 890	$ 2,000
Cash denominated in currency other than United States dollars	1,048	1,143
Credit and debit card receivables	246	260
	$ 2,184	$ 3,403

As of December 31, 2019 and 2018, cash and cash equivalents included $246 and $260 of credit card receivables, respectively. As of December 31, 2019, and 2018, the Company held cash balances in overseas accounts, totaling $1,048 and $1,143, respectively, which is not insured by the Federal Deposit Insurance Corporation ("FDIC"). If the Company were to distribute the amounts held overseas, the Company would need to follow an approval and distribution process as defined in its operating and partnership agreements, which may delay and/or reduce the availability of that cash to the Company. In addition, as of December 31, 2019 and 2018, there was $451 and $487, respectively, of restricted cash balances at financial institutions to secure bonds and letters of credit as required by the Company's various lease agreements, which is included in *Other assets* on the Company's consolidated balance sheets. The aggregate cash, cash equivalents, and restricted cash is $2,635 and $3,890 as of December 31, 2019 and 2018.

Cash denominated in United States dollars decreased $1,110 from December 31, 2018 to December 31, 2019 primarily due to cash proceeds received by the Company in 2018 from the issuance of preferred stock and from the issuance of convertible debt securities and warrants, which the Company did not receive in 2019.

Note 5. Other Current Assets

As of December 31, 2019, and 2018, the Company's other current assets were comprised of the following:

	December 31,	
	2019	2018
Prepaid expenses	$ 984	$ 1,204
Other	118	370
Total other current assets	$ 1,102	$ 1,574

Prepaid expenses are predominantly comprised of financed and prepaid insurance policies which have terms of one year or less.

Note 6. Property and Equipment

Property and equipment is comprised of three categories: leasehold improvements, furniture and fixtures, and other operating equipment as of December 31, 2019 and 2018 as follows:

	December 31,		
	2019	2018	Useful Life
Leasehold improvements	$ 16,102	$ 18,932	Average 5-8 years
Furniture and fixtures	863	1,264	3-4 years
Other operating equipment	1,305	2,322	Maximum 5 years
	18,270	22,518	
Accumulated depreciation	(10,206)	(10,723)	
Total property and equipment, net	$ 8,064	$ 11,795	

Depreciation is computed using the straight-line method over the estimated useful lives of the related assets. Leasehold improvements are depreciated over the shorter of remaining lease term or economic useful life (which is on average 5-8 years).

The Company did an assessment of its property and equipment for impairment as of December 31, 2019 and 2018. Based upon the results of the impairment tests, the Company recorded an impairment expense of approximately $1,844 and $2,100, respectively, which is included in *"Impairment/disposal of assets"* in the consolidated statements of operations and comprehensive loss. The expense was primarily related to the impairment of leasehold improvements made to certain locations where management determined that the location's discounted future cash flow was not enough to support the carrying value of the leasehold improvements over the remaining lease term. The impairment expense represents the excess of the carrying value of the leasehold improvements over the estimated future discounted cash flows. Management calculated the future cash flow of each location using a present value income approach. The sum of expected cash flow for the remainder of the lease term for each location was present valued at a discount rate of 9.0% and 11.24%, for 2019 and 2018 respectively, which represent the then borrowing rate of the Company's note payable to B3D. The Company believes that this rate incorporates the time value of money and an appropriate risk premium.

In July 2019, as a result of an early termination of a lease for one of its locations that was closed, the Company assessed all assets at the closed location (primarily leasehold improvements) for impairment. This resulted in a charge of approximately $620, which was included in *"Impairment/disposal of assets"* in the consolidated statements of operations and comprehensive loss that was recorded in June 30, 2019 and is reflected in the current period year to date results. The Company also reduced the remaining right of use asset and the lease liability balances by approximately $421 in June 2019 related to the leases for this location.

The Company expensed approximately $231 of costs incurred during 2019 that had been capitalized in anticipation of opening new spas, that the Company later determined were not viable. The Company also wrote off approximately $109 related to a previous asset disposition that had originally been classified as held for sale, were reclassified to continuing operations, but were ultimately deemed not realizable as of December 31, 2019. These charges are included in the *"Impairment/disposition of assets"* line in the consolidated statement of operations and comprehensive loss for the year ended December 31, 2019.

During the years ended December 31, 2019 and 2018, the Company recorded $3,821 and $4,945, respectively, of depreciation expense from continuing operations.

Note 7. Other Assets

Other assets in the consolidated balance sheets are comprised of the following as of December 31, 2019 and 2018:

	December 31, 2019	December 31, 2018
Cost method investments	$ 484	$ 2,482
Lease deposits	755	894
Other assets	$ 1,239	$ 3,376

In the second quarter of 2019, the Company impaired its investment in Route1, which the Company received from the disposition of Group Mobile in March 2018; due to an under performance of operating results. The Company recorded an impairment charge of $1,141, which is included in *"Impairment/disposal of assets"* account balance on the consolidated statement of operations and comprehensive loss for the year ended December 31, 2019. As of December 31, 2019, the balance in the Company's investment in Route 1 was $484.

In the third quarter of 2019, the Company recorded an impairment loss on its FLI Charge cost method investment, which the Company received from the disposition of FLI Charge in October 2017, of approximately $47, which is included in *"Impairment/disposal of assets"* on the Company's consolidated statements of operations and comprehensive loss for the year ended December 31, 2019.

The Company assessed its investment in InfoMedia Services Limited ("InfoMedia") for impairment at December 31, 2019 as InfoMedia was to have obtained financing to fund continuing operations and a new product during 2019 but was unable to obtain the financing. The Company believes this represents a triggering event and determined it should write off its investment in InfoMedia and recorded an impairment expense of $787, which is included in *"Impairment/disposal of assets"* on the Company's statement of operations and comprehensive loss for the year ended December 31, 2019.

The Company had an investment in Marathon Patent Group, Inc. ("Marathon"), which the Company acquired in January 2018, with an acquisition date fair value of $450. The Company determined based on its evaluation of its investment that certain unrealized losses represented an other-than-temporary impairment as of December 31, 2018 and the Company recognized an impairment charge of $148 for the year ended December 31, 2018, equal to the excess of carrying value over fair value. During the year ended December 31, 2018, the Company sold 205,646 shares of Marathon Common Stock, with a carrying value of $279, for net proceeds of $200. The Company sold its remaining investment in Marathon of $23 in December of 2019 for net proceeds of $14.

Also included in *"Other assets"* as of December 31, 2019 were $755 deposits made pursuant to various lease agreements, which will be returned to the Company at the end of the leases.

The Company has not identified any other events or changes in circumstances that occurred during 2019 that had a significant adverse effect on the carrying value of its remaining cost method investments. See Note 20, *Subsequent Events* for discussion pertaining to the impact of COVID-19 on our operations.

Note 8. Intangible Assets and Goodwill

Intangible assets

The following table provides information regarding the Company's intangible assets, which consist of the following:

	December 31, 2019			December 31, 2018		
	Gross Carrying Amount	Accumulated Amortization and Impairment	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization and Impairment	Net Carrying Amount
Trade name	$ 13,309	$ (6,709)	$ 6,600	$ 13,309	$ (4,485)	$ 8,824
Customer relationships	312	(312)	—	312	(312)	—
Software	312	(129)	183	312	(69)	243
Patents	26,897	(26,897)	—	26,897	(26,797)	100
Total intangible assets	$ 40,830	$ (34,047)	$ 6,783	$ 40,830	$ (31,663)	$ 9,167

The Company's trade name relates to the value of the XpresSpa trade name, customer relationships represent the value of loyalty customers, software relates to certain capitalized third-party costs related to a new point-of-sale system, and patents consist of intellectual property portfolios acquired from third parties.

The Company wrote off the net book value of certain patents that were no longer generating cash flow totaling approximately $85, which is included in "*Impairment/disposal of assets*" on the Company's consolidated statement of operations and comprehensive loss for the year ended December 31, 2019.

The Company's intangible assets are amortized over their expected useful lives, which is six years for tradenames and five years for software. During the years ended December 31, 2019 and 2018, the Company recorded amortization expense of $2,303 and $2,453, respectively, related to its intangible assets.

Estimated amortization expense for the Company's intangible assets at December 31, 2019 is as follows:

Years ending December 31,	Amount
2020	$ 2,278
2021	2,278
2022	2,227
Total	$ 6,783

Goodwill

On January 5, 2018, the Company changed its name to XpresSpa Group as part of a rebranding effort to carry out its corporate strategy to build a pure-play health and wellness services company, which the Company commenced following its acquisition of XpresSpa on December 23, 2016. The Company completed the sale of Group Mobile on March 22, 2018, which was the only remaining component of the Company's technology operating segment. Following the sale of Group Mobile, the Company's management made the decision that its intellectual property operating segment would no longer be an area of focus and would no longer be a separate operating segment as it was not expected to generate any material revenues. This completed the transition of the Company into a pure-play health and wellness company with only one operating segment, consisting of its XpresSpa business.

On April 19, 2018, the Company entered into a separation agreement with its Chief Executive Officer regarding his resignation as Chief Executive Officer and as a Director the Company. On that same date, the Company's Senior Vice President and Chief Executive Officer of XpresSpa was appointed by the Board of Directors as the Chief Executive Officer and as a Director of the Company.

These events were identified by the Company's management as triggering events requiring that goodwill be tested for impairment as of March 31, 2018. In addition to the Company's rebranding efforts to a pure-play health and wellness services company, its stock price continued to decline even after the announcement of the new Chief Executive Officer. As the stock price had not rebounded, the Company determined that an other than temporary impairment was incurred during the three-month period ended March 31, 2018.

The Company performed a quantitative goodwill impairment test, in which the Company compared the carrying value of the reporting unit to its estimated fair value, which was calculated using an income approach. The key assumptions for this approach were projected future cash flows and a discount rate, which was based on a weighted average cost of capital adjusted for the relevant risk associated with the characteristics of the business and the projected future cash flows. As a result of the quantitative goodwill impairment test performed, the Company determined that the fair value of the reporting unit did not exceed its carrying amount and, therefore, goodwill of the reporting unit was considered impaired.

Based on the estimated fair value of goodwill, the Company recorded an impairment charge of $19,630, to reduce the carrying value of goodwill to its fair value, which was determined to be zero. This impairment charge is included in goodwill impairment in the consolidated statements of operations and comprehensive loss for the year ended December 31, 2018.

The fair value measurement of goodwill was classified within Level 3 of the fair value hierarchy because the income approach was used, which utilizes inputs that are unobservable in the market. The Company believes it made reasonable estimates and assumptions to calculate the fair value of the reporting unit as of the impairment test measurement date.

Note 9. Leases

The Company leases its retail space at various domestic and international airports. Additionally, the Company leases its corporate office in New York City. Certain leases entered into by the Company are accounted for in accordance with ASC 842. The Company determines if an arrangement is a lease at inception and if it qualifies under ASC 842. Some of the Company's lease arrangements contain fixed payments throughout the term of the lease. Others involve a variable component to determine the lease obligation where a certain percentage of sales is used to calculate the lease payments. The Company enters into certain leases that expire and are then extended on a month-to-month basis. These leases are not included in the calculation of the total lease liability and the right of use asset after they convert to month-to-month.

All qualifying leases held by the Company are classified as operating leases. Operating lease assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent its obligation to make lease payments arising from the lease. Operating lease assets and liabilities are recognized at commencement date based on the present value of lease payments over the lease term. The Company records its operating lease assets and liabilities based on required guaranteed payments under each lease agreement. The Company uses its incremental borrowing rate, which approximates the rate at which the Company can borrow funds on a secured basis, using the information available at commencement date of the lease in determining the present value of guaranteed lease payments. The interest rate implicit in the lease is generally not determinable in transactions where a company is the lessee.

The Company reviews all of its existing lease agreements on a quarterly basis to determine whether there were any modifications to lease agreements and to assess if any agreements should be accounted for pursuant to the guidance in ASC 842. The Company has continued to use 11.24% as its incremental borrowing rate for majority of its leases as there have been no modifications to them since the adoption of ASC 842. The Company did exercise its option to extend the term of two existing lease contracts during the year. Since the existing lease liability did not originally consider the extension of the lease term for these two leases, the Company reassessed the incremental borrowing rate used to calculate the lease liability. The Company renegotiated terms of its senior secured notes during 2019. The borrowing rate was reduced from 11.24% to 9.0%. Therefore, the Company has determined that it should use 9.0% as its incremental borrowing rate for the two lease extensions and recalculated the right of use asset and lease liability based on the revised borrowing rate and the modified lease terms. There were no other lease modifications during the year ended December 31, 2019. The Company entered into two new lease arrangements during 2019 that are included in the balances of its right of use asset and lease liability as of December 31, 2019. The Company used 9.0% as its incremental borrowing rate in calculating the present value of future lease payments.

The following is a summary of the activity in the Company's current and long-term operating lease liabilities for the year ended December 31, 2019:

Operating lease liabilities, January 1, 2019	$	10,809
New leases entered into		770
Extension of term of existing lease obligations		986
Termination of existing qualifying leases		(447)
Amortization of lease obligation		(2,623)
Operating lease liabilities, December 31, 2019	$	9,495

As of December 31, 2019, future minimum operating leases commitments are as follows:

Calendar Years ending December 31,		**Amount**
2020	$	3,476
2021		2,952
2022		2,236
2023		1,314
2024		664
Thereafter		625
Total future lease payments		11,267
Less: interest expense at incremental borrowing rate		(1,772)
Net present value of lease liabilities	$	9,495

Other assumptions and pertinent information related to the Company's accounting for operating leases are:

Weighted average remaining lease term:		4.8 years
Weighted average discount rate used to determine present value of operating lease liability:		11.0%
Cash paid for lease obligations during the year ended December 31, 2019:	$	3,867

Variable lease payments calculated monthly as a percentage of a product and services revenue were $3,025 and $2,769 for the years ended December 31, 2019 and 2018, respectively.

Rent expense from continuing operations for operating leases for years ended December 31, 2019 and 2018 were $8,175 and $8,405, respectively.

The Company did an assessment of its right of use lease assets for impairment as of December 31, 2019. Based upon the results of the impairment test, the Company recorded an impairment expense of approximately $1,217, which is included in *Impairment/disposal of assets* on the consolidated statement of operations and comprehensive loss for the year ended December 31, 2019. The expense was primarily related to the impairment of right of use lease assets where management determined that the location's discounted future cash flow was not enough to support the carrying value of the assets over the remaining lease term. The impairment expense represents the excess of the carrying value of the right of use lease assets over the estimated future discounted cash flows. Management calculated the future cash flow of each location using a present value income approach. The sum of expected cash flow for the remainder of the lease term for each location was present valued at a discount rate of 9.0%, which represents the current borrowing rate of the Company's note payable to B3D. The Company believes that this rate incorporates the time value of money and an appropriate risk premium.

The fair value measurement of long-lived assets is classified within Level 3 of the fair value hierarchy because the income approach was used, which utilizes inputs that are unobservable in the market. The Company believes it made reasonable estimates and assumptions to calculate the fair value of its long-lived assets as of the impairment test measurement date.

Note 10. Long-term Notes and Convertible Notes

Total debt as of December 31, 2019 and 2018 is comprised of the following:

	December 31, 2019	December 31, 2018
B3D Note, net of unamortized debt discount of $2,420 at December 31, 2019	$ 4,580	$ 6,500
5% Secured Convertible Notes	—	1,986
Calm Note, net of unamortized debt discount of $1,318	1,182	—
Total debt	$ 5,762	$ 8,486

B3D Note

On July 8, 2019, the Company entered into the fourth amendment to its existing credit agreement (the "Amendment to the Credit Agreement") with B3D, to renegotiate the terms of its 11.24 %, $6,500 senior secured note. The Amendment to the Credit Agreement, among other provisions, (i) extended the maturity date to May 31, 2021, (ii) reduced the applicable interest rate to 9.0%, and (iii) amended and restated certain other provisions. As consideration for these and other modifications, the principal amount owed to B3D was increased to $7,000.

The Company engaged an independent third party to assess the fair value of each of the derivative instruments included in the B3D Note. The results of the appraisal were that the conversion feature and the B3D Note should be bifurcated, and that the conversion option should be treated as a separate derivative liability. An initial fair value of $2,774 was assigned to the conversion option, which is included in "*Derivative Liabilities"* on the consolidated balance sheet and the B3D Note was assigned a fair value of $4,226 as of July 8, 2019. The conversion option is marked to market at the end of each reporting period. The Company recorded a revaluation gain of approximately $1,012 that is included in *"Other income (expense), net"* for the year ended December 31, 2019 for the change in the fair value of the conversion option. During the year ended December 31, 2019, the Company recorded $724 of debt discount accretion expense that increased the carrying value of the B3D Note.

The modification to the terms included in the Credit Agreement Amendment were accounted for as a troubled debt restructuring in the Company's consolidated financial statements, in accordance with ASC 470-60 *"Troubled Debt Restructurings by Debtors"*. A debtor in a troubled debt restructuring involving only a modification of terms of a payable should account for the effects of the restructuring prospectively from the time of restructuring and not change the carrying amount of the payable at the time of the restructuring. The Company will pay interest monthly at the revised 9.0% rate over the life of the B3D Note. Since the future cash payments for principal and interest under the restructured B3D Note will be greater than the carrying value of the original note, no gain was recorded.

As a result of the extension of the maturity date to May 31, 2021, the balance of the B3D Note was reclassified from current liabilities as of December 31, 2018 to long-term liabilities on the Company's consolidated balance sheet as of December 31, 2019.

The Company agreed on a $500 increase in the principal amount of the B3D Note, which will be amortized on a straight-line basis over the revised term of the B3D Note. The net balance of the deferred issuance costs was $370 as of December 31, 2019 and is presented as a reduction of the B3D Note balance in the Company's consolidated balance sheet as of December 31, 2019. Amortization expense from July 8, 2019 through December 31, 2019 was $130 and is included in "Interest expense" in the consolidated statement of operations and comprehensive loss.

The B3D Note is guaranteed on a full, unconditional, joint, and several basis, by the parent Company, XpresSpa Group, Inc., and all wholly owned subsidiaries of Holdings (the "Guarantor Subsidiaries"). Under the terms of a security and guarantee agreement dated July 8, 2019, XpresSpa Group, Inc. (the parent company) and the Guarantor Subsidiaries each fully and unconditionally, jointly and severally, guarantee the payment of interest and principal on the B3D Note. Holdings pledged and granted to B3D a first priority security interest in, among other things, all of its equity interests in Holdings and all of its rights to receive distributions, cash or other property in connection with Holdings. The Company has not presented separate consolidating financial statements of XpresSpa Group, Inc., Holdings and Holdings' wholly-owned subsidiaries, as each entity has guaranteed the B3D Note, so each entity is responsible for the payment.

Convertible Notes

5% Secured Convertible Notes

On May 15, 2018, in a private placement offering, the Company issued (i) 5% Secured Convertible Notes (the "5% Secured Convertible Notes") convertible into Common Stock at $12.40 per share, originally due November 2019, (ii) May 2018 Class A Warrants to purchase 357,863 shares of Common Stock and (iii) May 2018 Class B Warrants to purchase 178,932 shares of Common Stock. The May 2018 Class A Warrants and May 2018 Class B Warrants were originally convertible into Common Stock at $12.40 per share. The Company received aggregate proceeds of $4,438 from the May 2018 private placement. Debt issuance costs that had been capitalized related to the 5% Secured Convertible Notes, were being amortized on a straight-line basis over their remaining term of the 5% Secured Convertible Notes. The Company did not record amortization expense of the debt issuance costs related to the 5% Secured Convertible Notes after June 30, 2019 as the notes were converted into Common Stock on June 27, 2019. The balance of debt issuance costs of $135 was written off in June 2019 and was included in "Interest expense" in the consolidated financial statements for the year ended December 31, 2019.

During the second quarter of 2019, the Company failed to make minimum monthly payments as required pursuant to the 5% Secured Convertible Notes, which failure constituted an event of default. Pursuant to the terms of the 5% Secured Convertible Notes, upon an event of default, an investor may elect to accelerate payment of the outstanding principal amount of such investor's 5% Secured Convertible Notes, liquidated damages and other amounts owing in respect thereof through the date of acceleration, which amounts become immediately due and payable in cash. No investor provided notice to the Company electing to exercise its right to accelerate payment.

On June 27, 2019, the Company entered into the Third Amendment Agreement to the 5% Secured Convertible Notes (the "Third Amendment") whereby the holders of the 5% Convertible Notes agreed to convert their notes then held into Common Stock. The Third Amendment reduced the conversion price of the 5% Convertible Notes to Common Stock from $12.40 per share to $2.48 per share. As a result of the reduction in the conversion price, the Company recorded debt conversion expense of $1,584 to account for the additional consideration paid over what was agreed to in the original 5% Secured Convertible Notes agreement. The expense is reflected in "Other non-operating income (expense), net" in the consolidated statement of operations and comprehensive loss. The 5% Secured Convertible Notes holders converted their remaining outstanding principal balances plus accrued interest into 586,389 shares of Common Stock and 356,772 Class A Warrants (the "June 2019 Class A Warrants"). The June 2019 Class A Warrants had an exercise price of $0.01 and are otherwise identical in form and substance to the Company's existing May 2018 Class A Warrants.

The Company had a valuation expert perform an appraisal of the June 2019 Class A Warrants as of June 30, 2019. The June 2019 Class A Warrants were assigned an original appraised value of $689. The value of these warrants was recorded as a derivative liability on the consolidated balance sheet and will be marked to market at the end of each reporting period. The expense of $689 is included in *"Other non-operating income (expense), net"* in the consolidated condensed statements of operations and comprehensive loss.

The June 2019 Class A Warrants were converted into 354,502 shares of Common Stock in July 2019.

Calm Note

On July 8, 2019, the Company entered into a securities purchase agreement with Calm.com, Inc. ("Calm") pursuant to which the Company agreed to sell (i) an aggregate principal amount of $2,500 in an unsecured convertible note (the "Calm Note"), which is convertible into shares of Series E Convertible Preferred Stock at a conversion price of $3.10 per share (the "Series E Preferred Stock") and (ii) warrants to purchase 937,500 shares of the Company's Common Stock. The Calm Note will mature on May 31, 2022, and bears interest at a rate of 5% per annum, subject to increase in the event of default, and is payable in arrears and may be paid in cash, shares of Series E Preferred Stock or a combination thereof. The Company made interest payments of $19 in cash and $31 in the form of Series E Preferred Stock in 2019.

On April 17, 2020, we entered into an amended and restated the Calm Note in order to provide, among other items, that Calm shall not have the right to convert the shares of Series E Preferred Stock issued in connection with the Calm Note into shares of Common Stock to the extent that such conversion would cause Calm to beneficially own in excess of the Beneficial Ownership Limitation, initially defined as 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of the Series E Preferred Stock.

The Company engaged a valuation expert to assess the fair value of each of the derivative instruments included in the Calm Note. The results of the appraisal were that the conversion feature and the Calm Warrants should be bifurcated, and both treated as derivative liabilities. A fair value of $351 was assigned to the conversion option, a fair value of $1,018 was assigned to the Calm Warrants and the Calm Note was assigned a fair value of $1,131, net of issuance cost, as of July 8, 2019. The conversion option and the Calm Warrants are marked to market at the end of each reporting period. The assessment of the fair value of the conversion option and Calm Warrants resulted in a gain of $771 as of December 31, 2019, which is reflected as a revaluation gain in that is included in *"Other income (expense), net"* in the consolidated statements of operations and comprehensive loss for the year ended December 31, 2019.

The Company capitalized direct issuance costs of approximately $222 related to the issuance of the Calm Note and recorded amortization of debt issuance costs of $235 from the date the debt was issued on July 8, 2019 through December 31, 2019. The net balance of the deferred issuance costs is $184 as of December 31, 2019 and is presented as a reduction of the Calm Note balance on the Company's consolidated balance sheet. Amortization expense is included in *"Interest expense"* in the Company's consolidated statement of operations and comprehensive loss for the year ended December 31, 2019. During the year ended December 31, 2019, the Company recorded $235 of debt discount accretion expense that increased the carrying value of the Calm Note.

Note 11. Preferred Stock and Warrants

Certificate of Elimination of Series B Preferred Stock

On July 8, 2019, the Company filed a Certificate of Elimination of Shares of Series B Preferred Stock (the "Certificate of Elimination") to the Company's amended and restated certificate of incorporation. The Certificate of Elimination reduced, pursuant to Section 151(g) of the Delaware General Corporation Law, the number of authorized shares of Series B Convertible Preferred Stock of the Company, par value $0.01 per share (the "Series B Preferred Stock") from 1,609,167 shares to zero shares. Pursuant to the provisions of Section 151(g) of the Delaware General Corporation Law, the 1,609,167 authorized shares of Series B Preferred Stock were eliminated pursuant to the reduction return to the available undesignated preferred stock of the Company and may be re-designated into another series of preferred stock.

Series D Convertible Preferred Stock Amendment and December 2016 Warrant Amendment

On July 8, 2019, the Company filed the Series D COD Amendment with the State of Delaware to reduce the conversion price of Series D Convertible Preferred Stock to Common Stock to $2.00 and to then provide for automatic conversion of the Series D Convertible Preferred Stock into shares of Common Stock.

Also, on July 8, 2019, the Company entered into an amendment to the December 2016 Warrants to provide for (i) a reduction in the exercise price into Common Stock to $2.00, (ii) certain anti-dilution price protection and (iii) a voluntary reduction at a future date of the exercise price by the Company in its discretion.

When a reporting entity changes the terms of its preferred stock, it must assess whether the changes should be accounted for as either a modification or extinguishment. The Company engaged a valuation expert to perform an appraisal to determine the fair value of the Series D Preferred Stock before and after the changes were made. The results of the fair value assessment indicated that the fair values before and after the change in the provisions and characteristics of the Series D Preferred Shares were not substantially different (in practice, substantially different has been interpreted to be greater than 10%). Therefore, the Company did not record an adjustment to the Series D Preferred Stock.

Series E Convertible Preferred Stock

On July 8, 2019, the Company filed the Series E COD Amendment with the State of Delaware to (i) increase the number of authorized shares of Series E Preferred Stock to 2,397,060 and (ii) reduce the conversion price to $2.00. The Series E COD Amendment was approved by the Board of Directors of the Company and the Company obtained shareholder approval of the Series E COD Amendment on October 2, 2019.

When a reporting entity changes the terms of its outstanding preferred stock, it must assess whether the changes should be accounted for as either a modification or an extinguishment. The Company engaged an independent third party to perform an appraisal to determine the fair value of the Series E Preferred Stock before and after the changes were made. The results of the fair value assessment indicated that the fair values before and after the change in the provisions and characteristics of the Series E Preferred Stock were not substantially different (in practice, substantially different has been interpreted to be greater than 10%). Therefore, the Company did not record an adjustment to the Series E Preferred Stock.

Series F Convertible Preferred Stock

In connection with the May 2018 SPA Amendment, the Company issued 8,996 shares of Series F Convertible Preferred Stock to the parties to the May 2018 SPA Amendment. The Company engaged a valuation expert to perform an appraisal to determine the fair value of the Series F Preferred Stock. The Series F Preferred Stock has a par value of $0.01 per share and a stated value of $100 per share. The Series F Preferred Stock was appraised at a fair value of $1,154, $1,131 net of issuance costs, which was recorded as a charge to "*Other income (expense), net"* in the Company's consolidated financial statements as of the date of issuance of the Series F Convertible Preferred Stock.

Warrants

The Calm Warrants entitle Calm to purchase an aggregate of 937,500 shares of Common Stock at an original exercise price of $2.00 per share, exercisable beginning six months from the date of issuance, and have a term of five years. In March 2020, the conversion price was reduced to $0.175 per share, due to the effect of certain anti-dilution adjustments,

In June 2019, the Company's 5% Secured Convertible Notes holders converted their remaining outstanding principal balances plus accrued interest into 586,389 shares of Common Stock and 356,772 June 2019 Class A Warrants. The June 2019 Class A Warrants had an exercise price of $0.01 and are otherwise identical in form and substance to the Company's existing May 2018 Class A Warrants.

The June 2019 Class A Warrants were converted into 354,502 shares of Common Stock in July 2019. The Class B Warrants were cancelled in July 2019.

The following table summarizes information about all warrant activity during the year ended December 31, 2019:

	No. of warrants*	Exercise price range*
December 31, 2018	703,669	$ 12.40 - 100.00
Granted	4,628,195	$ .01 - 2.00
Exercised	(1,748,869)	$ .01
Expired	(194,880)	$ .01 - 12.40
December 31, 2019	3,388,115	$ 2.00 - 100.00

The Company's outstanding equity warrants as of December 31, 2019 consist of the following:

	No. outstanding*	Exercise price*	Remaining contractual life	Expiration Date
October 2015 Warrants	2,500	$ 5.00	1.29 years	April 15, 2021
December 2016 Warrants	124,990	$ 3.00	1.98 years	December 23, 2021
Outstanding as of December 31, 2019	127,490			

The Company's outstanding derivative warrants as of December 31, 2019 consist of the following:

	No. outstanding*	Exercise price*	Remaining contractual life	Expiration Date
May 2015 Warrants	26,875	$ 3.00	.34 years	May 4, 2020
Class A Warrants	2,296,250	$ 2.48	3.38 years	November 17, 2023
Calm Warrants	937,500	$ 2.00	4.52 years	July 8, 2024
	3,260,625			

*Amounts outstanding on or before December 31, 2018 were adjusted to reflect the impact of the 1:20 reverse stock split that became effective on February 22, 2019.

Note 12. Fair Value Measurements

Fair value measurements are determined based on assumptions that a market participant would use in pricing an asset or liability. A three-tiered hierarchy distinguishes between market participant assumptions based on (i) observable inputs such as quoted prices in active markets (Level 1), (ii) inputs other than quoted prices in active markets that are observable either directly or indirectly (Level 2) and (iii) unobservable inputs that require us to use present value and other valuation techniques in the determination of fair value (Level 3).

The following table presents the placement in the fair value hierarchy of the Company's derivative liabilities measured at fair value on a recurring basis as of December 31, 2019 and 2018:

		Fair value measurement at reporting date using		
As of December 31, 2019:	**Balance**	**Quoted prices in active markets for identical assets (Level 1)**	**Significant other observable inputs (Level 2)**	**Significant unobservable inputs (Level 3)**
Class A Warrants	$ 778	$ —	$ —	$ 778
Calm Warrants	382	—	—	382
Calm Conversion Option	216	—	—	216
B3D Conversion Option	1,761	—	—	1,761
Total	$ 3,137	—	—	$ 3,137
As of December 31, 2018:				
Class A Warrants	$ 476	$ —	$ —	$ 476
Class B Warrants	—	—	—	—
Total	$ 476	$ —	$ —	$ 476

The Company measures its derivative liabilities at fair value. The derivative liabilities were classified within Level 3 because they were valued using the Monte Carlo model, which utilizes significant inputs that are unobservable in the market. These derivative liabilities were initially measured at fair value and are marked to market at each balance sheet date. The derivative warrant and conversion option liabilities are recorded as *"Derivative liabilities"* on the consolidated balance sheets and the revaluation of the derivative liabilities is included in *"Other non-operating income (expense)"* in the consolidated statements of operations and comprehensive loss.

In addition to the above, the Company's financial instruments as of December 31, 2019 and 2018 consisted of cash and cash equivalents, receivables, accounts payable and debt. The carrying amounts of all the aforementioned financial instruments approximate fair value because of the short-term maturities of these instruments.

The following table summarizes the changes in the Company's derivative liabilities measured at fair value using significant unobservable inputs (Level 3) during the year ended December 31, 2019:

December 31, 2018	$ 476
Fair value of derivative liabilities derived from issuance of Calm and B3D Notes	4,142
Issuance of warrants	689
Mark to market of warrants and conversion options	(2,170)
December 31, 2019	$ 3,137

Valuation processes for Level 3 Fair Value Measurements

Fair value measurement of the derivative liabilities falls within Level 3 of the fair value hierarchy. The fair value measurements are evaluated by management to ensure that changes are consistent with expectations of management based upon the sensitivity and nature of the inputs. The valuation of the derivative liabilities is performed by a valuation expert at the end of each reporting period. The price of the Company's Common Stock as of December 31, 2019 used in the valuation calculations was $0.67. The conversion option of the Calm and B3D warrants to Common Stock used in the valuation was $2.00 per share.

As of December 31, 2019:

Description	Valuation technique	Unobservable inputs	Range
Class A Warrants	Monte Carlo Method	Volatility	65.20%
		Risk-free interest rate	1.67%
		Expected term, in years	3.38
		Dividend yield	0.00%

Description	Valuation technique	Unobservable inputs	Range
Calm Warrants	Monte Carlo Method	Volatility	66.90%
		Risk-free interest rate	1.62%
		Expected term, in years	4.52
		Dividend yield	0.00%

Description	Valuation technique	Unobservable inputs	Range
Calm Conversion option	Monte Carlo Method	Volatility	66.90%
		Risk-free interest rate	1.75%
		Expected term, in years	2.41
		Dividend yield	0.00%

Description	Valuation technique	Unobservable inputs	Range
B3D Conversion option	Monte Carlo Method	Volatility	65.70%
		Risk-free interest rate	1.62%
		Expected term, in years	1.42
		Dividend yield	0.00%

As of December 31, 2018:

Description	Valuation technique	Unobservable inputs	Range
Class A Warrants	Black-Scholes-Merton	Volatility	70.61%
		Risk-free interest rate	2.53%
		Expected term, in years	4.38
		Dividend yield	0.00%
Class B Warrants	Black-Scholes-Merton	Volatility	84.02%
		Risk-free interest rate	2.98%
		Expected term, in years	0,12
		Dividend yield	0.00%

Sensitivity of Level 3 measurements to changes in significant unobservable inputs

The inputs to estimate the fair value of the Company's derivative warrant and conversion liabilities were the current market price of the Company's Common Stock, the exercise price of the derivative warrant liabilities, their remaining expected term, anti-dilution provisions, the volatility of the Company's Common Stock price and the risk-free interest rate over the expected term. Significant changes in any of those inputs in isolation can result in a significant change in the fair value measurement.

Generally, an increase in the market price of the Company's shares of Common Stock, an increase in the volatility of the Company's shares of Common Stock, and an increase in the remaining term of the derivative liabilities would each result in a directionally similar change in the estimated fair value of the Company's derivative liabilities. Such changes would increase the associated liability while decreases in these assumptions would decrease the associated liability. An increase in the risk-free interest rate or a decrease in the differential between the derivative warrant liabilities' exercise price and the market price of the Company's shares of Common Stock would result in a decrease in the estimated fair value measurement and thus a decrease in the associated liability. The Company has not, and does not plan to, declare dividends on its Common Stock and, as such, there is no change in the estimated fair value of the derivative warrant liabilities due to the dividend assumption.

Marathon Common Stock

On January 11, 2018 (the "Transaction Date"), the Company entered into a Patent Rights Purchase and Assignment Agreement (the "Agreement") with Crypto Currency Patent Holding Company LLC (the "Buyer") and its parent company, Marathon, pursuant to which the Buyer agreed to purchase certain of the Company's patents. As consideration for the patents, the Buyer paid $250 and Marathon issued 250,000 shares of Marathon Common Stock (the "Marathon Common Stock") to the Company. The Marathon Common Stock was subject to a lockup period (the "Lockup Period") which commenced on the Transaction Date and ended on July 11, 2018, subject to a leak-out provision.

The Marathon Common Stock is recognized as a cost method investment and, as such, was required to be measured at cost on the date of acquisition, which, as of the Transaction Date, approximated fair value. The following table presents the placement in the fair value hierarchy of the Marathon Common Stock measured at fair value on a nonrecurring basis as of the Transaction Date:

		Fair value measurement at reporting date using		
	Balance	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
December 31, 2018	$ 23	$ 23	$ —	$ —
December 31, 2019	$ —	$ —	$ —	$ —

The fair value of the Marathon Common Stock was estimated by multiplying the number of shares as they become tradeable by the price per share as of the Transaction Date, information that falls within Level 1 of the fair value hierarchy, quoted prices in active markets for identical assets; however, due to the fact that the Marathon Common Stock was restricted during the Lockup Period, the Company applied a discount on the lack of marketability to estimate the fair value at the measurement date, which is a significant other observable input resulting in placement in Level 2 of the fair value hierarchy. The fair value of the consideration as of the Transaction Date was determined to be $450. Based on the Company's evaluation of the investment, it was determined that certain unrealized losses represented an other-than-temporary impairment as of December 31, 2018 and the Company recognized an impairment charge of $148 for the year ended December 31, 2018, equal to the excess of carrying value over fair value.

On July 11, 2018, the Lockup Period concluded, and the Company was permitted to begin trading the Marathon Common Stock, subject to a leak-out provision whereby the shares were released from lockup in equal increments over a 20-day period. As of December 31, 2018, the remaining 44,354 shares of Marathon Common Stock were no longer restricted pursuant to the Lockup Period and leak-out provision, and the Company determined that the investments are classified within Level 1 of the fair value hierarchy.

During the year ended December 31, 2018, the Company sold 205,646 shares of Marathon Common Stock, with a carrying value of $279, for net proceeds of $200.

The following table summarizes the changes in the Company's investment in Marathon Common Stock, measured at fair value using significant other observable inputs (Level 2) as of Transaction Date and measured at fair value using quoted prices in active markets for identical assets (Level 1) during the year ended December 31, 2018:

January 11, 2018	$ 450
Carrying value of Marathon Common Stock sold	(279)
Decrease in fair value of the Marathon Common Stock	(148)
December 31, 2018	$ 23
December 31, 2018	$ 23
Carrying value of Marathon Common Stock sold	(23)
December 31, 2019	$ -

The Company sold the remaining shares of the Marathon Common Stock during the year ended December 31, 2019.

