

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	08/09/2004

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
zipRealty, Inc.	FORMERLY zipRealty.com, Inc.	08/09/2004	CORPORATION: CALIFORNIA

RECEIVING PARTY DATA

Name:	ZipRealty, Inc.
Street Address:	2000 Powell Street
Internal Address:	Suite 1555
City:	Emeryville
State/Country:	CALIFORNIA
Postal Code:	94608
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 21

Property Type	Number	Word Mark
Serial Number:	78319262	ZIPCLOSING
Serial Number:	78319218	1.800 CALL ZIP
Serial Number:	78350776	WE'RE BUILT AROUND YOU
Serial Number:	78319290	ZIPREBATE
Serial Number:	78319287	ZIPCOMMERCIAL
Serial Number:	78319279	ZIPRESIDENTIAL
Serial Number:	78319267	ZIPRATE
Serial Number:	78319257	ZIPMORTGAGE
Serial Number:	78319252	ZIPREFERRAL
Serial Number:	78319251	ZIPLOAN
Registration Number:	2895842	ZIPNOTIFY
Registration Number:	2895841	ZIP GUARANTEE

CH \$540.00 78319262

Registration Number:	2893593	ZIPTIPS
Registration Number:	2893592	ZIPADVANTAGE
Registration Number:	2893591	ZIPAGENT
Registration Number:	2967035	ZIP REALTY
Registration Number:	2976124	ZIP REALTY
Registration Number:	2986449	YOUR HOME IS WHERE OUR HEART IS
Registration Number:	2485032	REAL ESTATE. REDEFINED.
Registration Number:	2414752	YOUR ONLINE REAL ESTATE AGENT
Registration Number:	2507682	ZIPREALTY

CORRESPONDENCE DATA

Fax Number: (602)648-7009

Correspondence will be sent via US Mail when the fax attempt is unsuccessful.

Phone: 602-351-8269

Email: trademarkphx@perkinscoie.com

Correspondent Name: Michelle M. Morris

Address Line 1: 2901 N. Central Avenue

Address Line 2: Suite 2000

Address Line 4: Phoenix, ARIZONA 85012

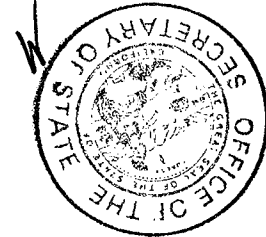
ATTORNEY DOCKET NUMBER:	53769-4000 (21 MARKS)
NAME OF SUBMITTER:	Michelle M. Morris
Signature:	/michelle m. morris/
Date:	01/25/2006

Total Attachments: 32

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State of California



SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 8 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

AUG - 9 2004



Kevin Shelley
Secretary of State

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

AUG - 9 2004

KEVIN SHELLEY
Secretary of State

**CERTIFICATE OF OWNERSHIP
OF ZIPREALTY, INC.**

Gary M. Beasley and Karen B. Seto certify that:

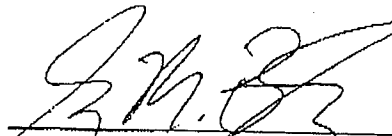
1. They are the Executive Vice President and the Secretary, respectively, of ZipRealty, Inc., a California corporation.

2. This corporation owns one hundred percent (100%) of the outstanding shares of ZipRealty, Inc., a corporation duly organized and existing under the laws of the State of Delaware ("ZipRealty Delaware"), the provisions of which permit a merger in the manner provided by Section 1110 of the California Corporations Code.


3. Attached hereto as Exhibit A is a copy of the Agreement and Plan of Merger (the "Merger Agreement"). The Merger Agreement is incorporated herein by reference as if fully set forth herein. The Merger Agreement was adopted and approved by the Board of Directors of this corporation on April 29, 2004, by a majority of the outstanding shares the common stock and preferred stock of this corporation, each voting as a separate class, on July 23, 2004, by the Board of Directors of ZipRealty Delaware on June 17, 2004, and by the sole stockholder of ZipRealty Delaware on July 13, 2004.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: August 9, 2004



Gary M. Beasley, Executive Vice President



Karen B. Seto, Secretary

Exhibit A
AGREEMENT AND PLAN OF MERGER OF
ZIPREALTY, INC.,
A DELAWARE CORPORATION
AND
ZIPREALTY, INC.,
A CALIFORNIA CORPORATION

THIS AGREEMENT AND PLAN OF MERGER, dated this ___th day of August 2004 (the "Agreement"), is made by and between ZipRealty, Inc., a Delaware corporation ("ZipRealty Delaware"), and ZipRealty, Inc., a California corporation ("ZipRealty California"). ZipRealty Delaware and ZipRealty California are collectively referred to hereinafter as the "Constituent Corporations."

RECITALS

A. ZipRealty Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has a total authorized capital stock of 139,342,640 shares. The number of shares of preferred stock of ZipRealty Delaware authorized to be issued is 59,342,640, par value \$0.001, of which 1,911,112 shares have been designated Series A Preferred Stock (the "ZipRealty Delaware Series A Preferred Stock"), 5,246,171 shares have been designated Series B Preferred Stock (the "ZipRealty Delaware Series B Preferred Stock"), 2,178,486 shares have been designated Series C Preferred Stock (the "ZipRealty Delaware Series C Preferred Stock"), 6,106,781 shares have been designated Series D Preferred Stock (the "ZipRealty Delaware Series D Preferred Stock"), 9,000,000 shares have been designated Series E Preferred Stock (the "ZipRealty Delaware Series E Preferred Stock"), 15,300,000 shares have been designated Series E-1 Preferred Stock (the "ZipRealty Delaware Series E-1 Preferred Stock") and 19,600,000 shares have been designated Series F Preferred Stock (the "ZipRealty Delaware Series F Preferred Stock," and, together with the ZipRealty Delaware Series A Preferred Stock, ZipRealty Delaware Series B Preferred Stock, ZipRealty Delaware Series C Preferred Stock, ZipRealty Delaware Series D Preferred Stock, ZipRealty Delaware Series E Preferred Stock, and the ZipRealty Delaware Series E-1 Preferred Stock, the "ZipRealty Delaware Preferred Stock"). No shares of ZipRealty Delaware Preferred Stock were outstanding as of the date hereof and prior to giving effect to the transactions contemplated hereby. The number of shares of common stock (the "ZipRealty Delaware Common Stock") authorized to be issued is 80,000,000, par value \$0.001. As of the date hereof, and before giving effect to the transactions contemplated hereby, 1,000 shares of ZipRealty Delaware Common Stock were issued and outstanding, all of which were held by ZipRealty California.

