SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): September 23, 1999

CD RADIO INC.

(Exact Name of Registrant as Specified in Charter)

DELAWARE (State or other Jurisdiction of Incorporation)	0-24710 (Commission File Number)	52-1700207 (I.R.S. Employer Identification No.)
1221 AVENUE OF THE AMERICAS, 36TH FL., NEW YORK, NY (Address of Principal Executive Offices)		10020 (Zip Code)

Registrant's telephone number, including area code: (212) 584-5100

ITEM 5. OTHER EVENTS.

The registrant is filing certain exhibits under Item 7 hereof, which exhibits relate to the registrant's offerings of 3,000,000 shares of its Common Stock and $125,000,000 aggregate principal amount of its 8 3/4% Convertible Subordinated Notes due 2009, which have been registered under the Securities Act of 1933 on Form S-3 (Registration No. 333-86003).

ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS.

The Exhibit Index attached hereto is incorporated herein.

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SIGNATURES

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

CD RADIO INC.

By: /s/ Patrick L. Donnelly

Patrick L. Donnelly
Senior Vice President, General Counsel
and Secretary

Dated: September 30, 1999

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EXHIBIT INDEX

Pursuant to Item 601 of Regulation S-K

Exhibit No.	Description of Exhibit
1.01	Terms Agreement for Common Stock among the registrant, Merrill Lynch & Co., Lehman Brothers Inc., Bear, Stearns & Co. Inc., Banc of America Securities LLC, and C.E. Unterberg, Towbin, dated September 23, 1999 (filed herewith)
1.02	Terms Agreement for 8 3/4% Convertible Subordinated Notes among the registrant, Merrill Lynch & Co., Lehman Brothers Inc., Bear, Stearns & Co. Inc. and Banc of America Securities LLC, dated September 23, 1999 (filed herewith)
4.01	First Supplemental Indenture, dated September 29, 1999, with respect to the registrant's 8 3/4% Convertible Subordinated Notes due 2009, between the registrant and the U.S. Trust Company of Texas, N.A. (filed herewith)
4.02	Form of the registrant's 8 3/4% Convertible Subordinated Notes due 2009 (included in Article VII to Exhibit 4.01)

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CD RADIO INC.
(a Delaware Corporation)

3,000,000 Shares of Common Stock

TERMS AGREEMENT
September 23, 1999

To: CD Radio Inc.

1221 Avenue of the Americas, 36th Fl.
New York, NY 10020

Ladies and Gentlemen:

This is a Terms Agreement referenced in the Form Underwriting Agreement filed as an Exhibit to Registration Statement No. 333-86003, the terms of which are hereby incorporated herein. We understand that CD Radio Inc., a Delaware corporation (the "Company"), proposes to issue and sell 3,000,000 shares of its common stock, par value $.001 per share (the "Underwritten Securities"). Subject to the terms and conditions set forth or incorporated by reference herein, we the underwriters named below (the "Underwriters") offer to purchase, severally and not jointly, the number of Underwritten Securities opposite our names set forth below at the purchase price set forth below, and a proportionate share of Option Underwritten Securities set forth below, to the extent any Underwritten Securities or Option Underwritten Securities are purchased.

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Underwriter	Number of Underwritten Securities
Merrill Lynch, Pierce, Fenner & Smith Incorporated	870,000
Lehman Brothers Inc	870,000
Bear, Stearns & Co. Inc	570,000
Banc of America Securities LLC	510,000
C.E. Unterberg, Towbin	180,000
Total	3,000,000

The Underwritten Securities shall have the following terms:

	Common Stock
Title:	Common Stock, par value $.001 per share.
Number of shares:	3,000,000
Number of Option Underwritten Securities:	The Underwriters have an option to purchase up to an additional 450,000 shares the Underwritten Securities (the "Option Underwritten Securities") at the public offering price, less underwriting discount, within 30 days from September 23, 1999 to cover over-allotments.
Initial public offering price per share:	$24.75
Purchase price per share:	$23.265
Listing requirements:	Nasdaq National Market
Black-out provisions:	None
Lock-up provisions:	For a period of 90 days from the issuance of the Underwritten Securities, the Company may not, without the prior written consent of Merill, Lynch, Pierce, Fenner & Smith Incorporated, sell, grant options for the sale of or otherwise dispose of shares of its capital stock or any securities convertible into or exchangeable or exercisable for its capital stock; provided however, the Company may sell $65,000,000 of its 9.2% Series B Junior Cumulative Convertible Preferred Stock to Apollo Investment Fund IV, L.P. and Apollo Overseas Partners IV, L.P. during this 90-day period.