Other Fair Value Measurements

The following table presents the placement in the fair value hierarchy of the contingent consideration assumed by the Company following the acquisition of Excalibur Integrated Systems, Inc. ("Excalibur"), which is measured at fair value on a recurring basis as of December 31, 2019 and 2018:

		Fair value measurement at reporting date using		
	Balance	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
December 31, 2019:				
Contingent consideration	$ 315	$ —	$ —	$ 315
December 31, 2018:				
Contingent consideration	$ 315	$ —	$ —	$ 315

The purchase value of the contingent consideration assumed by the Company following the acquisition of Excalibur was determined using the Monte-Carlo simulation and, as such, was classified as Level 3 of the fair value hierarchy. The fair value measurements are evaluated by management to ensure that

changes are consistent with expectations of management based upon the sensitivity and nature of the inputs. The contingent consideration expires in 2020.

Note 13. Stock-based Compensation*

The Company has a stock-based compensation plan available to grant stock options and RSUs to the Company's directors, employees and consultants. Under the 2012 Employee, Director and Consultant Equity Incentive Plan, as amended (the "Plan"), a maximum of 2,520,000 shares of Common Stock may be awarded. As of December 31, 2019, 2,286,156 shares were available for future grants under the Plan.

Awards granted under the Plan remain in effect pursuant to their terms. Generally, stock options are granted with exercise prices equal to the fair market value on the date of grant, vest in four equal quarterly installments, and expire 10 years from the date of grant. RSUs granted generally vest over a period of one year.

In February 2019, the Company granted a total of 32,500 stock options to members of its Board of Directors and 75,000 stock options to the Company's newly elected Chief Executive Officer at an exercise price of $4.20 per share. The options vest over a period of one year.

The Company also granted 37,500 restricted shares of Common Stock to its newly elected Chief Executive Officer. The restricted shares vest in full on February 10, 2020.

The fair value of stock options is estimated as of the date of grant using the Black-Scholes-Merton ("Black-Scholes") option-pricing model. The Company uses the simplified method to estimate the expected term of options due to insufficient history and high turnover in the past.

The following variables were used as inputs in the model:

Share price of the Company's Common Stock on the grant date:	$ 4.20
Exercise price:	$ 4.20
Expected volatility:	72%
Expected dividend yield:	0%
Annual average risk-free rate:	2.5%
Expected term:	5.25-6.25 years

Total stock-based compensation expense for the years ended December 31, 2019 and 2018 was $335 and $916, respectively.

The following tables summarize information about stock options and RSU activity during the year ended December 31, 2019:

	RSUs		Stock options		
	No. of RSUs*	Weighted average grant date fair value*	No. of options*	Weighted average exercise price*	Exercise price range*
Outstanding as of December 31, 2018	17,750	$ .60	101,979	$ 99.80	$ 22.00-820.00
Granted	—	$ —	107,500	$ 4.20	$ 4.20
Exercised	(14,750)	$ .60	—	$ —	$ —
Forfeited/Expired	(3,000)	$ .60	(71,587)	$ 112.13	$ 22.00-820.00
Outstanding as of December 31, 2019	—	$ —	137,892	$ 275.79	$ 4.20-820.00
Exercisable as of December 31, 2019	—	$ —	62,892	$ 404.00	$ 4.20-820.00
Expected to vest as of December 31, 2019	—	$ —	75,000	$ 4.20	$ 4.20

The weighted average remaining contractual term for options outstanding as of December 31, 2019 was between 5.25 and 6.25 years.

As of December 31, 2019, there was no aggregate intrinsic value associated with the options outstanding as the exercise price of the options was greater than the Company's Common Stock price. There was no unrecognized stock-based payment cost related to non-vested stock options as of December 31, 2019.

*Balances as of December 31, 2018 were adjusted to reflect the impact of the 1:20 reverse stock split that became effective on February 22, 2019.

Note 14. Segment Information

The Company's continuing operating segments are defined as components of an enterprise about which separate financial information is available that is regularly evaluated by the enterprise's CODM in deciding how to allocate resources and in assessing performance. As a result of the Company's transition to a pure-play health and wellness services company, it currently has one operating segment that is also its sole reporting unit, XpresSpa.

The Company currently operates in two geographical regions: United States and all other countries, which primarily include Amsterdam, and Dubai. The following table represents the geographical revenue, and total long-lived asset information as of and for the years ended December 31, 2019 and 2018. There were no concentrations of geographical revenue and long-lived assets related to any single foreign country that were material to the Company's consolidated financial statements. Long-lived assets include property and equipment, restricted cash, cost method investments, security deposits and right of use lease assets.

	For the years ended December 31,	
	2019	2018
Revenue		
United States	$ 43,455	$ 44,738
All other countries	5,060	5,356

Total revenue	$ 48,515	$ 50,094
Long-lived assets		
United States	$ 15,122	$ 14,331
All other countries	2,886	1,327
Total long-lived assets	$ 18,008	$ 15,658

Long-lived assets includes property and equipment, right of use lease assets, security deposits, cost method investments and restricted cash.

Note 15. Related Parties Transactions

On April 14, 2018, the Company entered into a consulting agreement with an employee of Mistral Equity Partners, which was a significant shareholder of the Company and whose Chief Executive Officer was a member of the Board of Directors of the Company, to consult on certain business-related matters. The total consideration is approximately $10 per month through December 31, 2018. The consulting agreement was extended through June 30, 2019. Pursuant to the agreement, the Company recorded consulting expense of $34 and $85 for the years ended December 31, 2019 and 2018, respectively.

In 2018, the Company entered into a collaboration agreement with Calm to the display, market, promote, and offer for sale Calm's products in each of the Company's branded stores worldwide. In connection with the collaboration agreement, the Company began selling Calm subscriptions and certain Calm-branded retail products in its spas, beginning in November 2018. Also, Calm holds 937,500 warrants to purchase shares of Company's Common stock and holds a $2,500 unsecured note convertible into the Company's Series E Convertible Preferred Stock. During the years ended December 31, 2019 and 2018, the Company recorded revenue of $40 and $11, respectively from the sale of Calm's branded products in its spas which is included in products revenue in the consolidated statements of operations and comprehensive loss for the years ended December 31, 2019 and 2018.

Note 16. Accounts Payable, Accrued Expenses and Other Current Liabilities

As of December 31, 2019, and 2018, the Company's accounts payable, accrued expenses and other current liabilities were comprised of the following:

	December 31,	
	2019	**2018**
Accounts payable and accrued expenses	$ 7,069	$ 4,632
Litigation accrual	1,800	250
Accrued compensation	1,162	1,126
Accrued insurance	714	897
Other	1,806	1,267
Total accounts payable, accrued expenses and other current liabilities	$ 12,551	$ 8,172

XpresSpa carries several annual insurance policies including indemnity, fire, umbrella, and workers' compensation and financed a total of $910 of the total insurance premiums with a third-party provider, at an average interest rate of approximately 5% per year payable in 10 monthly installments.

Note 17. Discontinued Operations

FLI Charge

Amendment to Royalty Agreement and Termination of Warrant

In February 2019, the Company entered into an agreement to release FLI Charge's obligation to pay any royalties on FLI Charge's perpetual gross revenues with regard to conductive wireless charging, power, or accessories, and to cancel its warrants exercisable in FLI Charge in exchange for cash proceeds of $1,100, which were received in full on February 15, 2019 and is included in *"Other revenue"* in the consolidated financial statements as of December 31, 2019.

Group Mobile

In December 2017, the Company concluded that the requirement to report the results of Group Mobile, a wholly-owned subsidiary included in its technology operating segment, as discontinued operations was triggered.

On March 7, 2018 (the "Signing Date"), the Company entered into a membership purchase agreement (the "Purchase Agreement") with Route1 Security Corporation, a Delaware corporation (the "Buyer"), and Route1 Inc., an Ontario corporation ("Route1"), pursuant to which the Buyer agreed to acquire Group Mobile (the "Disposition"). The transaction closed on March 22, 2018 (the "Closing Date"), after which the Company no longer had any involvement with Group Mobile.

In consideration for the Disposition, as subsequently adjusted to reflect the 1:10 reverse stock split completed by Route 1 effective as of August 12, 2019, the Buyer issued to the Company:

- 2,500,000 shares of common stock of Route1 ("Route1 common stock");
- warrants to purchase 3,000,000 shares of Route1 common stock, which will feature an exercise price of CAD 50 cents per share of common stock and will be exercisable for a three-year period; and
- certain other payments over the three-year period pursuant to an earn-out provision in the Purchase Agreement.

The Company retained certain inventory with a value of $555 to be disposed of separately from the transaction with Route1 during the first half of 2018. Of this amount, $110 was sold and the remaining inventory excluded from the transaction was subsequently determined to be obsolete and unsalable and was fully written off in June 2018.

Post-closing, the Company owned approximately 6.7% of Route1 common stock. The Company has the ability to sell the Route1 common stock and warrants to qualified institutional investors. The Group Mobile Purchase Agreement also contains representations, warranties, and covenants customary for transactions of this type.

The total consideration of the Disposition is recognized as a cost method investment and, as such, was measured at cost on the date of acquisition, which, as of the Closing Date, approximated fair value. The fair value of the total consideration as of the Closing Date was determined to be $1,625, which is less than the carrying value of the asset. This resulted in a loss on disposal of $301, which was included in consolidated net loss from discontinued operations in the consolidated statement of operations and comprehensive loss for the year ended December 31, 2018.

The value of the total consideration for the Group Mobile disposition was determined using a combination of valuation methods including:

(i) The value of the Route 1 common stock was determined to be $308, which was estimated by multiplying the number of shares as they become tradeable by the price per share as of the Closing Date.

(ii) The value of the warrants was determined to be $176, which was obtained using the Black-Scholes-Merton model.

(iii) The value of the earn-out provision was determined to be $1,141, which was estimated using a Monte-Carlo simulation analysis.

The sale of Group Mobile was completed on March 22, 2018, after which the Company had no further involvement with Group Mobile.

During the second quarter of 2019, the Company impaired the earn out portion of its investment in Route1, due to an under performance of operating results. The Company recorded an impairment charge of $1,141, which is included in *"Other non-operating income (expense), net"* on the consolidated statement of operations and comprehensive loss for the year ended December 31, 2019. As of December 31, 2019, the balance in the Company's investment in Route 1 was $484.

Operating Results of Discontinued Operations

The following table represents the components of operating results from discontinued operations, as presented in the consolidated statements of operations and comprehensive loss for the years ended December 31, 2019 and 2018:

	For the years ended December 31,	
	2019	**2018**
Revenue	$ —	$ 2,834
Cost of sales	—	(2,305)
Depreciation and amortization	—	(131)
Impairment	—	—
General and administrative	—	(1,190)
Loss on disposal	—	(301)
Non-operating expense	—	(22)
Loss from discontinued operations before income taxes		(1,115)
Income tax expense	—	—
Net loss from discontinued operations	$ —	$ (1,115)

Note 18. Income Taxes

For the years ended December 31, 2019 and 2018, the loss from continuing operations before income taxes consisted of the following:

	2019	2018
Domestic	$ (21,567)	$ (36,506)
Foreign	891	597
	$ (20,676)	$ (35,909)

Income tax expense attributable to continuing operations for the years ended December 31, 2019 and 2018 consisted of the following:

	For the years ended December 31,	
	2019	2018
Continuing operations		
Current:		
Federal	$ (167)	$ (6)
State	(6)	22
Foreign	27	22
Deferred:		
Federal	—	(316)
	$ (146)	$ (278)

The income tax benefit of $146 for the year ended December 31, 2019 is comprised primarily of the release of a liability for an uncertain tax position for which the statute of limitations expired in 2019, partially offset by the tax on earnings generated by foreign subsidiaries.

Income tax expense attributable to discontinued operations was $12 for the year ended December 31, 2018.

Income tax expense attributable to continuing operations differed from the amounts computed by applying the applicable United States federal income tax rate to loss from continuing operations before taxes on income as a result of the following:

	For the years ended December 31,	
	2019	2018
Loss from continuing operations before income taxes	$ (20,676)	$ (35,909)
Tax rate	21%	21%
Computed “expected” tax benefit	(4,342)	(7,541)
State taxes, net of federal income tax benefit	(944)	(1,422)
Change in valuation allowance	3,039	7,539
Nondeductible expenses	607	242
Other items	1,494	904
Income tax benefit for continuing operations	$ (146)	$ (278)

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company’s deferred tax assets and liabilities as of December 31, 2019 and 2018 are as follows:

	December 31,	
	2019	2018
Deferred income tax assets		
Net operating loss carryforwards	$ 41,985	$ 39,972
Stock-based compensation	4,642	4,468
Intangible assets and other	5,161	4,308
Net deferred income tax assets	51,788	48,748
Less:		
Valuation allowance	(51,788)	(48,748)
Net deferred income tax assets	$ —	$ —

The Company assesses the need for a valuation allowance related to its deferred income tax assets by considering whether it is more likely than not that some portion or all of the deferred income tax assets will not be realized. A valuation allowance has been recorded against the Company’s deferred income tax assets, as it is in the opinion of management that it is more likely than not that the net operating loss carryforwards (“NOLs”) will not be utilized in the foreseeable future. The cumulative valuation allowance will be reduced if and when the Company determines that the deferred income tax assets are more likely than not to be realized.

The following table presents the changes to the valuation allowance during the years presented:

As of January 1, 2018	$ 41,209
Charged to cost and expenses – continuing operations	8,300
Charged to cost and expenses – discontinued operations	342
Return to provision true-up and other	(1,103)
As of December 31, 2018	48,748

Charged to cost and expenses – continuing operations		4,842
Return to provision true-up and other		(1,802)
As of December 31, 2019	$	51,788

As of December 31, 2019, the Company's estimated aggregate total NOLs were $182,327, for U.S. federal purposes, expiring 20 years from the respective tax years to which they relate, and $31,401 for U.S. federal purposes with an indefinite life due to new regulations in the Tax Act of 2017 (the "Tax Act"). The NOL amounts are presented before Internal Revenue Code, Section 382 limitations ("Section 382"). The Tax Reform Act of 1986 imposed substantial restrictions on the utilization of NOL and tax credits in the event of an ownership change of a corporation. Thus, the Company's ability to utilize all such NOL and credit carryforwards may be limited. The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") was enacted on March 27, 2020 and provides favorable changes to tax law for businesses impacted by COVID-19. However, the Company does not anticipate the income tax law changes will materially benefit the Company.

The Company files its tax returns in the U.S. federal jurisdiction, as well as in various state and local jurisdictions and has open tax years for 2015 through 2017.

On December 22, 2017, the U.S. government enacted comprehensive tax reform, commonly referred to as the Tax Act. The Tax Act makes changes to the corporate tax rate, business-related deductions and taxation of foreign earnings, among other changes, that will generally be effective for tax years beginning after December 31, 2017. After the one-year evaluation under SAB 118, the Company determined that there was no material impact from the Tax Act.

Note 19. Commitments and Contingencies

Litigation and legal proceedings

Certain of the Company's outstanding legal matters include speculative claims for substantial or indeterminate amounts of damages. The Company regularly evaluates developments in its legal matters that could affect the amount of any potential liability and makes adjustments as appropriate. Significant judgment is required to determine both the likelihood of there being any potential liability and the estimated amount of a loss related to the Company's legal matters.

With respect to the Company's outstanding legal matters, based on its current knowledge, the Company's management believes that the amount or range of a potential loss will not, either individually or in the aggregate, have a material adverse effect on its business, consolidated financial position, results of operations or cash flows. However, the outcome of such legal matters is inherently unpredictable and subject to significant uncertainties. The Company evaluated the outstanding legal matters and assessed the probability and likelihood of the occurrence of liability. Based on management's estimates, the Company has recorded accruals of $1,800 and $250 as of December 31, 2019 and December 31, 2018, respectively, which is included in *"Accounts payable, accrued expenses and other current liabilities"* in the consolidated balance sheets.

The Company expenses legal fees in the period in which they are incurred.

Cordial

Effective October 2014, XpresSpa terminated its former Airport Concession Disadvantaged Business Enterprise ("ACDBE") partner, Cordial Endeavor Concessions of Atlanta, LLC ("Cordial"), in several store locations at Hartsfield-Jackson Atlanta International Airport.

Cordial filed a series of complaints with the City of Atlanta, both before and after the termination, in which Cordial alleged, among other things, that the termination was not valid and that XpresSpa unlawfully retaliated against Cordial when Cordial raised concerns about the joint venture. In response to the numerous complaints it received from Cordial, the City of Atlanta required the parties to engage in two mediations.

After the termination of the relationship with Cordial, XpresSpa sought to substitute two new ACDBE partners in place of Cordial.

In April 2015, Cordial filed a complaint with the United States Federal Aviation Administration ("FAA"), which oversees the City of Atlanta with regard to airport ACDBE programs, and, in December 2015, the FAA instructed that the City of Atlanta review XpresSpa's request to substitute new partners in lieu of Cordial and Cordial's claims of retaliation. In response to the FAA instruction, pursuant to a corrective action plan approved by the FAA, the City of Atlanta held a hearing in February 2016 and ruled in favor of XpresSpa such substitution and claims of retaliation. Cordial submitted a further complaint to the FAA claiming that the City of Atlanta was biased against Cordial and that the City of Atlanta's decision was wrong. In August 2016, the parties met with the FAA. On October 4, 2016, the FAA sent a letter to the City of Atlanta directing that the City of Atlanta retract previous findings on Cordial's allegations and engage an independent third party to investigate issues previously decided by Atlanta. The FAA also directed that the City of Atlanta determine monies potentially due to Cordial.

On January 3, 2017, XpresSpa filed a lawsuit in the Supreme Court of the State of New York, County of New York, against Cordial and several related parties. The lawsuit alleges breach of contract, unjust enrichment, breach of fiduciary duty, fraudulent inducement, fraudulent concealment, tortious interference, and breach of good faith and fair dealing. XpresSpa is seeking damages, declaratory judgment, rescission/termination of certain agreements, disgorgement of revenue, fees and costs, and various other relief. On February 21, 2017, the defendants filed a motion to dismiss. On March 3, 2017, XpresSpa filed a first amended complaint against the defendants. On April 5, 2017, Cordial filed a motion to dismiss. On September 12, 2017, the Court held a hearing on the motion to dismiss. On November 2, 2017, the Court granted the motion to dismiss which was entered on November 13, 2017. On December 22, 2017, XpresSpa filed a notice of appeal, and on September 24, 2018, XpresSpa perfected its appellate rights and submitted a brief to the Supreme Court of New York, First Department appellate court. Oral arguments on the appeal are expected to take place during early 2019. Oral argument on the appeal went forward on March 20, 2019, and the Company expects the court to rule on the appeal in the coming months.

On March 30, 2018, Cordial filed a lawsuit against XpresSpa, a subsidiary of XpresSpa, and several additional parties in the Superior Court of Fulton County, Georgia, alleging the violation of Cordial's civil rights, tortious interference, breach of fiduciary duty, civil conspiracy, conversion, retaliation, and unjust enrichment. Cordial has threated to seek punitive damages, attorneys' fees and litigation expenses, accounting, indemnification, and declaratory judgment as to the status of the membership interests of XpresSpa and Cordial in the joint venture and Cordial's right to profit distributions and management fees from the joint venture. On May 3, 2018, the Court issued an order extending the time for the defendants to respond to Cordial's lawsuit until June 25, 2018. On May 4, 2018, the defendants moved the lawsuit to the United States District Court for the Northern District of Georgia. On June 5, 2018, the Court granted an extension of time for the defendants' response until August 17, 2018. On August 9, 2018, the Court granted an additional extension of time for the defendants' response until September 7, 2018, and thereafter provided another extension pending the Court's consideration of XpresSpa's Motion to Stay all action in the Georgia lawsuit, pending resolution of the New York lawsuit and the FAA action. On October 29, 2018, XpresSpa's Motion to Stay was denied. Prior to resolution of the Motion to Stay, Cordial filed a Motion for Temporary Restraining Order ("TRO Motion"), seeking to enjoin the defendants and specifically XpresSpa, from, among other things, distributing any cash flow, net profits, or management fees, or otherwise expending resources beyond necessary operating expenses. XpresSpa filed an opposition and, in a decision entered December 26, 2018, the Court denied Cordial's TRO Motion entirely. Defendants filed a Motion to Dismiss the Complaint in its entirety on November 20, 2018, which is pending decision by the Court.

A Director's Determination was issued by the FAA in connection with the Part 16 Complaint ("Part 16 Proceeding") filed by Cordial against the City of Atlanta ("City") in 2017 ("Director's Determination"). The Company and Cordial were not parties to the FAA action, and had no opportunity to present evidence or otherwise be heard in such action. The Director's Determination concluded that the City was not in compliance with certain Federal obligations concerning the federal government's ACDBE program, including relating to the City's oversight of the Joint Venture Operating Agreement between Clients and Cordial, Cordial's termination, and Cordial's retaliation and harassment claims, and the City was ordered to achieve compliance in accordance with the Director's Determination. The Director's Determination does not constitute a Final Agency Decision and it is not subject to judicial review, pursuant to 14 CFR § 16.247(b)(2). Because the Company is not a party to the Part 16 Proceeding, the Company would not be considered "a party adversely affected by the Director's Determination" with a right of appeal to the FAA Assistant Administrator for Civil Rights.

On August 7, 2019, the Company filed a response, advising the U.S. District Court that: (i) the Company is not party to the FAA proceeding and therefore had no opportunity to present evidence or otherwise be heard in such action; (ii) as non-party, the Company is not bound by the Director's Determination; and (iii) the FAA cannot dictate the interpretation or enforceability of the contract between Cordial and the Company, which is the subject of the U.S. District Court action initiated by Cordial and the New York State Court action initiated by the Company.

In response to the numerous complaints it received from Cordial, the City of Atlanta required the parties to engage in mediation.

On November 22, 2019, a Mutual Release and Settlement Agreement (the "Settlement Agreement") and a Confidential Payment Agreement (the "Payment Agreement") were executed by the applicable parties, except the City of Atlanta, and are pending the requisite approval by the FAA of the terms of the Settlement Agreement.

The Settlement Agreement is ultimately expected to be executed in 2020, by and among Cordial Endeavor Concessions of Atlanta, LLC, Shelia Edwards, Steven A. White, the City of Atlanta, XpresSpa Holdings, LLC, XpresSpa Atlanta Terminal A, LLC, Azure Services, LLC, Adra Wilson, Meme Marketing & Communications LLC, Melanie Hutchinson, Kenja Parks, and Bernard Parks, Jr.

The requisite approval from the FAA has been obtained and the Leases have been executed by the Company. However, the condition precedent that an operating agreement between the Company and Cordial is finalized and executed has not yet been satisfied. Based on this, management has determined that the matter may not be completely resolved, at least to the extent of one or more of the Settling Parties seeking to enforce the terms of the Settlement Agreement, and thus resulting in a continuation of the litigation.

The Company continues to be involved in settlement negotiations seeking to resolve all pending matters with Cordial and the city of Atlanta, and those negotiations are continuing.

In re Chen et al.

In March 2015, four former XpresSpa employees who worked at XpresSpa locations in John F. Kennedy International Airport and LaGuardia Airport filed a putative class and collective action wage-hour litigation in the United States District Court, Eastern District of New York. *In re Chen et al.*, CV 15-1347 (E.D.N.Y.). Plaintiffs claim that they and other spa technicians around the country were misclassified as exempt commissioned salespersons under Section 7(i) of the federal Fair Labor Standards Act ("FLSA"). Plaintiffs also assert class claims for unpaid overtime on behalf of New York spa technicians under the New York Labor Law, and discriminatory employment practices under New York State and City laws. On July 1, 2015, the plaintiffs moved to have the court authorize notice of the FLSA misclassification claim sent to all employees in the spa technician job classification at XpresSpa locations around the country in the last three years. Defendants opposed the motion. On February 16, 2016, the Magistrate Judge assigned to the case issued a Report & Recommendation, recommending that the District Court Judge grant the plaintiffs' motion. On March 1, 2016, the defendants filed Opposition to the Magistrate Judge's Report & Recommendation, arguing that the District Court Judge should reject the Magistrate Judge's findings. On September 23, 2016, the court ruled in favor of the plaintiffs and conditionally certified the class. The parties held a mediation on February 28, 2017 and reached an agreement on a settlement in principle. On September 6, 2017, the parties entered into a settlement agreement. On September 15, 2017, the parties filed a motion for settlement approval with the Court. XpresSpa subsequently paid the agreed-upon settlement amount to the settlement claims administrator to be held in escrow pending a fairness hearing and final approval by the Court. On March 30, 2018, the Court entered a Memorandum and Order denying the motion without prejudice to renewal due to questions and concerns the Court had about certain settlement terms. On April 24, 2018, the parties jointly submitted a supplemental letter to the Court advocating for the fairness and adequacy of the settlement and appeared in Court on April 25, 2018 for a hearing to discuss the settlement terms in greater detail with the assigned Magistrate Judge. At the conclusion of the hearing, the Court still had questions about the adequacy and fairness of the settlement terms, and the Judge asked that the parties jointly submit additional information to the Court addressing the open issues. The parties submitted such information to the Court on May 18, 2018 and are awaiting the Court's ruling on the open issues.

On August 21, 2019, the Court issued an Order denying the parties' motion for preliminary approval of the revised settlement, as the Court still had concerns about several of the settlement terms. At the December 6, 2019 Status Conference with the Court, the Court reiterated its denial of preliminary approval of the proposed settlement agreement. The Court instructed a notice of pendency to be disseminated to putative collective members, who will then have a 60-day window to decide whether to participate in the case. The notice of pendency was sent out in February 2020 and putative collective members had until April 3, 2020 to return a Consent to Join the case. As of April 3, 2020, 304 individuals had joined the case.

Binn et al v. FORM Holdings Corp. et al.

On November 6, 2017, Moreton Binn and Marisol F, LLC, former stockholders of XpresSpa, filed a lawsuit against FORM Holdings Corp. ("FORM) and its directors in the United States District Court for the Southern District of New York. The lawsuit alleged violations of various sections of the Securities Exchange Act of 1934 ("Exchange Act"), material omissions and misrepresentations (negligent and fraudulent), fraudulent omission, expropriation, breach of fiduciary duties, aiding and abetting, and unjust enrichment in the defendants' conduct related to the Company's acquisition of XpresSpa, and sought rescission of the transaction, damages, equitable and injunctive relief, fees and costs, and various other relief. On January 17, 2018, the defendants filed a motion to dismiss the complaint. On February 7, 2018, the plaintiffs amended their complaint. On February 28, 2018, the defendants filed a motion to dismiss the amended complaint. By March 30, 2018, the motion to dismiss was fully briefed. On August 7, 2018, the Court ruled on the defendants' motion, dismissing eight of the plaintiffs' ten claims and denying the defendants' motion to dismiss with respect to the two remaining claims, related to the Exchange Act. On October 30, 2018, the Court ordered that the plaintiffs could file an amended complaint, and, in response, the defendants could move for summary judgment. Consistent with the Court's Order, on November 16, 2018, the plaintiffs filed a second amended complaint, modifying their allegations, and asserting claims pursuant to the Exchange Act and the Securities Act of 1933, as well as bringing a breach of contract claim. On December 17, 2018, the defendants filed a motion for summary judgment seeking dismissal of all claims. On February 1, 2019, the plaintiffs opposed defendant's motion, requested discovery and cross-moved for partial summary judgement filed an opposition to defendants' motion and a counter motion for partial summary judgment. Defendants' summary judgement motion and plaintiff's cross-motion for partial summary judgment were fully briefed as of March 15, 2019. On April 29, 2019, an emergency hearing was held before the Court in which the plaintiff sought a temporary restraining order and preliminary injunction to preclude acceleration of the maturity on the Senior Secured Note. The Court entered a temporary restraining order, while allowing parties the opportunity to brief the issue.

On May 21, 2019, the Court granted the defendant's motion for summary judgement in full, dismissing all claims in the action. On July 3, 2019, the plaintiffs filed a notice of appeal in the United States Court of Appeals for the second circuit. The Company and its directors continue to believe that this action is without merit and intend to defend the appeal vigorously. On July 1, 2019, the Court held oral argument on Binn's motion for preliminary injunction. After hearing argument by both sides, the Court deferred action and ordered that the temporary restraining order remain in place. On July 23, 2019, the Court denied the plaintiffs' request for a preliminary injunction and vacated the temporary restraining order. On September 13, 2019, plaintiffs filed their appellate brief in the Second Circuit. As of December 13, 2019, plaintiffs' appeal was fully briefed. Oral argument has been scheduled for May 4, 2020.

Binn, et al. v. Bernstein et al.

On June 3, 2019, a third suit was commenced in the United States District Court for the Southern District of New York against FORM, five of its directors, as well as Rockmore, the Company's previous senior secured lender and a senior executive of the lender. Although this action is brought by Morton Binn and Marisol F, LLC, it is asserted derivatively on behalf of the Company. Plaintiffs assert eight causes of action, including that certain individual defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, by making false statements concerning, *inter alia*, the merger and the independence of FORM's board of directors and the valuation of the Company's lease portfolio. Plaintiffs also assert common law claims for breach of fiduciary duty, corporate waste, unjust enrichment, faithless servant doctrine, and aiding and abetting certain of the directors' alleged breaches of fiduciary duty. The Company and its directors believe that this action is without merit and intend to file a motion to dismiss and defend the action vigorously.

The defendants filed a motion to dismiss on October 23, 2019. The court heard oral argument on the defendants' motion to dismiss on January 22, 2020 and has not yet ruled on the motion.

Kainz v. FORM Holdings Corp. et al.

On March 20, 2019, a second suit was commenced in the United States District Court for the Southern District of New York against FORM, seven of its directors and former directors, as well as a managing director of Mistral Equity Partners ("Mistral"). The individual plaintiff, a shareholder of XpresSpa Holdings, LLC at the time of the merger in December 2016, alleges that the defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 by making false statements concerning, *inter alia*, the merger and the independence of FORM's board of directors, violated Section 12(2) of the Securities Act of 1933, breached the merger agreement by making false and misleading statements concerning the merger and fraudulently induced the plaintiff into signing the joinder agreement related to the merger. On May 8, 2019, the Company and its directors and the managing director of Mistral filed a motion to dismiss the complaint. On June 5, 2019, plaintiff opposed the motion and filed a cross-motion for a partial stay. Defendants' motion to dismiss was fully briefed as of June 19, 2019.

On November 13, 2019, the matter was dismissed in its entirety. On December 12, 2019, plaintiff filed a motion for reconsideration to vacate the order and judgment, dismissing the action, and for leave to amend the complaint. The motion was fully briefed as of February 6, 2020. On April 1, 2020, the Court denied plaintiff's motion in full. Plaintiff has 30 days to file a notice of appeal. On April 10, 2020, plaintiff filed a notice of appeal to the United States Court of Appeals for the Second Circuit. The Company and its directors continue to believe that this action is without merit and intend to defend the appeal.

Route1

On or about May 23, 2018, Route1 Inc., Route1 Security Corporation (together, "Route1") and Group Mobile Int'l, LLC ("Group Mobile") commenced a legal proceeding against the Company in the Ontario Superior Court of Justice.

Route1 and Group Mobile seek damages in relation to alleged breaches of a Membership Purchase Agreement entered into between Route1 and the Company on or about March 7, 2018, pursuant to which Route1 acquired the Company's 100% membership interest in Group Mobile. All capitalized terms not otherwise defined herein have the meanings ascribed to them in the Agreement.

The Plaintiffs allege that the Company: (i) failed to ensure all Tax Returns were true, correct and compliant in all respects and that all Taxes had been paid in full; (ii) failed to ensure that all inventory of Group Mobile had been priced in accordance with GAAP and consisted of a quality and quantity that was materially usable and salable in the Ordinary Course of Business; (iii) failed to ensure that Group Mobile's Most Recent Balance Sheet was materially complete and correct and prepared in accordance with GAAP; (iv) failed to record all liabilities on Group Mobile's Most Recent Balance Sheet; and (v) failed to deliver the agreed upon amount of Net Working Capital, and/or pay the Shortfall, to Route1. The litigation is at an early stage, and it is not yet possible to assess the likelihood of success and/or liability.

The Company counterclaimed against the Plaintiffs for amounts owed to the Company in relation to the sale of Excluded Inventory and seek damages thereon.

As described further below, the Company delivered a draft amended counterclaim to the Plaintiffs on or around November 2019 seeking, among other things, damages. The Company is seeking the Plaintiffs' consent to amend its counterclaim. Examinations for discovery are scheduled to take place in Toronto, Canada on June 9th and 10th, 2020. The parties currently expect to attend a one-day mediation in Toronto on May 7, 2020.

Rodger Jenkins v. XpresSpa Group, Inc.

In March 2019, Rodger Jenkins filed a lawsuit against the Company in the United States District Court for the Southern District of New York. The lawsuit alleges breach of contract of the stock purchase agreement related to the Company's acquisition of Excalibur Integrated Systems, Inc. and seeks specific performance, compensatory damages and other fees, expenses and costs. On or about January 3, 2020, the court granted the plaintiffs' motion to amend their pleading to increase their total demand.

The Company has denied the material allegations of the complaint and is currently defending the action. Efforts to settle the parties' dispute at a court-ordered mediation in March 2020 were not successful. The action is currently scheduled for a bench trial on May 18, 2020, although we believe that the trial date is likely to be adjourned due to the COVID-19 pandemic.

EFP Capital Solutions LLC settlement

In March 2019, a complaint was filed against the Company by EFP Capital Solutions LLC ("EFP"), the receivables factor of the Company's vendor MobiPT, Inc. ("MobiPT"), relating to payments made incorrectly by the Company to MobiPT for receivables MobiPT had sold to EFP. The ensuing mediation resulted in the Company agreeing to pay EFP $165 for such payments, for which the Company recorded an expense that is included in *Accounts payable, accrued expenses and other current liabilities* in the consolidated financial statements for the year ended December 31, 2019. The Company intends to seek reimbursement of the $165 from MobiPT, but there is no assurance the Company will be successful.

Regulatory Matters

The continued listing standards of Nasdaq provide, among other things, that a company may be delisted if the bid price of its stock drops below $1.00 for a period of 30 consecutive business days or if stockholders' equity is less than $2,500. On January 2, 2020, the Company received a deficiency letter from Nasdaq which provided us a grace period of 180 calendar days, or until June 30, 2020, to regain compliance with the minimum bid price requirement. If we fail to regain compliance on or prior to June 30, 2020, we may be eligible for an additional 180-day compliance period. Additionally, if we fail to comply with other continued listing standards of Nasdaq, our Common Stock might be subject to delisting.

Intellectual Property and Other Matters

The Company is engaged in litigation related to certain of the intellectual property that it owns, for which no liability is recorded, as the Company does not expect a material negative outcome.

In addition to those matters specifically set forth herein, the Company and its subsidiaries are involved in various other claims and legal actions that arise in the ordinary course of business. The Company does not believe that the ultimate resolution of these actions will have a material adverse effect on the Company's financial position, results of operations, liquidity, or capital resources. However, a significant increase in the number of these claims, or one or more successful claims under which the Company incurs greater liabilities than the Company currently anticipates, could materially adversely affect the Company's business, financial condition, results of operations and cash flows.

In the event that an action is brought against the Company or one of its subsidiaries, the Company will investigate the allegation and vigorously defend itself.

Leases

XpresSpa is contingently liable to a surety company under certain general indemnity agreements required by various airports relating to its lease agreements. XpresSpa agrees to indemnify the surety for any payments made on contracts of suretyship, guaranty, or indemnity. The Company believes that all contingent liabilities will be satisfied by its performance under the specified lease agreements.

Note 20. Subsequent Events

On March 11, 2020, the World Health Organization declared the outbreak of the COVID-19, which continues to spread throughout the U.S. and the world, as a pandemic. The outbreak is having an impact on the global economy, resulting in rapidly changing market and economic conditions. Similar to many businesses in the travel sector the Company's business has been materially adversely impacted by the recent COVID-19 outbreak and associated restrictions on travel that have been implemented. Effective March 24, 2020, the Company temporarily closed all global spa locations, largely due to the categorization of such spa locations by local jurisdictions as "non-essential services" in connection with the outbreak of COVID-19. This has had a materially adverse impact on the Company's cash flows from operations and caused a liquidity crisis. As a result, management has concluded that there was a long-lived asset impairment triggering event during the first quarter of 2020, which will result in management performing an impairment evaluation of its long-lived asset balances (primarily leasehold improvements and right of use lease assets of approximately $16,318 as of December 31, 2019). This could lead to the Company recording an impairment charge during the first quarter of 2020. The full extent to which COVID-19 will impact the Company's results will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of the virus and the actions to contain or treat its impact.

The Company is currently seeking sources of capital to help fund its business operations during the COVID-19 crisis and during 2020 raised approximately $9,440. If the Company is unable to obtain additional funding in the immediate term , it may be required to curtail or terminate some or all of its business operations and cause the Company's Board of Directors to decide to pursue a restructuring, which may include a reorganization or bankruptcy under Federal bankruptcy laws, or a dissolution, liquidation and/or winding up of the Company. Accordingly, holders of the Company's senior and unsecured debt and Common Stock may lose their entire investment in the event of a reorganization, bankruptcy, liquidation, dissolution or winding up of the Company.

The Company has taken actions to improve its overall cash position and access to liquidity. The Company expects that these actions discussed below will improve its overall cash position and assist with its liquidity needs.

Credit Cash Funding Advance

On January 9, 2020, fifteen wholly owned subsidiaries (the "CC Borrowers") of the Company entered into an accounts receivable advance agreement (the "CC Agreement") with CC Funding, a division of Credit Cash NJ, LLC (the "CC Lender"). Pursuant to the terms of the CC Agreement, the CC Lender agreed to make an advance of funds in the amount of $1,000 for aggregate fees of $160, for a total repayment amount of $1,160 (the "Collection Amount"). The Borrowers agreed to repay the Collection Amount on or before the -12-month anniversary of the funding date of the advance by authorizing the CC Lender to retain a fixed daily amount equal to $4 from a collection account established for such purpose. The advance of funds is secured by substantially all of the assets of the CC Borrowers, including CC Borrowers' existing and future accounts receivables and other rights to payment, including accounts receivable arising out of the CC Borrowers' acceptance or other use of any credit cards, charge cards, debit cards or similar forms of payments. The funds received from advances may be used in the ordinary course of business consistent with past practices. The CC Agreement additionally includes certain stated events of default, upon which the Lender is entitled to increase the fixed daily payments made to the Lender and to increase the interest rate to 18% per annum. As a result of the COVID-19 pandemic and closing of the Company's spas on March 24, 2020, the Company has entered into a revised repayment amount equal to $10 per week.