B. ZipRealty California is a corporation duly organized and existing under the laws of the State of California and has a total authorized capital stock of 139,342,640 shares. The number of shares of preferred stock of ZipRealty California authorized to be issued is 59,342,640, par value \$0.001, of which 1,911,112 shares have been designated Series A Preferred Stock (the "ZipRealty California Series A Preferred Stock"), 5,246,171 shares have been designated Series B Preferred Stock (the "ZipRealty California Series B Preferred Stock"), 2,178,486 shares have been designated Series C Preferred Stock (the "ZipRealty California Series C Preferred Stock"), 6,106,781 shares have been designated Series D Preferred Stock (the "ZipRealty California Series D Preferred Stock"), 9,000,000 shares have been designated Series E Preferred Stock (the "ZipRealty California Series E Preferred Stock"), 15,300,000 shares have been designated Series E-1 Preferred Stock (the "ZipRealty California Series E-1 Preferred Stock") and 19,600,000 shares have been designated Series F Preferred Stock (the "ZipRealty California Series F Preferred Stock," and, together with the ZipRealty California Series A Preferred Stock, ZipRealty California Series B Preferred Stock, ZipRealty California Series C Preferred Stock, ZipRealty California Series D Preferred Stock, ZipRealty California Series E Preferred Stock, and

the ZipRealty California Series E-1 Preferred Stock, the "ZipRealty California Preferred Stock"). The number of shares of common stock (the "ZipRealty California Common Stock") authorized to be issued is 80,000,000, par value \$0.001 per share. As of the date hereof, and before giving effect to the transactions contemplated hereby, 1,888,889 shares of ZipRealty California Series A Preferred Stock were issued and outstanding, 5,204,266 shares of ZipRealty California Series B Preferred Stock were issued and outstanding, 1,642,037 shares of ZipRealty California Series C Preferred Stock were issued and outstanding, 6,019,084 shares of ZipRealty California Series D Preferred Stock were issued and outstanding, 7,400,216 shares of ZipRealty California Series E Preferred Stock were issued and outstanding, 5,017,232 shares of ZipRealty California Series E-1 Preferred Stock were issued and outstanding, 10,261,623 shares of ZipRealty California Series F Preferred Stock were issued and outstanding, and 4,653,793 shares of ZipRealty California Common Stock were issued and outstanding.

C. The Board of Directors of each of the Constituent Corporations has determined that it is reasonable, advisable, fair and in the best interests of each of the Constituent Corporations and each of the Constituent Corporations' stockholders that ZipRealty California merge with and into ZipRealty Delaware upon the terms and conditions herein provided.

D. The respective Boards of Directors and stockholders of ZipRealty Delaware and ZipRealty California have approved this Agreement and have directed that this Agreement be executed by the undersigned officers.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, ZipRealty Delaware and ZipRealty California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

I. MERGER

1.1 Merger. In accordance with the provisions of this Agreement, the General Corporation Law of the State of Delaware and the California Corporations Code, ZipRealty California shall be merged with and into ZipRealty Delaware (the "Merger"), the separate existence of ZipRealty California shall cease and ZipRealty Delaware shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be ZipRealty, Inc.

1.2 Effectiveness of the Merger. The Merger shall become effective in accordance with Section 1108 of the California General Corporation Law and Section 252 of the General Corporation Law of the State of Delaware. The date and time when the Merger shall become effective, as aforesaid, is herein called the "Effective Date."

1.3 Effect of the Merger. Upon the Effective Date, the separate existence of ZipRealty California shall cease and ZipRealty Delaware, as the Surviving Corporation: (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date; (ii) shall be subject to all actions previously taken by its and ZipRealty California's Board of Directors; (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of ZipRealty California in the manner more fully set forth in Section 259 of the General Corporation Law of the State of Delaware; (iv) shall continue to be subject to all of the debts, liabilities and obligations of ZipRealty Delaware as constituted immediately prior to the Effective Date; and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of ZipRealty California in the same manner as if ZipRealty Delaware had itself incurred them, all as more fully provided under the applicable provisions of the General Corporation Law of the State of Delaware and the General Corporation Law of the State of California.

II. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 Certificate of Incorporation. The Amended and Restated Certificate of Incorporation of ZipRealty Delaware as in effect immediately prior to the Effective Date of the Merger (the "Certificate of Incorporation") shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 Bylaws. The Bylaws of ZipRealty Delaware as in effect immediately prior to the Effective Date shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 Directors and Officers. The directors and officers of ZipRealty California immediately prior to the Effective Date shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

III. MANNER OF CONVERSION OF STOCK

3.1 ZipRealty California Common Stock. Upon the Effective Date, each share of ZipRealty California Common Stock issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one (1) fully paid and nonassessable share of ZipRealty Delaware Common Stock.

3.2 ZipRealty California Preferred Stock. Upon the Effective Date, each share of ZipRealty California Series A Preferred Stock, ZipRealty California Series B Preferred Stock, ZipRealty California Series C Preferred Stock, ZipRealty California Series D Preferred Stock, ZipRealty California Series E Preferred Stock, ZipRealty California Series E-1 Preferred Stock and ZipRealty California Series F Preferred Stock, respectively, issued and outstanding immediately prior to the Merger, which shares are convertible into such number of shares of ZipRealty California Common Stock as set forth in the ZipRealty California Articles of Incorporation, as amended, shall, by virtue of the Merger, and without any action by the Constituent Corporations, by the holder of such shares or by any other person, be converted into and exchanged for one (1) fully paid and nonassessable share of ZipRealty Delaware Series A Preferred Stock, ZipRealty Delaware Series B Preferred Stock, ZipRealty Delaware Series C Preferred Stock, ZipRealty Delaware Series D Preferred Stock, ZipRealty Delaware Series E Preferred Stock, ZipRealty Delaware Series E-1 Preferred Stock and ZipRealty Delaware Series F Preferred Stock, respectively, having such rights, preferences and privileges as set forth in the Certificate of Incorporation of the Surviving Corporation, which share of Preferred Stock shall be convertible into the shares of the Surviving Corporation's Common Stock, \$0.001 par value, as such share of ZipRealty California Preferred Stock was so convertible into immediately prior to the Effective Date of the Merger, subject to adjustment pursuant to the terms of the Certificate of Incorporation of the Surviving Corporation.

3.3 ZipRealty California Options, Warrants and Convertible Securities

(a) Upon the Effective Date, the Surviving Corporation shall assume the obligations of ZipRealty California under, and continue, the option plans (including without limitation the 1999 Stock Plan) and all other employee benefit plans of ZipRealty California. Each outstanding and unexercised option, other right to purchase, or security convertible into ZipRealty California Common Stock or ZipRealty California Preferred Stock (a "**Right**") shall become, subject to the provisions in paragraph (c) hereof, an option, right to purchase or a security convertible into the Surviving Corporation's Common

Stock or Preferred Stock, respectively, on the basis of one share of the Surviving Corporation's Common Stock or Preferred Stock, as the case may be, for each share of ZipRealty California Common Stock or Preferred Stock, as the case may be, issuable pursuant to any such Right, on the same terms and conditions and at an exercise price equal to the exercise price applicable to any such ZipRealty California Right at the Effective Date of the Merger. This paragraph 3.3(a) shall not apply to ZipRealty California Common Stock or Preferred Stock, which are subject to paragraph 3.1 and 3.2, respectively, hereof.

(b) One (1) share of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of Options to purchase each one (1) share of ZipRealty California Common Stock so reserved immediately prior to the Effective Date.

(c) No "additional benefits" (within the meaning of Section 424(a)(2) of the Internal Revenue Code of 1986, as amended) shall be accorded to the optionholders pursuant to the assumption of their Options.

3.4 ZipRealty Delaware Common Stock. Upon the Effective Date of the Merger, each share of ZipRealty Delaware Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by ZipRealty Delaware, or the holder of such shares or any other person, be cancelled and returned to the status of authorized and unissued shares of ZipRealty Delaware Common Stock.