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Other terms and conditions:	All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to the Underwriters at Merrill Lynch & Co., North Tower, World Financial Center, New York, New York 10281, attention of Robert Kramer; notices to the Company shall be directed to the Company at 1221 Avenue of the Americas, 36th Floor, New York, New York 10020, attention of Patrick L. Donnelly, Senior Vice President, General Counsel and Secretary.
Closing date and location:	September 29, 1999 Cravath, Swaine & Moore Worldwide Plaza 825 Eighth Avenue New York, NY 10019-7475

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Please accept this offer by signing a copy of this Terms Agreement in the space set forth below and returning the signed copy to us.

Very truly yours,

MERRILL, LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By /s/ Marilyn J. Pugliese

Name: Marilyn J. Pugliese
Title: Authorized Signatory

Acting on behalf of itself and the other named Underwriters.

Accepted:

CD RADIO INC.

By /s/ Patrick L. Donnelly

Name: Patrick L. Donnelly
Title: Senior Vice President,
General Counsel and Secretary

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FORM OF OPINION OF
PATRICK L. DONNELLY, ESQ. TO
BE DELIVERED PURSUANT TO
SECTION 5(b)

(1) The District of Columbia and the State of New York are the only jurisdictions in which the Company is required to be qualified as a foreign corporation to transact business, whether by reason of the ownership or leasing of property or the conduct of business as of the date hereof, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect.

(2) Satellite CD Radio, Inc. (the "Subsidiary") has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware, has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and is duly qualified as a foreign corporation to transact business and is in good standing in the District of Columbia and in the State of New York, which are the only jurisdictions in which the Subsidiary is required to be qualified, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure so to qualify or to be in good standing would not result in a Material Adverse Effect; all of the issued and outstanding capital stock of the Subsidiary has been duly authorized and validly issued, is fully paid and nonassessable and, to my knowledge, is owned by the Company free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity other than liens in favor of the Collateral Agent (as defined in the Amended and Restated Pledge Agreement dated as of May 15, 1999 (the "Pledge Agreement")) pursuant to the Pledge Agreement for its benefit, the benefit of the trustee of the Company's 15% Senior Secured Discount Notes due 2007 (the "Discount Notes"), the benefit of the trustee of the Company's 14-1/2% Senior Secured Notes due 2009 (the "Notes") and the ratable benefit of the holders of Discount Notes and Notes; none of the outstanding shares of capital stock of the Subsidiary was issued in violation of the preemptive rights provisions in (a) the Subsidiary's certificate of incorporation or by-laws or
(b) the Delaware General Corporation Law.

(3) [The execution, delivery and performance of the Loral Satellite Contract (as defined in the Prospectus) by the Company and compliance by the Company with its obligations under the Loral Satellite Contract do not and will not, whether with or without the giving of notice or lapse of time or both, conflict with or constitute a breach of, or default or Repayment Event (as defined in the Underwriting Agreement) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or its Subsidiary pursuant to, any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or any other agreement or instrument, described in the Prospectus, to which the Company or its Subsidiary is a party or by which it or any of them may be bound, or to which any of the property or assets of the Company or its Subsidiary is subject (except for such conflicts, breaches or defaults or liens, charges or encumbrances that would not have a Material Adverse Effect), nor will such action result in any violation of the provisions of the charter or by-laws of the Company or its Subsidiary, or any applicable law, statute, rule, regulation, judgment, order, writ or decree, known to us, of any government, government instrumentality or court of the State of New York or the United States, having jurisdiction over the Company or its Subsidiary or any of their respective properties, assets or operations.]
[Discuss]