As compensation for the consent of existing creditor B3D to the CC Agreement described above, on January 9, 2020, XpresSpa Holdings, LLC ("XpresSpa Holdings"), a wholly-owned subsidiary of the Company, entered into a fifth amendment (the "Fifth Credit Agreement Amendment") to its existing Credit Agreement with B3D in order to, among other provisions, (i) amend and restate its existing convertible promissory note (the "B3D Note") in order to increase the principal amount owed to B3D from $7,000 to $7,150, which additional $150 in principal and any interest accrued thereon will be convertible, at B3D's option, into shares of the Company's Common Stock subject to receipt of the approval of the Company's stockholders in accordance with applicable law and the rules and regulations of the Nasdaq Stock Market and (ii) provide for the advance payment of 291,669 shares of Common Stock in satisfaction of the interest payable pursuant to the B3D Note for the months of October, November and December 2020 in shares of Common Stock.

B3D Senior Secured Loan

On March 6, 2020, XpresSpa Holdings entered into a sixth amendment (the "Sixth Credit Agreement Amendment") to its existing credit agreement with B3D in order to, among other provisions, (i) amend and restate the B3D Note in order to increase the principal amount owed to B3D from $7,150 to $7,900, which additional $750 in principal ($500 in new funding and $250 in debt accretion) and any interest accrued thereon will be convertible, at B3D's option, into shares of the Company's Common Stock; provided, however, that the additional $750 in principal and any interest accrued thereon shall neither be convertible into Common Stock nor interest payable in Common Stock prior to receipt of the approval of the Company's stockholders in accordance with applicable law and the rules and regulations of the Nasdaq Stock Market and (ii) decrease the conversion rate under the B3D Note from $2.00 per share to $0.56 per share, pursuant to the authority of the Board of Directors of the Company to voluntarily reduce the conversion rate in its discretion, which was previously approved by the Company's stockholders on October 2, 2019. In connection with the Sixth Credit Agreement Amendment and B3D Note, B3D agreed to provide the Company with $500 in additional funding and to submit conversion notices to convert (i) an aggregate of $375 in principal to Common Stock on March 6, 2020 and (ii) an additional aggregate of $375 in principal to Common Stock on or prior to March 27, 2020.

Common Stock Offerings and Warrant Exchange

On March 19, 2020, the Company entered into a Securities Purchase Agreement (the "First Purchase Agreement") with certain purchasers named therein, pursuant to which the Company issued and sold in a registered direct offering, (i) 4,153,383 shares of the Company's common stock, par value $0.01 per share (the "Common Stock") at an offering price of $0.175 per share and (ii) an aggregate of 2,132,333 pre-funded warrants exercisable for shares of Common Stock (the "First Pre-Funded Warrants") at an offering price of $0.165 per First Pre-Funded Warrant (the offering of the shares of Common Stock and the First Pre-Funded Warrants, the "First Offering"). The Company received gross proceeds of approximately $1,100 in connection with the First Offering, before deducting financial advisory consultant fees and related offering expenses. The First Pre-Funded Warrants were sold to the purchasers to the extent that a purchaser's subscription of shares of Common Stock in the First Offering would otherwise result in the purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% of the Company's outstanding Common Stock immediately following the consummation of the First Offering, in lieu of shares of Common Stock. Each First Pre-Funded Warrant represented the right to purchase one share of Common Stock at an exercise price of $0.01 per share and was ultimately exercised.

On March 19, 2020, the Company entered into separate Warrant Exchange Agreements (the "Exchange Agreements") with the holders of certain existing warrants (the "Exchanged Warrants") to purchase shares of Common Stock. The Exchanged Warrants were originally issued (i) pursuant to a securities purchase agreement, dated as of May 15, 2018, and in connection with a related consent and (ii) in connection with that certain Agreement and Plan of Merger by and among the Company, FHXMS, LLC, XpresSpa Holdings, LLC and Mistral XH Representative, LLC, as representative of the unitholders, dated October 25, 2016, as subsequently amended. Pursuant to the Exchange Agreements, on the closing date and subject to (i) the receipt of approval of the Company's stockholders as required by the applicable rules and regulations of the Nasdaq Stock Market and (ii) the receipt of approval of the Company's stockholders to increase the Company's authorized shares, the holders of Exchanged Warrants would exchange each Exchanged Warrant for a number of shares of Common Stock (the "New Shares") equal to the product of (i) the number of shares of Common Stock underlying such Exchanged Warrants (based on a formula related to the closing price of the Common Stock at the time of the closing of the Exchange as further detailed in the Exchange Agreement) and (ii) 1.5 (the "Exchange"). To the extent any holder of Exchanged Warrants would otherwise beneficially own in excess of any beneficial ownership limitation applicable to such holder after giving effect to the Exchange, that holder's Exchanged Warrants shall be exchanged for a number of New Shares issuable to the holder without violating the applicable beneficial ownership limitation and the remainder of the holder's Exchanged Warrants shall automatically convert into pre-funded warrants to purchase the number of shares of Common Stock equal to the number of shares of Common Stock in excess of the applicable beneficial ownership limitation. The closing is expected to take place on the first business day on which the conditions to the closing are satisfied or waived, subject to satisfaction of customary closing conditions.

On March 25, 2020, the Company entered into a Securities Purchase Agreement (the "Second Purchase Agreement") with certain purchasers named therein, pursuant to which the Company issued and sold in a registered direct offering, (i) 7,450,000 shares of the Company's Common Stock at an offering price of $0.20 per share and (ii) an aggregate of 1,500,000 pre-funded warrants exercisable for shares of Common Stock (the "Second Pre-Funded Warrants") at an offering price of $0.19 per Second Pre-Funded Warrant (the offering of the shares of Common Stock and the Second Pre-Funded Warrants, the "Second Offering"). The Company received gross proceeds of approximately $1,790 in connection with the Second Offering, before deducting financial advisory consultant fees and related offering expenses. The Second Pre-Funded Warrants were sold to the purchasers to the extent that a purchaser's subscription of shares of Common Stock in the Second Offering would otherwise result in the purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% (or, in certain cases, 9.99%) of the Company's outstanding Common Stock immediately following the consummation of the Second Offering, in lieu of shares of Common Stock. Each Second Prefunded Warrant represents the right to purchase one share of Common Stock at an exercise price of $0.01 per share. The Second Pre-Funded Warrants were exercisable immediately and may be exercised at any time until the Second Pre-Funded Warrants are exercised in full. All of the Second Pre-Funded Warrants have been exercised.

On March 27, 2020, the Company entered into a Securities Purchase Agreement (the "Third Purchase Agreement") with certain purchasers named therein, pursuant to which the Company issued and sold, in a registered direct offering, (i) 7,895,000 shares of the Company's Common Stock, at an offering price of $0.20 per share and (ii) an aggregate of 2,105,000 pre-funded warrants exercisable for shares of Common Stock (the "Third Pre-Funded Warrants") at an offering price of $0.19 per Third Pre-Funded Warrant (the offering of the shares of Common Stock and the Third Pre-Funded Warrants, the "Third Offering"). The Company received gross proceeds of approximately $2,000 in connection with the Third Offering, before deducting financial advisory consultant fees and related offering expenses. The Third Pre-Funded Warrants were sold to the purchasers to the extent that a purchaser's subscription of shares of Common Stock in the Third Offering would otherwise result in the purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% (or, in certain cases, 9.99%) of the Company's outstanding Common Stock immediately following the consummation of the Third Offering, in lieu of shares of Common Stock. Each Third Prefunded Warrant represents the right to purchase one share of Common Stock at an exercise price of $0.01 per share. The Third Pre-Funded Warrants were exercisable immediately and may be exercised at any time until the Third Pre-Funded Warrants are exercised in full. All of the Third Pre-Funded Warrants have been exercised.

On April 6, 2020, the Company entered into a Securities Purchase Agreement (the "Fourth Purchase Agreement") with certain purchasers named therein, pursuant to which the Company issued and sold, in a registered direct offering, (i) 12,418,179 shares of the Company's Common Stock at an offering price of $0.22 per share and (ii) an aggregate of 1,445,454 pre-funded warrants exercisable for shares of Common Stock (the "Fourth Pre-Funded Warrants") at an offering price of $0.21 per Pre-Funded Warrant (the offering of the shares of Common Stock and the Pre-Funded Warrants, the "Fourth Offering"). The Company received gross proceeds of approximately $3.05 million in connection with the Fourth Offering, before deducting financial advisory consultant fees and related offering expenses. The Fourth Pre-Funded Warrants were sold to the purchasers to the extent that a purchaser's subscription of shares of Common Stock in the Fourth Offering would otherwise result in the purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% (or, in certain cases, 9.99%) of the Company's outstanding Common Stock immediately following the consummation of the Fourth Offering, in lieu of shares of Common Stock. Each Fourth Pre-Funded Warrant represents the right to purchase one share of Common Stock at an exercise price of $0.01 per share. The Fourth Pre-Funded Warrants are exercisable immediately and may be exercised at any time until the Fourth Pre-Funded Warrants are exercised in full.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Annual Report on Form 10-K to be signed on its behalf by the undersigned thereunto, duly authorized on the 20th day of April, 2020.

XpresSpa Group, Inc.

By: /s/ DOUGLAS SATZMAN

Douglas Satzman
Chief Executive Officer
(Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer)

Pursuant to the requirements of Securities Exchange Act of 1934, this Annual Report on Form 10-K has been signed below by the following persons on behalf of the registrant and in the capacities indicated below and on the dates indicated.

Signature	Title	Date
/s/ DOUGLAS SATZMAN **Douglas Satzman**	Chief Executive Officer and Director (Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer)	April 20, 2020
/s/ BRUCE T. BERNSTEIN **Bruce T. Bernstein**	Director	April 20, 2020
/s/ ROBERT WEINSTEIN **Robert Weinstein**	Director	April 20, 2020
Michael Lebowitz	Director	April 20, 2020
/s/ DONALD E. STOUT **Donald E. Stout**	Director	April 20, 2020

Exhibit 3.1

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:18 AM 06/22/2010
FILED 09:06 AM 06/22/2010
SRV 100677019 - 4090975 FILE

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
VRINGO, INC.

Vringo, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "DGCL"), DOES HEREBY CERTIFY:

1. The name of the Corporation is Vringo, Inc. The Corporation's original Certificate of Incorporation was filed with the Delaware Secretary of State on January 9, 2006. An Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on May 9, 2006, July 12, 2006, August 9, 2006 and July 30, 2007. An amendment to the Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on February 21, 2008 and December 29, 2009.

2. That the Board of Directors duly adopted resolutions setting forth a proposed amendment and restatement of the Amended and Restated Certificate of Incorporation of the Corporation, declaring said amendment and restatement to be advisable and directing its officers to submit said amendment and restatement to the stockholders of the Corporation for consideration thereof. The resolution setting forth the proposed amendment and restatement is as follows:

"THEREFORE, BE IT RESOLVED, that the Amended and Restated Certificate of Incorporation of the Corporation is hereby amended to read in its entirety as follows, subject to the required consent of the stockholders of the Corporation:

FIRST: The name of the Corporation (hereinafter the "Corporation") is Vringo, Inc.

SECOND: The address, including street, number, city and county, of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801; and the name of the Registered Agent of the Corporation at such address is The Corporation Trust Company.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

FOURTH: The Corporation is authorized to issue two classes of stock to be designated, respectively, Common Stock, par value $0.01 per share ("Common Stock") and Preferred Stock, par value $0.01 per share ("Preferred Stock"). The total number of shares the Corporation shall have the authority to issue is thirty three million (33,000,000) shares, twenty eight million (28,000,000) shares of which shall be Common Stock and five million (5,000,000) shares of which shall be Preferred Stock.

(1) Common Stock. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock or any series. The holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders. There shall be no cumulative voting. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of the Corporation will be entitled to receive ratably all assets of the Corporation available for distribution to stockholders, subject to any preferential rights of any then outstanding Preferred Stock.

(2) Preferred Stock. Shares of Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated in the resolution or resolutions providing for the establishment of such series adopted by the Board of Directors of the Corporation as hereinafter provided. Authority is hereby expressly granted to the Board of Directors of the Corporation to issue, from time to time, shares of Preferred Stock in one or more series, and, in connection with the establishment of any such series by resolution or resolutions, to determine and fix such voting powers, full or limited, or no voting powers, and such other powers, designations, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, if any, including, without limitation, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated in such resolution or resolutions, all to the fullest extent permitted by the DGCL. Without limiting the generality of the foregoing, the resolution or resolutions providing for the establishment of any series of Preferred Stock may, to the extent permitted by law, provide that such series shall be superior to, rank equally with or be junior to the Preferred Stock of any other series. The powers, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may be different from those of any and all other series at any time outstanding. Except as otherwise expressly provided in the resolution or resolutions providing for the establishment of any series of Preferred Stock, no vote of the holders of shares of Preferred Stock or Common Stock shall be a prerequisite to the issuance of any shares of any series of the Preferred Stock authorized by and complying with the conditions of this Certificate of Incorporation.

FIFTH: (1) The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors having that number of directors set out in the Bylaws of the Corporation as adopted or as set forth from time to time by a duly adopted amendment thereto by the Board of Directors or stockholders of the Corporation.

(2) No director (other than directors elected by one or more series of Preferred Stock) may be removed from office by the stockholders except for cause and, in addition to any other vote required by law, upon the affirmative vote of not less than 66 $^{2}/3\%$ of the total voting power of all outstanding securities of the Corporation then entitled to vote generally in the election of directors, voting together as a single class.

(3) Each director shall hold office until such director's successor shall have been duly elected and qualified or until such director's earlier death, resignation or removal. Vacancies on the Board of Directors resulting from death, resignation, removal or otherwise and newly created directorships resulting from any increase in the number of directors (other than directors elected by one or more series of Preferred Stock) may be filled solely by a vote of a majority of the directors then in office (although less than a quorum) or by a sole remaining director, and each director so elected shall serve for the remainder of the full term of the director whose death, resignation or removal shall have created such vacancy and until his or her successor shall have been elected and qualified. Whenever the holders of one or more classes or series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, the nomination, election, term of office, filling of vacancies, removal and other features of such directorships shall not be governed by this Article FIFTH unless otherwise provided for in the certificate of designation for such classes or series.

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation and for the further definition of the powers of the Corporation and its directors and stockholders:

(1) The Board of Directors is expressly authorized to make, adopt, amend, alter, rescind or repeal the Bylaws of the Corporation. Notwithstanding the foregoing, the stockholders may adopt, amend, alter, rescind or repeal the Bylaws with, in addition to any other vote required by law, the affirmative vote of the holders of not less than 66 $^{2}/3\%$ of the total voting power of all outstanding securities of the Corporation then entitled to vote generally in the election of directors, voting together as a single class.

(2) Elections of directors need not be by written ballot unless the Bylaws of the Corporation so provide.

(3) Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Chairman of the Board of Directors or the Chief Executive Officer or at the written request of a majority of the members of the Board of Directors and may not be called by any other person; provided, however, that if and to the extent that any special meeting of stockholders may be called by any other person or persons specified in any provisions of the Certificate of Incorporation or any amendment thereto or any certificate filed under Section 151(g) of the DGCL, then such special meeting may also be called by the person or persons, in the manner, at the times and for the purposes so specified.

EIGHTH: The Corporation shall, to the fullest extent permitted by the provisions of Section 145 of the DGCL, as the same may be amended and supplemented from time to time, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section as amended or supplemented (or any successor), and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

NINTH: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that this Article shall not eliminate or limit the liability of a director (i) for any breach of his or her duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derives an improper personal benefit.

If the DGCL is hereafter amended to authorize corporate action further limiting or eliminating the personal liability of directors, then the liability of the director to the Corporation shall be limited or eliminated to the fullest extent permitted by the DGCL, as so amended from time to time. Any amendment, repeal or modification of this Article shall be prospective only, and shall not adversely affect any right or protection of a director of the Corporation under this Article NINTH in respect of any act or omission occurring prior to the time of such amendment, repeal or modification.

TENTH: Each reference in this Amended and Restated Certificate of Incorporation to any provision of the DGCL refers to the specified provision of the DGCL, as the same now exists or as it may hereafter be amended or superseded.

ELEVENTH: The Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware; and all rights conferred on stockholders, directors or any other persons herein are granted subject to this reservation.

3. That said Amended and Restated Certificate of Incorporation has been consented to and authorized by the holders of a majority of the issued and outstanding stock entitled to vote in accordance with the provisions of Section 228 of the DGCL.

4. That said Amended and Restated Certificate of Incorporation was duly adopted in accordance with the applicable provisions of Sections 242 and 245 of the DGCL.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Vringo, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by Jonathan Medved, its Chief Executive Officer, on this 22nd day of June, 2010.

VRINGO, INC.

By: /s/ Jonathan Medved
Name: Jonathan Medved
Title: Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:59 PM 07/19/2012
FILED 02:00 PM 07/19/2012
SRV 120852405 - 4090975 FILE

CERTIFICATE OF AMENDMENT
OF THE
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
VRINGO, INC.

VRINGO, INC., a Delaware corporation (the **"Corporation"**), does hereby certify that:

FIRST: The name of the Corporation is **VRINGO, INC.**

SECOND: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on January 9, 2006 and the Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 22, 2010.

THIRD: The Board of Directors of the Corporation (the **"Board"),** acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware (the **"DGCL"),** adopted resolutions amending the Corporation's Amended and Restated Certificate of Incorporation as follows:

The second sentence of Article Fourth of the Corporation's Amended and Restated Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

"The total number of shares the Corporation shall have the authority to issue is one hundred fifty-five million (155,000,000) shares, one hundred fifty million (150,000,000) shares of which shall be Common Stock and five million (5,000,000) shares of which shall be Preferred Stock."

FOURTH: Thereafter, pursuant to a resolution of the Board, this Certificate of Amendment was submitted to the stockholders of the Corporation for their approval, and was duly adopted in accordance with the provisions of Sections 222 and 242 of the DGCL.

IN WITNESS WHEREOF, the Corporation has caused this **CERTIFICATE OF AMENDMENT** to be signed by its Chief Executive Officer as of the 19th day of July, 2012.

VRINGO, INC.

By: /s/ Andrew D. Perlman
Name: Andrew D. Perlman
Title: Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:59 PM 07/19/2012
FILED 02:01 PM 07/19/2012
SRV 120852409 - 4090975 FILE

VRINGO, INC.

CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS OF SERIES A CONVERTIBLE PREFERRED STOCK

Vringo, Inc. (the **"Corporation"**), a corporation organized and existing under the General Corporation Law of the State of Delaware (the **"DGCL"),** does hereby certify that, pursuant to authority conferred upon the Board of Directors of the Corporation (the **"Board")** by the Amended and Restated Certificate of Incorporation, as amended, of the Corporation, and pursuant to Sections 151 and 141 of the DGCL, the Board adopted resolutions (i) designating a series of the Corporation's previously authorized preferred stock, par value $0.01 per share, and (ii) providing for the designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations or restrictions thereof, of six thousand nine hundred and sixty eight (6,968) shares of Series A Convertible Preferred Stock of the Corporation, as follows:

RESOLVED, that the Corporation is authorized to issue six thousand nine hundred and sixty eight (6,968) shares of Series A Convertible Preferred Stock (the **"Series A Preferred Stock"),** par value $0.01 per share, which shall have the following powers, designations, preferences and other special rights:

1. Designation and Amount. The class of preferred stock hereby classified shall be designated the "Series A Preferred Stock". The initial number of authorized shares of the Series A Preferred Stock shall be six thousand nine hundred and sixty eight (6,968), which shall not be subject to increase without the consent of the holders of a majority of the then outstanding shares of Series A Preferred Stock. Each share of the Series A Preferred Stock shall have a par value of $0.01.

2. Ranking. The Series A Preferred Stock shall rank prior and superior to all of the common stock, par value $0.01 per share, of the Corporation **("Common Stock")** and any other capital stock of the Corporation (other than the Series A Preferred Stock) with respect to the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Corporation. The rights of the shares of Common Stock and other capital stock of the Corporation (other than the Series A Preferred Stock) shall be subject to the preferences and relative rights of the Series A Preferred Stock.

3. Dividends. From and after the first date of issuance of any shares of Series A Preferred Stock (the **"Initial Issuance Date"),** the holders of Series A Preferred Stock (each, a **"Holder"** and collectively, the **"Holders")** shall be entitled to receive such dividends paid and distributions made to the holders of Common Stock, which right shall be prior to the rights of the holders of capital stock of the Corporation, including the Common Stock, junior in rank to the Series A Preferred Stock in respect of the preferences as to distributions and payments upon a Liquidation Event (such stock, including the Common Stock, being referred to hereinafter collectively as **"Junior Stock")** (if any) (but after and subject to the rights of holders of Senior Preferred Stock (as defined below), if any, and *pari passu* to the rights of holders of capital stock of the Corporation *pari passu* in rank to the Series A Preferred Stock in respect of the preferences as to distributions and payments upon a Liquidation Event (such stock being referred to hereinafter collectively as **"Pari Passu Stock")** (if any)), to the same extent as if such Holders had converted the Series A Preferred Stock into Common Stock (without regard to any limitations on conversion herein or elsewhere) and had held such shares of Common Stock on the record date for such dividends and distributions (provided, however, to the extent that a Holder's right to participate in any such dividend or distribution would result in the Holder exceeding the Maximum Percentage (as defined below), then the Holder shall not be entitled to participate in such dividend or distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such dividend or distribution to such extent) and the portion of such dividend or distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage, at which time such Holder shall be delivered such dividend or distribution to the extent as if there had been no such limitation). Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock. Following the occurrence of a Liquidation Event (as defined below) and the payment in full to a Holder of its applicable liquidation preference, other than as set forth in Section 4 below, such Holder shall cease to have any rights hereunder to participate in any future dividends or distributions made to the holders of Common Stock. The Corporation shall not declare or pay any dividends on any other shares of Junior Stock or any Pari Passu Stock unless the holders of Series A Preferred Stock then outstanding shall simultaneously receive a dividend on a pro rata basis as if the shares of Series A Preferred Stock had been converted into shares of Common Stock pursuant to Section 7 immediately prior to the record date for determining the stockholders eligible to receive such dividends.

4. Liquidation Preference. Upon any Liquidation Event, the Holders shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after and subject to the payment in full of all amounts required to be distributed to the holders of any other Preferred Stock of the Corporation ranking on liquidation prior and in preference to the Series A Preferred Stock (such Preferred Stock being referred to hereinafter as **"Senior Preferred Stock")** upon such liquidation, dissolution or winding up, but before any payment shall be made to the holders of Junior Stock, an amount in cash equal to the Stated Value. If upon any such Liquidation Event, the remaining assets of the Corporation available for the distribution to its stockholders after payment in full of amounts required to be paid or distributed to holders of Senior Preferred Stock shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series A Preferred Stock and any class of stock ranking on liquidation on a parity with the Series A Preferred Stock, shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect to the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full. For purposes of this Certificate of Designations, the term **"Stated Value"** shall mean one thousand dollars ($1,000) per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar events relating to the Series A Preferred Stock after the Initial Issuance Date. For purposes of this Certificate of Designations, a **"Liquidation Event"** means the voluntary or involuntary liquidation, dissolution or winding up of the Corporation or its Subsidiaries, the assets of which constitute all or substantially all of the assets of the business of the Corporation and its Subsidiaries taken as a whole, in a single transaction or series of transactions.

5. Fundamental Transactions; Put Triggering Event.

(a) Certain definitions. For purposes of this Certificate of Designations, the following definitions shall apply:

(i) **"Business Day"** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(ii) **"Cash Conversion Amount"** means the product of (A) the percentage of the consideration in the Put Triggering Event (in relation to all consideration being paid in such Put Triggering Event) being paid in cash multiplied by (B) the Conversion Amount as to which a Put Triggering Event Redemption Notice is being delivered.

(iii) **"Exchange Act"** means the Securities Exchange Act of 1934, as amended.

(iv) **"Eligible Market"** means The New York Stock Exchange, Inc., the NYSE MKT, The NASDAQ Global Select Market, The NASDAQ Global Market or The NASDAQ Capital Market.

(v) **"Change of Control"** means any Fundamental Transaction other than (A) any reorganization, recapitalization or reclassification of the Common Stock in which holders of the Corporation's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, the voting power of the surviving entity or entities necessary to elect a majority of the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities, or (B) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Corporation.

(vi) **"Eligible Successor Common Stock"** means common stock of a Successor Entity that is a publicly traded corporation, whose common stock is quoted or listed for trading on an Eligible Market, and that assumes in writing all obligations of the Corporation under this Certificate of Designations in accordance with Section 5(b) hereof such that the applicable Series A Preferred Stock shall be convertible into publicly traded common stock (or its equivalent) of such Successor Entity.

(vii) **"Fundamental Transaction"** means that the Corporation shall (or in the case of clause (F) any "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act)), directly or indirectly, in one or more related transactions, (A) consolidate or merge with or into (whether or not the Corporation is the surviving corporation) another entity, or (B) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Corporation to another entity, or (C) allow another entity or entities to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the entity or entities making or party to, or associated or affiliated with the entity or entities making or party to, such purchase, tender or exchange offer), or (D) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another entity whereby such other entity acquires more than the 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the other entity or other entities making or party to, or associated or affiliated with the other entities making or party to, such stock purchase agreement or other business combination), or (E) reorganize, recapitalize or reclassify its Common Stock, or (F) become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than 50% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock.

(viii) **"Parent Entity"** of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(ix) **"Put Triggering Event"** means any Change of Control other than one in which a Successor Entity that is a publicly traded corporation, whose common stock is quoted or listed for trading on an Eligible Market, assumes in writing all obligations of the Corporation under this Certificate of Designations in accordance with Section 5(b) hereof such that the Series A Preferred Stock shall be convertible into publicly traded common stock (or its equivalent) of such Successor Entity.

(x) **"Required Holders"** means the holders of record of a majority of the outstanding shares of Series A Preferred Stock.

(xi) **"Securities Conversion Amount"** means the product of (A) the percentage of the consideration in the Put Triggering Event (in relation to all consideration being paid in such Put Triggering Event) being paid in securities (other than in Eligible Successor Common Stock) multiplied by (B) the Conversion Amount as to which a Put Triggering Event Redemption Notice is being delivered.

(xii) **"Successor Entity"** means the Person, which may be the Corporation, formed by, resulting from or surviving any Fundamental Transaction or the Person with which such Fundamental Transaction shall have been made, provided that if such Person is not a publicly traded entity whose common stock or equivalent equity security is quoted or listed for trading on an Eligible Market, Successor Entity shall mean such Person's Parent Entity.

(xiii) **"Successor Entity Conversion Amount"** means the product of (A) the percentage of the consideration in the Put Triggering Event (in relation to all consideration being paid in such Put Triggering Event) being paid in Eligible Successor Common Stock multiplied by (B) the Conversion Amount as to which a Put Triggering Event Redemption Notice is being delivered.

(xiv) **"Trading Day"** means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the shares of Common Stock are then traded; provided that "Trading Day" shall not include any day on which the shares of Common Stock are scheduled to trade on such exchange or market for less than 4.5 hours or any day that the shares of Common Stock are suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York Time).

(xv) **"Voting Stock"** means capital stock of the class or classes pursuant to which the holders thereof have the general voting power to elect or the general power to appoint, at least a majority of the board of directors, managers or trustees thereof (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

(b) Assumption. The Corporation shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Corporation under this Certificate of Designations in accordance with the provisions of this Section 5 pursuant to written agreements in form and substance satisfactory to the Required Holders and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each Holder of Series A Preferred Stock in exchange for such Series A Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Certificate of Designations including, without limitation, having a stated value equal to the Stated Value of the Series A Preferred Stock held by such Holder and having similar ranking to the Series A Preferred Stock, and satisfactory to the Required Holders and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designations referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designations with the same effect as if such Successor Entity had been named as the Corporation herein. Upon consummation of the Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion of the Series A Preferred Stock at any time after the consummation of the Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property) issuable upon the conversion of the Series A Preferred Stock prior to such Fundamental Transaction (without regard to any limitations on the conversion of the Series A Preferred Stock), such shares of publicly traded common stock (or their equivalent) of the Successor Entity, as adjusted in accordance with the provisions of this Certificate of Designations, which the Holder would have been entitled to receive had such Holder converted the Series A Preferred Stock in full (without regard to any limitations on conversion, including without limitation, the Maximum Percentage) immediately prior to such Fundamental Transaction (provided, however, to the extent that a Holder's right to receive any such shares of publicly traded common stock (or their equivalent) of the Successor Entity would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to receive such shares to such extent (or to beneficially own any shares of publicly traded common stock (or their equivalent) of the Successor Entity as a result of such consideration to such extent) and the portion of such shares shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage, at which time such Holder shall be delivered such shares to the extent as if there had been no such limitation). The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of the Series A Preferred Stock.

(c) Put Triggering Event. No sooner than fifteen (15) days nor later than ten (10) days prior to the consummation of a Change of Control, but not prior to the public announcement of such Change of Control, the Corporation shall deliver written notice thereof via facsimile and overnight courier to the Holders (a **"Change of Control Notice").** At any time during the period beginning after a Holder's receipt of a Change of Control Notice with respect to a Put Triggering Event and ending on the date that is twenty (20) Trading Days after such Put Triggering Event, such Holder may require the Corporation to redeem all or any portion of such Holder's Series A Preferred Stock by delivering (such date of delivery, the **"Put Triggering Event Redemption Notice Date")** written notice thereof **("Put Triggering Event Redemption Notice")** to the Corporation, which Put Triggering Event Redemption Notice shall indicate the Conversion Amount the Holder is electing to be redeemed and/or assumed as provided below. Any Series A Preferred Stock subject to redemption pursuant to this Section 5(c) shall be redeemed by the Corporation in cash at a price equal to (I) in the event of a Put Triggering Event that provides for cash payments to the Corporation or the equity holders of the Corporation, the greater of (i) 100% of the Cash Conversion Amount and (ii) the product of (x) the Conversion Rate in effect at such time as the Holder delivers a Put Triggering Event Redemption Notice with respect to such Cash Conversion Amount and (y) the highest amount of cash consideration to be paid to a holder of one share of Common Stock upon consummation of such Put Triggering Event (or, if such cash consideration is paid to the Corporation, that would be payable to a holder of one share of Common Stock after consummation of such Put Triggering Event and distribution of such cash by the Corporation to its holders of Common Stock), **(II)** in the event of a Put Triggering Event that provides for payments in securities (other than in Eligible Successor Common Stock) to the Corporation or the equity holders of the Corporation, the greater of (i) 100% of the Securities Conversion Amount and (ii) the product of (x) the Conversion Rate in effect at such time as the Holder delivers a Put Triggering Event Redemption Notice with respect to such Securities Conversion Amount and (y) the last Closing Sale Price of the Common Stock in effect immediately prior to the consummation of the Put Triggering Event (the **"Put Triggering Event Redemption Price"),** and **(**III**)** in the event of a Triggering Event that provides for payments in Eligible Successor Common Stock to the Corporation or the equity holders of the Corporation, the Successor Entity shall assume the Successor Entity Conversion Amount in accordance with the provisions of Section 5(b) above. Upon the Corporation's receipt of a Put Triggering Event Redemption Notice(s) from any Holder, the Corporation shall within one (1) Business Day of such receipt notify each other Holder by facsimile of the Corporation's receipt of such notice(s). The Corporation shall make payment of the Put Triggering Event Redemption Price concurrently with the consummation of such Put Triggering Event to all Holders that deliver a Put Triggering Event Redemption Notice prior to the consummation of such Put Triggering Event and within five (5) Trading Days after the Corporation's receipt of such notice otherwise (the **"Put Triggering Event Redemption Date").** To the extent redemptions required by this Section 5(c) are deemed or determined by a court of competent jurisdiction to be prepayments of the Series A Preferred Stock by the Corporation, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 5(c), until the Put Triggering Event Redemption Price (together with any interest thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 5(c) may be converted, in whole or in part, by the Holder into shares of Common Stock, or in the event the Conversion Date is after the consummation of the Put Triggering Event, shares or equity interests of the Successor Entity substantially equivalent to the Corporation's Common Stock pursuant to Section 7(c)(i). The Holders and the Corporation agree that in the event of the Corporation's redemption of any Series A Preferred Stock under this Section 5(c), the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future dividend rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 5(c) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. In the event that the Corporation does not pay the Put Triggering Event Redemption Price on the Put Triggering Event Redemption Date, then the Holder shall have the right to void the redemption pursuant to Section 5(d).

(d) Void Redemption. In the event that the Corporation does not pay a Put Triggering Event Redemption Price within the time period set forth in this Certificate of Designations, at any time thereafter and until the Corporation pays such unpaid applicable Put Triggering Event Redemption Price in full, a Holder shall have the option to, in lieu of redemption, require the Corporation to promptly return to such Holder any or all of the Series A Preferred Stock that were submitted for redemption by such Holder and for which the applicable Put Triggering Event Redemption Price has not been paid, by sending written notice thereof to the Corporation via facsimile (the **"Void Redemption Notice").** Upon the Corporation's receipt of such Void Redemption Notice, (i) the applicable Redemption Notice shall be null and void with respect to the Series A Preferred Stock subject to the Void Redemption Notice, (ii) the Corporation shall immediately return any Series A Preferred Stock subject to the Void Redemption Notice, and (iii) the Conversion Price of such returned Series A Preferred Stock shall be adjusted to the lesser of (A) the Conversion Price as in effect on the date on which the Void Redemption Notice is delivered to the Corporation and (B) the lowest Weighted Average Price of the Common Stock during the period beginning on the date on which the applicable Redemption Notice is delivered to the Corporation and ending on the date on which the Void Redemption Notice is delivered to the Corporation, as applicable, subject to further adjustment as provided in this Certificate of Designations.

(e) Disputes. In the event of a dispute as to the determination of the arithmetic calculation of the Put Triggering Event Redemption Price, such dispute shall be resolved pursuant to Section 7(e) with the term "Put Triggering Event Redemption Price" being substituted for the term "Conversion Rate". A Holder's delivery of a Void Redemption Notice and exercise of its rights following such notice shall not effect the Corporation's obligations to make any payments which have accrued prior to the date of such notice.

6. Voting Rights.

(a) Certain definitions. For purposes of this Certificate of Designations, the following definitions shall apply:

(i) **"Contingent Obligation"** means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(ii) **"GAAP"** means United States generally accepted accounting principles, consistently applied.

(iii) **"Indebtedness"** of any Person means, without duplication (i) all indebtedness for borrowed money, (ii) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, including (without limitation) "capital leases" in accordance with GAAP (other than trade payables entered into in the ordinary course of business), (iii) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (iv) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (v) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (vi) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (vii) all indebtedness referred to in clauses (i) through (vi) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (viii) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (i) through (vii) above.

(iv) **"Person"** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(b) General. The Holders shall not be entitled to vote, except (i) as otherwise required by applicable law and (ii) subject to Section 7(i), that each issued and outstanding share of Series A Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which each such share of Series A Preferred Stock is convertible (as adjusted from time to time pursuant to Section 8 hereof), at each meeting of stockholders of the Corporation (or pursuant to any action by written consent) with respect to matters presented to the stockholders of the Corporation for their action or consideration in connection with (A) a Change of Control of the Corporation or (B) the issuance by the Corporation, directly or indirectly, in one or more transactions or series of transactions, of shares of Common Stock, Options or Convertible Securities if, in the aggregate, the number of such shares of Common Stock together with the number of shares of Common Stock issuable upon the conversion or exercise, as applicable, of such Options and Convertible Securities is more than 20% of the number of shares of Common Stock issued and outstanding prior to any such issuance (such issuance, the **"Twenty Percent Issuance").**

(c) Series A Preferred Stock Protective Provisions. In addition to any other rights provided by law, the Corporation shall not and shall not permit any direct or indirect Subsidiary of the Corporation to, without first obtaining the affirmative vote or written consent of the holders of a majority of the outstanding shares of Series A Preferred Stock:

(i) increase the authorized number of shares of Series A Preferred Stock;

(ii) amend, alter or repeal the preferences, special rights or other powers of the Series A Preferred Stock so as to affect adversely the Series A Preferred Stock;

(iii) on or prior to the 18th month anniversary of the Initial Issuance Date, create, or authorize the creation of, or issue, or authorize the issuance of any debt security or any equity security or incur, or authorize the incurrence of any other Indebtedness, if such debt security, equity security or other Indebtedness is (A) one with preference or priority over the rights of the Series A Preferred Stock as to the right to either receive dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation and (B) issued or incurred with net proceeds to the Corporation or will have outstanding principal amount incurred plus accrued interest, as applicable, in an amount, individually or in the aggregate, more than $6,000,000 less the then outstanding principal amount of Vringo Notes (as defined in the Agreement and Plan of Merger, dated as of March 12, 2012 (the **"Subscription Date"),** by and among Vringo, Inc., a Delaware corporation **("Parent"),** VIP Merger Sub, Inc., a Delaware corporation and wholly owned Subsidiary of Parent, and the Corporation; provided, that the Corporation and its Subsidiaries shall be permitted to incur Indebtedness, provided, that the liens or other encumbrances, if any, on such Indebtedness cover only assets acquired after the Initial Issuance Date, and the holder of such Indebtedness expressly subordinates to the Holders of the Series A Preferred Stock with respect to assets owned by the Corporation on or prior to the Initial Issuance Date pursuant to a subordination agreement in form and substance reasonably satisfactory to the Required Holders; or

(iv) in any manner, issue or sell any rights, warrants or options to subscribe for or purchase shares of Common Stock or securities directly or indirectly, convertible into or exchangeable or exercisable for shares of Common Stock at a price which varies or may vary with the market price of the shares of Common Stock, including by way of one or more reset(s) to any fixed price, unless the conversion, exchange or exercise price of any such security cannot be less than the then applicable Conversion Price. Nothing herein shall prevent the Corporation from consummating an acquisition that does not result in capital raising for the Corporation and/or any of its Subsidiaries where the purchase price with respect thereto is a fixed price determined on or prior to the consummation of such transaction based on an average of recent market prices prior to such consummation, but only if all parties to any agreement with respect to such transaction and all Persons that are entitled to receive any securities pursuant to any such agreement are prohibited from selling, directly or indirectly, all equity and equity linked securities of the Corporation at all times after commencement of negotiations with respect to any such transaction until the consummation of any such transaction.