3.5 Exchange of Certificates. On or after the Effective Date, each holder of an outstanding certificate representing shares of ZipRealty California Common Stock, ZipRealty California Series A Preferred Stock, ZipRealty California Series B Preferred Stock, ZipRealty California Series C Preferred Stock, ZipRealty California Series D Preferred Stock, ZipRealty California Series E Preferred Stock, ZipRealty California Series E-1 Preferred Stock or ZipRealty California Series F Preferred Stock, as the case may be, may be asked to surrender the same to ZipRealty Delaware for cancellation, and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of ZipRealty Delaware Common Stock, ZipRealty Delaware Series A Preferred Stock, ZipRealty Delaware Series B Preferred Stock, ZipRealty Delaware Series C Preferred Stock, ZipRealty Delaware Series D Preferred Stock, ZipRealty Delaware Series E Preferred Stock, ZipRealty Delaware Series E-1 Preferred Stock or ZipRealty Delaware Series F Preferred Stock, as the case may be, into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of ZipRealty California Common Stock, ZipRealty California Series A Preferred Stock, ZipRealty California Series B Preferred Stock, ZipRealty California Series C Preferred Stock, ZipRealty California Series D Preferred Stock, ZipRealty California Series E Preferred Stock, ZipRealty California Series E-1 Preferred Stock or ZipRealty California Series F Preferred Stock, as the case may be, shall be deemed for all purposes to represent the number of shares of ZipRealty Delaware Common Stock, ZipRealty Delaware Series A Preferred Stock, ZipRealty Delaware Series B Preferred Stock, ZipRealty Delaware Series C Preferred Stock, ZipRealty Delaware Series D Preferred Stock, ZipRealty Delaware Series E Preferred Stock, ZipRealty Delaware Series E-1 Preferred Stock or ZipRealty Delaware Series F Preferred Stock, respectively, into which such shares of ZipRealty California Common Stock, ZipRealty California Series A Preferred Stock, ZipRealty California Series B Preferred Stock, ZipRealty California Series C Preferred Stock, ZipRealty California Series D Preferred Stock, ZipRealty California Series E Preferred Stock, ZipRealty California Series E-1 Preferred Stock or ZipRealty California Series F Preferred Stock, as the case may be, were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or its transfer agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or its transfer agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and

other distributions upon the shares of ZipRealty Delaware Common Stock, ZipRealty Delaware Series A Preferred Stock, ZipRealty Delaware Series B Preferred Stock, ZipRealty Delaware Series C Preferred Stock, ZipRealty Delaware Series D Preferred Stock, ZipRealty Delaware Series E Preferred Stock, ZipRealty Delaware Series E-1 Preferred Stock or ZipRealty Delaware Series F Preferred Stock, as the case may be, by such outstanding certificate as provided above.

Each certificate representing ZipRealty Delaware Common Stock, ZipRealty Delaware Series A Preferred Stock, ZipRealty Delaware Series B Preferred Stock, ZipRealty Delaware Series C Preferred Stock, ZipRealty Delaware Series D Preferred Stock, ZipRealty Delaware Series E Preferred Stock, ZipRealty Delaware Series E-1 Preferred Stock or ZipRealty Delaware Series F Preferred Stock, as the case may be, so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of ZipRealty California so converted and given in exchange therefore, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws, or other such additional legends as agreed upon by the holder and the Surviving Corporation.

If any certificate for shares of ZipRealty Delaware stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and comply with applicable securities laws and that the person requesting such transfer pay to the Constituent Corporation's transfer agent any transfer or other taxes payable by reason of issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of ZipRealty Delaware that such tax has been paid or is not payable.

IV. CONDITIONS TO THE MERGER

The obligations of the Constituent Corporations under this Agreement are subject to the fulfillment, or the waiver by the parties, on or before the Effective Date, of each of the following:

- 4.1 The shareholders of ZipRealty California shall have approved the Merger.
- 4.2 The sole stockholder of ZipRealty Delaware shall have approved the Merger.
- 4.3 All consents required to be obtained by the Constituent Corporations to effect the Merger shall have been obtained.

V. GENERAL

5.1 Covenants of ZipRealty Delaware. ZipRealty Delaware covenants and agrees that it will, on or before the Effective Date of the Merger:

(a) Qualify to do business as a foreign corporation in the State of California and, in connection therewith, irrevocably appoint an agent for service of process as required under the provisions of Section 2105 of the California General Corporation Law.

(b) File any and all documents with the California Franchise Tax Board necessary for the assumption by ZipRealty Delaware of all of the franchise tax liabilities of ZipRealty California.

(c) Take such other actions as may be required by the California General Corporation Law.

5.2 Further Assurances. From time to time, as and when required by ZipRealty Delaware or by its successors or assigns, there shall be executed and delivered on behalf of ZipRealty California such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions as shall be appropriate or necessary to vest or perfect in or conform of record or otherwise by ZipRealty Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of ZipRealty California and otherwise to carry out the purposes of this Agreement, and the officers and directors of ZipRealty Delaware are fully authorized in the name and on behalf of ZipRealty California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

5.3 Abandonment. At any time before the Effective Date, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either ZipRealty California or of ZipRealty Delaware, or of both, notwithstanding the approval of this Agreement by the shareholders of ZipRealty California or the sole stockholder of ZipRealty Delaware. In the event of the termination of this Agreement, the Agreement shall become void and of no effect and there shall be no obligations on either Constituent Corporation or their respective Board of Directors or stockholders with respect thereto.

5.4 Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretary of State of the State of Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of either Constituent Corporation shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation; (2) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger; (3) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class or series of capital stock of any Constituent Corporation; or (4) change in any way the principal terms of this Agreement.

5.5 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is 2711 Centreville Road, Suite 400, City of Wilmington, County of New Castle, Delaware 19808 and the Corporation Service Company is the registered agent of the Surviving Corporation at such address.

5.6 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 2000 Powell Street, Suite 1555, Emeryville, California 94608, and copies thereof will be furnished to any stockholder of either Constituent Corporation, upon request and without cost.

5.7 Governing Law. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the California Corporations Code.

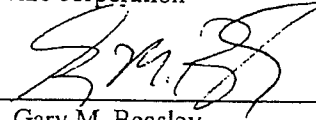
5.8 Counterparts. To facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

* * *

IN WITNESS WHEREOF, this Agreement having first been approved by the resolutions of the Board of Directors of ZipRealty, Inc., a Delaware corporation, and the Board of Directors of ZipRealty, Inc., a California corporation, is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

ZIPREALTY, INC.,
a Delaware corporation

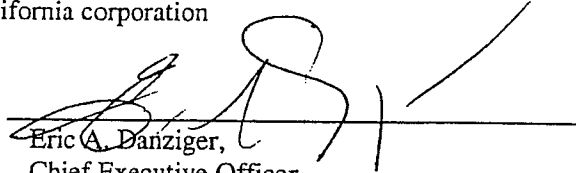
By:



Gary M. Beasley,
Chief Financial Officer

ZIPREALTY, INC.,
a California corporation

By:



Eric A. Danziger,
Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]



TRADEMARK
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Delaware

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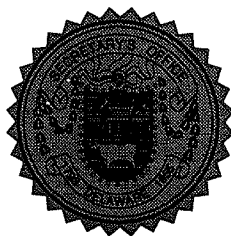
The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS FILED FROM AND INCLUDING THE RESTATED CERTIFICATE OF "ZIPREALTY, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

RESTATED CERTIFICATE, FILED THE FOURTEENTH DAY OF JULY, A.D. 2004, AT 9:56 O'CLOCK P.M.