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In addition, although I have not undertaken to investigate or verify independently, and am not passing upon and do not assume any responsibility for, the accuracy, completeness or fairness of the contents of the Prospectus, in connection with the preparation of the Prospectus, I have participated in conferences with representatives and counsel of the Underwriters and with certain officers and employees of, and independent certified public accountants for, the Company, at which conferences the contents of the Prospectus and related matters were discussed, and based upon this participation (and relying as to factual matters to the extent I deemed reasonable on officers and employees of the Company), advise you that no facts have come to my attention that would lead me to believe that the Prospectus or any amendment or supplement thereto (except for financial statements and schedules and other financial data included or incorporated by reference in or omitted from those documents, as to which I make no statement), at the time the Prospectus was issued, at the time any amended or supplemented Prospectus was issued or at the Closing Time (as defined in the Underwriting Agreement), included or includes an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

In rendering his opinion, such counsel may rely, as to matters of facts (but not as to legal conclusions), to the extent he deems proper, on certificates of public officials. The opinion shall not state that it is to be governed or qualified by, or that it is otherwise subject to, any treatise, written policy or other document relating to legal opinions, including, without limitation, the Legal Opinion Accord of the ABA Section of Business Law (1991). The opinion shall contain assumptions, limitations, qualifications and exceptions normally included by counsel in transactions of this kind.

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FORM OF OPINION OF COMPANY'S COUNSEL
TO BE DELIVERED PURSUANT TO
SECTION 5(c)

(1) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware.

(2) The Company has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and to enter into and perform its obligations under, or as contemplated under, the Underwriting Agreement and the applicable Terms Agreement.

(3) The Company is duly qualified as a foreign corporation to transact business and is in good standing in the District of Columbia and in the State of New York.

(4) The Underwriting Agreement and the applicable Terms Agreement have been duly authorized, executed and delivered by the Company.

(5) The Underwritten Securities have been duly authorized by the Company for issuance and sale pursuant to the Underwriting Agreement and the applicable Terms Agreement. The Underwritten Securities, when issued and delivered by the Company pursuant to the Underwriting Agreement and such Terms Agreement against payment of the consideration therefor specified in such Terms Agreement, will be validly issued, fully paid and non-assessable and will not be subject to preemptive or other similar rights of any securityholder of the Company. No holder of the Underwritten Securities is or will be subject to personal liability by reason of being such a holder. The form of certificate used to evidence the Underwritten Securities is in due and proper form and complies with the applicable statutory requirements, with any applicable requirements of the charter or by-laws of the Company and with the requirements of the Nasdaq National Market.

(6) The Underwritten Securities have been duly authorized by the Company for issuance and sale pursuant to the Underwriting Agreement and the applicable Terms Agreement. The Underwritten Securities, when issued and authenticated in the manner provided for in the applicable Indenture and delivered against payment of the consideration therefor specified in such Terms Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally or by general equitable principles (regardless of whether enforcement is considered in a proceeding in equity or at law), and except further as enforcement thereof may be limited by requirements that a claim with respect to any Debt Securities payable in a foreign or corporate currency (or a foreign or composite currency judgment in respect of such claim) be converted into U.S. dollars at a rate of exchange prevailing on a date determined pursuant to applicable law or by governmental authority to limit, delay or prohibit the making of payments outside the United States. The Underwritten Securities are in the form contemplated by, and each registered holder thereof is entitled to the benefits of, the applicable Indenture.

(7) The applicable Indenture has been duly authorized, executed and delivered by the Company and (assuming due authorization, execution and delivery thereof by the

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applicable Trustee) constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally or by general equitable principles (regardless of whether enforcement is considered in a proceeding in equity or at law).

(8) The Underlying Securities have been duly authorized and reserved for issuance by the Company upon conversion of the related Subordinated Debt Securities. The Underlying Securities, when issued upon such conversion, will be validly issued, fully paid and non-assessable and will not be subject to preemptive or other similar rights of any securityholder of the Company. No holder of the Underlying Securities is or will be subject to personal liability by reason of being such a holder.