7. Conversion. Subject to Section 7(i), each share of Series A Preferred Stock may be converted into shares of Common Stock at any time or times, at the option of any Holder as provided in this Section 7, provided, however, that in connection with any Liquidation Event, the right of conversion shall terminate at the close of business on the full business day next preceding the date fixed for the payment of any amounts distributable on liquidation to the holders of Series A Preferred Stock.

(a) Certain definitions. For purposes of this Certificate of Designations, the following definitions shall apply:

(i) "**Bloomberg**" means Bloomberg Financial Markets.

(ii) "**Conversion Amount**" means the Stated Value.

(iii) "**Conversion Price**" means $.33138918, subject to adjustment as provided herein.

(iv) "**Subsidiary**" means, with respect to the Corporation, any entity in which the Corporation, directly or indirectly, owns any of the capital stock or holds an equity or similar interest.

(v) "**Weighted Average Price**" means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market during the period beginning at 9:30:01 a.m., New York City time, and ending at 4:00:00 p.m., New York City time, as reported by Bloomberg through its "Volume at Price" function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York City time, and ending at 4:00:00 p.m., New York City time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the "pink sheets" by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Weighted Average Price cannot be calculated for such security on such date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be the fair market value as mutually determined by the Corporation and the Required Holders. If the Corporation and the Required Holders are unable to agree upon the fair market value of the Common Stock, then such dispute shall be resolved pursuant to Section 7(e) below with the term "Weighted Average Price" being substituted for the term "Conversion Rate." All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(b) Conversion. The number of shares of Common Stock issuable upon conversion of each share of Series A Preferred Stock pursuant to this Section 7 shall be determined according to the following formula (the **"Conversion Rate"):**

$$\frac{\text{Conversion Amount}}{\text{Conversion Price}}$$

No fractional shares of Common Stock are to be issued upon the conversion of any Series A Preferred Stock, but rather the number of shares of Common Stock to be issued shall be rounded up to the nearest whole number.

The applicable Conversion Rate and Conversion Price from time to time in effect is subject to adjustment as hereinafter provided.

(c) Mechanics of Conversion. The conversion of Series A Preferred Stock shall be conducted in the following manner:

(i) Holder's Delivery Requirements. To convert Series A Preferred Stock into shares of Common Stock on any date (a **"Conversion Date"),** the Holder shall (A) transmit by facsimile (or otherwise deliver), for receipt on or prior to 11:59 p.m., New York City time, on such date, a copy of a properly completed notice of conversion executed by the registered Holder of the Series A Preferred Stock subject to such conversion in the form attached hereto as Exhibit I (the **"Conversion Notice")** to the Corporation and if the Corporation has appointed a registered transfer agent, the Corporations registered transfer agent (the **"Transfer Agent")** (if the Corporation does not have a registered transfer agent, references hereto to the "Transfer Agent" shall be deemed to be references to the Corporation) and (B) if required by Section 7(c)(iv), surrender to a common carrier for delivery to the Corporation as soon as practicable following such date the original certificates representing the Series A Preferred Stock being converted (or compliance with the procedures set forth in Section 11) (the **"Preferred Stock Certificates").**

(ii) Corporation's Response. Upon receipt by the Corporation of a copy of a Conversion Notice, the Corporation shall (A) as soon as practicable, but in any event within two (2) Trading Days, send, via facsimile, a confirmation of receipt of such Conversion Notice to such Holder and the Transfer Agent, if applicable, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (B) on or before the third (3^{rd}) Trading Day following the date of receipt by the Corporation of such Conversion Notice (the **"Share Delivery Date"),** (1) provided the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled. If the number of shares of Series A Preferred Stock represented by the Preferred Stock Certificate(s) submitted for conversion, as may be required pursuant to Section 7(c)(iv), is greater than the number of shares of Series A Preferred Stock being converted, then the Corporation shall, as soon as practicable and in no event later than five (5) Business Days after receipt of the Preferred Stock Certificate(s) (the **"Preferred Stock Delivery Date")** and at its own expense, issue and deliver to the Holder a new Preferred Stock Certificate representing the number of shares of Series A Preferred Stock not converted.

(iii) Corporation's Failure to Timely Convert.

(A) Cash Damages. If within three (3) Trading Days after the Corporation's receipt of the facsimile copy of a Conversion Notice the Corporation shall fail to credit a Holder's balance account with DTC or issue and deliver a certificate to such Holder for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of Series A Preferred Stock (a **"Conversion Failure"),** and if on or after such Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the shares of Common Stock issuable upon such conversion that the Holder anticipated receiving from the Corporation (a **"Buy-In"),** then the Corporation shall, within three (3) Trading Days after the Holder's request and in the Holder's discretion, either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the **"Buy- In Price"),** at which point the Corporation's obligation to deliver such certificate (and to issue such Common Stock) shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such Common Stock and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Closing Sale Price on the Conversion Date. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver certificates representing shares of Common Stock upon conversion of the Series A Preferred Stock as required pursuant to the terms hereof.

(B) Void Conversion Notice: Adjustment of Conversion Price. If for any reason a Holder has not received all of the shares of Common Stock to which such Holder is entitled prior to the tenth (10^{th}) Trading Day after the Share Delivery Date with respect to a conversion of Series A Preferred Stock, then the Holder, upon written notice to the Corporation, with a copy to the Transfer Agent, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, any shares of Series A Preferred Stock that have not been converted pursuant to such Holder's Conversion Notice; provided that the voiding of a Holder's Conversion Notice shall not effect the Corporation's obligations to make any payments which have accrued prior to the date of such notice pursuant to Section 7(c)(iii)(A) or otherwise.

(iv) Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of Series A Preferred Stock in accordance with the terms hereof, the Holder thereof shall not be required to physically surrender the certificate representing the Series A Preferred Stock to the Corporation unless (A) the full or remaining number of shares of Series A Preferred Stock represented by the certificate are being converted, in which case the Holder shall deliver such stock certificate to the Corporation promptly following such conversion, or (B) a Holder has provided the Corporation with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Series A Preferred Stock upon physical surrender of any Series A Preferred Stock. The Holder and the Corporation shall maintain records showing the number of shares of Series A Preferred Stock so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Corporation, so as not to require physical surrender of the certificate representing the Series A Preferred Stock upon each such conversion. In the event of any dispute or discrepancy, such records of the Corporation establishing the number of shares of Series A Preferred Stock to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if Series A Preferred Stock represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the Series A Preferred Stock unless such Holder first physically surrenders the certificate representing the Series A Preferred Stock to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of shares of Series A Preferred Stock represented by such certificate. A Holder and any assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Series A Preferred Stock, the number of shares of Series A Preferred Stock represented by such certificate may be less than the number of shares of Series A Preferred Stock stated on the face thereof. Each certificate for Series A Preferred Stock shall bear the following legend:

ANY TRANSFEREE OF THIS CERTIFICATE SHOULD CAREFULLY REVIEW THE TERMS OF THE CORPORATION'S CERTIFICATE OF DESIGNATIONS RELATING TO THE SERIES A PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE, INCLUDING SECTION 7(c)(iv) THEREOF. THE NUMBER OF SHARES OF SERIES A PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE MAY BE LESS THAN THE NUMBER OF SHARES OF SERIES A PREFERRED STOCK STATED ON THE FACE HEREOF PURSUANT TO SECTION 7(c)(iv) OF THE CERTIFICATE OF DESIGNATIONS RELATING TO THE SERIES A PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE.

(d) Reservation of Shares.

(i) The Corporation shall have such number of its duly authorized and unissued shares of Common Stock for each Series A Preferred Stock equal to 130% of the number of shares of Common Stock necessary to effect the conversion at the Conversion Rate with respect to each such Series A Preferred Stock as of the Initial Issuance Date. The Corporation shall at all times when the Series A Preferred Stock shall be outstanding reserve and keep available out of its authorized but unissued stock, for the purposes of effecting the conversion of the Series A Preferred Stock, such number of its duly authorized and unissued shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock (the **"Required Reserve Amount").** The initial number of shares of Common Stock reserved for conversions of the Series A Preferred Stock and each increase in the number of shares so reserved shall be allocated pro rata among the Holders based on the number of shares of Series A Preferred Stock held by each Holder at the time of issuance of the Series A Preferred Stock or increase in the number of reserved shares, as the case may be (the **"Authorized Share Allocation").** In the event a Holder shall sell or otherwise transfer any of such Holder's Series A Preferred Stock, each transferee shall be allocated a pro rata portion of the number of reserved shares of Common Stock reserved for such transferor. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Series A Preferred Stock (other than pursuant to a transfer of Series A Preferred Stock in accordance with the immediately preceding sentence) shall be allocated to the remaining Holders of Series A Preferred Stock, pro rata based on the number of shares of Series A Preferred Stock then held by such Holders. Before taking any action that would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, the Corporation will take any corporate action that may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully-paid and nonassessable shares of such Common Stock at such adjusted conversion price.

(ii) If at any time while any of the Series A Preferred Stock remain outstanding the Corporation does not have a sufficient number of duly authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Series A Preferred Stock at least a number of shares of Common Stock equal to the Required Reserve Amount (an **"Authorized Share Failure"),** then the Corporation shall immediately take all action necessary to increase the Corporation's authorized shares of Common Stock to an amount sufficient to allow the Corporation to reserve the Required Reserve Amount for the Series A Preferred Stock then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Corporation shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Corporation shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal.

(e) Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the Conversion Rate, the Corporation shall issue to the Holder the number of shares of Common Stock that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via facsimile within one (1) Business Day of receipt of such Holder's Conversion Notice or other date of determination. If such Holder and the Corporation are unable to agree upon the determination of the arithmetic calculation of the Conversion Rate within two (2) Business Days of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Corporation shall within one (1) Business Day submit via facsimile the disputed arithmetic calculation of the Conversion Rate to any ''big four" international accounting firm. The Corporation shall cause, at the Corporation's expense (unless the accounting firm determines in favor of the Corporation, in which case the Holder shall be responsible for such expense), the accountant to perform the determinations or calculations and notify the Corporation and the Holders of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such accountant's determination or calculation, as the case may be, shall be binding upon all parties absent error.

(f) Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Series A Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(g) Effect of Conversion. All shares of Series A Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall forthwith cease and terminate except only the right of the holder thereof to receive shares of Common Stock in exchange therefor and payment of any accrued but unpaid dividends thereon (whether or not declared). Subject to Section 7(c)(iii)(B), any shares of Series A Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series A Preferred Stock accordingly.

(h) Transfer Taxes. The issuance of certificates for shares of the Common Stock on conversion of this Series A Preferred Stock shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of such shares of Series A Preferred Stock so converted and the Corporation shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

(i) Maximum Percentage. Notwithstanding anything to the contrary set forth herein, the Corporation shall not effect any conversion of Series A Preferred Stock, and no Holder shall have the right to convert any Series A Preferred Stock, to the extent that after giving effect to such conversion, the beneficial owner of such shares (together with such Person's affiliates) would have acquired, through conversion of Series A Preferred Stock or otherwise, beneficial ownership of a number of shares of Common Stock that exceeds 9.99% (the "**Maximum Percentage**") of the number of shares of Common Stock outstanding immediately after giving effect to such conversion. The Corporation shall not give effect to any voting rights of the Series A Preferred Stock, and any Holder shall not have the right to exercise voting rights with respect to any Series A Preferred Stock pursuant hereto, to the extent that giving effect to such voting rights would result in such Holder (together with its affiliates) being deemed to beneficially own in excess of the Maximum Percentage of the number of shares of Common Stock outstanding immediately after giving effect to such exercise, assuming such exercise as being equivalent to conversion. For purposes of the foregoing, the number of shares of Common Stock beneficially owned by a Person and its affiliates shall include the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted shares of Series A Preferred Stock beneficially owned by such Person or any of its affiliates and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation (including, without limitation, any notes or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 7(i) beneficially owned by such Person or any of its affiliates. Except as set forth in the preceding sentence, for purposes of this Section 7(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended. For purposes of this Section 7(i), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Corporation's most recent Form 10-K, Form 10-Q, or Form 8-K, as the case may be, (2) a more recent public announcement by the Corporation, or (3) any other notice by the Corporation or the Transfer Agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written request of any Holder, the Corporation shall within one (1) Business Day following the receipt of such notice, confirm orally and in writing to any such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the Series A Preferred Stock, by such Holder and its affiliates since the date as of which such number of outstanding shares of Common Stock was reported. By written notice to the Corporation, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% specified in such notice; provided, that (i) any such increase will not be effective until the sixty-first (61st) day after such notice is delivered to the Corporation, and (ii) any such increase or decrease will apply only to the Holder providing such written notice and not to any other Holder. In the event that the Corporation cannot pay any portion of any dividend, distribution, grant or issuance hereunder (including pursuant to Sections 3, 5(b) or 8(f)) to a Holder solely by reason of this Section 7(i) (such shares, the **"Limited Shares"),** notwithstanding anything to the contrary contained herein, the Corporation shall not be required to pay cash in lieu of the payment that otherwise would have been made in such Limited Shares, but shall hold any such Limited Shares in abeyance for such Holder until such time, if ever, that the delivery of such Limited Shares shall not cause the Holder to exceed the Maximum Percentage, at which time such Holder shall be delivered such Limited Shares to the extent as if there had been no such limitation. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 7(i) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation.

8. Anti-Dilution Provisions. The Conversion Price shall be subject to adjustment from time to time in accordance with this Section 8.

(a) Certain Definitions. For purposes of this Certificate of Designations, the following definitions shall apply:

(i) **"Closing Sale Price"** means, for any security as of any date, the last closing trade price for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price then the last trade price of such security prior to 4:00:00 p.m., New York City time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or, if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no last trade price is reported for such security by Bloomberg, the average of the ask prices of any market makers for such security as reported in the "pink sheets" by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Corporation and the Required Holders. If the Corporation and the Required Holders are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 7(e). All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

(ii) **"Convertible Securities"** means any stock or securities (other than Options) directly or indirectly convertible into or exchangeable or exercisable for Common Stock.

(iii) **"Excluded Securities"** means any capital stock issued or issuable: (i) upon conversion of the Series A Preferred Stock; (ii) as a dividend or distribution on the Series A Preferred Stock; (iii) upon conversion of any Options or Convertible Securities which are outstanding on the day immediately preceding the Subscription Date, provided that the terms of such Options or Convertible Securities are not amended, modified or changed on or after the Subscription Date; (iv) pursuant to any benefit plan, program or agreement approved by the Corporation's board of directors or any committee thereof pursuant to which the Corporation's securities may be issued to any employee, officer or director for bona fide services provided to the Corporation; and (v) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Corporation, provided that any such issuance shall only be to a Person (or to the equity holders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Corporation and shall provide to Corporation additional benefits in addition to the investment of funds, but shall not include a transaction in which the Corporation is issuing securities for the purpose of raising capital or to an entity whose primary business is investing in securities.

(iv) **"Options"** means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

(v) **"Option Value"** means the value of an Option based on the Black and Scholes Option Pricing model obtained from the "OV" function on Bloomberg determined (1) in the event the issuance of such Option is publicly announced, the day prior to the public announcement of the applicable Option for pricing purposes or (2) in the event the issuance of such Option is not publicly announced, the day of issuance of such Option, and reflecting (i) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of the applicable Option as of the applicable date of determination, (ii) an expected volatility equal to the lesser of 50% and the 100 day volatility obtained from the HVT function on Bloomberg as of the day immediately following the public announcement of the applicable Option, (iii) the underlying price per share used in such calculation shall be the highest Weighted Average Price during the period beginning on the day prior to the execution of definitive documentation relating to the issuance of the applicable Option and the public announcement of such issuance, (iv) a zero cost of borrow, and (v) a 250 day annualization factor.

(vi) **"Principal Market"** means the Eligible Market that is the principal securities exchange market for the Common Stock.

(b) Adjustment of Series A Conversion Price Upon Issuance of Additional Shares of Common Stock. If and whenever after the Subscription Date the Corporation issues or sells, or in accordance with this Section 8(b) is deemed to have issued or sold, any Common Stock (including the issuance or sale of Common Stock owned or held by or for the account of the Corporation but excluding Excluded Securities) for a consideration per share (the **"New Issuance Price")** less than a price (the **"Applicable Price")** equal to the Conversion Price in effect immediately prior to such issue or sale or deemed issuance or sale (the foregoing, a **"Dilutive Issuance"),** then immediately after such Dilutive Issuance, the Conversion Price then in effect shall be reduced to an amount equal to the New Issuance Price. Notwithstanding anything to the contrary contained herein, from and after the date on which an aggregate of at least 100,000,000 shares of Common Stock have been traded on an Eligible Market from and after the Initial Issuance Date at a per share price above $3.00 (as adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period), the provisions of this Section 8(b) shall no longer be applicable. For purposes of determining the adjusted Conversion Price under this Section 8(b), the following shall be applicable:

(i) Issuance of Options. If the Corporation in any manner grants or sells any Options and the lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion or exchange or exercise of any Convertible Securities issuable upon exercise of such Option is less than the Applicable Price, then each such share of Common Stock underlying such Option shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the granting or sale of such Option for such price per share. For purposes of this Section 8(b)(i), the "lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion or exchange or exercise of any Convertible Securities issuable upon exercise of such Option" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to any one share of Common Stock upon granting or sale of the Option, upon exercise of the Option and upon conversion or exchange or exercise of any Convertible Security issuable upon exercise of such Option less any consideration paid or payable by the Corporation with respect to such one Ordinary Share upon the granting or sale of such Option, upon exercise of such Option and upon conversion exercise or exchange of any Convertible Security issuable upon exercise of such Option. No further adjustment of the Conversion Price shall be made upon the actual issuance of such share of Common Stock or of such Convertible Securities upon the exercise of such Options or upon the actual issuance of such Common Stock upon conversion or exchange or exercise of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Corporation in any manner issues or sells any Convertible Securities and the lowest price per share for which one share of Common Stock is issuable upon such conversion or exchange or exercise thereof is less than the Applicable Price, then each such share of Common Stock underlying such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this Section 8(b)(ii), the "lowest price per share for which one share of Common Stock is issuable upon such conversion or exchange or exercise" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to any one share of Common Stock upon the issuance or sale of the Convertible Security and upon the conversion or exchange or exercise of such Convertible Security less any consideration paid or payable by the Corporation with respect to such one Ordinary Share upon the issuance or sale of such Convertible Security and upon conversion, exercise or exchange of such Convertible Security. No further adjustment of the Conversion Price shall be made upon the actual issuance of such share of Common Stock upon conversion or exchange or exercise of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Conversion Price had been or are to be made pursuant to other provisions of this Section 8(b), no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

(iii) Change in Option Price or Rate of Conversion. If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exchange or exercise of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exchangeable or exercisable for Common Stock changes at any time, the Conversion Price in effect at the time of such change shall be adjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this Section 8(b)(iii), if the terms of any Option or Convertible Security that was outstanding as of the Subscription Date are changed in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such change. No adjustment shall be made if such adjustment would result in an increase of the Conversion Price then in effect.

(iv) Calculation of Consideration Received. In case any Option is issued in connection with the issue or sale of other securities of the Corporation, together comprising one integrated transaction (x) the Options will be deemed to have been issued for the Option Value of such Options and (y) the other securities issued or sold in such integrated transaction shall be deemed to have been issued for the difference of (x) the aggregate consideration received by the Corporation less any consideration paid or payable by the Corporation pursuant to the terms of such other securities of the Corporation, less (y) the Option Value of such Options. If any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation will be the fair value of such consideration, except where such consideration consists of marketable securities, in which case the amount of consideration received by the Corporation will be the Closing Sale Price of such marketable securities on the date of receipt of such securities. If any Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash or marketable securities will be determined jointly by the Corporation and the Required Holders. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the **"Valuation Event"),** the fair value of such consideration will be determined within five (5) Business Days after the tenth (10^{th}) day following the Valuation Event by an independent, reputable appraiser jointly selected by the Corporation and the Required Holders. The determination of such appraiser shall be deemed binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Corporation.

(c) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. If the Corporation at any time after the Initial Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Corporation at any time after the Initial Issuance Date combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased.

(d) Other Events. If any event occurs of the type contemplated by the provisions of this Section 8 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features, other than the issuance of Excluded Securities), then the Corporation's Board of Directors will make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of Series A Preferred Stock; provided that no such adjustment will increase the Conversion Price as otherwise determined pursuant to this Section 8.

(e) Voluntary Adjustment By Corporation. The Corporation may at any time reduce the then current Conversion Price to any amount and for any period of time deemed appropriate and approved by the Board of Directors in accordance with Delaware law.

(f) Purchase Rights. If at any time the Corporation grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the **"Purchase Rights"),** then the Holders will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such Holder could have acquired if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of the Series A Preferred Stock (without taking into account any limitations or restrictions on the convertibility of the Series A Preferred Stock) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that to the extent that a Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage, at which time the Holder shall be granted such right to the same extent as if there had been no such limitation).

(g) Notices.

(i) Immediately upon any adjustment of the Conversion Rate and Conversion Price pursuant to Section 8 hereof, the Corporation will give written notice thereof sent by mail, first class, postage prepaid to each Holder at its address appearing on the stock register, setting forth in reasonable detail, and certifying, the calculation of such adjustment. In the case of a dispute as to the determination of such adjustment, then such dispute shall be resolved in accordance with the procedures set forth in Section 7(e).

(ii) Except as otherwise required by law, the Corporation will give written notice to each Holder at least ten (10) Business Days prior to the date on which the Corporation closes its books or takes a record (I) with respect to any dividend or distribution upon the Common Stock, (II) with respect to any pro rata subscription offer to holders of Common Stock or (III) for determining rights to vote with respect to any Change of Control, any Twenty Percent Issuance, any Fundamental Transaction or any Liquidation Event.

(iii) The Corporation will also give written notice to each Holder at least ten (10) Business Days prior to the date on which any Change of Control, any Twenty Percent Issuance, any Fundamental Transaction or any Liquidation Event will take place.

9. Suspension from Trading. If on any day after the Initial Issuance Date, the sale of any of the shares of Common Stock issued or issuable upon the conversion of any shares of Series A Preferred Stock (the **"Conversion Shares")** (without giving effect to the Maximum Percentage) issuable hereunder cannot be made (i) because of the suspension of trading by the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the shares of Common Stock are then traded (a **"Maintenance Failure"),** then, as partial relief for the damages to any Holder by reason of any such delay in or reduction of its ability to sell the Conversion Shares (which remedy shall not be exclusive of any other remedies available at law or in equity, including, without limitation, specific performance), the Corporation shall pay to each Holder, for each full fifteen (15) day period during which there is a Maintenance Failure, an amount in cash equal to one quarter of one percent (0.25%) of the product of (I) the total number of Conversion Shares issuable hereunder (without giving effect to the Maximum Percentage) and (II) the highest Closing Sale Price of the Common Stock during the period beginning on the Trading Date immediately prior to the first date of the Maintenance Failure and ending on the date such Maintenance Failure is cured or (ii) because of a failure to maintain the listing of the Common Stock on one or more Eligible Markets (a **"Delisting Maintenance Failure"),** then, as partial relief for the damages to any Holder by reason of any such delay in or reduction of its ability to sell the Conversion Shares (which remedy shall not be exclusive of any other remedies available at law or in equity, including, without limitation, specific performance), the Corporation shall pay to each Holder, for each full fifteen (15) day period during which there is a Delisting Maintenance Failure, an amount in cash equal to one quarter of one percent (0.25%) of the Conversion Amount then held by such Holder. The payments to which a Holder shall be entitled pursuant to this Section 9 are referred to herein as **"Suspension Payments".** Suspension Payments shall be paid on the third Business Day after each full fifteen (15) day period during which there is a Maintenance Failure or a Delisting Maintenance Failure, as applicable.

10. Status of Converted Stock, In the event any shares of Series A Preferred Stock shall be converted pursuant to Section 7 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation.

11. Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any Series A Preferred Stock Certificates representing the Series A Preferred Stock, and, in the case of loss, theft or destruction, of an indemnification undertaking by the holder thereof to the Corporation in customary form and, in the case of mutilation, upon surrender and cancellation of the Series A Preferred Stock Certificate(s), the Corporation shall execute and deliver new preferred stock certificate(s) of like tenor and date; provided, however, the Corporation shall not be obligated to re-issue preferred stock certificates if the holder contemporaneously requests the Corporation to convert such Series A Preferred Stock into Common Stock.

12. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit a holder of Series A Preferred Stock's right to pursue actual damages for any failure by the Corporation to comply with the terms of this Certificate of Designations. The Corporation covenants to each holder of Series A Preferred Stock that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder of Series A Preferred Stock thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of Series A Preferred Stock and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, the holders of Series A Preferred Stock shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

13. Notice. Whenever notice or other communication is required to be given under this Certificate of Designations, unless otherwise provided herein, such notice shall be given in accordance with contact information provided by each Holder to the Corporation and set forth in the register for the Series A Preferred Stock maintained by the Corporation as set forth in Section 16.

14. Failure or Indulgence Not Waiver. No failure or delay on the part of any holder of Series A Preferred Stock in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

15. Transfer of Series A Preferred Stock. A Holder may assign some or all of the Series A Preferred Stock and the accompanying rights hereunder held by such Holder without the consent of the Corporation; provided that such assignment is in compliance with applicable securities laws.

16. Series A Preferred Stock Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the Series A Preferred Stock, in which the Corporation shall record the name and address of the persons in whose name the Series A Preferred Stock have been issued, as well as the name and address of each transferee. The Corporation may treat the person in whose name any Series A Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

17. Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Corporation pursuant to the DGCL, this Certificate of Designations or otherwise with respect to the issuance of the Series A Preferred Stock or the Common Stock issuable upon conversion thereof may be effected by written consent of the Corporation's stockholders or at a duly called meeting of the Corporation's stockholders, all in accordance with the applicable rules and regulations of the DGCL. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting,

18. General Provisions. In addition to the above provisions with respect to Series A Preferred Stock, such Series A Preferred Stock shall be subject to and be entitled to the benefit of the provisions set forth in the Certificate of Incorporation of the Corporation with respect to preferred stock of the Corporation generally.

19. Disclosure. Upon receipt or delivery by the Corporation of any notice in accordance with the terms of this Certificate of Designations, unless the Corporation has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Corporation or any of its Subsidiaries, the Corporation shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Corporation believes that a notice contains material, nonpublic information relating to the Corporation or its Subsidiaries, the Corporation so shall indicate to the Holders contemporaneously with delivery of such notice, and in the absence of any such indication, the Holders shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Corporation or its Subsidiaries.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Designation on the 19th day of July 2012, and affirms the statements contained therein as true under the penalties of perjury.

VRINGO, INC.

By: /s/ Andrew D. Perlman
Name: Andrew D. Perlman
Its: Chief Executive Officer

EXHIBIT I

VRINGO, INC.

Reference is made to the Certificate of Designations, Preferences and Rights of Series A Convertible Preferred Stock of Vringo, Inc. (the **"Certificate of Designations"**). In accordance with and pursuant to the Certificate of Designations, the undersigned hereby elects to convert the number of shares of Series A Convertible Preferred Stock, par value $0.01 per share (the **"Series A Preferred Stock"**), of Vringo, Inc., a Delaware corporation (the **"Corporation"**), indicated below into shares of Common Stock, par value $0.01 per share (the **"Common Stock"**), of the Corporation, as of the date specified below. The undersigned represents and warrants that such conversion is not prohibited by Section 7(i) of the Certificate of Designations.

Date of Conversion: _____

Number of shares of Series A Preferred Stock to be converted: _____

Stock certificate no(s). of Series A Preferred Stock to be converted: _____

Tax ID Number (If applicable): _____

Please confirm the following information: _____

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Series A Preferred Stock are being converted in the following name and to the following address:

Issue to: _____

_____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Authorization: _____

By: _____

Title: _____

Dated:

Account Number (if electronic book entry transfer): _____

Transaction Code Number (if electronic book entry transfer): _____

ACKNOWLEDGMENT

The Corporation hereby acknowledges this Conversion Notice and hereby directs American Stock Transfer & Trust Company, LLC to issue the above indicated number of shares of Common Stock.

VRINGO, INC.

By: _____

Name: _____
Title: _____

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:41 PM 06/21/2013
FILED 01:41 PM 06/21/2013
SRV 130808120 - 4090975 FILE

STATE OF DELAWARE
CERTIFICATE OF CHANGE
OF REGISTERED AGENT AND/OR
REGISTERED OFFICE

The Board of Directors of Vringo, Inc., a Corporation of Delaware, on June 21, 2013 do hereby resolve and order that the location of the Registered Office of this Corporation within this State be, and the same hereby is, 1811 Silverside Road, in the City of Wilmington, County of New Castle, Zip Code 19810.

The name of the Registered Agent therein and in charge thereof upon whom process against this Corporation may be served is Vcorp Services, LLC.

Vringo, Inc., a Corporation of Delaware, does hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Directors at a meeting held as herein stated.

IN WITNESS WHEREOF, said Corporation has caused this certificate to be signed by an authorized officer on June 21, 2013

/s/ Alexander R. Berger
Alexander R. Berger,
Authorized Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 03:32 PM 10/15/2015
FILED 03:32 PM 10/15/2015
SR 20150522391 - File Number 4090975

VRINGO, INC,

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES B CONVERTIBLE PREFERRED STOCK**

WHEREAS, the Amended and Restated Certificate of Incorporation of Vringo, Inc., a Delaware corporation (the "Corporation") provides for a class of its authorized stock known, as preferred stock, comprised of 5,000,000 shares, issuable from, time to time in one or more series;

WHEREAS, the Board of Directors of the Corporation is authorized to fix the dividend rights, voting rights, conversion, rights, redemption privileges and liquidation preferences of any wholly unissued series of preferred stock and the number of shares constituting any Series and the designation thereof, of any of them; and

WHEREAS, it is the desire of the Board of Directors of the Corporation, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of ONE MILLION SIX HUNDRED NINE THOUSAND ONE HUNDRED SIXTY SEVEN (1,609,167) shares of the preferred stock which the Corporation has the authority to issue, classified as Series B Convertible Preferred Stock, as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Corporation does hereby provide for the issuance of a series of preferred stock for cash or exchange of other securities, rights, or property and does hereby fix and determine the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

TERMS OF PREFERRED STOCK

1. Designation and Amount. The class of preferred stock hereby classified shall be designated the "Series B Convertible Preferred Stock". The initial number of authorized shares of the Series B Convertible Preferred Stock shall be ONE MILLION SIX HUNDRED NINE THOUSAND ONE HUNDRED SIXTY SEVEN (1,609,167), which shall not be subject to increase without the consent of the holders of a majority of the then outstanding shares of Series B Convertible Preferred Stock. Each share of the Series B Convertible Preferred Stock shall have a par value of $0.01.

2. Dividends. From and after the first date of issuance of any shares of Series B Convertible Preferred Stock (the **"Initial Issuance Date"**), the holders of Series B Convertible Preferred Stock (each, a **"Holder"** and collectively, the **"Holders")** shall be entitled to receive such dividends paid and distributions made to the holders of common stock, par value $0.01 per share (the "**Common Stock**"), pro rata to the holders of Common Stock to the same extent as if such Holders had converted the Series B Convertible Preferred Stock into Common Stock (without regard to any limitations on conversion herein or elsewhere) and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

3. Liquidation Preference. Upon any Liquidation Event (as defined below), after provision for payment of all debts and liabilities of the Corporation, any remaining assets of the Corporation shall be distributed pro rata to the holders of Common Stock and the holders of Series B Convertible Preferred Stock as if the Series B Convertible Preferred Stock had been converted into shares of Common Stock pursuant to the provisions of Section 6 hereof immediately prior to such distribution. For purposes of this Certificate of Designation, a **"Liquidation Event"** means the voluntary or involuntary liquidation, dissolution or winding up of the Corporation or its subsidiaries or the sale of assets of which constitute all or substantially all of the assets of the business of the Corporation and its Subsidiaries taken as a whole, in a single transaction or series of transactions.

4. Fundamental Transactions.

(a) Certain definitions. For purposes of this Certificate of Designation, the following definitions shall apply:

(i) **"Business Day"** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(ii) **"Exchange Act"** means the Securities Exchange Act of 1934, as amended.

(iii) **"Eligible Market"** means the New York Stock Exchange, Inc., the NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market and the Over-the-Counter Bulletin Board.

(iv) **"Fundamental Transaction"** means that the Corporation shall (or in the case of clause (F) any "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act)), directly or indirectly, in one or more related transactions, (A) consolidate or merge with or into (whether or not the Corporation is the surviving corporation) another entity, or (B) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Corporation to another entity, or (C) allow another entity or entities to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the entity or entities making or party to, or associated or affiliated with the entity or entities making or party to, such purchase, tender or exchange offer), or (D) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another entity whereby such other entity acquires more than the 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the other entity or other entities making or party to, or associated or affiliated with the other entities making or party to, such stock purchase agreement or other business combination), or (E) reorganize, recapitalize or reclassify its Common Stock, or (F) become the ''beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than 50% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock.

(v) **"Parent Entity"** of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(vi) **"Person"** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(vii) **"Required Holders"** means the holders of record of a majority of the then outstanding shares of Series B Convertible Preferred Stock.

(viii) **"Stated Value"** shall mean $6.00 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar events relating to the Series B Convertible Preferred Stock after the Initial issuance Date.

(ix) **"Successor Entity"** means the Person, which may be the Corporation, formed by, resulting from or surviving any Fundamental Transaction or the Person with which such Fundamental Transaction shall have been made, provided that if such Person is not a publicly traded entity whose common stock or equivalent equity security is quoted or listed for trading on an Eligible Market, Successor Entity shall mean such Person's Parent Entity.

(x) **"Trading Day"** means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the shares of Common Stock are then traded; provided that "Trading Day" shall not include any day on which the shares of Common Stock are scheduled to trade on such exchange or market for less than 4.5 hours or any day that the shares of Common Stock are suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York Time).

(xi) **"Voting Stock"** means capital stock of the class or classes pursuant to which the holders thereof have the general voting power to elect or the general power to appoint, at least a majority of the board of directors, managers or trustees thereof (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

(b) Assumption. The Corporation shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Corporation under this Certificate of Designation in accordance with the provisions of this Section 4 pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each Holder of Series B Convertible Preferred Stock in exchange for such Series B Convertible Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Certificate of Designation including, without limitation, having a stated value equal to the Stated Value of the Series B Convertible Preferred Stock held by such Holder and having similar ranking to the Series B Convertible Preferred Stock, and satisfactory to the Required Holders and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation with the same effect as if such Successor Entity had been named as the Corporation herein. Upon consummation of the Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion of the Series B Convertible Preferred Stock at any time after the consummation of the Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property) issuable upon the conversion of the Series B Convertible Preferred Stock prior to such Fundamental Transaction (without regard to any limitations on the conversion of the Series B Convertible Preferred Stock), such shares of publicly traded common stock (or their equivalent) of the Successor Entity, as adjusted in accordance with the provisions of this Certificate of Designation, which the Holder would have been entitled to receive had such Holder converted the Series B Convertible Preferred Stock in full (without regard to any limitations on conversion) immediately prior to such Fundamental Transaction. The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of the Series B Convertible Preferred Stock.

5. Voting Rights.

(a) General. Each issued and outstanding share of share of Series B Convertible Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which each such share of Series B Convertible Preferred Stock is convertible (as adjusted from time to time pursuant to Section 4 hereof).

(b) Series B Convertible Preferred Stock Protective Provisions. In addition to any other rights provided by law, the Corporation shall not and shall not permit any direct or indirect Subsidiary (as defined below) of the Corporation to, without first obtaining the affirmative vote or written consent of the holders of a majority of the outstanding shares of Series B Convertible Preferred Stock:

(i) increase the authorized number of shares of Series B Convertible Preferred Stock; or

(ii) amend, alter or repeal the preferences, special rights or other powers of the Series B Convertible Preferred Stock so as to affect adversely the Series B Convertible Preferred Stock.

6. Conversion. Each share of Series B Convertible Preferred Stock shall automatically be converted into shares of Common Stock immediately upon (i) the Corporation's authorized shares of Common Stock being increased to an amount sufficient to allow the Corporation to convert all shares of Series B Convertible Preferred Stock then outstanding into shares of Common Stock or (ii) the number of issued and outstanding shares of Common Stock and shares reserved for issuance being reduced to an amount sufficient to allow the Corporation to convert all shares of Series B Convertible Preferred Stock then outstanding into shares of Common Stock (each, a **"Series B Automatic Conversion Event")**. If a Series B Automatic Conversion Event does not occur following the Corporation's Annual Meeting scheduled to be held on November 16, 2015 (as such date may be extended pursuant to any adjournments of such meeting), then each share of Series B Convertible Preferred Stock shall automatically be converted into shares of Common Stock, up to and to the extent that the Corporation has authorized shares that are not reserved for other issuances (the **"Partial Conversion Event")**. The number of shares to be converted pursuant to the Partial Conversion Event shall be allocated pro rata among the Holders based on the number of shares of Series B Convertible Preferred Stock held by each Holder at the time of the Partial Conversion Event. Upon the occurrence of a Series B Automatic Conversion Event or Partial Conversion Event, the applicable shares of Series B Preferred Stock shall be automatically converted into the number of shares of Common Stock into which such shares of Series B Convertible Preferred Stock are then convertible pursuant to this Section 6 without any further action by any holder of such shares and whether or not the certificate(s) representing such shares are surrendered to the Corporation or its transfer agent.