CERTIFICATE OF MERGER, FILED THE NINTH DAY OF AUGUST, A.D. 2004, AT 8 O'CLOCK A.M.



3785231 8100X

040579316

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3282057

DATE: 08-09-04

TRADEMARK

REEL: 003233 FRAME: 0356

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
ZIPREALTY, INC.**

ZipRealty, Inc., a corporation organized and existing under the laws of the State of Delaware, certifies that:

A. The name of the corporation is ZipRealty, Inc. The corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on May 26, 2004.

B. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and restates, integrates and further amends the provisions of the corporation's Certificate of Incorporation.

C. The text of the Certificate of Incorporation is amended and restated to read as set forth in EXHIBIT A attached hereto.

IN WITNESS WHEREOF, ZipRealty, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by Gary M. Beasley, a duly authorized officer of the corporation, on July 14, 2004.

/s/ Gary M. Beasley

Gary M. Beasley,
Executive Vice President and
Chief Financial Officer

*State of Delaware
Secretary of State
Division of Corporations
Delivered 09:56 PM 07/14/2004
FILED 09:56 PM 07/14/2004
SRV 040518469 - 3785231 FILE*

**TRADEMARK
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EXHIBIT A**ARTICLE I**

The name of the corporation is ZipRealty, Inc.

ARTICLE II

The address of the corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III

The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware as the same exists or may hereafter be amended.

ARTICLE IV

This corporation is authorized to issue two classes of stock to be designated Common Stock and Preferred Stock. The total number of shares of Common Stock that the corporation is authorized to issue is 80,000,000 shares, \$0.001 par value. The total number of shares of Preferred Stock that the corporation is authorized to issue is 59,342,640 shares, \$0.001 par value, of which 1,911,112 are designated Series A Preferred Stock, 5,246,171 are designated Series B Preferred Stock, 2,178,486 are designated Series C Preferred Stock, 6,106,871 are designated Series D Preferred Stock, 9,000,000 are designated as Series E Preferred Stock, 15,300,000 are designated as Series E-1 Preferred Stock and 19,600,000 are designated Series F Preferred Stock.

ARTICLE V

The relative powers, preferences, special rights, qualifications, limitations and restrictions granted to or imposed on the respective classes of the shares of capital stock or the holders thereof are as follows:

1. **Dividends.** (a) The holders of Series F Preferred Stock shall be entitled, when and if declared by the Board of Directors of the corporation, to dividends out of assets of the corporation legally available therefor at the rate of \$0.1048 per share of Series F Preferred Stock per annum (as proportionately adjusted for any stock dividends, combinations or splits with respect to such shares). Dividends on the Series F Preferred Stock shall be payable in preference and prior to any payment of any dividend on the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series E-1 Preferred Stock and Common Stock of the corporation.

(b) The holders of Series E Preferred Stock and Series E-1 Preferred Stock shall be entitled, when and if declared by the Board of Directors of the corporation, to dividends out of assets

of the corporation legally available therefor at the rate of \$0.1048 per share of Series E Preferred Stock and Series E-1 Preferred Stock, respectively, per annum (as proportionately adjusted for any stock dividends, combinations or splits with respect to such shares). Dividends on the Series E Preferred Stock and Series E-1 Preferred Stock shall be payable on a pari passu basis in preference and prior to any payment of any dividend on the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Common Stock of the corporation.

(c) The holders of Series D Preferred Stock shall be entitled, when and if declared by the Board of Directors of the corporation (or as otherwise provided in Section 2(a)), to dividends out of assets of the corporation legally available therefor at the rate of \$0.1048 per share of Series D Preferred Stock per annum (as proportionately adjusted for any stock dividends, combinations or splits with respect to such shares). Dividends on the Series D Preferred Stock shall begin to accrue and be cumulative on outstanding shares of Series D Preferred Stock from the date of issue of such shares. Accrued but unpaid dividends shall not bear interest. Dividends on the Series D Preferred Stock shall be payable in preference and prior to any payment of any dividend on the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Common Stock of the corporation.

(d) The holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be entitled, when and if declared by the Board of Directors of the corporation, on a pari passu basis, to dividends out of assets of the corporation legally available therefor at the rate of \$0.072 per share of Series A Preferred Stock per annum (as proportionately adjusted for any stock dividends, combinations or splits with respect to such shares), \$0.25 per share of Series B Preferred Stock per annum (as proportionately adjusted for any stock dividends, combinations or splits with respect to such shares) and \$0.49 per share of Series C Preferred Stock per annum (as proportionately adjusted for any stock dividends, combinations or splits with respect to such shares). Dividends on the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be payable in preference and prior to any payment of any dividend on the Common Stock of the corporation.

(e) So long as any shares of Preferred Stock shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Common Stock, nor shall any shares of any Common Stock of the Company be purchased, redeemed, or otherwise acquired for value by the Company (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer) until all dividends (set forth in Sections 1(a), (b), (c) and (d) above) on the Preferred Stock shall have been paid or declared and set apart. To the extent all dividends (set forth in Sections 1(a), (b), (c) and (d) above) shall have been paid or declared and set apart, in the event dividends are paid on any share of Common Stock or any other securities of the corporation, as the case may be, an additional dividend shall be paid with respect to all outstanding shares of Preferred Stock in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock or such other securities, as the case may be. The provisions of this Section 1(e) shall not, however, apply to (i) a dividend payable in Common Stock, (ii) the acquisition of shares of any Common Stock in exchange for shares of any other Common Stock, or (iii) any repurchase of any outstanding securities of the Company that is unanimously

approved by the Company's Board of Directors. The holders of the Preferred Stock expressly waive their rights, if any, as described in Sections 502 and 503 of the General Corporation Law of California as they relate to repurchase of shares upon termination of employment or service as a consultant or director. Except as otherwise provided herein with respect to the Series D Preferred Stock, the right to dividends on shares of the Common Stock and Preferred Stock shall not be cumulative, and no right shall accrue to holders of Common Stock or Preferred Stock by reason of the fact that dividends on said shares are not declared in any prior period.

2. Liquidation Preference. In the event of any liquidation, dissolution, or winding up of the corporation, either voluntary or involuntary, distributions to the stockholders of the corporation shall be made in the following manner:

(a) Preferred Preferences. In the event of any liquidation, dissolution or winding up of the corporation, either voluntarily or involuntarily:

(1) The holders of Series F Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the corporation to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series E-1 Preferred Stock or Common Stock of the corporation, an amount equal to \$2.62 per share of Series F Preferred Stock, plus a further amount equal to any dividends declared but unpaid on such shares (subject to proportionate adjustment of such fixed dollar amount for any stock splits, stock dividends, combinations, recapitalizations or the like) (the "Series F Preference").

(2) After the payment of the Series F Preference, the holders of Series E Preferred Stock and Series E-1 Preferred Stock, on a pari passu basis, shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the corporation to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Common Stock of the corporation, an amount equal to (A) with respect to the Series E Preferred Stock, \$3.93 per share of Series E Preferred Stock, plus a further amount equal to any dividends declared but unpaid on such shares (subject to proportionate adjustment of such fixed dollar amount for any stock splits, stock dividends, combinations, recapitalizations or the like) (the "Series E Preference"); and (B) with respect to the Series E-1 Preferred Stock, \$1.31 per share of Series E-1 Preferred Stock, plus a further amount equal to any dividends declared but unpaid on such shares (subject to proportionate adjustment of such fixed dollar amount for any stock splits, stock dividends, combinations, recapitalizations or the like) (the "Series E-1 Preference").