(9) The Underwritten Securities being sold pursuant to the applicable Terms Agreement and the applicable Indenture conform, and any Underlying Securities, when issued and delivered in accordance with the terms of the related Underwritten Securities, will conform, in all material respects to the statements relating thereto contained in the Prospectus and are in substantially the form filed or incorporated by reference, as the case may be, as an exhibit to the Registration Statement.

(10) The information in the Prospectus under "Description of Underwritten Securities" and "Description of Underlying Securities", if any, or any caption purporting to describe any such Securities, "Certain Federal Income Tax Considerations" and " ", in the Annual Report on Form 10-K under " " and in the Registration Statement under Item 15, to the extent that it constitutes matters of law, summaries of legal matters or the Company's charter, bylaws or legal proceedings, or legal conclusions, has been reviewed by us and is correct in all material respects.

(11) To the best of our knowledge, neither the Company nor any of its subsidiaries is in violation of its charter or by-laws and no default by the Company or any of its subsidiaries exists in the due performance or observance of any material obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument that is described or referred to in the Registration Statement or the Prospectus or filed or incorporated by reference as an exhibit to the Registration Statement.

(12) The execution, delivery and performance of the Underwriting Agreement, the applicable Terms Agreement and the applicable Indenture and any other agreement or instrument entered into or issued or to be entered into or issued by the Company in connection with the transactions contemplated in the Registration Statement and the Prospectus and the consummation of the transactions contemplated in the Underwriting Agreement and such Terms Agreement and in the Registration Statement and the Prospectus (including the issuance and sale of the Underwritten Securities and the use of the proceeds from the sale of the Underwritten Securities as described under the caption "Use of Proceeds" and the issuance of any Underlying Securities) and compliance by the Company with its obligations thereunder do not and will not, whether with or without the giving of notice or passage of time or both, conflict with or constitute a breach of, or default or Repayment Event under, or result in the creation or imposition of any lien, charge or encumbrance upon any assets, properties or operations of the

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Company or any of its subsidiaries pursuant to, any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or any other agreement or instrument, known to us, to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of the assets, properties or operations of the Company or any of its subsidiaries is subject, nor will such action result in any violation of the provisions of the charter or by-laws of the Company or any of its subsidiaries or any applicable law, statute, rule, regulation, judgment, order, writ or decree, known to us, of any government, government instrumentality or court, domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or any of their assets, properties or operations.

(13) To the best of our knowledge, there is not pending or threatened any action, suit, proceeding, inquiry or investigation to which the Company or any of its subsidiaries thereof is a party or to which the assets, properties or operations of the Company or any of its subsidiaries thereof is subject, before or by any court or governmental agency or body, domestic or foreign, which might reasonably be expected to result in a Material Adverse Effect or which might reasonably be expected to materially and adversely affect the assets, properties or operations thereof or the consummation of the transactions contemplated under the Underwriting Agreement, the applicable Terms Agreement or the applicable Indenture or the performance by the Company of its obligations thereunder.

(14) All descriptions in the Prospectus of contracts and other documents to which the Company or its subsidiaries are a party are accurate in all material respects. To the best of our knowledge, there are no franchises, contracts, indentures, mortgages, loan agreements, notes, leases or other instruments required to be described or referred to in the Prospectus or to be filed as exhibits to the Registration Statement other than those described or referred to therein or filed or incorporated by reference as exhibits thereto, and the descriptions thereof or references thereto are correct in all material respects.

(15) To the best of our knowledge, there are no statutes or regulations that are required to be described in the Prospectus that are not described as required.

(16) The Registration Statement (including any Rule 462(b) Registration Statement) has been declared effective under the 1933 Act. Any required filing of the Prospectus pursuant to Rule 424(b) has been made in the manner and within the time period required by Rule 424(b). To the best of our knowledge, no stop order suspending the effectiveness of the Registration Statement (or such Rule 462(b) Registration Statement) has been issued under the 1933 Act and no proceedings for that purpose have been initiated or are pending or threatened by the Commission.