(a) Certain definitions. For purposes of this Certificate of Designation, the following definitions shall apply:

(i) **"Bloomberg"** means Bloomberg Financial Markets.

(ii) **"Conversion Amount"** means the Stated Value.

(iii) **"Conversion Price"** means $0.60, subject to adjustment as provided herein.

(iv) **"Subsidiary"** means, with respect to the Corporation, any entity in which the Corporation, directly or indirectly, owns any of the capital stock or holds an equity or similar interest.

(b) Conversion. The number of shares of Common Stock issuable upon conversion of each share of Series B Convertible Preferred Stock pursuant to this Section 6 shall be determined by multiplying each such share of Series B Convertible Preferred Stock by the fraction set forth below (the **"Conversion Rate"**):

Conversion Amount
Conversion Price

No fractional shares of Common Stock are to be issued upon the conversion of any Series B Convertible Preferred Stock, but rather the number of shares of Common Stock to be issued shall be rounded up to the nearest whole number.

The applicable Conversion Rate and Conversion Price from time to time in effect is subject to adjustment as hereinafter provided.

(c) Mechanics of Conversion. The conversion of Series B Convertible Preferred Stock shall be conducted in the following manner:

(i) Upon the occurrence of a Series B Automatic Conversion Event or if a Partial Conversion Event is to occur and in any event within ten (10) days after receipt of notice, by mail, postage prepaid from the Corporation of the occurrence of such event, each holder of record of shares of Series B Convertible Preferred Stock being converted shall (A) transmit by facsimile (or otherwise deliver) a copy of a properly completed notice of conversion executed by the registered Holder of the Series B Convertible Preferred Stock subject to such conversion in the form attached hereto as Exhibit I (the **"Conversion Notice"**) to the Corporation and if the Corporation has appointed a registered transfer agent, the Corporation's registered transfer agent (the **"Transfer Agent"**) (if the Corporation does not have a registered transfer agent, references hereto to the "Transfer Agent" shall be deemed to be references to the Corporation) and (B) if required by Section 6(c)(iv), surrender to a common carrier for delivery to the Corporation as soon as practicable following such date the original certificates representing the Series B Convertible Preferred Stock being converted (or compliance with the procedures set forth in Section 9) (the **"Preferred Stock Certificates"**).

(ii) Corporation's Response, Upon receipt by the Corporation of a copy of a Conversion Notice, the Corporation shall (A) as soon as practicable, but in any event within three (3) Trading Days, send, via facsimile, a confirmation of receipt of such Conversion Notice to such Holder and the Transfer Agent, if applicable, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (B) on or before the third (3^{rd}) Trading Day following the date of receipt by the Corporation of such Conversion Notice (the **"Share Delivery Date")**, (1) provided the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled. If the number of shares of Series B Convertible Preferred Stock represented by the Preferred Stock Certificate(s) submitted for conversion pursuant to a Partial Conversion Event, as may be required pursuant to Section 6(c)(iv), is greater than the number of shares of Series B Convertible Preferred Stock being converted, then the Corporation shall or shall direct the Transfer Agent, as soon as practicable and in no event later than three (3) Business Days after receipt of the Preferred Stock Certificate(s) (the **"Preferred Stock Delivery Date")** and at its own expense, issue and deliver to the Holder a new Preferred Stock Certificate representing the number of shares of Series B Convertible Preferred Stock not converted or it shall direct the Transfer Agent to update the Holder's account to reflect the number of shares of Series B Convertible Preferred Stock not converted.

(iii) Corporation's Failure to Timely Convert.

(A) Cash Damages. If within three (3) Trading Days after the Corporation's receipt of the facsimile copy of a Conversion Notice the Corporation shall fail to credit a Holder's balance account with DTC or issue and deliver a certificate to such Holder for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of Series B Convertible Preferred Stock (a **"Conversion Failure"**), and if on or after such Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the shares of Common Stock issuable upon such conversion that the Holder anticipated receiving from the Corporation (a **"Buy-In"**), then the Corporation shall, within three (3) Trading Days after the Holder's request and in the Holder's discretion, either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the **"Buy-In Price"**), at which point the Corporation's obligation to deliver such certificate (and to issue such Common Stock) shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such Common Stock and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Closing Sale Price on the Conversion Date. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver certificates representing shares of Common Stock upon conversion of the Series B Convertible Preferred Stock as required pursuant to the terms hereof.

(iv) Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of Series B Convertible Preferred Stock in accordance with the terms hereof, the Holder thereof shall not be required to physically surrender the Preferred Stock Certificate unless (A) the full or remaining number of shares of Series B Convertible Preferred Stock represented by the Preferred Stock Certificate are being converted, in which case the Holder shall deliver such Preferred Stock Certificate to the Corporation promptly following such conversion, or (B) a Holder has provided the Corporation with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Series B Convertible Preferred Stock upon physical surrender of any Series B Convertible Preferred Stock. The Holder and the Corporation shall maintain records showing the number of shares of Series B Convertible Preferred Stock so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Corporation, so as not to require physical surrender of the certificate representing the Series B Convertible Preferred Stock upon each such conversion. In the event of any dispute or discrepancy, such records of the Corporation establishing the number of shares of Series B Convertible Preferred Stock to which the record holder is entitled shall be controlling and determinative in the absence of manifest error, Notwithstanding the foregoing, if Series B Convertible Preferred Stock represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the Series B Convertible Preferred Stock unless such Holder first physically surrenders the certificate representing the Series B Convertible Preferred Stock to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of shares of Series B Convertible Preferred Stock represented by such certificate. A Holder and any assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Series B Convertible Preferred Stock, the number of shares of Series B Convertible Preferred Stock represented by such certificate may be less than the number of shares of Series B Convertible Preferred Stock stated on the face thereof. Each certificate for Series B Convertible Preferred Stock shall bear the following legend:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR THE SECURITIES LAWS OF ANY U.S. STATE, NOR IS ANY SUCH REGISTRATION CONTEMPLATED. THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM.

(d) Reservation of Shares.

(i) The Corporation shall, upon the happening of the Series B Automatic Conversion Event, reserve and keep available out of its authorized but unissued stock, for the purposes of effecting the conversion of the Series B Convertible Preferred Stock, such number of its duly authorized and unissued shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series B Convertible Preferred Stock (the **"Required Reserve Amount"**). The initial number of shares of Common Stock reserved for conversions of the Series B Convertible Preferred Stock and each increase in the number of shares so reserved shall be allocated pro rata among the Holders based on the number of shares of Series B Convertible Preferred Stock held by each Holder at the time of issuance of the Series B Convertible Preferred Stock or increase in the number of reserved shares, as the case may be (the **"Authorized Share Allocation")**. In the event a Holder shall sell or otherwise transfer any of such Holder's Series B Convertible Preferred Stock, each transferee shall be allocated a pro rata portion of the number of reserved shares of Common Stock reserved for such transferor. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Series B Convertible Preferred Stock (other than pursuant to a transfer of Series B Convertible Preferred Stock in accordance with the immediately preceding sentence) shall be allocated to the remaining Holders of Series B Convertible Preferred Stock, pro rata based on the number of shares of Series B Convertible Preferred Stock then held by such Holders. Before taking any action that would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series B Convertible Preferred Stock, the Corporation will take any corporate action that may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully-paid and nonassessable shares of such Common Stock at such adjusted conversion price.

(e) Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the Conversion Rate, the Corporation shall issue to the Holder the number of shares of Common Stock that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via facsimile within one (1) Business Day of receipt of such Holder's Conversion Notice or other date of determination. If such Holder and the Corporation are unable to agree upon the determination of the arithmetic calculation of the Conversion Rate within two (2) Business Days of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Corporation shall within one (1) Business Day submit via facsimile the disputed arithmetic calculation of the Conversion Rate to any "big four" international accounting firm. The Corporation shall cause, at the Corporation's expense (unless the accounting firm determines in favor of the Corporation, in which case the Holder shall be responsible for such expense), the accountant to perform the determinations or calculations and notify the Corporation and the Holders of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such accountant's determination or calculation, as the case may be, shall be binding upon all parties absent error.

(f) Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Series B Convertible Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(g) Effect of Conversion. All shares of Series B Convertible Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall forthwith cease and terminate except only the right of the holder thereof to receive shares of Common Stock in exchange therefor and payment of any accrued but unpaid dividends thereon (whether or not declared). Subject to Section 6(c)(iii)(B), any shares of Series B Convertible Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series B Convertible Preferred Stock accordingly.

(h) Transfer Taxes. The issuance of certificates for shares of the Common Stock on conversion of this Series B Convertible Preferred Stock shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of such shares of Series B Convertible Preferred Stock so converted and the Corporation shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

7. Anti-Dilution Provisions. The Conversion Price shall be subject to adjustment from time to time in accordance with this Section 7.

(a) Certain Definitions. For purposes of this Certificate of Designations, the following definitions shall apply:

(i) **"Convertible Securities"** means any stock or securities (other than Options) directly or indirectly convertible into or exchangeable or exercisable for Common Stock.

(ii) **"Options"** means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

(iii) **"Principal Market"** means the Eligible Market that is the principal securities exchange market for the Common Stock.

(b) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. If the Corporation at any time after the Initial Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Corporation at any time after the Initial Issuance Date combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased.

(c) Notices.

(i) Immediately upon any adjustment of the Conversion Rate and Conversion Price pursuant to Section 7 hereof, the Corporation will give written notice thereof sent by mail, first class, postage prepaid to each Holder at its address appearing on the stock register, setting forth in reasonable detail, and certifying, the calculation of such adjustment. In the case of a dispute as to the determination of such adjustment, then such dispute shall be resolved in accordance with the procedures set forth in Section 6(e).

(ii) Except as otherwise required by law, the Corporation will give written notice to each Holder at least ten (10) Business Days prior to the date on which the Corporation closes its books or takes a record (I) with respect to any dividend or distribution upon the Common Stock, (II) with respect to any pro rata subscription offer to holders of Common Stock or (III) for determining rights to vote with respect to any Twenty Percent Issuance, any Fundamental Transaction or any Liquidation Event.

(iii) The Corporation will also give written notice to each Holder at least ten (10) Business Days prior to the date on which any Twenty Percent Issuance, any Fundamental Transaction or any Liquidation Event will take place.

8. Status of Converted Stock. In the event any shares of Series B Convertible Preferred Stock shall be converted pursuant to Section 6 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation.

9. Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any Series B Convertible Preferred Stock Certificates representing the Series B Convertible Preferred Stock, and, in the case of loss, theft or destruction, of an indemnification undertaking (with surety, if reasonably requested by the Corporation) by the holder thereof to the Corporation in customary form and, in the case of mutilation, upon surrender and cancellation of the Series B Convertible Preferred Stock Certificate(s), the Corporation shall execute and deliver new preferred stock certificate(s) of like tenor and date; provided, however, the Corporation shall not be obligated to re-issue preferred stock certificates if the holder contemporaneously requests the Corporation to convert such Series B Convertible Preferred Stock into Common Stock.

10. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designation shall be cumulative and in addition to all other remedies available under this Certificate of Designation, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit a holder of Series B Convertible Preferred Stock's right to pursue actual damages for any failure by the Corporation to comply with the terms of this Certificate of Designation. The Corporation covenants to each holder of Series B Convertible Preferred Stock that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder of Series B Convertible Preferred Stock thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of Series B Convertible Preferred Stock and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, the holders of Series B Convertible Preferred Stock shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

11. Notice. Whenever notice or other communication is required to be given hereunder, unless otherwise provided herein, such notice shall be given in accordance with contact information provided by each Holder to the Corporation and set forth in the register for the Series B Convertible Preferred Stock maintained by the Corporation as set forth in Section 14.

12. Failure or Indulgence Not Waiver. No failure or delay on the part of any holder of Series B Convertible Preferred Stock in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

13. Transfer of Series B Convertible Preferred Stock. A Holder may assign some or all of the Series B Convertible Preferred Stock and the accompanying rights hereunder held by such Holder without the consent of the Corporation; provided that such assignment is in compliance with applicable securities laws.

14. Series B Convertible Preferred Stock Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the Series B Convertible Preferred Stock, in which the Corporation shall record the name and address of the persons in whose name the Series B Convertible Preferred Stock have been issued, as well as the name and address of each transferee. The Corporation may treat the person in whose name any Series B Convertible Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

15. Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Corporation pursuant to the Delaware General Corporation Law (**"DGCL"**), this Certificate of Designation or otherwise with respect to the issuance of the Series B Convertible Preferred Stock or the Common Stock issuable upon conversion thereof may be effected by written consent of the Corporation's stockholders or at a duly called meeting of the Corporation's stockholders, all in accordance with the applicable rules and regulations of the DGCL and the applicable provisions hereof. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

16. General Provisions. In addition to the above provisions with respect to Series B Convertible Preferred Stock, such Series B Convertible Preferred Stock shall be subject to and be entitled to the benefit of the provisions set forth in the Certificate of Incorporation of the Corporation with respect to preferred stock of the Corporation generally.

17. Disclosure. Upon receipt or delivery by the Corporation of any notice in accordance with the terms of this Certificate of Designation, unless the Corporation has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Corporation or any of its Subsidiaries, the Corporation shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Corporation believes that a notice contains material, nonpublic information relating to the Corporation or its Subsidiaries, the Corporation so shall indicate to the Holders contemporaneously with delivery of such notice, and in the absence of any such indication, the Holders shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Corporation or its Subsidiaries.

[signature page follows]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be signed by the undersigned this 15th day of October, 2015.

VRINGO, INC.

By: /s/ Andrew D. Perlman
Name: Andrew D. Perlman
Title: Chief Executive Officer

EXHIBIT I

VRINGO, INC.

The undersigned hereby elects to convert the number of shares of Series B Convertible Preferred Stock, par value $0.01 per share (the **"Series B Convertible Preferred Stock"**), of Vringo, Inc., a Delaware corporation (the **"Corporation"**), indicated below into shares of Common Stock, par value $0.01 per share (the **"Common Stock"**), of the Corporation, as of the date specified below.

Date of Conversion: _____

Number of shares of Series B Convertible Preferred Stock to be converted: _____

Stock certificate no(s). of Series B Convertible Preferred Stock to be converted: _____

Tax ID Number (If applicable): _____

Please confirm the following information: _____

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Series B Convertible Preferred Stock are being converted in the following name and to the following address:

Issue to: _____
_____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Authorization: _____

By: _____
Title: _____

Dated:

Account Number (if electronic book entry transfer): _____

Transaction Code Number (if electronic book entry transfer): _____

CERTIFICATE OF AMENDMENT
OF THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
VRINGO, INC.

VRINGO, INC., a Delaware corporation (the "Corporation"), does hereby certify that:

FIRST: The name of the Corporation is VRINGO, INC.

SECOND: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on January 9, 2006 and the Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 22, 2010, and as further amended by the Certificate of Amendment of the Amended and Restated Certificate of Incorporation on July 19, 2012.

THIRD: The Board of Directors of the Corporation (the "Board"), acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware (the "DGCL"), adopted resolutions amending the Corporation's Amended and Restated Certificate of Incorporation as follows:

Article Fourth of the Corporation's Amended and Restated Certificate of Incorporation is hereby amended by adding the following Sections (3), (4) and (5):

"(3) Reverse Stock Split. Upon the effectiveness of this Certificate of Amendment of the Amended and Restated Certificate of Incorporation of the Corporation, the shares of the Corporation's Common Stock issued and outstanding prior to the Effective Time and the shares of Common Stock issued and held in treasury of the Corporation immediately prior to the Effective Time shall automatically be reclassified into a smaller number of shares such that each ten (10) shares of the Corporation's issued and outstanding Common Stock immediately prior to the Effective Time are reclassified into one (1) validly issued, fully paid and nonassessable share of Common Stock, without any further action by the Corporation or the holder thereof. No fractional shares of Corporation Common Stock will be issued as a result of the reverse stock split. Instead, stockholders of record who otherwise would be entitled to receive fractional shares, will be entitled to rounding up of their fractional share to the nearest whole share.

(4) Each stock certificate that, immediately prior to the Effective Time, represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time shall, from and after the Effective Time, automatically and without the necessity of presenting the same for exchange, represent that the number of whole shares of Common Stock after the Effective Time into which the shares of Common Stock formerly represented by such certificate shall have been reclassified (as well as the right to receive a whole share in lieu of a fractional share of Common Stock), provided, however, that each person of record holding a certificate that represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time shall receive, upon surrender of such certificate, a new certificate evidencing and representing the number of whole shares of Common Stock after the Effective Time into which the shares of Common Stock formerly represented by such certificate shall have been reclassified (including the right to receive a whole share in lieu of a fractional share of Common Stock).

State of Delaware
Secretary of State
Division of Corporations
Delivered 03:32 PM 11/24/2015
FILED 03:32 PM 11/24/2015
SR 20151067617 - File Number 4090975

(5) This Certificate of Amendment shall be effective on November 27, 2015 at 05:00 p.m., Eastern time (the **"Effective Time")."**

FOURTH: Thereafter, pursuant to a resolution of the Board, this Certificate of Amendment was submitted to the stockholders of the Corporation for their approval, and was duly adopted in accordance with the provisions of Sections 222 and 242 of the DGCL.

IN WITNESS WHEREOF, the Corporation has caused this CERTIFICATE OF AMENDMENT to be signed by Anastasia Nyrkovskaya its Chief Financial Officer and Treasurer as of the 24th day of November, 2015.

VRINGO, INC.

By: /s/ Anastasia Nyrkovskaya
Name: Anastasia Nyrkovskaya
Title: Chief Financial Officer and Treasurer

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:43 PM 03/18/2016
FILED 04:43 PM 03/18/2016
SR 20161744697 - File Number 4090975

CERTIFICATE OF DESIGNATION

OF

SERIES C JUNIOR PARTICIPATING PREFERRED STOCK

OF

VRINGO, INC.

The undersigned do hereby certify that the following resolution was duly adopted by the Board of Directors of Vringo, Inc., a Delaware corporation (the "Company"), on March 18, 2016:

RESOLVED, that pursuant to the authority vested in the board of directors of the Company (the "Board of Directors") by the Company's Amended and Restated Certificate of Incorporation, as amended (the "Certificate of Incorporation"), the Board of Directors does hereby create, authorize and provide for the issue of a series of Preferred Stock, par value $0.01 per share, of the Company, to be designated "Series C Junior Participating Preferred Stock", initially consisting of 300,000 shares, and to the extent that the designations, powers, preferences and relative and other special rights and the qualifications, limitations or restrictions of the Series C Junior Participating Preferred Stock are not stated and expressed in the Certificate of Incorporation, does hereby fix and herein state and express such designations, powers, preferences and relative and other special rights and the qualifications, limitations and restrictions thereof, as follows (all terms used herein which are defined in the Certificate of Incorporation shall be deemed to have the meanings provided therein):

SECTION 1. Designation and Amount. There shall be a series of Preferred Stock that shall be designated as "Series C Junior Participating Preferred Stock," and the number of shares constituting such series shall be 300,000. Such number of shares may be increased or decreased by resolution of the Board of Directors of the Company (the "Board"); provided, however, that no decrease shall reduce the number of shares of Series C Junior Participating Preferred Stock to less than the number of shares then issued and outstanding plus the number of shares issuable upon exercise of outstanding rights, options or warrants or upon conversion of outstanding securities issued by the Company.

SECTION 2. Dividends or Distributions. (a) Subject to the superior rights of the holders of shares of any other series of preferred stock of the Company or other class of capital stock of the Company ranking superior to the shares of Series C Junior Participating Preferred Stock with respect to dividends, the holders of shares of Series C Junior Participating Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of the assets of the Company legally available therefor, (1) quarterly dividends payable in cash on the last day of each fiscal quarter in each year, or such other dates as the Board shall approve (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or a fraction of a share of Series C Junior Participating Preferred Stock, in the amount of $10.00 per whole share (rounded to the nearest cent) less the amount of all cash dividends declared on the Series C Junior Participating Preferred Stock pursuant to the following clause (2) since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series C Junior Participating Preferred Stock (the total of which shall not, in any event, be less than zero) and (2) dividends payable in cash on the payment date for each cash dividend declared on the shares of Common Stock, par value $0.01 per share, of the Company (the "Common Stock") in an amount per whole share (rounded to the nearest cent) equal to the Formula Number (as hereinafter defined) then in effect times the cash dividends then to be paid on each share of Common Stock. In addition, if the Company shall pay any dividend or make any distribution on the Common Stock payable in assets, securities or other forms of noncash consideration (other than dividends or distributions solely in shares of Common Stock), then, in each such case, the Company shall simultaneously pay or make on each outstanding whole share of Series C Junior Participating Preferred Stock a dividend or distribution in like kind equal to the Formula Number then in effect times such dividend or distribution on each share of Common Stock. As used herein, the "Formula Number" shall be 1,000; provided, however, that, if at any time after March 18, 2016, the Company shall (i) declare or pay any dividend on the Common Stock payable in shares of Common Stock or make any distribution on the Common Stock in shares of Common Stock, (ii) subdivide (by a stock split or otherwise) the outstanding shares of Common Stock into a larger number of shares of Common Stock or (iii) combine (by a reverse stock split or otherwise) the outstanding shares of Common Stock into a smaller number of shares of Common Stock, then in each such event the Formula Number shall be adjusted to a number determined by multiplying the Formula Number in effect immediately prior to such event by a fraction, the numerator of which is the number of shares of Common Stock that are outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that are outstanding immediately prior to such event (and rounding the result to the nearest whole number); and provided further that, if at any time after March 18, 2016, the Company shall issue any shares of its capital stock in a merger, reclassification, or change of the outstanding shares of Common Stock, then in each such event the Formula Number shall be appropriately adjusted to reflect such merger, reclassification or change so that each share of Series C Junior Participating Preferred Stock continues to be the economic equivalent of a Formula Number of shares of Common Stock prior to such merger, reclassification or change.

(b) The Company shall declare a cash dividend on the Series C Junior Participating Preferred Stock as provided in Section 2(a)(2) immediately prior to or at the same time it declares a cash dividend on the Common Stock; provided, however, that, in the event no cash dividend shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, during the period between the first issuance of any share or fraction of a share of Series C Junior Participating Preferred Stock, a dividend of $10.00 per whole share on the Series C Junior Participating Preferred Stock shall nevertheless accrue on such subsequent Quarterly Dividend Payment Date or the first Quarterly Dividend Payment Date, as the case may be. The Board may fix a record date for the determination of holders of shares of Series C Junior Participating Preferred Stock entitled to receive a dividend or distribution declared thereon, which record date shall be the same as the record date for any corresponding dividend or distribution on the Common Stock.

(c) Whether or not declared, dividends shall begin to accrue and be cumulative on outstanding shares of Series C Junior Participating Preferred Stock from and after the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue and be cumulative from and after the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series C Junior Participating Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from and after such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series C Junior Participating Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding.

(d) So long as any shares of Series C Junior Participating Preferred Stock are outstanding, no dividends or other distributions shall be declared, paid or distributed, or set aside for payment or distribution, on the Common Stock unless, in each case, the dividend required by this Section 2 to be declared on the Series C Junior Participating Preferred Stock shall have been declared and set aside.

(e) The holders of shares of Series C Junior Participating Preferred Stock shall not be entitled to receive any dividends or other distributions except as herein provided.

SECTION 3. Voting Rights. The holders of shares of Series C Junior Participating Preferred Stock, in addition to the voting rights provided by law, shall have the following voting rights:

(a) Each holder of Series C Junior Participating Preferred Stock shall be entitled to a number of votes on each matter on which holders of the Common Stock or stockholders generally are entitled to vote equal to the Formula Number then in effect, for each share of Series C Junior Participating Preferred Stock held of record, multiplied by the maximum number of votes per share which any holder of Common Stock or stockholders generally then have with respect to such matter (assuming, if applicable, any holding period or other requirement to exercise such maximum voting rights is satisfied).

(b) Except as otherwise herein provided or by applicable law, the holders of shares of Series C Junior Participating Preferred Stock and the holders of shares of Common Stock shall vote together as one class for the election of directors of the Company and on all other matters submitted to a vote of stockholders of the Company.

(c) Except as otherwise herein provided or by applicable law, holders of Series C Junior Participating Preferred Stock shall have no voting rights.

SECTION 4. Certain Restrictions. (a) Whenever quarterly dividends or other dividends or distributions on the Series C Junior Participating Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series C Junior Participating Preferred Stock outstanding shall have been paid in full, the Company shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series C Junior Participating Preferred Stock:

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series C Junior Participating Preferred Stock, except dividends paid ratably on the Series C Junior Participating. Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series C Junior Participating Preferred Stock; provided, however, that the Company may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Company ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series C Junior Participating Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series C Junior Participating Preferred Stock, or any shares of stock ranking on a parity with the Series C Junior Participating Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board) to all holders of such shares upon such terms as the Board, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(b) The Company shall not permit any subsidiary of the Company to purchase or otherwise acquire for consideration any shares of stock of the Company unless the Company could, under Section 4(a), purchase or otherwise acquire such shares at such time and in such manner.

SECTION 5. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, no distribution shall be made (1) to the holders of any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series C Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Series C Junior Participating Preferred Stock shall have received an amount equal to the accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, plus an amount equal to the greater of (x) $1,000 per whole share or (y) an aggregate amount per share equal to the Formula Number then in effect times the aggregate amount to be distributed per share to holders of Common Stock or (2) to the holders of any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series C Junior Participating Preferred Stock, except distributions made ratably on the Series C Junior Participating Preferred Stock and all other such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up.

SECTION 6. Consolidation, Merger, etc. In case the Company shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash or any other property, then in any such case the then outstanding shares of Series C Junior Participating Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share equal to the Formula Number then in effect times the aggregate amount of stock, securities, cash or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is exchanged or changed. In the event both this Section 6 and Section 2 appear to apply to a transaction, this Section 6 will control.

SECTION 7. No Redemption; No Sinking Fund, (a) The shares of Series C Junior Participating Preferred Stock shall not be subject to redemption by the Company or at the option of any holder of Series C Junior Participating Preferred Stock; provided, however, that, subject to Section 4(a)(iv), the Company may purchase or otherwise acquire outstanding shares of Series C Junior Participating Preferred Stock in the open market or by offer to any holder or holders of shares of Series C Junior Participating Preferred Stock.

(b) The shares of Series C Junior Participating Preferred Stock shall not be subject to or entitled to the operation of a retirement or sinking fund.

SECTION 8. No Purchase Fund. The shares of Series C Junior Participating Preferred Stock shall not be subject to or entitled to the operation of a purchase fund.

SECTION 9. No Conversion; No Exchange. The shares of Series C Junior Participating Preferred Stock shall not be convertible into, or exchangeable for, shares of any other class or series.

SECTION 10. Ranking. The Series C Junior Participating Preferred Stock shall rank junior to all other series of preferred stock of the Company unless the Board shall specifically determine otherwise in fixing the powers, preferences and relative, participating, optional and other special rights of the shares of such series and the qualifications, limitations and restrictions thereof.

SECTION 11. Fractional Shares. The Series C Junior Participating Preferred Stock shall be issuable upon exercise of the Rights issued pursuant to the Rights Agreement in whole shares or in any fraction of a share that is one one-thousandth of a share (as such fraction may be adjusted as provided in the Rights Agreement) or any integral multiple of such fraction which shall entitle the holder, in proportion to such holder's fractional shares, to receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series C Junior Participating Preferred Stock. In lieu of any fractional shares, the Company may elect (a) to make a cash payment as provided in the Rights Agreement for fractions of a share, other than those one one-thousandths (1/1,000ths) of a Preferred Share (as such fraction may be adjusted as provided in the Rights Agreement), or any integral multiple thereof represented by one or more whole Rights immediately prior to such exercise, or (b) to issue depositary receipts evidencing fractional shares of Series C Junior Participating Preferred Stock pursuant to an appropriate agreement between the Company and a depository selected by the Company; provided, however, that such agreement shall provide that the holders of such depositary receipts shall have all the rights, privileges and preferences to which they are entitled as holders of the Series C Junior Participating Preferred Stock.

SECTION 12. Reacquired Shares. Any shares of Series C Junior Participating Preferred Stock purchased or otherwise acquired by the Company in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancelation become authorized but unissued shares of Preferred Stock, without designation as to series until such shares are once more designated as part of a particular series by the Board pursuant to the provisions of the Articles.

SECTION 13. Amendment. So long as any shares of Series C Junior Participating Preferred Stock shall be outstanding, (i) none of the voting power, the designations, the relative preferences, powers, participating, optional or other special rights and the qualifications, limitations and restrictions of the Series C Junior Participating Preferred Stock as herein provided shall be amended in any manner which would alter or change the powers, preferences, rights or privileges of the holders of Series C Junior Participating Preferred Stock so as to affect them adversely and (ii) no amendment, alteration or repeal of the Articles or of the Amended and Restated By-laws of the Company shall be effected so as to affect adversely any of such powers, preferences, rights or privileges.

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations to be signed by Andrew D. Perlman its Chief Executive Officer, as of the 18th day of March, 2016.

VRINGO, INC.

By: /s/ Andrew D. Perlman
Andrew D. Perlman
Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:00 PM 05/05/2016
FILED 01:00 PM 05/05/2016
SR 20162868079 - File Number 4090975

CERTIFICATE OF AMENDMENT
OF THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
VRINGO, INC.

VRINGO, INC., a Delaware corporation (the "Corporation"), does hereby certify that:

FIRST: The name of the Corporation is VRINGO, INC.

SECOND: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on January 9, 2006 and the Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 22, 2010, and as further amended by the Certificates of Amendment of the Amended and Restated Certificate of Incorporation on July 19, 2012 and on November 24, 2015.

THIRD: The Board of Directors of the Corporation (the "Board"), acting in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware (the "DGCL"), adopted resolutions amending the Corporation's Amended and Restated Certificate of Incorporation as follows:

Article First of the Corporation's Amended and Restated Certificate of Incorporation is hereby deleted in its entirety and replaced with the following:

"FIRST: The name of the Corporation (hereinafter the "Corporation") is FORM Holdings Corp."

FOURTH: This Certificate of Amendment shall be effective on Friday, May 6, 2016 at 5:00 PM, Eastern Daylight Time.

IN WITNESS WHEREOF, the Corporation has caused this CERTIFICATE OF AMENDMENT to be signed by Anastasia Nyrkovskaya, its Chief Financial Officer and Treasurer, as of the 5th day of May, 2016.

VRINGO, INC.

By: /s/ Anastasia Nyrkovskaya
Name: Anastasia Nyrkovskaya
Title: Chief Financial Officer and Treasurer

CERTIFICATE OF AMENDMENT
OF THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
FORM HOLDINGS CORP.

FORM HOLDINGS CORP., a Delaware corporation (the "Corporation''), does hereby certify that:

FIRST: The name of the Corporation is FORM HOLDINGS CORP.

SECOND: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on January 9, 2006 and the Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 22, 2010, and as further amended by the Certificates of Amendment of the Amended and Restated Certificate of Incorporation on July 19, 2012, on November 24, 2015 and on May 5, 2016.

THIRD: The Board of Directors of the Corporation (the "Board"), acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware (the "DGCL"), adopted resolutions amending the Corporation's Amended and Restated Certificate of Incorporation as follows:

Article Fifth, Section (2) of the Corporation's Amended and Restated Certificate of Incorporation is hereby deleted in its entirety and replaced with the following:

"(2) Subject to the rights of the holders of any series of Preferred Stock then outstanding, any directors, or the entire Board of Directors, may be removed from office, with or without cause, by the affirmative vote of the holders of at least a majority of the total voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class."

FOURTH: Thereafter, pursuant to a resolution of the Board, this Certificate of Amendment was submitted to the stockholders of the Corporation for their approval, and was duly adopted in accordance with the provisions of Sections 222 and 242 of the DGCL.

IN WITNESS WHEREOF, the Corporation has caused this CERTIFICATE OF AMENDMENT to be signed by Anastasia Nyrkovskaya, its Chief Financial Officer, as of the 28th day of November, 2016.

FORM HOLDINGS CORP.

By: /s/ Anastasia Nyrkovskaya
Name: Anastasia Nyrkovskaya
Title: Chief Financial Officer and Treasurer

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:49 PM 11/28/2016
FILED 04:49 PM 11/28/2016
SR 20166803529 - File Number 4090975

State of Delaware
Secretary of State
Division of Corporations
Delivered 11:25 AM 12/23/2016
FILED 11:25 AM 12/23/2016
SR 20167246612 - File Number 4090975

FORM HOLDINGS CORP.

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES D CONVERTIBLE PREFERRED STOCK**

WHEREAS, the Amended and Restated Certificate of Incorporation of Form Holdings Corp., a Delaware corporation (the "Corporation"), provides for a class of its authorized stock known as preferred stock, comprised of 5,000,000 shares, issuable from time to time in one or more series;

WHEREAS, the Board of Directors of the Corporation (the "Board of Directors") is authorized to fix the dividend rights, voting rights, conversion rights, redemption privileges and liquidation preferences of any wholly unissued series of preferred stock and the number of shares constituting any series and the designation thereof, of any of them; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of 500,000 shares of the preferred stock which the Corporation has the authority to issue, classified as Series D Convertible Preferred Stock, as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of preferred stock in exchange for other securities, rights, or property and does hereby fix and determine the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

TERMS OF PREFERRED STOCK

1. Designation and Amount. The class of preferred stock hereby classified shall be designated the "Series D Convertible Preferred Stock", The initial number of authorized shares of the Series D Convertible Preferred Stock shall be 500,000, which, except as provided herein, shall not be subject to increase without the consent of the holders of a majority of the then outstanding shares of Series D Convertible Preferred Stock. Each share of the Series D Convertible Preferred Stock shall have a par value of $0.01.

2. Dividends.

   2.1. Dividends and Distributions to the Holders of Common Stock, From and after the first date of issuance of any shares of Series D Convertible Preferred Stock (the "Initial Issuance Date"), the holders of Series D Convertible Preferred Stock (each, a "Holder" and collectively, the "Holders") shall be entitled to receive such dividends paid and distributions made to the holders of common stock, par value $0.01 per share (the "Common Stock"), pro rata to the holders of Common Stock to the same extent as if such Holders had converted the Series D Convertible Preferred Stock into Common Stock and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

2.2. Payment of Dividends. In addition to the dividends described in Section 2.1, from and after the date of the issuance of any shares of Series D Convertible Preferred Stock, dividends at the rate per annum of $4.32 per share shall accrue on such shares of Series D Convertible Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series D Convertible Preferred Stock) (the "Accruing Dividends"). Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided, however, that except as set forth in the following sentence of this Section 2.2. in Section 4, or in Section 7, such Accruing Dividends shall be payable only when, as, and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such Accruing Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless the holders of the Series D Convertible Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series D Convertible Preferred Stock in an amount at least equal to (i) the amount of the aggregate Accruing Dividends then accrued on such share of Series D Convertible Preferred Stock and not previously paid and (ii) the amount required to be paid pursuant to Section 2.1.

3. Liquidation Preference.

3.1. Preferential Payments to Holders of Series D Convertible Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, subject to the rights of the holders of any other class of preferred stock, the holders of shares of Series D Convertible Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the Stated Value (defined below) plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series D Convertible Preferred Stock been converted into Common Stock pursuant to Section 6 immediately prior to such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the "Series D Liquidation Preference Amount"). If upon any such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the Holders the full amount to which they shall be entitled under this Section 3.1, the Holders shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

3.2. Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series D Convertible Preferred Stock (subject to the rights of the holders of any other class of preferred stock), the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

4. Deemed Liquidation Events.

4.1. Certain definitions. For purposes of this Certificate of Designation, the following definitions shall apply:

4.1.1. "Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

4.1.2. "Deemed Liquidation Event" means that the Corporation shall, directly or indirectly, in one or more related transactions, (A) (i) consolidate or merge with or into (whether or not the Corporation is the surviving corporation) another Person or (ii) permit any subsidiary of the Corporation to merge or consolidate with or into (whether or not the subsidiary of the Corporation is the surviving corporation) another Person, if the Corporation issues shares of its capital stock pursuant to such merger or consolidation (in either (i) or (ii) of this clause (A)), other than a consolidation or merger involving the Corporation or a subsidiary of the Corporation in which the shares of capital stock of the Corporation outstanding immediately prior to such consolidation or merger continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such consolidation or merger, at least a majority of the Voting Stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly-owned subsidiary of another corporation immediately following such consolidation or merger, the parent corporation of such surviving or resulting corporation), or (B) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Corporation on a consolidated basis to another entity, or (C) allow another Person(s) to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the entity or entities making or party to, or associated or affiliated with the entity or entities making or party to, such purchase, tender or exchange offer), or (D) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another entity whereby such other entity acquires more than the 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the other Person(s) making or party to, or associated or affiliated with the other Person(s) making or party to, such stock purchase agreement or other business combination).

4.1.3. "Exchange Act" means the Securities Exchange Act of 1934, as amended.

4.1.4. "Eligible Market" means the New York Stock Exchange, Inc., the NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Global Market, and the NASDAQ Capital Market, and any successor to any of the foregoing.

4.1.5. "Person" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

4.1.6. "Required Holders" means the holders of record of a majority of the then outstanding shares of Series D Convertible Preferred Stock.

4.1.7. "Stated Value" shall mean $48 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar events relating to the Series D Convertible Preferred Stock after the Initial Issuance Date,

4.1.8. "Trading Day" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the shares of Common Stock are then traded; provided that "Trading Day" shall not include any day on which the shares of Common Stock are scheduled to trade on such exchange or market for less than 4.5 hours or any day that the shares of Common Stock are suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York Time),

4.1.9. "Voting Stock" means capital stock of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees thereof (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency that has not occurred at the time of determination).

4.2. Effecting a Deemed Liquidation Event.

4.2.1. The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in clause (A) of the definition of "Deemed Liquidation Event" unless the agreement or plan of merger or consolidation for such transaction (the "Merger Agreement") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3.