(3) After payment of the Series F Preference, Series E Preference and Series E-1 Preference, the holders of Series D Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the corporation to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Common Stock of the corporation, an amount equal to \$1.31 per share of Series D Preferred Stock, plus a further amount equal to any dividends accrued or declared but unpaid on such shares (subject to proportionate adjustment of such fixed dollar amount for any stock splits, stock dividends, combinations, recapitalizations or the like) (the "Series D Preference").

(4) After the payment of the Series F Preference, Series E Preference, Series E-1 Preference and Series D Preference, the holders of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock shall be entitled to receive, on a pari passu basis, prior and in preference to any distribution of any of the assets or surplus funds of the corporation to the holders of Common Stock of the corporation, an amount equal to \$0.90 per share of Series A Preferred Stock, \$3.15 per share of Series B Preferred Stock and \$6.09 per share of Series C Preferred Stock, plus a further amount equal to any dividends declared but unpaid on such shares (subject to proportionate adjustment of such fixed dollar amount for any stock splits, stock dividends, combinations, recapitalizations or the like) (respectively, the "Series A Preference," the "Series B Preference," and the "Series C Preference").

If upon such liquidation, dissolution or winding up of the corporation, the assets of the corporation are insufficient to provide for the cash payment of the Series F Preference, Series E Preference, Series E-1 Preference and Series D Preference as required by Sections 2(a)(1), 2(a)(2) and 2(a)(3) above, then the entire amount of the assets and funds of the corporation legally available for distribution shall be distributed ratably, *first*, among the holders of the Series F Preferred Stock in proportion to the full preferential amount each such holder would otherwise be entitled to receive pursuant to Section 2(a)(1), *second*, among the holders of the Series E Preferred Stock and Series E-1 Preferred Stock on a pari passu basis in proportion to the full preferential amount each such holder would otherwise be entitled to receive pursuant to Section 2(a)(2), and *third*, among the holders of the Series D Preferred Stock in proportion to the full preferential amount each such holder would otherwise be entitled to receive pursuant to Section 2(a)(3).

If upon such liquidation, dissolution or winding up of the corporation, and after the cash payment of the Series F Preference, Series E Preference, Series E-1 Preference and Series D Preference as required by Sections 2(a)(1), 2(a)(2) and 2(a)(3) above, the remaining assets of the corporation are insufficient to provide for the cash payment of the Series A Preference, Series B Preference and Series C Preference, then the entire remaining amount of the assets and funds of the corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock on a pari passu basis in proportion to the full preferential amount each such holder would otherwise be entitled to receive pursuant to Section 2(a)(4).

(b) Remaining Assets. After full payment of the Series A Preference, Series B Preference, Series C Preference, Series D Preference, Series E Preference, Series E-1 Preference and Series F Preference, the holders of Common Stock shall be entitled to receive pro rata the remaining assets of the corporation in proportion to the number of shares of Common Stock held by them.

(c) Shares not Treated as Both Preferred Stock and Common Stock in any Distribution. Shares of Preferred Stock shall not be entitled to be converted into shares of Common Stock in order to participate in any distribution, or series of distributions, as shares of Common Stock, without first foregoing participation in the distribution, or series of distributions, as shares of Preferred Stock.

(d) Reorganization or Merger. (A) The acquisition of the corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any

reorganization, merger, consolidation or stock issuance) that results in the transfer of fifty percent (50%) or more of the then outstanding voting power of the corporation; or (B) a sale of all or substantially all of the assets of this corporation (collectively, a "Change in Control") shall be deemed to be a liquidation within the meaning of this Section 2.

(e) Noncash Distributions. If any of the assets of the corporation are to be distributed other than in cash under Section 2(d) or for any purpose, then the Board of Directors of the corporation shall promptly engage independent competent appraisers to determine the value of the assets to be distributed to the holders of Preferred Stock; provided, that in the event the Board of Directors and the holders of at least a majority of the Preferred Stock agree in writing on the value of the noncash consideration such value shall be used, and shall be binding on the corporation and all holders of outstanding Common Stock and Preferred Stock and an appraiser shall not be engaged. The corporation shall, upon receipt of such appraiser's valuation or upon the date the valuation is determined by the Board of Directors and holders of Preferred Stock, give prompt written notice to each holder of shares of Preferred Stock of the appraiser's valuation. Notwithstanding the above, any securities to be distributed to the stockholders shall be valued as follows:

(i) If traded on a securities exchange or the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange, or the last reported sale prices on the Nasdaq National Market as the case may be, over the 30-day period ending three (3) business days prior to the closing;

(ii) If actively traded over-the-counter (other than on the Nasdaq National Market), the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) business days prior to the closing; and

(iii) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Board of Directors and the holders of not less than a majority of the outstanding shares of Preferred Stock, provided that if the Board of Directors and the holders of a majority of the outstanding shares of Preferred Stock are unable to reach an agreement, then as determined by independent appraisal by an investment banker and as approved by the Board of Directors, with such investment banker to be hired and paid by the corporation, but acceptable to the holders of at least a majority of the outstanding shares of Preferred Stock.

(f) Noncompliance. In the event the requirements of this Section 2 are not complied with, the corporation shall forthwith either:

(i) Cause such closing to be postponed until such time as the requirements of this Section 2 have been complied with; or

(ii) Cancel such transaction, in which event the rights, preferences, privileges and restrictions of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences, privileges and restrictions existing immediately prior to the date of the canceled transaction.

(g) Repurchase of Shares. As authorized by Section 402.5(c) of the California Corporations Code, if Section 502 or Section 503 of the California Corporations Code is applicable to a payment made by the corporation then such applicable section or sections shall not apply if such payment is a payment made by the corporation in connection with repurchases of Common Stock pursuant to its agreements with certain of the holders thereof.

3. Voting Rights.

(a) Generally. The holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which each share of Preferred Stock could be converted on the record date (as adjusted pursuant to Section 4(e) below) for the vote or consent of stockholders. Except as provided in Sections 3(b), 5(a) and 5(b) or as otherwise required by law, the Preferred Stock shall have voting rights and powers equal to the voting rights and powers of the Common Stock. The holder of each share of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the corporation and shall vote with holders of the Common Stock upon the election of directors and upon any other matter submitted to a vote of stockholders, except those matters required by law or herein to be submitted to a class vote. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares of Common Stock into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half rounded upward to one).

(b) Election of Directors. One member of the corporation's board of directors shall be elected by the holders of the Series A Preferred Stock, voting as a separate class. One member of the corporation's board of directors shall be elected by the holders of the Series B Preferred Stock, voting as a separate class. One member of the corporation's board of directors shall be elected by the holders of the Series D Preferred Stock, voting as a separate class. Two members of the corporation's board of directors shall be elected by the holders of Common Stock, voting as a separate class. Any remaining members of the corporation's board of directors shall be elected by the holders of the Common Stock and Preferred Stock, voting as a single class.

The stockholders entitled to vote upon election may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors.