4.2.2. In the event of a Deemed Liquidation Event, if the Corporation does not effect a dissolution of the Corporation under the Delaware General Corporation Law ("DGCL") within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series D Convertible Preferred Stock no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause; (ii) to require the repayment and cancellation of such shares of Series D Convertible Preferred Stock, and (iii) if the holders of at least 50% of the then outstanding shares of Series D Convertible Preferred Stock so request in a written instrument delivered to the Corporation not later than 30 days after receipt of the notice described in clause (i), the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors), together with any other assets of the Corporation available for distribution to its stockholders, subject to the rights of any other existing class of preferred stock, all to the extent permitted by Delaware law governing distributions to stockholders (the "Available Proceeds"), on the one hundred fiftieth (150th) day after such Deemed Liquidation Event, to repay and cancel all outstanding shares of Series D Convertible Preferred Stock at a price per share equal to the Series D Liquidation Preference Amount, Notwithstanding the foregoing, in the event of a repayment pursuant to the preceding sentence, if the Available Proceeds are not sufficient to repay all outstanding shares of Series D Convertible Preferred Stock, the Corporation shall ratably repay each Holder's shares of Series D Convertible Preferred Stock to the fullest extent of such Available Proceeds, and shall repay the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. Prior to the distribution or repayment provided for in this Section 4.2.2, the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

4.3. Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon the occurrence of a Deemed Liquidation Event shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors.

4.4. Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to clause (A)(i) of the definition thereof, if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "Additional Consideration"), the transaction agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3.1 and 3.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3.1 and 3.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 4.4, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

5. Voting Rights.

5.1. General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each Holder shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series D Convertible Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Amended and Restated Certificate of Incorporation, the holders of Series D Convertible Preferred Stock shall vote together with the holders of Common Stock as a single class,

5.2. Election of Directors. The Holders of record of the shares of Series D Convertible Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the "Series D Director"). If the holders of shares of Series D Convertible Preferred Stock fail to elect a director to fill the directorship for which they are entitled to elect a director, voting exclusively and as a separate class, pursuant to the first sentence of this Section 5.2, then the directorship not so filled shall remain vacant until such time as the holders of the Series D Convertible Preferred Stock elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Series D Convertible Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Section 5.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 5.2. The initial Series D Director shall be Mr. Andrew Heyer, C/O FORM Holdings Corp., 780 Third Avenue, 12th Floor, New York, NY 10017. The rights of the holders of the Series D Convertible Preferred Stock to elect a Series D Director shall terminate on the first date following the Initial Issuance Date on which the shares of Common Stock underlying the Series D Convertible Preferred Stock represent beneficial ownership (as such term is defined in Rule 13d-3 under the Exchange Act), in the aggregate, of less than five percent (5%) of the Corporation's issued and outstanding shares of Common Stock on an as-converted basis.

6. Conversion.

6.1. Holder's Right to Convert.

The holders of the Series D Convertible Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

6.1.1. Right to Convert.

6.1.1.1. Conversion Ratio. Each share of Series D Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Stated Value (plus any accrued but unpaid dividends) by the Series D Conversion Price (as defined below) in effect at the time of conversion (the result of such fraction, the "Series D Conversion Rate"). The "Series D Conversion Price" shall initially be equal to $6.00. Such initial Series D Conversion Price, and the rate at which shares of Series D Convertible Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. On the Initial Issuance Date, the Series D Conversion Rate shall be equal to 8 shares of Common Stock for each share of Series D Convertible Preferred Stock.

6.1.1.2. Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series D Convertible Preferred Stock.

6.1.2. Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series D Convertible Preferred Stock. In lieu of any fractional shares to which the Holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series D Convertible Preferred Stock the Holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

6.2. Mechanics of Conversion. The conversion of Series D Convertible Preferred Stock shall be conducted in the following manner:

6.2.1. Conversion Notice. The Holder of record of shares of Series D Convertible Preferred Stock being converted shall (A) transmit by email (or otherwise deliver) a copy of a properly completed notice of conversion executed by the registered Holder of the Series D Convertible Preferred Stock subject to such conversion in the form attached hereto as Exhibit A (the "Conversion Notice") to the Corporation and if the Corporation has appointed a registered transfer agent, the Corporation's registered transfer agent (the "Transfer Agent") (if the Corporation does not have a registered transfer agent, references hereto to the "Transfer Agent" shall be deemed to be references to the Corporation) and (B) if required by Section 6.2.3, surrender to a common carrier for delivery to the Corporation as soon as practicable following such date the original certificates, if any, representing the Series D Convertible Preferred Stock being converted (or compliance with the procedures set forth in Section 10) (the "Preferred Stock Certificates").

6.2.2. Corporation's Response. Upon receipt by the Corporation of a copy of a Conversion Notice, the Corporation shall (A) as soon as practicable, but in any event within three (3) Trading Days, send, via email, a confirmation of receipt of such Conversion Notice to such Holder and the Transfer Agent, if applicable, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (B) on or before the third (3^{rd}) Trading Day following the date of receipt by the Corporation of such Conversion Notice, (1) provided the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled. If the number of shares of Series D Convertible Preferred Stock represented by the Preferred Stock Certificate(s) submitted for conversion is greater than the number of shares of Series D Convertible Preferred Stock being converted, then the Corporation shall or shall direct the Transfer Agent, as soon as practicable and in no event later than three (3) Business Days after receipt of the Preferred Stock Certificate(s) and at its own expense, issue and deliver to the Holder a new Preferred Stock Certificate representing the number of shares of Series D Convertible Preferred Stock not converted or it shall direct the Transfer Agent to update the Holder's account to reflect the number of shares of Series D Convertible Preferred Stock not converted.

6.2.3. Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of Series D Convertible Preferred Stock in accordance with the terms hereof, the Holder thereof shall not be required to physically surrender the Preferred Stock Certificate, if any, unless (A) the full or remaining number of shares of Series D Convertible Preferred Stock represented by the Preferred Stock Certificate are being converted, in which case the Holder shall deliver such Preferred Stock Certificate to the Corporation promptly following such conversion, or (B) a Holder has provided the Corporation with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Series D Convertible Preferred Stock upon physical surrender of any Series D Convertible Preferred Stock. The Holder and the Corporation shall maintain records showing the number of shares of Series D Convertible Preferred Stock so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Corporation, so as not to require physical surrender of the certificate representing the Series D Convertible Preferred Stock upon each such conversion. In the event of any dispute or discrepancy, such records of the Corporation establishing the number of shares of Series D Convertible Preferred Stock to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if Series D Convertible Preferred Stock represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the Series D Convertible Preferred Stock unless such Holder first physically surrenders the certificate representing the Series D Convertible Preferred Stock to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of shares of Series D Convertible Preferred Stock represented by such certificate. A Holder and any assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Series D Convertible Preferred Stock, the number of shares of Series D Convertible Preferred Stock represented by such certificate may be less than the number of shares of Series D Convertible Preferred Stock stated on the face thereof.

6.2.4. Reservation of Shares. The Corporation shall, so long as any shares of Series D Convertible Preferred Stock are outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Series D Convertible Preferred Stock according to the terms hereof, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Series D Convertible Preferred Stock then outstanding; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series D Convertible Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in all reasonable efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Series D Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series D Convertible Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Series D Convertible Conversion Price.

6.2.5. Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the Series D Conversion Rate, the Corporation shall issue to the Holder the number of shares of Common Stock that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via email within one (1) Business Day of receipt of such Holder's Conversion Notice or other date of determination. If such Holder and the Corporation are unable to agree upon the determination of the arithmetic calculation of the Series D Conversion Rate within two (2) Business Days of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Corporation shall within one (1) Business Day submit via email the disputed arithmetic calculation of the Series D Conversion Rate to any "big four" international accounting firm that is reasonably acceptable to the Corporation and the Holder, The Corporation shall cause, at the Corporation's expense (unless the accounting firm determines in favor of the Corporation, in which case the Holder shall be responsible for such expense), the accountant to perform the determinations or calculations and notify the Corporation and the Holders of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such accountant's determination or calculation, as the case may be, shall be binding upon all parties absent error,

6.2.6. Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Series D Convertible Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the date of conversion,

6.2.7. Effect of Conversion. All shares of Series D Convertible Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote in the capacity of a Holder, shall forthwith cease and terminate except only the right of the holder thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversation as provided in Section6.1.2, and payment of any accrued but unpaid dividends thereon (whether or not declared). Any shares of Series D Convertible Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series D Convertible Preferred Stock accordingly.

6.2.8. Transfer Taxes. The issuance of certificates, if any, for shares of the Common Stock on conversion of this Series D Convertible Preferred Stock shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of such shares of Series D Convertible Preferred Stock so converted and the Corporation shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

6.2.9. Corporation's Failure to Timely Convert. If within three (3) Trading Days after the Corporation's receipt of the copy of a Conversion Notice, the Corporation shall fail to credit a Holder's balance account with DTC or issue and deliver a certificate to such Holder for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of Series D Convertible Preferred Stock (a "Conversion Failure"), and if on or after such third (3rd) Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the shares of Common Stock issuable upon such conversion that the Holder anticipated receiving from the Corporation (a "Buy-In"), then, in addition to all other remedies available to the Holder, the Corporation shall, within three (3) Trading Days after the Holder's request pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the "Buy-In Price"), at which point the Corporation's obligation to deliver such certificate (and to issue such Common Stock) shall terminate. "Closing Sale Price" means, for the shares of Common Stock as of any date, the last closing price for such security on the principal market on which such security is traded, as reported by Bloomberg L.P., or if the foregoing does not apply, the last closing price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg L.P., or, if no closing price is reported for such security by Bloomberg L.P., the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC).

6.3. Corporation's Right to Convert.

6.3.1. At any time or from time to time after the Initial Issuance Date of the Series D Convertible Preferred Stock, if the volume weighted average price per share, as published by Bloomberg L.P, (or if Bloomberg L.P, does not then exist, a comparable publication) ("VWAP") of the shares of Common Stock of the Corporation on its principal trading market that is an Eligible Market (the "Principal Market") over any twenty (20) of the thirty (30) consecutive Trading Days exceeds $9.00 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization) (the "Corporation Conversion Right Event"), the Corporation will have the right, but not the obligation, by notice given no more than ten (10) Trading Days after the occurrence of such Corporation Conversion Right Event, to convert each outstanding share of Series D Convertible Preferred Stock into a number of fully paid and nonassessable shares of Common Stock calculated based on the then applicable Series D Conversion Rate.

6.3.2. To exercise the Corporation's right set forth in Section 6.3.1, the Corporation shall deliver to each Holder of record of Series D Convertible Preferred Stock an irrevocable written notice (a "Corporation Conversion Notice") during the ten (10) Trading Day period referenced above indicating the effective date of the conversion (the "Corporation Conversion Date"), which Corporation Conversion Date shall be not more than sixty (60), nor less than five (5), days following delivery of the Corporation Conversion Notice.

6.3.3. On the Corporation Conversion Date, the outstanding shares of Series D Convertible Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares, if any, are surrendered to the Corporation or its Transfer Agent, and certificates previously representing shares of Series D Convertible Preferred shall represent only the shares of Common Stock into which the shares of Series D Convertible Preferred previously represented thereby have been converted pursuant hereto; *provided*, *however*, that the Corporation shall not be obligated to issue the shares of Common Stock issuable upon such conversion of any shares of Series D Convertible Preferred unless certificates evidencing such shares of Series D Convertible Preferred, if any, are either delivered to the Corporation or the holder notifies the Corporation that such certificates, if any, have been lost, stolen, or destroyed, and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. Upon the occurrence of the conversion of the Series D Convertible Preferred pursuant to this Section 6.3, the Holders of shares of Series D Convertible Preferred shall surrender the certificates representing such shares to the Corporation and the Corporation shall cause its Transfer Agent to deliver the shares of Common Stock issuable upon such conversion (in the same manner set forth in Section 6.2.2) to the Holder within three (3) Business Days of the Holder's delivery of the applicable Series D Convertible Preferred certificates,

7. Repayment of Series D Convertible Preferred Stock.

7.1. General. On the date that is the seven (7) year anniversary after the Initial Issuance Date of the Series D Convertible Preferred (the "Maturity Date"), the Corporation shall, in accordance with Section 7.2 hereof, repay and cancel each share of Series D Convertible Preferred, at a price per share of the Series D Convertible Preferred equal to the Series D Liquidation Preference Amount, plus an amount equal to any accrued but unpaid dividends payable thereon until the Maturity Date.

7.2. Share Issuance.

7.2.1. On the Maturity Date, the Corporation, at its sole option, may elect to pay to the Holders the Series D Liquidation Preference Amount pursuant to Section 7.1: (i) in cash; (ii) by delivery of shares of Common Stock; or (iii) through any combination of cash and/or Common Stock.

7.2.2. If the Corporation elects to make a payment, or any portion thereof, pursuant to this Section 7, in shares of Common Stock, the number of shares deliverable shall be determined by (A) dividing (x) the cash amount of such payment that would apply if no payment were to be made in Common Stock, or such portion, *by* (y) the VWAP of the Common Stock for the period of thirty (30) consecutive Trading Days ending on the Trading Day immediately preceding the Maturity Date (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization during such period) (the "Base Price") and adding to the number of shares determined in accordance with clause (A), (B) an additional number of shares of Common Stock (the "Premium Shares"), calculated as follows: (i) if the Base Price as calculated pursuant to clause (A) above is greater than $9.00, no Premium Shares shall be issued, (ii) if the Base Price as calculated pursuant to clause (A) above is greater than $7.00 and equal to or less than $9.00, a number of shares equal to 5% of the shares to be issued pursuant to Section 7.2.2(A), (iii) if the Base Price as calculated pursuant to clause (A) above is greater than $6.00 and equal to or less than $7.00, a number of shares equal to 10% of the shares to be issued pursuant to Section 7.2.2(A), (iv) if the Base Price as calculated pursuant to clause (A) above is greater than $5.00 and equal to or less than $6.00, a number of shares equal to 20% of the shares to be issued pursuant to Section 7.2.2(A) and (v) if the Base Price as calculated pursuant to clause (A) above is less than or equal to $5.00, a number of shares equal to 25% of the shares to issued pursuant to Section 7.2.2(A). All per share prices set forth in Section 7.2.2 shall be subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization after the Initial Issuance Date.

8. Adjustment of Series D Conversion Price.

8.1.1. Adjustment of Series D Conversion Price upon Subdivision or Combination of Common Stock. The Series D Conversion Price shall be subject to adjustment from time to time in accordance with this Section 8. If the Corporation at any time after the Initial Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Series D Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Corporation at any time after the Initial Issuance Date combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Series D Conversion Price in effect immediately prior to such combination will be proportionately increased.

8.1.2. Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 4, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series D Convertible Preferred Stock) is converted into or exchanged for securities, cash or other property, then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series D Convertible Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series D Convertible Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 8 with respect to the rights and interests thereafter of the holders of the Series D Convertible Preferred Stock, to the end that the provisions set forth in this Section 8 (and the provisions with respect to changes in and other adjustments of the Series D Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock.

8.2. Notices.

8.2.1. Immediately upon any adjustment of the Series D Conversion Rate and Series D Conversion Price pursuant to Section 8 hereof, the Corporation will give written notice thereof sent by mail, first class, postage prepaid to each Holder at its address appearing on the stock register, setting forth in reasonable detail, and certifying, the calculation of such adjustment. In the case of a dispute as to the determination of such adjustment, then such dispute shall be resolved in accordance with the procedures set forth in Section 6.2.5.

8.2.2. Except as otherwise required by law, the Corporation will give written notice to each Holder at least ten (10) Business Days prior to the date on which the Corporation closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, or (B) with respect to any pro rata subscription offer to holders of Common Stock,

8.2.3. The Corporation will also give written notice to each Holder at least ten (10) Business Days prior to the date on which a Deemed Liquidation Event will take place.

9. Status of Converted Stock. In the event any shares of Series D Convertible Preferred Stock shall be converted pursuant to Sections 6 or 7 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation.

10. Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any Series D Convertible Preferred Stock Certificates representing the Series D Convertible Preferred Stock, if any, and, in the case of loss, theft or destruction, of an indemnification undertaking (with surety, if reasonably requested by the Corporation) by the holder thereof to the Corporation in customary form and, in the case of mutilation, upon surrender and cancellation of the Series D Convertible Preferred Stock Certificate(s), the Corporation shall execute and deliver new preferred stock certificate(s) of like tenor and date; provided, however, the Corporation shall not be obligated to re-issue preferred stock certificates if the holder contemporaneously requests the Corporation to convert such Series D Convertible Preferred Stock into Common Stock.

11. Remedies, Characterizations. Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designation shall be cumulative and in addition to all other remedies available under this Certificate of Designation, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit a holder of Series D Convertible Preferred Stock's right to pursue actual damages for any failure by the Corporation to comply with the terms of this Certificate of Designation. The Corporation covenants to each holder of Series D Convertible Preferred Stock that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder of Series D Convertible Preferred Stock thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of Series D Convertible Preferred Stock and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, the holders of Series D Convertible Preferred Stock shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required,

12. Notice. Whenever notice or other communication is required to be given hereunder, unless otherwise provided herein, such notice shall be given in accordance with contact information provided by each Holder to the Corporation and set forth in the register for the Series D Convertible Preferred Stock maintained by the Corporation as set forth in Section 15.

13. Failure or Indulgence Not Waiver. No failure or delay on the part of any holder of Series D Convertible Preferred Stock in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

14. Transfer of Series D Convertible Preferred Stock. A Holder may assign some or all of the Series D Convertible Preferred Stock and the accompanying rights hereunder held by such Holder without the consent of the Corporation; provided that such assignment is in compliance with applicable securities laws.

15. Series D Convertible Preferred Stock Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the Series D Convertible Preferred Stock, in which the Corporation shall record the name, address and email address of the persons in whose name the Series D Convertible Preferred Stock have been issued, as well as the name, address and email address of each transferee. The Corporation may treat the person in whose name any Series D Convertible Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

16. Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Corporation pursuant to the DGCL, this Certificate of Designation or otherwise with respect to the issuance of the Series D Convertible Preferred Stock or the Common Stock issuable upon conversion thereof may be effected by written consent of the Corporation's stockholders or at a duly called meeting of the Corporation's stockholders, all in accordance with the applicable rules and regulations of the DGCL and the applicable provisions hereof This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

17. General Provisions. In addition to the above provisions with respect to Series D Convertible Preferred Stock, such Series D Convertible Preferred Stock shall be subject to and be entitled to the benefit of the provisions set forth in the Amended and Restated Certificate of Incorporation of the Corporation with respect to preferred stock of the Corporation generally.

18. Waiver and Amendment. Any of the rights, powers, preferences and other terms of the Series D Convertible Preferred Stock set forth herein may be waived or amended on behalf of all holders of Series D Convertible Preferred Stock by the affirmative written consent or vote of the holders of at least 50 % of the shares of Series D Convertible Preferred Stock then outstanding.

signature page follows

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be signed by the undersigned this 23rd day of December, 2016.

FORM HOLDINGS CORP.

By: /s/ Andrew D. Perlman
Name: Andrew D. Perlman
Title: Chief Executive Officer

EXHIBIT A

FORM HOLDINGS CORP.

The undersigned hereby elects to convert the number of shares of Series D Convertible Preferred Stock, par value $0.01 per share (the **"Series D Convertible Preferred Stock"),** of Form Holdings Corp., a Delaware corporation (the **"Corporation"),** indicated below into shares of Common Stock, par value $0.01 per share (the **"Common Stock"),** of the Corporation, as of the date specified below.

Date of Conversion: _____

Number of shares of Series D Convertible Preferred Stock to be converted: _____

Stock certificate no(s). of Series D Convertible Preferred Stock to be converted: _____

Tax ID Number (If applicable): _____

Please confirm the following information: _____

Series D Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Series D Convertible Preferred Stock are being converted in the following name and to the following address:

Issue to: _____

_____

Address: _____

Telephone Number: _____

Email address: _____

Authorization: _____

By: _____

Title: _____

Dated:

Account Number (if electronic book entry transfer): _____

Transaction Code Number (if electronic book entry transfer): _____

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:27 PM 01/05/2018
FILED 02:27 PM 01/05/2018
SR 20180088930 - File Number 4090975

CERTIFICATE OF AMENDMENT
OF THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
FORM HOLDINGS CORP.

FORM HOLDINGS CORP., a Delaware corporation (the "Corporation"), does hereby certify that:

FIRST: The name of the Corporation is FORM HOLDINGS CORP.

SECOND: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on January 9, 2006 and the Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 22, 2010, and as further amended by the Certificates of Amendment of the Amended and Restated Certificate of Incorporation on July 19, 2012, on November 24, 2015, on November 28, 2016, and on May 5, 2016.

THIRD: The Board of Directors of the Corporation (the "Board"), acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware (the "DGCL"), adopted resolutions amending the Corporation's Amended and Restated Certificate of Incorporation as follows:

Article First of the Corporation's Amended and Restated Certificate of Incorporation is hereby deleted in its entirety and replaced with the following:

"FIRST: The name of the Corporation (hereinafter the "Corporation") is XpresSpa Group, Inc."

FOURTH: Thereafter, pursuant to a resolution of the Board, this Certificate of Amendment was duly adopted in accordance with the provisions of Sections 222 and 242 of the DGCL.

FIFTH: This Certificate of Amendment shall be effective on January 5, 2018 at 4:01 P.M., Eastern Standard Time.

IN WITNESS WHEREOF, the Corporation has caused this CERTIFICATE OF AMENDMENT to be signed by Andrew Perlman, its Chief Executive Officer, as of the 5th day of January, 2018.

FORM HOLDINGS CORP.

By: /s/ Andrew Perlman
Name: Andrew Perlman
Title: Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:42 AM 11/13/2018
FILED 10:42 AM 11/13/2018
SR 20187602685 - File Number 4090975

XPRESSPA GROUP, INC.

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES E CONVERTIBLE PREFERRED STOCK**

WHEREAS, the Amended and Restated Certificate of Incorporation (the "Charter") of XpresSpa Group, Inc., a Delaware corporation (the "Corporation"), provides for a class of its authorized stock known as preferred stock, comprised of 5,000,000 shares, issuable from time to time in one or more series;

WHEREAS, the Board of Directors of the Corporation (the "Board of Directors") is authorized to fix the dividend rights, voting rights, conversion rights, redemption privileges and liquidation preferences of any wholly unissued series of preferred stock and the number of shares constituting any series and the designation thereof, of any of them; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of 1,473,300 shares of the preferred stock which the Corporation has the authority to issue, classified as Series E Convertible Preferred Stock, as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of preferred stock in exchange for other securities, rights, or property and does hereby fix and determine in this Certificate of Designation of Preferences, Rights and Limitations of the Series E Convertible Preferred Stock (this "Certificate of Designation") the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

TERMS OF PREFERRED STOCK

1. Designation and Amount. The class of preferred stock hereby classified shall be designated the "Series E Convertible Preferred Stock". The initial number of authorized shares of the Series E Convertible Preferred Stock shall be 1,473,300, which, except as provided herein, shall not be subject to increase without the consent of the holders of a majority of the then outstanding shares of Series E Convertible Preferred Stock. Each share of the Series E Convertible Preferred Stock shall have a par value of $0.01.

2. Dividends.

2.1. Dividends and Distributions to the Holders of Common Stock. From and after the first date of issuance of any shares of Series E Convertible Preferred Stock (the "Initial Issuance Date"), the holders of Series E Convertible Preferred Stock (each, a "Holder" and collectively, the "Holders") shall be entitled to receive such dividends paid and distributions made to the holders of common stock, par value $0.01 per share (the "Common Stock"), pro rata to the holders of Common Stock to the same extent as if such Holders had converted the Series E Convertible Preferred Stock into Common Stock and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

2.2. Payment of Dividends. In addition to the dividends described in Section 2.1, from and after the date of the issuance of any shares of Series E Convertible Preferred Stock, dividends at the rate per annum of $0.186 per share shall accrue on such shares of Series E Convertible Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series E Convertible Preferred Stock) (the "Accruing Dividends"). Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided, however, that except as set forth in the following sentence of this Section 2.2, in Section 4, or in Section 7, such Accruing Dividends shall be payable only when, as, and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such Accruing Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (including the Series D Convertible Preferred Stock and other than dividends on shares of Common Stock payable in shares of Common Stock) unless the holders of the Series E Convertible Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series E Convertible Preferred Stock in an amount at least equal to (i) the amount of the aggregate Accruing Dividends then accrued on such share of Series E Convertible Preferred Stock and not previously paid and (ii) the amount required to be paid pursuant to Section 2.1. The dividends described in this Section 2.2 may be paid in shares of Series E Convertible Preferred Stock valued at $3.10 per share (provided that any accrued and unpaid dividend payable at maturity may be paid in shares of Common Stock).

3. Liquidation Preference.

3.1 Preferential Payments to Holders of Series E Convertible Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, subject to the rights of the holders of any other class of preferred stock, the holders of shares of Series E Convertible Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Series D Convertible Preferred Stock by reason of their ownership thereof or to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the Stated Value (defined below) plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series E Convertible Preferred Stock been converted into Common Stock pursuant to Section 6 immediately prior to such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the "Series E Liquidation Preference Amount"). If upon any such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the Holders the full amount to which they shall be entitled under this Section 3.1, the Holders shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

3.2. Payments to Holders of Series D Convertible Preferred Stock and Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series E Convertible Preferred Stock (subject to the rights of the holders of any other class of preferred stock), the remaining assets of the Corporation available for distribution to its stockholders shall be distributed in accordance with the other provisions of the Charter, including as set forth in the Certificate of Designation of Preferences, Rights and Limitations of the Series D Convertible Preferred Stock (the "Series D Certificate of Designation"). For the avoidance of doubt, this Certificate of Designation shall be deemed to amend the Series D Certificate of Designation so as to effect the senior ranking of the Series E Preferred Stock and the liquidation preference set forth in this Section 3.

4. Deemed Liquidation Events.

4.1. Certain definitions. For purposes of this Certificate of Designation, the following definitions shall apply:

4.1.1. "Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

4.1.2. "Deemed Liquidation Event" means that the Corporation shall, directly or indirectly, in one or more related transactions, (A) (i) consolidate or merge with or into (whether or not the Corporation is the surviving corporation) another Person or (ii) permit any subsidiary of the Corporation to merge or consolidate with or into (whether or not the subsidiary of the Corporation is the surviving corporation) another Person, if the Corporation issues shares of its capital stock pursuant to such merger or consolidation (in either (i) or (ii) of this clause (A)), other than a consolidation or merger involving the Corporation or a subsidiary of the Corporation in which the shares of capital stock of the Corporation outstanding immediately prior to such consolidation or merger continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such consolidation or merger, at least a majority of the Voting Stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly-owned subsidiary of another corporation immediately following such consolidation or merger, the parent corporation of such surviving or resulting corporation), or (B) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Corporation on a consolidated basis to another entity, or (C) allow another Person(s) to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the entity or entities making or party to, or associated or affiliated with the entity or entities making or party to, such purchase, tender or exchange offer), or (D) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another entity whereby such other entity acquires more than the 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the other Person(s) making or party to, or associated or affiliated with the other Person(s) making or party to, such stock purchase agreement or other business combination).

4.1.3. "Exchange Act" means the Securities Exchange Act of 1934, as amended.

4.1.4. "Eligible Market" means the New York Stock Exchange, Inc., the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market, and the Nasdaq Capital Market, and any successor to any of the foregoing.

4.1.5. "Person" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

4.1.6. "Required Holders" means the holders of record of a majority of the then outstanding shares of Series E Convertible Preferred Stock.

4.1.7. "Stated Value" shall mean $3.10 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar events relating to the Series E Convertible Preferred Stock after the Initial Issuance Date.

4.1.8. 'Trading Day" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the shares of Common Stock are then traded; provided that 'Trading Day" shall not include any day on which the shares of Common Stock are scheduled to trade on such exchange or market for less than 4.5 hours or any day that the shares of Common Stock are suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York Time).

4.1.9. "Voting Stock" means capital stock of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees thereof (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency that has not occurred at the time of determination).

4.2. Effecting a Deemed Liquidation Event.

4.2.1. The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in clause (A) of the definition of "Deemed Liquidation Event" unless the agreement or plan of merger or consolidation for such transaction (the "Merger Agreement") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3.

4.2.2. In the event of a Deemed Liquidation Event, if the Corporation does not effect a dissolution of the Corporation under the Delaware General Corporation Law ("DGCL") within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series E Convertible Preferred Stock no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause; (ii) to require the repayment and cancellation of such shares of Series E Convertible Preferred Stock, and (iii) if the holders of at least 50% of the then outstanding shares of Series E Convertible Preferred Stock so request in a written instrument delivered to the Corporation not later than 30 days after receipt of the notice described in clause (i), the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors), together with any other assets of the Corporation available for distribution to its stockholders, subject to the rights of any other existing class of preferred stock, all to the extent permitted by Delaware law governing distributions to stockholders (the "Available Proceeds"), on the one hundred fiftieth (150th) day after such Deemed Liquidation Event, to repay and cancel all outstanding shares of Series E Convertible Preferred Stock at a price per share equal to the Series E Liquidation Preference Amount. Notwithstanding the foregoing, in the event of a repayment pursuant to the preceding sentence, if the Available Proceeds are not sufficient to repay all outstanding shares of Series E Convertible Preferred Stock, the Corporation shall ratably repay each Holder's shares of Series E Convertible Preferred Stock to the fullest extent of such Available Proceeds, and shall repay the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. Prior to the distribution or repayment provided for in this Section 4.2.2, the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

4.3. Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon the occurrence of a Deemed Liquidation Event shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors.

4.4. Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to clause (A)(i) of the definition thereof, if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "Additional Consideration"), the transaction agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3.1 and 3.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3.1 and 3.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 4.4, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

5. Voting Rights. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each Holder shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series E Convertible Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Charter, the holders of Series E Convertible Preferred Stock shall vote together with the holders of Common Stock as a single class.

6. Conversion.

6.1. Holder's Right to Convert. The holders of the Series E Convertible Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

6.1.1. Right to Convert.

6.1.1.1. Conversion Ratio. Each share of Series E Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Stated Value (plus any accrued but unpaid dividends) by the Series E Conversion Price (as defined below) in effect at the time of conversion (the result of such fraction, the "Series E Conversion Rate"). The "Series E Conversion Price" shall initially be equal to $0.62. Such initial Series E Conversion Price, and the rate at which shares of Series E Convertible Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. On the Initial Issuance Date, the Series E Conversion Rate shall be equal to 5 shares of Common Stock for each share of Series E Convertible Preferred Stock.

6.1.1.2. Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series E Convertible Preferred Stock.

6.1.2. Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series E Convertible Preferred Stock. In lieu of any fractional shares to which the Holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series E Convertible Preferred Stock the Holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

6.2. Mechanics of Conversion. The conversion of Series E Convertible Preferred Stock shall be conducted in the following manner:

6.2.1. Conversion Notice. The Holder of record of shares of Series E Convertible Preferred Stock being converted shall (A) transmit by email (or otherwise deliver) a copy of a properly completed notice of conversion executed by the registered Holder of the Series E Convertible Preferred Stock subject to such conversion in the form attached hereto as Exhibit A (the "Conversion Notice") to the Corporation and if the Corporation has appointed a registered transfer agent, the Corporation's registered transfer agent (the "Transfer Agent") (if the Corporation does not have a registered transfer agent, references hereto to the "Transfer Agent" shall be deemed to be references to the Corporation) and (B) if required by Section 6.2.3, surrender to a common carrier for delivery to the Corporation as soon as practicable following such date the original certificates, if any, representing the Series E Convertible Preferred Stock being converted (or compliance with the procedures set forth in Section 11) (the "Preferred Stock Certificates").

6.2.2. Corporation's Response. Upon receipt by the Corporation of a copy of a Conversion Notice, the Corporation shall (A) as soon as practicable, but in any event within three (3) Trading Days, send, via email, a confirmation of receipt of such Conversion Notice to such Holder and the Transfer Agent, if applicable, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (B) on or before the third (3rd) Trading Day following the date of receipt by the Corporation of such Conversion Notice, (1) provided the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled. If the number of shares of Series E Convertible Preferred Stock represented by the Preferred Stock Certificate(s) submitted for conversion is greater than the number of shares of Series E Convertible Preferred Stock being converted, then the Corporation shall or shall direct the Transfer Agent, as soon as practicable and in no event later than three (3) Business Days after receipt of the Preferred Stock Certificate(s) and at its own expense, issue and deliver to the Holder a new Preferred Stock Certificate representing the number of shares of Series E Convertible Preferred Stock not converted or it shall direct the Transfer Agent to update the Holder's account to reflect the number of shares of Series E Convertible Preferred Stock not converted.

6.2.3. Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of Series E Convertible Preferred Stock in accordance with the terms hereof, the Holder thereof shall not be required to physically surrender the Preferred Stock Certificate, if any, unless (A) the full or remaining number of shares of Series E Convertible Preferred Stock represented by the Preferred Stock Certificate are being converted, in which case the Holder shall deliver such Preferred Stock Certificate to the Corporation promptly following such conversion, or (B) a Holder has provided the Corporation with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Series E Convertible Preferred Stock upon physical surrender of any Series E Convertible Preferred Stock. The Holder and the Corporation shall maintain records showing the number of shares of Series E Convertible Preferred Stock so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Corporation, so as not to require physical surrender of the certificate representing the Series E Convertible Preferred Stock upon each such conversion. In the event of any dispute or discrepancy, such records of the Corporation establishing the number of shares of Series E Convertible Preferred Stock to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if Series E Convertible Preferred Stock represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the Series E Convertible Preferred Stock unless such Holder first physically surrenders the certificate representing the Series E Convertible Preferred Stock to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of shares of Series E Convertible Preferred Stock represented by such certificate. A Holder and any assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Series E Convertible Preferred Stock, the number of shares of Series E Convertible Preferred Stock represented by such certificate may be less than the number of shares of Series E Convertible Preferred Stock stated on the face thereof.

6.2.4. Reservation of Shares. The Corporation shall, so long as any shares of Series E Convertible Preferred Stock are outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Series E Convertible Preferred Stock according to the terms hereof, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Series E Convertible Preferred Stock then outstanding; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series E Convertible Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in all reasonable efforts to obtain the requisite stockholder approval of any necessary amendment to the Charter. Before taking any action which would cause an adjustment reducing the Series E Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series E Convertible Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Series E Convertible Conversion Price.

6.2.5. Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the Series E Conversion Rate, the Corporation shall issue to the Holder the number of shares of Common Stock that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via email within one (1) Business Day of receipt of such Holder's Conversion Notice or other date of determination. If such Holder and the Corporation are unable to agree upon the determination of the arithmetic calculation of the Series E Conversion Rate within two (2) Business Days of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Corporation shall within one (1) Business Day submit via email the disputed arithmetic calculation of the Series E Conversion Rate to any "big four" international accounting firm that is reasonably acceptable to the Corporation and the Holder. The Corporation shall cause, at the Corporation's expense (unless the accounting firm determines in favor of the Corporation, in which case the Holder shall be responsible for such expense), the accountant to perform the determinations or calculations and notify the Corporation and the Holders of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such accountant's determination or calculation, as the case may be, shall be binding upon all parties absent error.

6.2.6. Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Series E Convertible Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the date of conversion.

6.2.7. Effect of Conversion. All shares of Series E Convertible Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote in the capacity of a Holder, shall forthwith cease and terminate except only the right of the holder thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversation as provided in Section 6.1.2, and payment of any accrued but unpaid dividends thereon (whether or not declared). Any shares of Series E Convertible Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series E Convertible Preferred Stock accordingly.

6.2.8. Transfer Taxes. The issuance of certificates, if any, for shares of the Common Stock on conversion of this Series E Convertible Preferred Stock shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of such shares of Series E Convertible Preferred Stock so converted and the Corporation shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

6.2.9. Corporation's Failure to Timely Convert. If within three (3) Trading Days after the Corporation's receipt of the copy of a Conversion Notice, the Corporation shall fail to credit a Holder's balance account with DTC or issue and deliver a certificate to such Holder for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of Series E Convertible Preferred Stock (a "Conversion Failure"), and if on or after such third (3rd) Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the shares of Common Stock issuable upon such conversion that the Holder anticipated receiving from the Corporation (a "Buy-In"), then, in addition to all other remedies available to the Holder, the Corporation shall, within three (3) Trading Days after the Holder's request pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the "Buy-In Price"), at which point the Corporation's obligation to deliver such certificate (and to issue such Common Stock) shall terminate. "Closing Sale Price" means, for the shares of Common Stock as of any date, the last closing price for such security on the principal market on which such security is traded, as reported by Bloomberg L.P., or if the foregoing does not apply, the last closing price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg L.P., or, if no closing price is reported for such security by Bloomberg L.P., the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC).

6.3. Corporation's Right to Convert.

6.3.1. At any time or from time to time after the Initial Issuance Date of the Series E Convertible Preferred Stock, if the volume weighted average price per share, as published by Bloomberg L.P. (or if Bloomberg L.P. does not then exist, a comparable publication) ("VWAP") of the shares of Common Stock of the Corporation on its principal trading market that is an Eligible Market (the "Principal Market") over any twenty (20) of the thirty (30) consecutive Trading Days exceeds $9.00 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization) (the "Corporation Conversion Right Event"), the Corporation will have the right, but not the obligation, by notice given no more than ten (10) Trading Days after the occurrence of such Corporation Conversion Right Event, to convert each outstanding share of Series E Convertible Preferred Stock into a number of fully paid and nonassessable shares of Common Stock calculated based on the then applicable Series E Conversion Rate.

6.3.2. To exercise the Corporation's right set forth in Section 6.3.1, the Corporation shall deliver to each Holder of record of Series E Convertible Preferred Stock an irrevocable written notice (a "Corporation Conversion Notice") during the ten (10) Trading Day period referenced above indicating the effective date of the conversion (the "Corporation Conversion Date"), which Corporation Conversion Date shall be not more than sixty (60), nor less than five (5), days following delivery of the Corporation Conversion Notice.

6.3.3. On the Corporation Conversion Date, the outstanding shares of Series E Convertible Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares, if any, are surrendered to the Corporation or its Transfer Agent, and certificates previously representing shares of Series E Convertible Preferred shall represent only the shares of Common Stock into which the shares of Series E Convertible Preferred previously represented thereby have been converted pursuant hereto; *provided*, *however*, that the Corporation shall not be obligated to issue the shares of Common Stock issuable upon such conversion of any shares of Series E Convertible Preferred unless certificates evidencing such shares of Series E Convertible Preferred, if any, are either delivered to the Corporation or the holder notifies the Corporation that such certificates, if any, have been lost, stolen, or destroyed, and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. Upon the occurrence of the conversion of the Series E Convertible Preferred pursuant to this Section 6.3, the Holders of shares of Series E Convertible Preferred shall surrender the certificates representing such shares to the Corporation and the Corporation shall cause its Transfer Agent to deliver the shares of Common Stock issuable upon such conversion (in the same manner set forth in Section 6.2.2) to the Holder within three (3) Business Days of the Holder's delivery of the applicable Series E Convertible Preferred certificates.

7. Repayment of Series E Convertible Preferred Stock.

7.1. General. On the date that is the seven (7) year anniversary after the Initial Issuance Date of the Series E Convertible Preferred (the "Maturity Date"), the Corporation shall, in accordance with Section 7.2 hereof, repay and cancel each share of Series E Convertible Preferred, at a price per share of the Series E Convertible Preferred equal to the Series E Liquidation Preference Amount, plus an amount equal to any accrued but unpaid dividends payable thereon until the Maturity Date.

7.2. Share Issuance.

7.2.1. On the Maturity Date, the Corporation, at its sole option, may elect to pay to the Holders the Series E Liquidation Preference Amount pursuant to Section 7.1: (i) in cash; (ii) by delivery of shares of Common Stock; or (iii) through any combination of cash and/or Common Stock.

7.2.2. If the Corporation elects to make a payment, or any portion thereof, pursuant to this Section 7, in shares of Common Stock, the number of shares deliverable shall be determined by (A) dividing (x) the cash amount of such payment that would apply if no payment were to be made in Common Stock, or such portion, *by* (y) the VWAP of the Common Stock for the period of thirty (30) consecutive Trading Days ending on the Trading Day immediately preceding the Maturity Date (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization during such period); provided, however that such VWAP of the Common Stock shall not be less than $0.62 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization during such period) (the "Base Price") and adding to the number of shares determined in accordance with clause (A), (B) an additional number of shares of Common Stock (the "Premium Shares"), calculated as follows: (i) if the Base Price as calculated pursuant to clause (A) above is greater than $9.00, no Premium Shares shall be issued, (ii) if the Base Price as calculated pursuant to clause (A) above is greater than $7.00 and equal to or less than $9.00, a number of shares equal to 5% of the shares to be issued pursuant to Section 7.2.2(A), (iii) if the Base Price as calculated pursuant to clause (A) above is greater than $6.00 and equal to or less than $7.00, a number of shares equal to 10% of the shares to be issued pursuant to Section 7.2.2(A), (iv) if the Base Price as calculated pursuant to clause (A) above is greater than $5.00 and equal to or less than $6.00, a number of shares equal to 20% of the shares to be issued pursuant to Section 7.2.2(A) and (v) if the Base Price as calculated pursuant to clause (A) above is less than or equal to $5.00, a number of shares equal to 25% of the shares to issued pursuant to Section 7.2.2(A). All per share prices set forth in Section 7.2.2 shall be subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization after the Initial Issuance Date.

8. Adjustment of Series E Conversion Price.

8.1.1. Adjustment of Series E Conversion Price upon Subdivision or Combination of Common Stock. The Series E Conversion Price shall be subject to adjustment from time to time in accordance with this Section 8. If the Corporation at any time after the Initial Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Series E Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Corporation at any time after the Initial Issuance Date combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Series E Conversion Price in effect immediately prior to such combination will be proportionately increased.

8.1.2. Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 4, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series E Convertible Preferred Stock) is converted into or exchanged for securities, cash or other property, then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series E Convertible Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series E Convertible Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 8 with respect to the rights and interests thereafter of the holders of the Series E Convertible Preferred Stock, to the end that the provisions set forth in this Section 8 (and the provisions with respect to changes in and other adjustments of the Series E Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series E Preferred Stock.

8.2. Notices.

8.2.1. Immediately upon any adjustment of the Series E Conversion Rate and Series E Conversion Price pursuant to Section 8 hereof, the Corporation will give written notice thereof sent by mail, first class, postage prepaid to each Holder at its address appearing on the stock register, setting forth in reasonable detail, and certifying, the calculation of such adjustment. In the case of a dispute as to the determination of such adjustment, then such dispute shall be resolved in accordance with the procedures set forth in Section 6.2.5.

8.2.2. Except as otherwise required by law, the Corporation will give written notice to each Holder at least ten (10) Business Days prior to the date on which the Corporation closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, or (B) with respect to any pro rata subscription offer to holders of Common Stock.

8.2.3. The Corporation will also give written notice to each Holder at least ten (10) Business Days prior to the date on which a Deemed Liquidation Event will take place.

9. Status of Converted Stock. In the event any shares of Series E Convertible Preferred Stock shall be converted pursuant to Sections 6 or 7 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation.

10. Series E Convertible Preferred Stock Protective Provisions.

10.1. At any time when shares of Series E Convertible Preferred Stock are outstanding, the Corporation shall not make payments in connection with any of the following without (in addition to any other vote required by law or the Charter) the written consent of the holders of a majority of the outstanding shares of Series E Convertible Preferred Stock:

10.1.1. any cash dividend or payment of any Indebtedness prior to the time such payment is due and payable or payment in cash of any due and payable Indebtedness where the Corporation may elect to make such payment in shares of capital stock or other equity securities of the Corporation, other than (i) prepayments made out of the proceeds of the sale of capital stock or other equity securities of the Corporation (other than sales of Series E Convertible Preferred Stock) or the incurrence of Indebtedness, so long as the aggregate amount of Indebtedness of the Corporation outstanding following such sale or incurrence is equal to or lesser than the aggregate amount of Indebtedness outstanding immediately prior to such sale or incurrence, (ii) prepayments made in shares of capital stock or other equity securities of the Corporation ranking junior to the Series E Convertible Preferred Stock, (iii) the election to pay dividends, pay any Indebtedness prior to the time such payment is due and payable or pay due and payable Indebtedness in cash if, at the time of such payment, the Corporation has an aggregate cash balance greater than the then aggregate Stated Value of all shares of Series E Convertible Preferred Stock issued prior to such payment (whether or not such shares are then outstanding) (such amount, the "Cash Balance Threshold") and has delivered to the holders of Series E Convertible Preferred Stock the Cash Balance Certificate (defined below), (iv) prepayments or elections to pay in cash with respect to up to an aggregate of $100,000 of Indebtedness that is not Indebtedness for borrowed money evidenced by bonds, notes, debentures or similar instruments or (v) prepayments made out of the proceeds of any Indebtedness incurred by the Corporation with American Express or any of its affiliates, so long as the Indebtedness to be prepaid has a higher interest rate than the Indebtedness incurred by the Corporation with American Express or any of its affiliates; or

10.1.2. any repurchase of any outstanding securities of the Corporation, other than (i) repurchases made out of the proceeds of the sale of capital stock or other equity securities of the Corporation (other than sales of Series E Convertible Preferred Stock) or the incurrence of Indebtedness, so long as the aggregate amount of Indebtedness of the Corporation outstanding following such sale or incurrence is equal to or lesser than the aggregate amount of Indebtedness outstanding immediately prior to such sale or incurrence or (ii) repurchases, if, at the time of such repurchase, the Corporation has an aggregate cash balance greater than the then-applicable Cash Balance Threshold and has delivered to the holders of Series E Convertible Preferred Stock the Cash Balance Certificate.

10.1.3. Prior to taking any action pursuant to Sections 10.1.1 (iii) or 10.1.2(ii) (each action a "Proposed Transaction"), the Company shall deliver to the holders of Series E Convertible Preferred Stock a certificate signed by an officer of the Company certifying that: (i) the Company's aggregate cash balance is greater than the Cash Balance Threshold on the date of the Proposed Transaction and at the close of each of the five Business Days immediately prior to the Proposed Transaction and (ii) after giving effect to the Proposed Transaction, the Company's aggregate cash balance will be greater than the Cash Balance Threshold (the "Cash Balance Certificate").

For purposes of this Certificate of Designation, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed (other than trade accounts payable incurred in the ordinary course of business), and (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Corporation's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

11. Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any Series E Convertible Preferred Stock Certificates representing the Series E Convertible Preferred Stock, if any, and, in the case of loss, theft or destruction, of an indemnification undertaking (with surety, if reasonably requested by the Corporation) by the holder thereof to the Corporation in customary form and, in the case of mutilation, upon surrender and cancellation of the Series E Convertible Preferred Stock Certificate(s), the Corporation shall execute and deliver new preferred stock certificate(s) of like tenor and date; provided, however, the Corporation shall not be obligated to re-issue preferred stock certificates if the holder contemporaneously requests the Corporation to convert such Series E Convertible Preferred Stock into Common Stock.

12. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designation shall be cumulative and in addition to all other remedies available under this Certificate of Designation, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit a holder of Series E Convertible Preferred Stock's right to pursue actual damages for any failure by the Corporation to comply with the terms of this Certificate of Designation. The Corporation covenants to each holder of Series E Convertible Preferred Stock that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder of Series E Convertible Preferred Stock thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of Series E Convertible Preferred Stock and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, the holders of Series E Convertible Preferred Stock shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

13. Notice. Whenever notice or other communication is required to be given hereunder, unless otherwise provided herein, such notice shall be given in accordance with contact information provided by each Holder to the Corporation and set forth in the register for the Series E Convertible Preferred Stock maintained by the Corporation as set forth in Section 16.

14. Failure or Indulgence Not Waiver. No failure or delay on the part of any holder of Series E Convertible Preferred Stock in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

15. Transfer of Series E Convertible Preferred Stock. A Holder may assign some or all of the Series E Convertible Preferred Stock and the accompanying rights hereunder held by such Holder without the consent of the Corporation; provided that such assignment is in compliance with applicable securities laws.

16. Series E Convertible Preferred Stock Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the Series E Convertible Preferred Stock, in which the Corporation shall record the name, address and email address of the persons in whose name the Series E Convertible Preferred Stock have been issued, as well as the name, address and email address of each transferee. The Corporation may treat the person in whose name any Series E Convertible Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

17. Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Corporation pursuant to the DGCL, this Certificate of Designation or otherwise with respect to the issuance of the Series E Convertible Preferred Stock or the Common Stock issuable upon conversion thereof may be effected by written consent of the Corporation's stockholders or at a duly called meeting of the Corporation's stockholders, all in accordance with the applicable rules and regulations of the DGCL and the applicable provisions hereof. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

18. General Provisions. In addition to the above provisions with respect to Series E Convertible Preferred Stock, such Series E Convertible Preferred Stock shall be subject to and be entitled to the benefit of the provisions set forth in the Charter with respect to preferred stock of the Corporation generally.

19. Waiver and Amendment. Any of the rights, powers, preferences and other terms of the Series E Convertible Preferred Stock set forth herein may be waived or amended on behalf of all holders of Series E Convertible Preferred Stock by the affirmative written consent or vote of the holders of at least 50 % of the shares of Series E Convertible Preferred Stock then outstanding.

signature page follows

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be signed by the undersigned this 12th day of November, 2018.

XPRESSPA GROUP, INC.

By: /s/ Edward Jankowski
Name: Edward Jankowski
Title: Chief Executive Officer

EXHIBIT A

XPRESSPA GROUP, INC.

The undersigned hereby elects to convert the number of shares of Series E Convertible Preferred Stock, par value $0.01 per share (the **"Series E Convertible Preferred Stock"),** of XpresSpa Group, Inc., a Delaware corporation (the **"Corporation"),** indicated below into shares of Common Stock, par value $0.01 per share (the **"Common Stock"),** of the Corporation, as of the date specified below.

Date of Conversion: _____

Number of shares of Series E Convertible Preferred Stock to be converted: _____

Stock certificate no(s). of Series E Convertible Preferred Stock to be converted: _____

Tax ID Number (If applicable): _____

Please confirm the following information: _____

Series E Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Series E Convertible Preferred Stock are being converted in the following name and to the following address:

Issue to: _____

_____

Address: _____

Telephone Number: _____

Email address: _____

Authorization: _____

By: _____

Title: _____

Dated:

Account Number (if electronic book entry transfer): _____

Transaction Code Number (if electronic book entry transfer): _____

State of Delaware
Secretary of State
Division of Corporations
Delivered 08:01 AM 02/22/2019
FILED 08:01 AM 02/22/2019
SR 20191258217 - File Number 4090975

CERTIFICATE OF AMENDMENT

TO

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF XPRESSPA GROUP, INC.

Pursuant to Section 242 of the General Corporation Law of the State of Delaware, XpresSpa Group, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), does hereby certify as follows:

1. The name of the Corporation is XpresSpa Group, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was January 9, 2006, under the name of Vringo, Inc. The name of the Corporation was changed to FORM Holdings Corp. by filing a Certificate of Amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware on May 6, 2016. The name of the Corporation was changed to XpresSpa Group, Inc. by filing a Certificate of Amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware on January 5, 2018.

2. The Board of Directors of the Corporation has duly adopted a resolution pursuant to Section 242 of the General Corporation Law of the State of Delaware setting forth a proposed amendment to the Amended and Restated Certificate of Incorporation of the Corporation and declaring said amendment to be advisable. The requisite stockholders of the Corporation have duly approved said proposed amendment in accordance with Section 242 of the General Corporation Law of the State of Delaware. The amendment amends the Amended and Restated Certificate of Incorporation of the Corporation as follows:

Sections (3) and (4) of Article Fourth are hereby amended and restated in their entirety as follows:

(3) Upon effectiveness of this Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Corporation (the "Effective Time"), the shares of Common Stock issued and outstanding immediately prior to the Effective Time and the shares of Common Stock issued and held in the treasury of the Corporation immediately prior to the Effective Time are reclassified into a smaller number of shares such that each twenty (20) shares of issued Common Stock immediately prior to the Effective Time is reclassified into one (1) share of Common Stock. Notwithstanding the immediately preceding sentence, no fractional shares shall be issued as a result of the reverse stock split. Instead, any stockholder who would otherwise be entitled to a fractional share of our Common Stock as a result of the reclassification shall be entitled to receive a cash payment equal to the product of such resulting fractional interest in one share of our Common Stock multiplied by the closing trading price of our Common Stock on the trading day immediately preceding the effective date of the reverse stock split. Notwithstanding the foregoing, the Corporation shall not be obliged to issue certificates evidencing the shares of Common Stock outstanding as a result of the reverse stock split or cash in lieu of fractional shares, if any, unless and until the certificates evidencing the shares held by a holder prior to the reverse stock split are either delivered to the Corporation or its transfer agent, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates.

(4) Each stock certificate that, immediately prior to the Effective Time, represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time shall, from and after the Effective Time, automatically and without the necessity of presenting the same for exchange, represent that the number of whole shares of Common Stock after the Effective Time into which the shares of Common Stock formerly represented by such certificate shall have been reclassified (as well as the right to receive a cash payment in lieu of a fractional share of Common Stock), provided, however, that each person of record holding a certificate that represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time shall receive, upon surrender of such certificate, a new certificate evidencing and representing the number of whole shares of Common Stock after the Effective Time into which the shares of Common Stock formerly represented by such certificate shall have been reclassified (including the right to receive a cash payment in lieu of a fractional share of Common Stock)."

This Certificate of Amendment shall be effective on February 22, 2019 at 5:00 p.m., Eastern Time.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by its Chief Executive Officer on this 22nd day of February, 2019.

XPRESSPA GROUP, INC.

By: /s/ Douglas Satzman
Name: Douglas Satzman
Title: Chief Executive Officer

XPRESSPA GROUP, INC.
AMENDMENT TO THE
CERTIFICATE OF DESIGNATION OF PREFERENCES, RIGHTS AND LIMITATIONS
OF SERIES D CONVERTIBLE PREFERRED STOCK

This Amendment to the Certificate of Designation of Preferences, Rights and Limitations of the Series D Convertible Preferred Stock (this "**Amendment**") is dated as of July 8, 2019.

WHEREAS, the board of directors ("**Board of Directors**") of XpresSpa Group, Inc., a Delaware corporation (the "**Company**"), pursuant to authority granted to it by the certificate of incorporation of the Company, has previously fixed the rights, preferences, restrictions and other matters relating to a series of the Company's preferred stock, consisting of 500,000 authorized shares of preferred stock, classified as Series D Convertible Preferred Stock (the "**Series D Preferred Stock**") and the Certificate of Designation of Preferences, Rights and Limitations of the Series D Convertible Preferred Stock (the "**Certificate of Designation**") was filed with the Secretary of State of the State of Delaware on December 23, 2016 evidencing such terms;

WHEREAS, the Holders identified on the signature pages hereto (the "**Holders**") are the record and beneficial owners of certain shares of Series D Preferred Stock, issued pursuant to that certain (a) Agreement and Plan of Merger, dated as of August 8, 2016, as subsequently amended, by and among the Company (formerly known as FORM Holdings Corp.), FHXMS, LLC, XpresSpa Holdings LLC, the unitholders of XpresSpa Holdings LLC who were parties thereto (the "**Unitholders**") and Mistral XH Representative, LLC, as representative of the Unitholders and (b) the Certificate of Designation;

WHEREAS, pursuant to Section 18 of the Certificate of Designation, any of the rights, powers, preferences and other terms of the Series D Preferred Stock may be waived or amended on behalf of all holders of Series D Preferred Stock by the affirmative written consent or vote of the holders of at least 50% of the shares of Series D Preferred Stock then outstanding (the "**Required Holders**");

WHEREAS, the Holders constitute the Required Holders pursuant to the Certificate of Designation and have consented in writing, in accordance with Section 228 of the General Corporation Law of the State of Delaware (the "**DGCL**"), on July 8, 2019, to this Amendment on the terms set forth herein;

WHEREAS, the Board of Directors has duly adopted resolutions proposing to adopt this Amendment and declaring this Amendment to be advisable and in the best interest of the Company and its stockholders; and

WHEREAS, the Holders have agreed to convert their shares of Series D Preferred Stock into shares of common stock, par value $0.01 per share, of the Company (the "**Common Stock**") pursuant to Section 6.1.1 of the Certificate of Designation, as amended by this Amendment, upon receipt of Shareholder Approval (as defined below).

NOW, THEREFORE, this Amendment has been duly adopted in accordance with Section 242 of the DGCL and has been executed by a duly authorized officer of the Company as of the date first set forth above to amend the terms of the Certificate of Designation as follows:

1. Capitalized Terms. Unless otherwise specified in this Amendment, all terms herein shall have the same meanings ascribed to them in the Certificate of Designation.

2. Amendment to Section 6.1.1.1. Section 6.1.1.1 of the Certificate of Designation is hereby amended and restated in its entirety as follows:

"Conversion Ratio. Each share of Series D Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Stated Value (plus any accrued but unpaid dividends) by the Series D Conversion Price (as defined below) in effect at the time of conversion (the result of such fraction, the "Series D Conversion Rate"). The "Series D Conversion Price" shall initially be equal to $6.00 (before giving effect to the reverse stock split of the Common Stock that was effective on February 22, 2019 (the "Reverse Stock Split")), but shall be amended to be equal to $2.00, as may be adjusted as provided below, upon receipt of shareholder approval pursuant to Nasdaq Listing Rule 5635(a) ("Shareholder Approval"). Such Series D Conversion Price, and the rate at which shares of Series D Convertible Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. For the avoidance of doubt, any adjustments made to the Series D Conversion Price after July 8, 2019 but prior to receipt of Shareholder Approval shall be made equitably and proportionately to the Series D Conversion Price following Shareholder Approval. For further avoidance of doubt, other than the Reverse Stock Split, no other event has occurred after the Initial Issuance Date but prior to July 8, 2019 that would result in the adjustment of the Series D Conversion Price."

3. Amendment to Section 6.3.4. Section 6.3.4 of the Certificate of Designation is hereby amended and restated in its entirety to add a new Section 6.3.4 as follows:

"6.3.4 Each share of Series D Convertible Preferred Stock shall, automatically and without further action on the part of any holder thereof, be converted effective upon, subject to, and concurrently with, the receipt of the Shareholder Approval, into a number of fully paid and nonassessable shares of Common Stock calculated based on the then-applicable Series D Conversion Rate (after giving effect to the amendment thereto occurring upon receipt of the Shareholder Approval as provided in Section 6.1.1). Each holder of any shares of Series D Convertible Preferred Stock converted pursuant to this Section 6.3.4 shall deliver to this corporation during regular business hours at the office of any transfer agent of this corporation for the Series D Convertible Preferred Stock, or at such other place as may be designated by the Corporation, the certificate or certificates for the shares so converted, duly endorsed or assigned in blank or to the Corporation. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder, at the place designated by such holder, a certificate or certificates for the number of full shares of the Common Stock to be issued and such holder shall be deemed to have become a stockholder of record of Common Stock on the date of receipt of the Shareholder Approval unless the transfer books of the Corporation are closed on that date, in which event he, she or it shall be deemed to have become a stockholder of record of Common Stock on the next succeeding date on which the transfer books are open."

4. No Other Amendment. Except for the matters set forth in this Amendment, all other terms of the Certificate of Designation and the Series D Preferred Stock shall remain unchanged and in full force and effect.

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IN WITNESS WHEREOF, each of the parties has caused this Amendment to be executed by its duly authorized representatives.

XPRESSPA GROUP, INC.

By: _____
Name: Douglas Satzman
Title: Chief Executive Officer

XPRESSPA GROUP, INC.

AMENDMENT TO THE
CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES E CONVERTIBLE PREFERRED STOCK

This Amendment to the Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock (this "**Amendment**") is dated as of July 8, 2019.

WHEREAS, the board of directors ("**Board of Directors**") of XpresSpa Group, Inc., a Delaware corporation (the "**Company**"), pursuant to authority granted to it by the certificate of incorporation of the Company, has previously fixed the rights, preferences, restrictions and other matters relating to a series of the Company's preferred stock, consisting of 1,473,300 authorized shares of preferred stock, classified as Series E Convertible Preferred Stock (the "**Series E Preferred Stock**") and the Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock (the "**Certificate of Designation**") was filed with the Secretary of State of the State of Delaware on November 13, 2018 evidencing such terms;

WHEREAS, Calm.com, Inc., a Delaware corporation (the "**Holder**") is the record and beneficial owner of certain shares of the Series E Preferred Stock, issued pursuant to that certain (a) Series E Preferred Stock Purchase Agreement, dated as of November 12, 2018, by and between the Company and Calm.com, Inc. and (b) the Certificate of Designation;

WHEREAS, pursuant to Section 19 of the Certificate of Designation, any of the rights, powers, preferences and other terms of the Series E Preferred Stock may be waived or amended on behalf of all holders of Series E Preferred Stock by the affirmative written consent or vote of the holders of at least 50% of the shares of Series E Preferred Stock then outstanding (the "**Required Holders**");

WHEREAS, the Holder constitutes the Required Holders pursuant to the Certificate of Designation and has consented in writing, in accordance with Section 228 of the General Corporation Law of the State of Delaware (the "**DGCL**"), on July 8, 2019, to this Amendment on the terms set forth herein; and

WHEREAS, the Board of Directors has duly adopted resolutions proposing to adopt this Amendment and declaring this Amendment to be advisable and in the best interest of the Company and its stockholders.

NOW, THEREFORE, this Amendment has been duly adopted in accordance with Section 242 of the DGCL and has been executed by a duly authorized officer of the Company as of the date first set forth above to amend the terms of the Certificate of Designation as follows:

1. Capitalized Terms. Unless otherwise specified in this Amendment, all terms herein shall have the same meanings ascribed to them in the Certificate of Designation.

2. Amendment to Section 1. Section 1 of the Certificate of Designation is hereby amended and restated in its entirety as follows:

"Designation and Amount. The class of preferred stock hereby classified shall be designated the "Series E Convertible Preferred Stock". The number of authorized shares of the Series E Convertible Preferred Stock shall be 2,397,060, which, except as provided herein, shall not be subject to increase without the consent of the holders of a majority of the then outstanding shares of Series E Convertible Preferred Stock. Each share of the Series E Convertible Preferred Stock shall have a par value of $0.01."

3. Amendment to Section 5. Section 5 of the Certificate of Designation is hereby amended and restated in its entirety as follows:

"Voting Rights. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each Holder shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series E Convertible Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Notwithstanding the foregoing, in no event shall the holders of shares of Series E Convertible Preferred Stock issued pursuant to that certain Unsecured Convertible Note due May 31, 2022 (the "Note") be permitted to exercise a greater number of votes than such holders would have been entitled to cast if the Note had immediately been converted into shares of Common Stock at a conversion price equal to $1.73 (subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar events). Except as provided by law or by the other provisions of the Charter, the holders of Series E Convertible Preferred Stock shall vote together with the holders of Common Stock as a single class."

4. Amendment to Section 6.1.1.1. Section 6.1.1.1 of the Certificate of Designation is hereby amended and restated in its entirety as follows:

"Conversion Ratio. Each share of Series E Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Stated Value (plus any accrued but unpaid dividends) by the Series E Conversion Price (as defined below) in effect at the time of conversion (the result of such fraction, the "Series E Conversion Rate"). The "Series E Conversion Price" shall initially be equal to $0.62 (before giving effect to the reverse stock split of the Common Stock that was effective on February 22, 2019 (the "Reverse Stock Split")), but shall be amended to be equal to $2.00, as may be adjusted as provided below, upon receipt of shareholder approval pursuant to Nasdaq Listing Rule 5635(d) ("Shareholder Approval"). Such Series E Conversion Price, and the rate at which shares of Series E Convertible Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. For the avoidance of doubt, any adjustments made to the Series E Conversion Price after July 8, 2019 but prior to receipt of Shareholder Approval shall be made equitably and proportionately to the Series E Conversion Price following Shareholder Approval. For the further avoidance of doubt, other than the Reverse Stock Split, no other event has occurred after the Initial Issuance Date but prior to July 8, 2019 that would result in the adjustment of the Series E Conversion Price."

5. No Other Amendment. Except for the matters set forth in this Amendment, all other terms of the Certificate of Designation and the Series E Preferred Stock shall remain unchanged and in full force and effect.

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IN WITNESS WHEREOF, the Company has caused this Amendment to be signed by the undersigned as of July 8, 2019.

XPRESSPA GROUP, INC.

By: _____
Name: Douglas Satzman
Title: Chief Executive Officer

XPRESSPA GROUP, INC.

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES F CONVERTIBLE PREFERRED STOCK**

WHEREAS, the Amended and Restated Certificate of Incorporation (the "Charter") of XpresSpa Group, Inc., a Delaware corporation (the "Corporation"), provides for a class of its authorized stock known as preferred stock, comprised of 5,000,000 shares, issuable from time to time in one or more series;

WHEREAS, the Board of Directors of the Corporation (the "Board of Directors") is authorized to fix the dividend rights, voting rights, conversion rights, redemption privileges and liquidation preferences of any wholly unissued series of preferred stock and the number of shares constituting any series and the designation thereof, of any of them; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of 9,000 shares of the preferred stock which the Corporation has the authority to issue, classified as Series F Convertible Preferred Stock, as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of preferred stock in exchange for other securities, rights, or property and does hereby fix and determine in this Certificate of Designation of Preferences, Rights and Limitations of the Series F Convertible Preferred Stock (this "Certificate of Designation") the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

TERMS OF PREFERRED STOCK

1. Designation and Amount. The class of preferred stock hereby classified shall be designated the "Series F Convertible Preferred Stock". The initial number of authorized shares of the Series F Convertible Preferred Stock shall be 9,000, which, except as provided herein, shall not be subject to increase without the consent of the holders of a majority of the then outstanding shares of Series F Convertible Preferred Stock. Each share of the Series F Convertible Preferred Stock shall have a par value of $0.01.

2. Dividends.

2.1 Dividends and Distributions to the Holders of Common Stock. From and after the first date of issuance of any shares of Series F Convertible Preferred Stock (the "Initial Issuance Date"), the holders of Series F Convertible Preferred Stock (each, a "Holder" and collectively, the "Holders") shall be entitled to receive such dividends paid and distributions made to the holders of common stock, par value $0.01 per share (the "Common Stock"), pro rata to the holders of Common Stock to the same extent as if such Holders had converted the Series F Convertible Preferred Stock into Common Stock and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

3. Ranking.

3.1 Except with respect to any current series of preferred stock of senior rank to the Series F Preferred Stock (including the Series D Preferred Stock and Series E Preferred Stock) in respect of the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Corporation (collectively, the "Senior Preferred Stock") and any current or future series of preferred stock of pari passu rank to the shares of Series F Preferred Stock in respect of the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Corporation (collectively, the "Parity Stock"), all shares of capital stock of the Corporation shall be junior in rank to all shares of Series F Preferred Stock with respect to the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Corporation (collectively, the "Junior Stock"). In the event of the merger or consolidation of the Corporation with or into another corporation, the shares of Series F Preferred Stock shall maintain their relative rights, powers, designations, privileges and preferences provided for herein and no such merger or consolidation shall result inconsistent therewith.

4. Certain definitions. For purposes of this Certificate of Designation, the following definitions shall apply:

4.1.1. "Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

4.1.2. "Deemed Liquidation Event" means that the Corporation shall, directly or indirectly, in one or more related transactions, (A) (i) consolidate or merge with or into (whether or not the Corporation is the surviving corporation) another Person or (ii) permit any subsidiary of the Corporation to merge or consolidate with or into (whether or not the subsidiary of the Corporation is the surviving corporation) another Person, if the Corporation issues shares of its capital stock pursuant to such merger or consolidation (in either (i) or (ii) of this clause (A)), other than a consolidation or merger involving the Corporation or a subsidiary of the Corporation in which the shares of capital stock of the Corporation outstanding immediately prior to such consolidation or merger continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such consolidation or merger, at least a majority of the Voting Stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly-owned subsidiary of another corporation immediately following such consolidation or merger, the parent corporation of such surviving or resulting corporation), or (B) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Corporation on a consolidated basis to another entity, or (C) allow another Person(s) to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the entity or entities making or party to, or associated or affiliated with the entity or entities making or party to, such purchase, tender or exchange offer), or (D) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another entity whereby such other entity acquires more than the 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the other Person(s) making or party to, or associated or affiliated with the other Person(s) making or party to, such stock purchase agreement or other business combination).

4.1.3. "Eligible Market" means the New York Stock Exchange, Inc., the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market, and the Nasdaq Capital Market, and any successor to any of the foregoing.

4.1.4. "Equity Conditions" means each of the following conditions: (i) a registration statement shall be effective and available for the issuance or resale of all shares of Common Stock issuable upon conversion of the Series F Preferred Stock; (ii) the Corporation shall have delivered all shares of Common Stock upon conversion of all shares of Series F Preferred Stock previously exercised by the Holder; (iii) any applicable shares of Common Stock to be issued in connection with the event requiring determination may be issued in full without violating the rules or regulations of the Principal Market or any other applicable Eligible Market; (iv) the Holder shall not be in possession of any material, nonpublic information received from the Corporation or any of its agents or affiliates; and (v) the shares of Common Stock issuable pursuant the event requiring the satisfaction of the Equity Conditions are duly authorized and listed and eligible for trading without restriction on an Eligible Market. For point of clarification, the non-delivery of shares of Common Stock as a result of their designation as "Excess Shares" shall not constitute an Equity Conditions Failure.

4.1.5. "Exchange Act" means the Securities Exchange Act of 1934, as amended.

4.1.6. "Exempt Issuance" means the issuance of (a) shares of Common Stock and options to officers, directors, employees or consultants of the Corporation after the Initial Issuance Date pursuant to plans approved by the shareholders of the Corporation and which issuances are approved by a majority of the independent members of a committee of the board of directors, (b) securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Certificate of Designation, provided that such securities and any term thereof have not been amended since the date of this Certificate of Designation to increase the number of such securities or to decrease the issue price, exercise price, exchange price or conversion price of such securities, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Corporation, provided that any such issuance shall only be to a Person (or to the equity holders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Corporation and shall be intended to provide to the Corporation substantial additional benefits in addition to the investment of funds, but shall not include a transaction in which the Corporation is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, (d) up to 25,000 shares of Common Stock, (e) securities as payment for investment banking services provided to the Corporation, (f) securities issued to third party vendors as payment for goods or services, (g) securities issued to the Corporation's Airport Concession Disadvantaged Business Enterprise partners, and (h) (i) securities issued as payment of interest pursuant to the Credit Agreement dated as of April 22, 2015, as subsequently amended through the date hereof by and between XpresSpa Holdings, LLC and Rockmore Investment Master Fund Ltd. (including, without limitation, that certain Fourth Amendment to Credit Agreement, dated as of July 8, 2019, by and between the Company and B3D, LLC).

4.1.7. "Person" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

4.1.8. "Principal Market" means the Nasdaq Capital Market.

4.1.9. "Required Holders" means the holders of record of a majority of the then outstanding shares of Series F Convertible Preferred Stock.

4.1.10. "Shareholder Approval" means such approval as may be required by the applicable rules and regulations of the Nasdaq Stock Market (or any successor entity) from the shareholders of the Corporation with respect to the transactions contemplated by the SPA Amendment and this Certificate of Designation (including, without limitation, Sections 6 and Section 7.1.3 hereof).

4.1.11. "SPA Amendment" means that certain Amendment to Securities Purchase Agreement by and between the Corporation and the signatories identified therein dated as of July 8, 2019.

4.1.12. "Stated Value" shall mean $100.00 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar events relating to the Series F Convertible Preferred Stock after the Initial Issuance Date.

4.1.13. "Trading Day" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the shares of Common Stock are then traded; provided that "Trading Day" shall not include any day on which the shares of Common Stock are scheduled to trade on such exchange or market for less than 4.5 hours or any day that the shares of Common Stock are suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York Time).

4.1.14. "Voting Stock" means capital stock of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees thereof (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency that has not occurred at the time of determination).

4.2. Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon the occurrence of a Deemed Liquidation Event shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors.

4.3. Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to clause (A)(i) of the definition thereof, if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "Additional Consideration"), the transaction agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3.1 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3.1 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 4.3, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

5. Voting Rights. Holders of Series F Preferred Stock shall have no voting rights, except as required by law (including without limitation, the DGCL) and as expressly provided in this Certificate of Designation. Subject to Section 6.2.10, to the extent that under the DGCL holders of the Series F Preferred Stock are required to vote on a matter with holders of shares of Common Stock, voting together as one class, each share of Series F Preferred Stock shall entitle the holder thereof to cast that number of votes per share as is equal to the number of shares of Common Stock into which it is then convertible (subject to the ownership limitations specified in Section 6.2.10 hereof) using the record date for determining the stockholders of the Corporation eligible to vote on such matters as the date as of which the Series F Conversion Price is calculated. Holders of the shares of Series F Preferred Stock shall be entitled to written notice of all stockholder meetings or written consents (and copies of proxy materials and other information sent to stockholders) with respect to which they would be entitled by vote, which notice would be provided pursuant to the Corporation's bylaws and the DGCL.

6. Conversion.

6.1. Holder's Right to Convert. Upon receipt of Shareholder Approval, the holders of the Series F Convertible Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

6.1.1. Right to Convert.

6.1.1.1. Conversion Ratio. Each share of Series F Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Stated Value (plus any accrued but unpaid dividends) by the Series F Conversion Price (as defined below) in effect at the time of conversion (the result of such fraction, the "Series F Conversion Rate"). The "Series F Conversion Price" shall initially be equal to $2.00. Such initial Series F Conversion Price, and the rate at which shares of Series F Convertible Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. On the Initial Issuance Date, the Series F Conversion Rate shall be equal to 50 shares of Common Stock for each share of Series F Convertible Preferred Stock.

6.1.1.2. Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series F Convertible Preferred Stock.

6.1.2. Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series F Convertible Preferred Stock. In lieu of any fractional shares to which the Holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series F Convertible Preferred Stock the Holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

6.2. Mechanics of Conversion. The conversion of Series F Convertible Preferred Stock shall be conducted in the following manner:

6.2.1. Conversion Notice. The Holder of record of shares of Series F Convertible Preferred Stock being converted shall (A) transmit by email (or otherwise deliver) a copy of a properly completed notice of conversion executed by the registered Holder of the Series F Convertible Preferred Stock subject to such conversion in the form attached hereto as Exhibit A (the "Conversion Notice") to the Corporation and if the Corporation has appointed a registered transfer agent, the Corporation's registered transfer agent (the "Transfer Agent") (if the Corporation does not have a registered transfer agent, references hereto to the "Transfer Agent" shall be deemed to be references to the Corporation) and (B) if required by Section 6.2.3, surrender to a common carrier for delivery to the Corporation as soon as practicable following such date the original certificates, if any, representing the Series F Convertible Preferred Stock being converted (or compliance with the procedures set forth in Section 10) (the "Preferred Stock Certificates").

6.2.2. Corporation's Response. Upon receipt by the Corporation of a copy of a Conversion Notice, the Corporation shall (A) as soon as practicable, but in any event within three (3) Trading Days, send, via email, a confirmation of receipt of such Conversion Notice to such Holder and the Transfer Agent, if applicable, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (B) on or before the second (2^{nd}) Trading Day following the date of receipt by the Corporation of such Conversion Notice, (1) provided the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled. If the number of shares of Series F Convertible Preferred Stock represented by the Preferred Stock Certificate(s) submitted for conversion is greater than the number of shares of Series F Convertible Preferred Stock being converted, then the Corporation shall or shall direct the Transfer Agent, as soon as practicable and in no event later than three (3) Business Days after receipt of the Preferred Stock Certificate(s) and at its own expense, issue and deliver to the Holder a new Preferred Stock Certificate representing the number of shares of Series F Convertible Preferred Stock not converted or it shall direct the Transfer Agent to update the Holder's account to reflect the number of shares of Series F Convertible Preferred Stock not converted.