4. Conversion. The holders of the Preferred Stock have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the corporation or any transfer agent for the Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Issuance Price by the Conversion Price, determined as hereinafter provided, in effect at the time of the conversion (the "Conversion Rate"). The Issuance Price for the Series A Preferred Stock shall be \$0.90 per share. The Issuance Price for the Series B Preferred Stock shall be \$3.15 per share. The Issuance Price for the Series C Preferred Stock shall be \$6.09 per share. The Issuance Price for the Series D Preferred Stock shall be \$1.31 per share. The Issuance Price for the Series E Preferred Stock shall be \$1.31

per share. The Issuance Price for the Series E-1 Preferred Stock shall be \$1.31 per share. The Issuance Price for the Series F Preferred Stock shall be \$1.31 per share. The Conversion Price for the Series A Preferred Stock shall initially be \$0.90 per share. The Conversion Price for the Series B Preferred Stock shall initially be \$3.15 per share. The Conversion Price for the Series C Preferred Stock shall initially be \$6.09 per share. The Conversion Price for the Series D Preferred Stock shall initially be \$1.31 per share. The Conversion Price for the Series E Preferred Stock shall initially be \$1.31 per share. The Conversion Price for the Series E-1 Preferred Stock shall initially be \$1.31 per share. The Conversion Price for the Series F Preferred Stock shall initially be \$1.31 per share. Such initial Conversion Prices shall be subject to adjustment as hereinafter provided.

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Rate (i) immediately prior to the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the corporation to the public where the aggregate gross proceeds raised equals or exceeds \$20,000,000.00 (a "Qualifying IPO"); or (ii) (A) with respect to each share of Series F Preferred Stock, on the date upon which the corporation obtains the consent of the holders of 75% of the then outstanding shares of Series F Preferred Stock, voting as a separate class; (B) with respect to each share of Series E Preferred Stock and Series E-1 Preferred Stock, on the date upon which the corporation obtains the consent of the holders of 70% of the then outstanding shares of Series E Preferred Stock and Series E-1 Preferred Stock, voting together as a single class, and not as separate series; and (C) with respect to each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, on the date upon which the corporation obtains the consent of the holders of 66 2/3% of the then outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock, voting as a single class, and not as separate series. In the event of the automatic conversion of the Preferred Stock upon a public offering as aforesaid, the person(s) entitled to receive the Common Stock issuable upon such conversion of Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(c) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the corporation at such office that such holder elects to convert the same; provided, however, that in the event of an automatic conversion pursuant to Section 4(b), the outstanding shares of Preferred Stock, respectively, shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the corporation or its transfer agent, and provided further that the corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the corporation or its transfer agent as provided above, 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. The corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder of

Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, or in the case of automatic conversion on the date of closing of the offering and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(d) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of 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 then fair market value of one share of Common Stock as determined by the Board of Directors of the corporation. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock of each holder at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(e) Adjustment of Conversion Price. The Conversion Price of Preferred Stock shall be subject to adjustment from time to time as follows:

(i) Adjustments for Dilutive Issuances.

A. Special Definitions. For purposes of this Section 4(e), the following definitions shall apply:

(1) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities (defined below).

(2) "Original Issue Date" shall mean the date on which the first share of Series F Preferred was first issued.

(3) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock and Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 4(e)(i)(C), deemed to be issued) by the corporation after the Original Issue Date, other than shares of Common Stock issued or issuable:

(a) upon conversion of the Preferred Stock; or

(b) upon exercise of (i) warrants outstanding as of the date of the filing of this Certificate of Incorporation for the purchase of capital stock of the corporation and (ii) warrants to purchase shares of Series F Preferred Stock of the corporation; or

(c) upon conversion of (i) promissory notes convertible into shares of Series E Preferred Stock of the corporation and (ii) promissory notes convertible into shares of Series F Preferred Stock of the corporation; or

(d) to officers, directors and employees of, and consultants to, the corporation pursuant to an option plan, purchase plan or other officer, director, employee or consultant incentive plan or pursuant to stock grants or any other plan or arrangement unanimously approved by the Board of Directors; or

(e) to banks, savings and loan associations, equipment lessors or other similar lending institutions in connection with such entities providing working capital, credit facilities or equipment financing to the Corporation unanimously approved by the Board of Directors; or

(f) to third parties in connection with agreements to license technology or other strategic partnership agreements, as unanimously approved by the Board of Directors; or

(g) as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to subparagraph (e)(ii), (iii), (iv) or (v) hereof; or

(h) pursuant to a Qualifying IPO; or

(i) in connection with bona fide acquisitions, consolidations, mergers or similar transactions unanimously approved by the Board of Directors.

B. No Adjustment of Conversion Price. Any provision herein to the contrary notwithstanding, no adjustment in the Conversion Price of a particular share of Series E Preferred Stock, Series E-1 Preferred Stock or Series F Preferred Stock, as the case may be, shall be made hereunder in respect of the issuance of Additional Shares of Common Stock unless the consideration per share (determined pursuant to Section 4(e)(i)(E) hereof) for an Additional Share of Common Stock issued or deemed to be issued by the corporation is less than the Conversion Price of such share of Series E Preferred Stock, Series E-1 Preferred Stock or Series F Preferred Stock, as the case may be, in effect on the date of, and immediately prior to, such issuance.

C. Deemed Issue of Additional Shares of Common Stock.

(1) **Options and Convertible Securities.** Except as otherwise provided in Section 4(e)(i)(B), in the event the corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options (or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities or Options for Convertible Securities), shall be deemed to be Additional Shares of Common Stock

issued as of the time of such issue of Options or Convertible Securities, or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that, in any such case in which Additional Shares of Common Stock are deemed to be issued:

(a) no further adjustment in the Conversion Price for such shares of Series E Preferred Stock, Series E-1 Preferred Stock or Series F Preferred Stock, as the case may be, shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(b) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the corporation, or decrease or increase in the number of shares of Common Stock or Preferred Stock issuable, upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as those set forth in this Section 4(e)), the applicable Conversion Price of the Series E Preferred Stock, Series E-1 Preferred Stock or Series F Preferred Stock, as the case may be, and any subsequent adjustments based thereon shall be recomputed to reflect such increase or decrease as if such change had been in effect as of the original issue thereof (or upon the occurrence of a record date with respect thereto) (provided, however, that no such adjustment of the appropriate Conversion Price shall affect Common Stock previously issued upon conversion of the Series E Preferred Stock, Series E-1 Preferred Stock or Series F Preferred Stock, as the case may be).

(c) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price for such series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(I) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the corporation upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the corporation upon such conversion or exchange; and

(II) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(d) no readjustment pursuant to clause (b) or (c) above shall have the effect of increasing the Conversion Price for such shares of Series E Preferred Stock, Series E-1 Preferred Stock or Series F Preferred Stock, as the case may be, to an amount which exceeds the lower of (i) the Conversion Price for such series of Preferred Stock immediately prior to the original adjustment date, or (ii) the Conversion Price for such series of Preferred Stock that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date; and

(e) in the case of Options which expire by their terms not more than thirty (30) days after the date of issue thereof, no adjustment of the Conversion Price for such series of Preferred Stock shall be made until the expiration or exercise of all such Options.

D. Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. Adjustment of the Conversion Price as a result of the corporation's issuance of Additional Shares of Common Stock shall be made only with respect to shares of Series E Preferred Stock, Series E-1 Preferred Stock and Series F Preferred Stock. In the event the corporation shall, after the Original Issue Date, issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4(e)(i)(C)) without consideration or for a consideration per share less than the Conversion Price of the Series E Preferred Stock, Series E-1 Preferred Stock and/or the Series F Preferred Stock, as the case may be, in effect on the date of and immediately prior to such issuance, then and in such event, the Conversion Price for the Series E Preferred Stock, Series E-1 Preferred Stock and/or Series F Preferred Stock, as the case may be, shall be reduced, concurrently with such issuance, to a price per share equal to the price per share paid for such Additional Shares of Common Stock.

E. Determination of Consideration. For purposes of this Section 4(e), the consideration received by the corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(1) Cash and Property: Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the corporation excluding amounts paid or payable for accrued interest or accrued dividends;

(b) insofar as it consists of services or property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(c) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (a) and (b) above, as determined in good faith by the Board of Directors.

(2) Options and Convertible Securities. The consideration per share received by the corporation for Additional Shares of Common Stock deemed to have been

issued pursuant to Section 4(e)(i)(C), relating to Options and Convertible Securities, shall be determined by dividing:

(a) the total amount, if any, received or receivable by the corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the corporation upon the exercise in full of such Options or the conversion or exchange in full of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise in full of such Options for Convertible Securities and the conversion or exchange in full of such Convertible Securities; by

(b) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise in full of such Options or the conversion or exchange in full of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise in full of such Options for Convertible Securities and the conversion or exchange in full of such Convertible Securities.

(ii) Adjustments for Stock Dividends, Subdivisions, or Split-ups of Common Stock. If the number of shares of Common Stock outstanding at any time after the date of the filing of this Certificate of Incorporation is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, on the date such payment is made or such change is effective, the Conversion Price of the Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of any shares of Preferred Stock shall be increased in proportion to such increase of outstanding shares.

(iii) Adjustments for Combinations of Common Stock. If the number of shares of Common Stock outstanding at any time after the date of the filing of this Certificate of Incorporation is decreased by a combination of the outstanding shares of Common Stock, then, on the effective date of such combination, the Conversion Price of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of any shares of Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(iv) Adjustments for Reorganizations, Reclassifications, etc. In case, at any time after the date of the filing of this Certificate of Incorporation, of any capital reorganization, or any reclassification of the stock of the corporation (other than as a result of a stock dividend or subdivision, split-up or combination of shares), or the consolidation or merger of the corporation with or into another person (other than a consolidation or merger in which the corporation is the continuing entity and which does not result in any change in the Common Stock or a consolidation or merger where Section 2 applies), the shares of Preferred Stock shall, after such reorganization, reclassification, consolidation, merger, sale or other disposition, be convertible into the kind and number of shares of stock or other securities or property of the corporation or otherwise to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation, merger, sale or other disposition such holder had converted its shares of Preferred

Stock into Common Stock. The provisions of this clause (iv) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or other dispositions.

(v) Adjustments for Other Dividends. In case the corporation shall declare a cash dividend upon its Common Stock payable otherwise than out of retained earnings or shall distribute to holders of its Common Stock shares of its capital stock (other than Common Stock), stock or other securities of other persons, evidences of indebtedness issued by the corporation or other persons, assets (excluding cash dividends) or options or rights (excluding options to purchase and rights to subscribe for Common Stock or other securities of the corporation convertible into or exchangeable for Common Stock), then, in each such case, the holders of shares of Preferred Stock shall, concurrent with the distribution to holders of Common Stock, receive a like distribution based upon the number of shares of Common Stock into which such Preferred Stock is then convertible.

(f) Minimal Adjustments. No adjustment in the Conversion Price for any series of Preferred Stock need be made if such adjustment would result in a change in the Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in the Conversion Price. All calculations under this Section 4 shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be. For purposes of this Section 4, 0.005 and up shall be rounded to 0.01 and any number below 0.005 shall be rounded to 0.

(g) No Impairment. The corporation will not through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment. This provision shall not restrict the corporation's right to amend its Certificate of Incorporation with the requisite stockholder consent.

(h) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Rate for any series of Preferred Stock pursuant to this Section 4, the corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The corporation shall, upon written request at any time of any holder of any series of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) all such adjustments and readjustments, (ii) the Conversion Rate at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's shares of Preferred Stock.

(i) Notices of Record Date and Proposed Liquidation Distribution. In the event of any taking by the corporation of a record of the holders of any class of securities for the purpose of

determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property or to receive any other right, the corporation shall mail to each holder of Preferred Stock at least twenty (20) days prior to such record date, a notice specifying the date on which any such record is to be taken for the purpose of such dividend or distribution or right, and the amount and character of such dividend, distribution or right. In the event of a liquidation distribution pursuant to Section 2 hereof, the corporation shall mail to each holder of Preferred Stock at least twenty (20) days prior to the date of such distribution a notice (i) certifying as to (x) the anticipated aggregate proceeds available for distribution to holders of Preferred Stock and Common Stock, (y) the amount expected to be distributed pursuant to Section 2 in respect of each share of each outstanding series of Preferred Stock and each share of Common Stock and (z) the amount expected to be distributed pursuant to Section 2 in respect of each share of each outstanding series of Preferred Stock if the holder of each such share of Preferred Stock converted such share of Preferred Stock into Common Stock immediately prior to the liquidation distribution and (ii) stating that in connection with such liquidation distribution the holders of shares of each series of Preferred Stock may prior to such liquidation distribution convert their shares of such series of Preferred Stock into Common Stock at the applicable Conversion Rate for such series.

(j) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of the Preferred Stock shall be deemed given upon personal delivery, upon delivery by nationally recognized courier or three business days after deposit in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the corporation's books.

(k) Reservation of Stock Issuable Upon Conversion. The corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; 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 Preferred Stock, the corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(f) Reissuance of Converted Shares. No shares of Preferred Stock which have been converted into Common Stock after the original issuance thereof shall ever again be reissued and all such shares so converted shall upon such conversion cease to be a part of the authorized shares of the corporation.

5. General Covenants.

(a) Preferred Vote. In addition to any other rights provided by law, so long as at least 500,000 shares of Preferred Stock are outstanding (adjusted for any subsequent stock splits, stock dividends, combinations, reclassification, recapitalizations or the like), this corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least a majority of

the outstanding shares of the Preferred Stock, voting together as a single class and not as separate series, and on an as-if-converted basis:

- (i) repurchase any shares of Common Stock or Preferred Stock (except for buybacks from directors, employees and consultants pursuant to the termination of their services with the corporation, which buybacks are made pursuant to agreements entered into at the time of the original acquisition of the shares that are to be repurchased);
- (ii) authorize or issue any security of the corporation that is senior to or on a parity with the Preferred Stock;
- (iii) declare or pay dividends on or make any distribution on any class or series of the corporation's stock;
- (iv) permit a subsidiary of the corporation to sell stock to a third party;
- (v) amend the certificate of incorporation or bylaws such that the rights, preferences and privileges of the Preferred Stock are adversely affected;
- (vi) dissolve, liquidate, or wind up the corporation;
- (vii) increase or decrease the authorized number of shares of Preferred Stock or Common Stock;
- (viii) consummate a Change in Control (as defined in Section 2(d)); or
- (ix) change the authorized number of directors of the corporation to greater or less than seven (7) members.