6.2.3. Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of Series F Convertible Preferred Stock in accordance with the terms hereof, the Holder thereof shall not be required to physically surrender the Preferred Stock Certificate, if any, unless (A) the full or remaining number of shares of Series F Convertible Preferred Stock represented by the Preferred Stock Certificate are being converted, in which case the Holder shall deliver such Preferred Stock Certificate to the Corporation promptly following such conversion, or (B) a Holder has provided the Corporation with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Series F Convertible Preferred Stock upon physical surrender of any Series F Convertible Preferred Stock. The Holder and the Corporation shall maintain records showing the number of shares of Series F Convertible Preferred Stock so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Corporation, so as not to require physical surrender of the certificate representing the Series F Convertible Preferred Stock upon each such conversion. In the event of any dispute or discrepancy, such records of the Corporation establishing the number of shares of Series F Convertible Preferred Stock to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if Series F Convertible Preferred Stock represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the Series F Convertible Preferred Stock unless such Holder first physically surrenders the certificate representing the Series F Convertible Preferred Stock to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of shares of Series F Convertible Preferred Stock represented by such certificate. A Holder and any assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Series F Convertible Preferred Stock, the number of shares of Series F Convertible Preferred Stock represented by such certificate may be less than the number of shares of Series F Convertible Preferred Stock stated on the face thereof.

6.2.4. Reservation of Shares. The Corporation shall, so long as any shares of Series F Convertible Preferred Stock are outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Series F Convertible Preferred Stock according to the terms hereof, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Series F Convertible Preferred Stock then outstanding; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series F Convertible Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in all reasonable efforts to obtain the requisite stockholder approval of any necessary amendment to the Charter. Before taking any action which would cause an adjustment reducing the Series F Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series F Convertible Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Series F Convertible Conversion Price.

6.2.5. Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the Series F Conversion Rate, the Corporation shall issue to the Holder the number of shares of Common Stock that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via email within one (1) Business Day of receipt of such Holder's Conversion Notice or other date of determination. If such Holder and the Corporation are unable to agree upon the determination of the arithmetic calculation of the Series F Conversion Rate within two (2) Business Days of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Corporation shall within one (1) Business Day submit via email the disputed arithmetic calculation of the Series F Conversion Rate to any "big four" international accounting firm that is reasonably acceptable to the Corporation and the Holder. The Corporation shall cause, at the Corporation's expense (unless the accounting firm determines in favor of the Corporation, in which case the Holder shall be responsible for such expense), the accountant to perform the determinations or calculations and notify the Corporation and the Holders of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such accountant's determination or calculation, as the case may be, shall be binding upon all parties absent error.

6.2.6. Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Series F Convertible Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the date of conversion.

6.2.7. Effect of Conversion. All shares of Series F Convertible Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote in the capacity of a Holder, shall forthwith cease and terminate except only the right of the holder thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversation as provided in Section 6.1.2, and payment of any accrued but unpaid dividends thereon (whether or not declared). Any shares of Series F Convertible Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series F Convertible Preferred Stock accordingly.

6.2.8. Transfer Taxes. The issuance of certificates, if any, for shares of the Common Stock on conversion of this Series F Convertible Preferred Stock shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of such shares of Series F Convertible Preferred Stock so converted and the Corporation shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

6.2.9. Corporation's Failure to Timely Convert. If within two (2) Trading Days after the Corporation's receipt of the copy of a Conversion Notice (the "Share Delivery Date"), the Corporation shall fail to credit a Holder's balance account with DTC or issue and deliver a certificate to such Holder for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of Series F Convertible Preferred Stock (a "Conversion Failure"), then (X) the Company shall pay in cash to the Holder on each day after the Share Delivery Date and during such Conversion Failure an amount equal to 1.0% of the product of (A) the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Date and to which the Holder is entitled, and (B) the higher of (i) the then in effect Series F Conversion Price or (ii) the closing price of the Common Stock on the date of the applicable Conversion Notice, and (Y) the Holder, upon written notice to the Company, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, any portion of the shares of Series F Preferred Stock that have not been converted pursuant to such Conversion Notice; provided that the voiding of a Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 6.2.9 or otherwise. In addition, if on or after the Share Delivery Date the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the shares of Common Stock issuable upon such conversion that the Holder anticipated receiving from the Corporation (a "Buy-In"), then, in addition to all other remedies available to the Holder, the Corporation shall, within two (2) Trading Days after the Holder's request pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the "Buy-In Price"), at which point the Corporation's obligation to deliver such certificate (and to issue such Common Stock) shall terminate. "Closing Sale Price" means, for the shares of Common Stock as of any date, the last closing price for such security on the principal market on which such security is traded, as reported by Bloomberg L.P., or if the foregoing does not apply, the last closing price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg L.P., or, if no closing price is reported for such security by Bloomberg L.P., the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC).

6.2.10. Notwithstanding anything to the contrary contained in this Certificate of Designation, the shares of Series F Preferred Stock held by a Holder shall not be convertible by such Holder, and the Corporation shall not effect any conversion of any shares of Series F Preferred Stock held by such Holder, to the extent (but only to the extent) that such Holder or any of its affiliates would beneficially own in excess of 4.99% (the "Maximum Percentage") of the Common Stock. To the extent the above limitation applies, the determination of whether the shares of Series F Preferred Stock held by such Holder shall be convertible (vis-à-vis other convertible, exercisable or exchangeable securities owned by such Holder or any of its affiliates) and of which such securities shall be convertible, exercisable or exchangeable (as among all such securities owned by such Holder and its affiliates) shall, subject to such Maximum Percentage limitation, be determined on the basis of the first submission to the Corporation for conversion, exercise or exchange (as the case may be). No prior inability of a Holder to convert shares of Series F Preferred Stock, or of the Corporation to issue shares of Common Stock to such Holder, pursuant to this Section 6.2.10. shall have any effect on the applicability of the provisions of this Section 6.2.10. with respect to any subsequent determination of convertibility or issuance (as the case may be). For purposes of this Section 6.2.10., beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership) shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. The provisions of this Section 6.2.10. shall be implemented in a manner otherwise than in strict conformity with the terms of this Section 6.2.10. to correct this Section 6.2.10. (or any portion hereof) which may be defective or inconsistent with the intended Maximum Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Maximum Percentage limitation. The limitations contained in this Section 6.2.10. shall apply to a successor holder of shares of Series F Preferred Stock. The Corporation may not waive this Section 6.2.10. without the consent of holders of a majority of its Common Stock. For any reason at any time, upon the written or oral request of a Holder, the Corporation shall within one (1) Business Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock, including, without limitation, pursuant to this Certificate of Designation.

6.3. Corporation's Right to Convert.

6.3.1. At any time or from time to time after the Initial Issuance Date of the Series F Convertible Preferred Stock, if (i) the closing price of the Common Stock listed on the Principal Market equals or exceeds $2.75 (subject to appropriate adjustments for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar transactions after the Issuance Date) for not less than fifteen (15) consecutive Trading Days (the "Corporation Conversion Right Measuring Period"); (ii) the daily average number of shares of Common Stock listed on the Principal Market traded during the Corporation Conversion Right Measuring Period equals or exceeds 100,000 (subject to appropriate adjustments for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar transactions after the Issuance Date); and (iii) no Equity Conditions Failure (as defined below) has occurred (unless such Equity Conditions Failure has been waived) as of such date (clauses (i), (ii) and (iii), the "Corporation Conversion Right Event"), the Corporation will have the right, but not the obligation, to convert each outstanding share of Series F Convertible Preferred Stock into a number of fully paid and nonassessable shares of Common Stock calculated based on the Series F Conversion Rate as of the Mandatory Conversion Date (as defined below) (a "Mandatory Conversion").

6.3.2. The Corporation may exercise its right to require conversion under Section 6.3.1 by delivering within not more than two (2) Trading Days following the end of such Corporation Conversion Right Measuring Period a written notice thereof by facsimile or electronic mail to the Holder (the "Mandatory Conversion Notice" and the date that the Holder received such notice is referred to as the "Mandatory Conversion Notice Date"), which conversion date shall be thirty (30) days following delivery of the Mandatory Conversion Notice (the "Mandatory Conversion Date"). The Company covenants and agrees that it will honor all Conversion Notices tendered from the time of delivery of the Mandatory Conversion Notice until the Corporation Conversation Date has occurred. Unless otherwise indicated by the Holder, all shares of Series F Preferred Stock converted by the Holder after the Mandatory Conversion Notice Date shall reduce the number of shares of Series F Preferred Stock required to be converted on the Mandatory Conversion Date.

6.3.3. On the Mandatory Conversion Date, the outstanding shares of Series F Convertible Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares, if any, are surrendered to the Corporation or its Transfer Agent, and certificates previously representing shares of Series F Convertible Preferred Stock shall represent only the shares of Common Stock into which the shares of Series F Convertible Preferred Stock previously represented thereby have been converted pursuant hereto; *provided, however*, that the Corporation shall not be obligated to issue the shares of Common Stock issuable upon such conversion of any shares of Series F Convertible Preferred Stock unless certificates evidencing such shares of Series F Convertible Preferred Stock, if any, are either delivered to the Corporation or the holder notifies the Corporation that such certificates, if any, have been lost, stolen or destroyed, and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. Upon the occurrence of the conversion of the Series F Convertible Preferred pursuant to this Section 6.3, the Holders of shares of Series F Convertible Preferred shall surrender the certificates representing such shares to the Corporation and the Corporation shall cause its Transfer Agent to deliver the shares of Common Stock issuable upon such conversion (in the same manner set forth in Section 6.2.2) to the Holder within two (2) Business Days of the Holder's delivery of the applicable Series F Convertible Preferred certificates. Notwithstanding anything to the contrary contained herein, if the conversion of a holder's shares of Series F Preferred Stock would result in the Holder exceeding the Maximum Percentage, the Holder shall not be entitled to receive any such Excess Shares (or the beneficial ownership of, including voting rights with respect to, any such Excess Shares) and any Excess Shares shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage. Further, notwithstanding anything to the contrary set forth in this Section 6.3.3, upon conversion of any shares of Series F Preferred Stock in accordance with the terms hereof, no holder thereof shall be required to physically surrender the certificate representing the shares of Series F Preferred Stock to the Company following conversion thereof unless (A) the full or remaining number of shares of Series F Preferred Stock represented by the certificate are being converted or (B) such Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of shares of Series F Preferred Stock upon physical surrender of any shares of Series F Preferred Stock.

7. Adjustment of Series F Conversion Price.

7.1.1. Adjustment of Series F Conversion Price upon Subdivision or Combination of Common Stock. The Series F Conversion Price shall be subject to adjustment from time to time in accordance with this Section 7. If the Corporation at any time after the Initial Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Series F Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Corporation at any time after the Initial Issuance Date combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Series F Conversion Price in effect immediately prior to such combination will be proportionately increased.

7.1.2. Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 7, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series F Convertible Preferred Stock) is converted into or exchanged for securities, cash or other property, then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series F Convertible Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series F Convertible Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 7 with respect to the rights and interests thereafter of the holders of the Series F Convertible Preferred Stock, to the end that the provisions set forth in this Section 7 (and the provisions with respect to changes in and other adjustments of the Series F Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series F Preferred Stock.

7.1.3. Certain Anti-Dilution Adjustments. If the Corporation shall, at any time while any of the shares of Series F Preferred Stock are outstanding, issue any shares of its Common Stock, other than Exempt Issuances, without consideration or for a consideration per share less than the applicable Series F Conversion Price, then with respect to any such issuance, the Series F Conversion Price as in effect immediately prior to each such issuance shall forthwith be lowered to a price equal to the issuance, conversion, exchange or exercise price, as applicable, of any such securities so issued. Notwithstanding anything herein to the contrary, this Section 7.1.3. shall not apply until receipt of the Shareholder Approval.

7.2. Notices.

7.2.1. Immediately upon any adjustment of the Series F Conversion Rate and Series F Conversion Price pursuant to Section 7 hereof, the Corporation will give written notice thereof sent by mail, first class, postage prepaid to each Holder at its address appearing on the stock register, setting forth in reasonable detail, and certifying, the calculation of such adjustment. In the case of a dispute as to the determination of such adjustment, then such dispute shall be resolved in accordance with the procedures set forth in Section 6.2.5.

7.2.2. Except as otherwise required by law, the Corporation will give written notice to each Holder at least ten (10) Business Days prior to the date on which the Corporation closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, or (B) with respect to any pro rata subscription offer to holders of Common Stock.

7.2.3. The Corporation will also give written notice to each Holder at least ten (10) Business Days prior to the date on which a Deemed Liquidation Event will take place.

8. Optional Repurchase. Commencing upon the date Shareholder Approval is obtained, the Corporation will have the option of repurchasing the shares of Series F Preferred Stock, in whole or in part, by paying to the Holder a sum of money in cash equal to (a) the number of shares of Series F Preferred Stock then held by such Holder multiplied by the aggregate Stated Value of such shares of Series F Preferred Stock plus (b) any other amounts due to the Holder pursuant to the terms of this Certificate of Designation (the "Repurchase Amount"). The Corporation's election to exercise its right to repurchase shares of Series F Preferred Stock must be by notice in writing ("Repurchase Notice"). The Repurchase Notice shall specify the date for such optional repurchase (the "Repurchase Payment Date"), which date shall be thirty (30) days after Holder receives the Repurchase Notice. On the Repurchase Payment Date, the Repurchase Amount, less any cash portion of the Redemption Amount against which the Holder has permissibly exercised its conversion rights, shall be paid to the Holder in immediately available funds.

9. Status of Converted Stock. In the event any shares of Series F Convertible Preferred Stock shall be converted pursuant to Section 6 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation.

10. Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any Series F Convertible Preferred Stock Certificates representing the Series F Convertible Preferred Stock, if any, and, in the case of loss, theft or destruction, of an indemnification undertaking (with surety, if reasonably requested by the Corporation) by the holder thereof to the Corporation in customary form and, in the case of mutilation, upon surrender and cancellation of the Series F Convertible Preferred Stock Certificate(s), the Corporation shall execute and deliver new preferred stock certificate(s) of like tenor and date; provided, however, the Corporation shall not be obligated to re-issue preferred stock certificates if the holder contemporaneously requests the Corporation to convert such Series F Convertible Preferred Stock into Common Stock.

11. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designation shall be cumulative and in addition to all other remedies available under this Certificate of Designation, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit a holder of Series F Convertible Preferred Stock's right to pursue actual damages for any failure by the Corporation to comply with the terms of this Certificate of Designation. The Corporation covenants to each holder of Series F Convertible Preferred Stock that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder of Series F Convertible Preferred Stock thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of Series F Convertible Preferred Stock and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, the holders of Series F Convertible Preferred Stock shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

12. Notice. Whenever notice or other communication is required to be given hereunder, unless otherwise provided herein, such notice shall be given in accordance with contact information provided by each Holder to the Corporation and set forth in the register for the Series F Convertible Preferred Stock maintained by the Corporation as set forth in Section 15.

13. Failure or Indulgence Not Waiver. No failure or delay on the part of any holder of Series F Convertible Preferred Stock in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

14. Transfer of Series F Convertible Preferred Stock. A Holder may assign some or all of the Series F Convertible Preferred Stock and the accompanying rights hereunder held by such Holder without the consent of the Corporation; provided that such assignment is in compliance with applicable securities laws.

15. Series F Convertible Preferred Stock Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the Series F Convertible Preferred Stock, in which the Corporation shall record the name, address and email address of the persons in whose name the Series F Convertible Preferred Stock have been issued, as well as the name, address and email address of each transferee. The Corporation may treat the person in whose name any Series F Convertible Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

16. Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Corporation pursuant to the DGCL, this Certificate of Designation or otherwise with respect to the issuance of the Series F Convertible Preferred Stock or the Common Stock issuable upon conversion thereof may be effected by written consent of the Corporation's stockholders or at a duly called meeting of the Corporation's stockholders, all in accordance with the applicable rules and regulations of the DGCL and the applicable provisions hereof. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

17. General Provisions. In addition to the above provisions with respect to Series F Convertible Preferred Stock, such Series F Convertible Preferred Stock shall be subject to and be entitled to the benefit of the provisions set forth in the Charter with respect to preferred stock of the Corporation generally.

18. Waiver and Amendment. Any of the rights, powers, preferences and other terms of the Series F Convertible Preferred Stock set forth herein may be waived or amended on behalf of all holders of Series F Convertible Preferred Stock by the affirmative written consent or vote of the holders of at least 50 % of the shares of Series F Convertible Preferred Stock then outstanding.

signature page follows

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be signed by the undersigned this 8th day of July, 2019.

XPRESSPA GROUP, INC.

By: _____
Name: Douglas Satzman
Title: Chief Executive Officer

EXHIBIT A

XPRESSPA GROUP, INC.

The undersigned hereby elects to convert the number of shares of Series F Convertible Preferred Stock, par value $0.01 per share (the "**Series F Convertible Preferred Stock**"), of XpresSpa Group, Inc., a Delaware corporation (the "**Corporation**"), indicated below into shares of Common Stock, par value $0.01 per share (the "**Common Stock**"), of the Corporation, as of the date specified below.

Date of Conversion: _____

Number of shares of Series F Convertible Preferred Stock to be converted: _____

Stock certificate no(s). of Series F Convertible Preferred Stock to be converted: _____

Tax ID Number (If applicable): _____

Please confirm the following information: _____

Series F Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Series F Convertible Preferred Stock are being converted in the following name and to the following address:

Issue to: _____

_____

Address: _____

Telephone Number: _____

Email address: _____

Authorization: _____

By: _____

Title: _____

Dated:

Account Number (if electronic book entry transfer): _____

Transaction Code Number (if electronic book entry transfer): _____

CERTIFICATE OF AMENDMENT TO
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF XPRESSPA
GROUP, INC.

Pursuant to Section 242 of the General Corporation Law of the State of Delaware, XpresSpa Group, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), does hereby certify as follows:

1. The name of the Corporation is XpresSpa Group, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was January 9, 2006, under the name of Vringo, Inc. The name of the Corporation was changed to FORM Holdings Corp. by filing a Certificate of Amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware on May 6, 2016. The name of the Corporation was changed to XpresSpa Group, Inc. by filing a Certificate of Amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware on January 5, 2018.

2. The Board of Directors of the Corporation has duly adopted a resolution pursuant to Section 242 of the General Corporation Law of the State of Delaware setting forth a proposed amendment to the Amended and Restated Certificate of Incorporation of the Corporation and declaring said amendment to be advisable. The requisite stockholders of the Corporation have duly approved said proposed amendment in accordance with Section 242 of the General Corporation Law of the State of Delaware. The amendment amends the Amended and Restated Certificate of Incorporation of the Corporation as follows:

The second sentence of Article Fourth of the Corporation's Amended and Restated Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

"The total number of shares the Corporation shall have the authority to issue is one hundred sixty million (160,000,000) shares, one hundred fifty million (150,000,000) shares of which shall be Common Stock and ten million (10,000,000) shares of which shall be Preferred Stock."

This Certificate of Amendment shall be effective on October 3, 2019 at 5:00 P.M. Eastern Time.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by its Chief Executive Officer on this 3rd day of October, 2019.

XPRESSPA GROUP, INC.

By: /s/ Douglas Satzman
Name: Douglas Satzman
Title: Chief Executive Officer

Exhibit 4.22

DESCRIPTION OF THE REGISTRANT'S SECURITIES

GENERAL

The following is a summary of material characteristics of the capital stock of XpresSpa Group, Inc. ("we," "us," "our," "XpresSpa," or the "Company") as set forth in our amended and restated certificate of incorporation and amended and restated bylaws, each as amended to date, our outstanding warrants, and certain provisions of Delaware law. The following description does not purport to be complete and is subject to and qualified in its entirety by, and should be read in conjuncture with, our amended and restated certificate of incorporation and amended and restated bylaws, each of which are filed as exhibits to the Annual Report on Form 10-K to which this description is an exhibit, and to applicable provisions of Delaware law.

As of April 13, 2020, the following securities were outstanding:

- 86,500,160 shares of common stock held by 115 stockholders of record;
- 2,406,239 shares of common stock issuable upon the conversion of preferred stock;
- 29,414,493 shares of common stock issuable upon the conversion of indebtedness;
- 27,009,331 warrants outstanding for the purchase of an aggregate of 27,009,331 shares of common stock; and
- 137,892 shares of common stock issuable upon the exercise of stock options.

COMMON STOCK

General

We are authorized to issue 150,000,000 shares of common stock, par value $0.01 per share. Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders and do not have cumulative voting rights. An election of directors by our stockholders shall be determined by a plurality of the votes cast by the stockholders entitled to vote on the election. Holders of common stock are entitled to receive proportionately any dividends as may be declared by our board of directors, subject to any preferential dividend rights of any then outstanding series of preferred stock.

In the event of our liquidation or dissolution, the holders of common stock are entitled to receive proportionately our net assets available for distribution to stockholders after the payment of all debts and other liabilities and subject to any preferential rights of any then outstanding series of preferred stock. Holders of common stock have no preemptive, subscription, redemption or conversion rights. There are no redemption or sinking fund provisions applicable to the common stock. The voting, dividend and liquidation rights of holders of common stock are subject to and may be adversely affected by the rights of the holders of shares of our existing series of preferred stock or any series of preferred stock that we may designate and issue in the future.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company, LLC, with offices at 6201 15th Avenue, Brooklyn, New York 11219.

Stock Exchange Listing

Our common stock is listed for quotation on The Nasdaq Capital Market under the symbol "XSPA."

DESCRIPTION OF PREFERRED STOCK

We are authorized to issue 10,000,000 shares of preferred stock, $0.01 par value per share. The powers, preferences, rights and restrictions of the preferred stock of each series will be fixed by the certificate of designation relating to that series.

As of April 13, 2020, we had:

- designated 300,000 shares of our preferred stock as “Series C Junior Preferred Stock” with no shares outstanding;
- designated 2,397,060 shares of our preferred stock as “Series E Convertible Preferred Stock” with 987,988 shares outstanding; and
- designated 9,000 shares of our preferred stock as “Series F Convertible Preferred Stock” with 1,531 shares outstanding.

Our board of directors has the authority, without further action by the stockholders, to issue additional shares of preferred stock in one or more series and to fix the rights, preferences, privileges and restrictions granted to or imposed upon the preferred stock. Any or all of these rights may be greater than the rights of our common stock.

Our board of directors, without stockholder approval, can issue preferred stock with voting, conversion or other rights that could negatively affect the voting power and other rights of the holders of our common stock. Preferred stock could thus be issued quickly with terms calculated to delay or prevent a change in control of the Company or make it more difficult to remove our management. Additionally, the issuance of preferred stock may have the effect of decreasing the market price of our common stock.

Our board of directors may specify the following characteristics of any preferred stock:

- the maximum number of shares;
- the designation of the shares;
- the annual dividend rate, if any, whether the dividend rate is fixed or variable, the date or dates on which dividends will accrue, the dividend payment dates, and whether dividends will be cumulative;
- the price and the terms and conditions for redemption, if any, including redemption at our option or at the option of the holders, including the time period for redemption, and any accumulated dividends or premiums;
- the liquidation preference, if any, and any accumulated dividends upon the liquidation, dissolution or winding up of our affairs;
- any sinking fund or similar provision, and, if so, the terms and provisions relating to the purpose and operation of the fund;
- the terms and conditions, if any, for conversion or exchange of shares of any other class or classes of our capital stock or any series of any other class or classes, or of any other series of the same class, or any other securities or assets, including the price or the rate of conversion or exchange and the method, if any, of adjustment;
- the voting rights;
- any or all other preferences and relative, participating, optional or other special rights, privileges or qualifications, limitations or restrictions; and
- any preferred stock issued will be fully paid and nonassessable upon issuance.

Series C Junior Participating Preferred Stock

On March 18, 2016, our board of directors approved, and we entered into, a Section 382 Rights Agreement (the "Rights Agreement") between the Company and American Stock Transfer & Trust Company, LLC (the "Rights Agent"). The Rights Agreement provides for a dividend of one preferred stock purchase right (a "Right") for each share of common stock outstanding on March 29, 2016 (the "Record Date"). Each Right entitles the holder to purchase one one-thousandth of a share of Series C Junior Participating Preferred Stock (the "Series C Preferred Stock"), for an initial purchase price of $9.50 (the "Purchase Price"), subject to adjustment as provided in the Rights Agreement. In connection with the adoption of the Rights Agreement, we filed with the Secretary of State of the State of Delaware a Certificate of Designation of Series C Junior Participating Preferred Stock (the "Series C Certificate of Designation"). Pursuant to the Series C Certificate of Designation, the Series C Preferred Stock issuable upon exercise of the Rights are designed so that each 1/1,000th of a share of Series C Preferred Stock is the economic and voting equivalent of one whole share of common stock. In addition, the Series C Preferred Stock has certain minimum dividend and liquidation rights.

Series E Convertible Preferred Stock

On November 12, 2018, we filed with the Secretary of State of the State of Delaware a Certificate of Designation of Preferences, Rights and Limitations (the "Series E Certificate of Designation") of Series E Convertible Preferred Stock (the "Series E Preferred Stock"). Pursuant to the Series E Certificate of Designation, the holders of the Series E Preferred Stock are entitled to participate in any dividends and distributions paid to common stockholders on an as-converted basis. The Series E Preferred Stock votes on an as-converted basis. The Series E Preferred Stock is convertible at any time and from time to time without the payment of additional consideration and has a stated value of $3.10 per share of Series E Preferred Stock. In the event of any liquidation or dissolution of the Company, the Series E Preferred Stock ranks senior to any other class of preferred stock and to the Common Stock in the distribution of assets, to the extent legally available for distribution. Upon the occurrence of certain fundamental events, the holders of the Series E Preferred Stock will be able to require the Company to redeem the shares of Series E Preferred Stock at the greater of the liquidation preference and the amount per share as would have been payable had the shares of Series E Preferred Stock been converted into common stock.

On July 8, 2019, we filed a certificate of amendment to the Series E Certificate of Designation to (i) increase the number of authorized shares of Series E Preferred Stock to 2,397,060 and (ii) upon receipt of the approval of our shareholders, which was obtained on October 2, 2019, reduce the conversion price to $2.00. The conversion price was subsequently reduced to $0.27125 per share in connection with the triggering of anti-dilution price protection.

Series F Convertible Preferred Stock

On July 8, 2019, we filed with the Secretary of State of the State of Delaware a Certificate of Designation of Preferences, Rights and Limitations of Series F Convertible Preferred Stock (the "Series F Certificate of Designation") establishing and designating the rights, powers and preferences of the Series F Convertible Preferred Stock (the "Series F Preferred Stock"). We designated 9,000 shares of Series F Preferred Stock. Pursuant to the Series F Certificate of Designation, the holders of the Series F Preferred Stock are entitled, among other things, to the right to participate in any dividends and distributions paid to common stockholders on an as-converted basis. The Series F Preferred Stock has no voting rights except as required by law. The Series F Preferred Stock contains certain anti-dilution price protection such that, following receipt of the approval of our shareholders, which was obtained on October 2, 2019, if at any time while the Series F Preferred Stock is outstanding, we issue any shares of Common Stock without consideration or for a consideration per share less than the conversion price then in effect for the Series F Preferred Stock, then the conversion price of the Series F Preferred Stock shall be lowered to a price equal to such issuance. The Series F Preferred Stock is convertible at any time and from time to time without the payment of additional consideration into shares of Common Stock at a conversion price initially equal to $2.00 per share, which was subsequently reduced to $0.175 per share in connection with the triggering of anti-dilution price protection, subject to certain adjustments and has a stated value of $100.00 per share of Series F Preferred Stock. In the event of any liquidation or dissolution of the Company, the Series F Preferred Stock will rank junior to our Series E Preferred Stock and any other class of preferred stock of senior rank to the Series F Preferred Stock, senior to any other class of preferred stock and to the Common Stock in the distribution of assets, to the extent legally available for distribution. Each share of Series F Preferred Stock is initially convertible into 50 shares of Common Stock.

DESCRIPTION OF WARRANTS

We may issue warrants to purchase shares of our common stock, preferred stock and/or debt securities in one or more series together with other securities or separately. Below is a description of our currently outstanding warrants:

- On May 15, 2018, we entered into a securities purchase agreement with certain purchasers, pursuant to which we agreed to issue Class A Warrants to purchase shares of common stock, at an exercise price that was subsequently reduced to $0.175 per share (the "Class A Warrants"). The Class A Warrants contain anti-dilution price protection. As of April 13, 2020, there were Class A Warrants to purchase 13,421,018 shares of common stock outstanding.

- On July 8, 2019, we entered into a securities purchase agreement with Calm.com, Inc., pursuant to which we agreed to sell (i) an aggregate principal amount of $2,500,000 in 5.00% unsecured convertible Notes due 2022, which are convertible into shares of Series E Preferred Stock, which shares of Series E Preferred Stock are convertible into Common Stock and (ii) warrants to purchase 937,500 shares of the common stock at an exercise price that was subsequently reduced to $0.175 per share (the "Calm Warrants"). The Calm Warrants contain anti-dilution price protection. As of April 13, 2020, the Calm Warrants were exercisable for 10,714,286 shares of common stock.

- On July 8, 2019, we entered into an amendment to certain outstanding warrants issued in December 2016 (the "December 2016 Warrants"), in order to, among other things, reduce the exercise price of such warrants, which exercise price was subsequently reduced to $0.175 per share. The December 2016 Warrants contain anti-dilution price protection. As of April 13, 2020, the December 2016 Warrants were exercisable for 1,428,573 shares of common stock.

- On April 6, 2020, we entered into a Securities Purchase Agreement (the "Fourth Purchase Agreement") with certain purchasers named therein, pursuant to which we issued and sold, in a registered direct offering, (i) 12,418,179 shares of the Company's Common Stock at an offering price of $0.22 per share and (ii) an aggregate of 1,445,454 pre-funded warrants exercisable for shares of Common Stock (the "Fourth Pre-Funded Warrants") at an offering price of $0.21 per Pre-Funded Warrant (the offering of the shares of Common Stock and the Pre-Funded Warrants, the "Fourth Offering"). As of April 13, 2020, the Fourth Pre-Funded Warrants were exercisable for 1,445,454 shares of common stock.

The warrants contain customary provisions for adjustment in the event of stock splits, subdivision or combination, mergers, and similar events. The holders of the warrants have the right to exercise the warrants by means of a cashless exercise in certain circumstances.

CERTAIN PROVISIONS OF DELAWARE LAW AND OF THE COMPANY'S CERTIFICATE OF INCORPORATION AND BYLAWS

Anti-Takeover Provisions

Delaware Law

We are subject to Section 203 of the Delaware General Corporation Law (the "DGCL"). Subject to certain exceptions, Section 203 prevents a publicly held Delaware corporation from engaging in a "business combination" with any "interested stockholder" for three years following the date that the person became an interested stockholder, unless the interested stockholder attained such status with the approval of our board of directors or unless the business combination is approved in a prescribed manner. A "business combination" includes, among other things, a merger or consolidation involving us and the "interested stockholder" and the sale of more than 10% of our assets. In general, an "interested stockholder" is any entity or person beneficially owning 15% or more of our outstanding voting stock and any entity or person affiliated with or controlling or controlled by such entity or person.

Charter Documents

Our amended and restated certificate of incorporation provides that amendments by our stockholders of our amended and restated bylaws require the approval of at least $66^{2}/_{3}\%$ of the voting power of all outstanding stock. These provisions could discourage a potential acquirer from making a tender offer or otherwise attempting to obtain control of the Company and could delay changes in management.

Our amended and restated bylaws provide that a special meeting of stockholders may be called at any time by our board of directors. Because our stockholders do not have the right to call a special meeting, a stockholder cannot force stockholder consideration of a proposal over the opposition of our board of directors by calling a special meeting of stockholders prior to such time as a majority of our board of directors believes the matter should be considered and such stockholder would only be able to force consideration of such proposal at the next annual meeting, *provided* that the requestor met the applicable notice requirements. The restriction on the ability of our stockholders to call a special meeting means that a proposal to replace one or more directors on our board of directors also could be delayed until the next annual meeting.

Limitation of Liability and Indemnification

Our amended and restated certificate of incorporation contains provisions that limit the liability of our directors for monetary damages to the fullest extent permitted by Delaware law. Consequently, our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for:

- any breach of the director's duty of loyalty to us or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL; or
- any transaction from which the director derived an improper personal benefit.

Our amended and restated certificate of incorporation and amended and restated bylaws provide that we are required to indemnify our directors and officers, in each case to the fullest extent permitted by Delaware law. The amended and restated bylaws also provide that we are obligated to advance expenses incurred by a director or officer in advance of the final disposition of any action or proceeding, and permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in that capacity regardless of whether we would otherwise be permitted to indemnify him or her under Delaware law.

We have entered and expect to continue to enter into agreements to indemnify our directors, executive officers and other employees as determined by our board of directors. With specified exceptions, these agreements provide for indemnification for related expenses including, among other things, attorneys' fees, judgments, fines and settlement amounts incurred by any of these individuals in any action or proceeding brought against them by reason of the fact that they are or were our agents. We believe that these provisions in our amended and restated certificate of incorporation and amended and restated bylaws and indemnification agreements are necessary to attract and retain qualified directors and officers. We also maintain directors' and officers' liability insurance. This description of the limitation of liability and indemnification provisions of our amended and restated certificate of incorporation, amended and restated bylaws and indemnification agreements is qualified in its entirety by reference to these documents.

Exhibit 21

Subsidiaries of XpresSpa Group, Inc.

Name of Subsidiary	Jurisdiction of Incorporation
I/P Engine, Inc.	Virginia
Innovate/Protect, Inc.	Delaware
International Development Group, Ltd.	Maryland
Iron Gate Security, Inc.	Delaware
Quantum Stream Inc.	Delaware
Spa Products Import & Distribution Co., LLC	New York
Spa Products Wholesaling, LLC	New York
Vringo Acquisition, Inc.	Delaware
Vringo GmbH	Germany
Vringo Infrastructure, Inc.	Delaware
Vringo Labs, Inc.	Delaware
Vringo Ltd.	Israel
Vringo Mobile, Inc.	Delaware
VRTUAL, Inc.	Delaware
XpresSpa Amsterdam Airport B.V.	Netherlands
XpresSpa at Term. 4 JFK, LLC	New York
XpresSpa Atlanta Terminal A, LLC	New York
XpresSpa Atlanta Terminal C, LLC	New York
XpresSpa Atlanta Terminal D&E, LLC	New York
XpresSpa Austin Airport, LLC	New York
XpresSpa Charlotte Airport, LLC	New York
XpresSpa Chicago O'Hare, LLC	New York
XpresSpa Denver Airport, LLC	New York
XpresSpa DFW International, LLC	New York
XpresSpa DFW Kiosk, LLC	New York
XpresSpa DFW Terminal A, LLC	New York
XpresSpa Downtown NYC, LLC	New York
XpresSpa Europe B.V.	Netherlands
XpresSpa Franchising, LLC	New York
XpresSpa Franchising USA, LLC	New York
XpresSpa Holdings, LLC	Delaware
XpresSpa Houston Hobby, LLC	New York
XpresSpa Houston Intercontinental Terminal A, LLC	New York
XpresSpa International Holdings, LLC	New York
XpresSpa JFK Terminal 1, LLC	New York
XpresSpa JFK Terminal 7, LLC	New York
XpresSpa JFK Terminal 8, LLC	New York
XpresSpa John Wayne Airport, LLC	New York
XpresSpa LaGuardia Airport, LLC	New York
XpresSpa Las Vegas Airport, LLC	New York
XpresSpa LAX Airport, LLC	New York
XpresSpa LAX Tom Bradley, LLC	New York
XpresSpa Miami Airport, LLC	New York
XpresSpa Middle East B.V.	Netherlands
XpresSpa Middle East Limited	British Virgin Islands
XpresSpa Mobile Services, LLC	New York
XpresSpa MSP Airport, LLC	New York
XpresSpa Online Shopping, LLC	New York
XpresSpa Orlando International, LLC	New York
XpresSpa Orlando, LLC	New York
XpresSpa Philadelphia Airport, LLC	New York
XpresSpa Philadelphia Terminal B, LLC	New York
XpresSpa Phoenix Airport, LLC	New York
XpresSpa Pittsburgh A, LLC	New York
XpresSpa Raleigh-Durham Intl, LLC	New York
XpresSpa RDU Airport, LLC	New York
XpresSpa S.F. International, LLC	New York
XpresSpa Salt Lake City, LLC	New York
XpresSpa Washington Reagan, LLC	New York
XpresRecover Charlotte Airport, LLC	New York

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in registration statements No. 333-225531, No. 333-232764 and No. 333-233419 on Form S-3 and registration statements No. 333-210257, No. 333-182853 and No. 333-181477 on Form S-8 of XpresSpa Group, Inc. of our report, which includes an explanatory paragraph relating to the Company's ability to continue as a going concern, dated April 20, 2020, on our audits of the consolidated financial statements of XpresSpa Group, Inc. and subsidiaries as of December 31, 2019 and 2018, and for the years then ended, which report is included in the Annual Report on Form 10-K of XpresSpa Group, Inc. and subsidiaries for the year ended December 31, 2019.

/s/ CohnReznick LLP

April 20, 2020
Jericho, New York

Exhibit 31.1

CERTIFICATIONS UNDER SECTION 302

I, Douglas Satzman, certify that:

1. I have reviewed this Annual Report on Form 10-K of XpresSpa Group, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under my supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to me by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report my conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: April 20, 2020

/s/ DOUGLAS SATZMAN

Chief Executive Officer
(Principal Executive Officer)
(Principal Accounting and Financial Officer)

Exhibit 32

CERTIFICATIONS UNDER SECTION 906

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), each of the undersigned officers of XpresSpa Group, Inc., a Delaware corporation (the "Company"), does hereby certify, to such officer's knowledge, that:

The Annual Report for the year ended December 31, 2019 (the "Form 10-K") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: April 20, 2020

/s/ DOUGLAS SATZMAN
Chief Executive Officer
(Principal Executive Officer)
(Principal Financial and Accounting Officer)