(b) Series E Preferred Stock and Series E-1 Preferred Stock Vote. Notwithstanding the foregoing, and in addition to any other rights provided by law, so long as at least 500,000 shares of Series E Preferred Stock or Series E-1 Preferred Stock are outstanding (adjusted for any subsequent stock splits, stock dividends, combinations, reclassification, recapitalizations or the like), this corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least a majority of the outstanding shares of the Series E Preferred Stock and Series E-1 Preferred Stock, voting together as a single class, and not as separate series, and on an as-if-converted basis:

- (i) repurchase any shares of Common Stock or Preferred Stock (except for buybacks from directors, employees and consultants pursuant to the termination of their services with the corporation, which buybacks are made pursuant to agreements entered into at the time of the original acquisition of the shares that are to be repurchased);
- (ii) authorize or issue any security of the corporation that is senior to or on a parity with the Series E Preferred Stock or Series E-1 Preferred Stock;

- (iii) declare or pay dividends on or make any distribution on any class or series of the corporation's stock;
- (iv) permit a subsidiary of the corporation to sell stock to a third party;
- (v) amend the certificate of incorporation or bylaws such that the rights, preferences and privileges of the Series E Preferred Stock or Series E-1 Preferred Stock are adversely affected;
- (vi) dissolve, liquidate, or wind up the corporation;
- (vii) increase or decrease the authorized number of shares of Preferred Stock or Common Stock;
- (viii) consummate a Change in Control (as defined in Section 2(d)); or
- (ix) increase the number of shares reserved for issuance under the Company's 1999 Stock Plan to an amount that is greater than 7,235,873 shares; or
- (x) change the authorized number of directors of the corporation to greater or less than seven (7) members.

(c) Series F Preferred Stock Vote. Notwithstanding the foregoing, and in addition to any other rights provided by law, so long as at least 500,000 shares of Series F Preferred Stock are outstanding (adjusted for any subsequent stock splits, stock dividends, combinations, reclassification, recapitalizations or the like), this corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least 70% of the outstanding shares of the Series F Preferred Stock (except with respect to item (vi) below, for which the requisite percentage shall be 66 2/3% of the outstanding shares of the Series F Preferred Stock), voting together as a single class:

- (i) repurchase any shares of Common Stock or Preferred Stock (except for buybacks from directors, employees and consultants pursuant to the termination of their services with the corporation, which buybacks are made pursuant to agreements entered into at the time of the original acquisition of the shares that are to be repurchased);
- (ii) authorize or issue any security of the corporation that is senior to or on a parity with the Series F Preferred Stock;
- (iii) declare or pay dividends on or make any distribution on any class or series of the corporation's stock;
- (iv) permit a subsidiary of the corporation to sell stock to a third party;
- (v) amend the certificate of incorporation or bylaws such that the rights, preferences and privileges of the Series F Preferred Stock are adversely affected;

- (vi) dissolve, liquidate, or wind up the corporation;
- (vii) increase or decrease the authorized number of shares of Preferred Stock or Common Stock;
- (viii) consummate a Change in Control (as defined in Section 2(d)); or
- (ix) increase the number of shares reserved for issuance under the Company's 1999 Stock Plan to an amount that is greater than 7,235,873 shares; or
- (x) change the authorized number of directors of the corporation to greater or less than seven (7) members.

6. Residual Rights. All rights accruing to the outstanding shares of the corporation not expressly provided for to the contrary herein shall be vested with the Common Stock.

7. Redemption. Neither the Common Stock nor the Preferred Stock are redeemable.

ARTICLE VI

The corporation is to have perpetual existence.

ARTICLE VII

Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the corporation shall so provide.

ARTICLE VIII

Unless otherwise set forth herein, the number of directors which constitute the Board of Directors of the Corporation shall be designated in the Bylaws of the corporation.

ARTICLE IX

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE X

1. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director.

2. The corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a

director, officer or employee of the corporation or any predecessor of the corporation or serves or served at any other enterprise as a director, officer or employee at the request of the corporation or any predecessor to the corporation.

3. Neither any amendment nor repeal of this ARTICLE X, nor the adoption of any provision of this corporation's Certificate of Incorporation inconsistent with this ARTICLE X, shall eliminate or reduce the effect of this ARTICLE X, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this ARTICLE X, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

* * *

**CERTIFICATE OF MERGER
OF
ZIPREALTY, INC., A CALIFORNIA CORPORATION
with and into
ZIPREALTY, INC., A DELAWARE CORPORATION
Under Section 252 of the General Corporation Law of the State of Delaware**

Pursuant to Section 252(c) of the General Corporation Law of the State of Delaware, as amended, ZipRealty, Inc., a Delaware corporation ("ZipRealty-Delaware"), hereby certifies to the following information relating to the merger of ZipRealty, Inc., a California corporation ("ZipRealty-California"), with and into ZipRealty-Delaware (the "Merger").

1. The name and the state of incorporation of each of the constituent corporations in the Merger are:

- a) ZipRealty, Inc., a California corporation; and
- b) ZipRealty, Inc., a Delaware corporation.

2. An agreement and plan of merger, dated as of August 9, 2004 by and between ZipRealty-California and ZipRealty-Delaware ("Merger Agreement"), setting forth the terms and conditions of such Merger has been approved, adopted, certified, executed and acknowledged by the constituent corporations pursuant to subsection (c) of Section 252 of the General Corporation Law of the State of Delaware.

3. The name of the surviving corporation ("Surviving Corporation") is ZipRealty, Inc., a Delaware corporation.

4. The Restated Certificate of Incorporation of ZipRealty-Delaware, as it exists immediately prior to the time this Certificate is duly filed with the Secretary of State of the State of Delaware, shall be the Certificate of Incorporation of the Surviving Corporation and thereafter may be amended in accordance with its terms and as provided by law.

5. An executed Merger Agreement is on file at the principal place of business of the Surviving Corporation, which is located at 2000 Powell Street, Suite 1555, Emeryville, CA 94608.

6. A copy of the Merger Agreement shall be furnished by the Surviving Corporation, on request and without cost, to any stockholder of ZipRealty-California or ZipRealty-Delaware.

7. The authorized capital stock of ZipRealty-California immediately prior to the time this Certificate is duly filed with the Secretary of State of the State of Delaware is eighty million (80,000,000) shares of Common Stock, \$0.001 par value and fifty-nine million three hundred forty-two thousand six hundred forty (59,342,640) shares of Preferred Stock, \$0.001 par value, one million nine hundred eleven thousand one hundred twelve (1,911,112) shares of which are designated as "Series A Preferred Stock," five million two hundred forty-six thousand one hundred seventy-one (5,246,171) shares of which are designated as "Series B Preferred Stock," two million one hundred seventy-eight thousand four hundred eighty-six (2,178,486) shares of which are designated as "Series C Preferred Stock," six million one hundred six thousand eight hundred seventy-one (6,106,871) shares of which are designated as "Series D Preferred Stock," nine million (9,000,000) shares of which are designated as "Series E Preferred Stock," fifteen million three hundred thousand (15,300,000) shares of which are designated as "Series E-1 Preferred Stock," and nineteen million six hundred thousand (19,600,000) shares of which are designated as "Series F Preferred Stock."

IN WITNESS WHEREOF, ZipRealty, Inc., a Delaware corporation, has caused this Certificate to be signed by Gary M. Beasley, its authorized officer, on August 9, 2004.

ZIPREALTY, INC.

/s/ Gary M. Beasley

By: Gary M. Beasley

Title: Executive Vice President and Chief
Financial Officer