(17) The Registration Statement (including any Rule 462(b) Registration Statement) and the Prospectus, excluding the documents incorporated by reference therein, and each amendment or supplement to the Registration Statement (including any Rule 462(b) Registration Statement) and Prospectus, excluding the documents incorporated by reference therein, as of their respective effective or issue dates (other than the financial statements and supporting schedules included therein or omitted therefrom and each Trustee's Statement of Eligibility on Form T-1 (the "Form T-1s"), as to which we express no opinion), complied as to form in all material respects with the requirements of the 1933 Act and the 1933 Act Regulations.

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(18) The documents incorporated by reference in the Prospectus (other than the financial statements and supporting schedules therein or omitted therefrom, as to which we express no opinion), when they became effective or were filed with the Commission, as the case may be, complied as to form in all material respects with the requirements of the 1933 Act or the 1934 Act, as applicable, and the rules and regulations of the Commission thereunder.

(19) No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency, domestic or foreign, is necessary or required for the due authorization, execution or delivery by the Company of the Underwriting Agreement or the applicable Terms Agreement or for the performance by the Company of the transactions contemplated under the Prospectus, the Underwriting Agreement, such Terms Agreement or the any applicable Indenture, other than under the 1933 Act, the 1933 Act Regulations, the 1939 Act and the 1939 Act Regulations, which have already been made, obtained or rendered, as applicable.

(20) The applicable Indenture has been duly qualified under the 1939 Act.

(21) The Underwritten Securities, upon issuance, will be excluded or exempted under, or beyond the purview of, the Commodity Exchange Act, as amended (the "Commodity Exchange Act"), and the rules and regulations of the Commodity Futures Trading Commission under the Commodity Exchange Act (the "Commodity Exchange Act Regulations").

(22) The Company is not, and upon the issuance and sale of the Underwritten Securities as herein contemplated and the application of the net proceeds therefrom as described in the Prospectus will not be, an "investment company" within the meaning of the Investment Company Act of 1940, as amended (the "1940 Act").

(23) The Voting Trust Agreement constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as enforcement may be limited as described by Insolvency Exemption; and the provisions of the Voting Trust Agreement create a "voting trust" as provided in Section 218 under the DGCL.

Nothing has come to our attention that would lead us to believe that the Registration Statement (including any Rule 462(b) Registration Statement) or any post-effective amendment thereto (except for financial statements and supporting schedules and other financial data included therein or omitted therefrom and for the Form T-1s, as to which we make no statement), at the time the Registration Statement (including any Rule 462(b) Registration Statement) or any post-effective amendment thereto (including the filing of the Company's Annual Report on Form 10-K with the Commission) became effective or at the date of the applicable Terms Agreement, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that the Prospectus or any amendment or supplement thereto (except for financial statements and supporting schedules and other financial data included therein or omitted therefrom, as to which we make no statement), at the time the Prospectus was issued, at the time any such amended or supplemented prospectus was issued or at the Closing Time, included or includes an untrue statement of a material fact or omitted or omits to state a material fact necessary

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in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

In rendering such opinion, such counsel may rely as to matters of fact (but not as to legal conclusions), to the extent they deem proper, on certificates of responsible officers of the Company and public officials. Such opinion shall not state that it is to be governed or qualified by, or that it is otherwise subject to, any treatise, written policy or other document relating to legal opinions, including, without limitation, the Legal Opinion Accord of the ABA Section of Business Law (1991). The opinion shall contain assumptions, limitations, qualifications and exceptions normally included by counsel in transactions of this kind.

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FORM OF OPINION OF WILEY, REIN & FIELDING,
REGULATORY COUNSEL TO THE COMPANY,
TO BE DELIVERED PURSUANT TO
SECTION 5(d)

(1) (a) The execution, delivery and performance of the Underwriting Agreement, the consummation of the transactions contemplated therein and in the Prospectus and compliance by the Company with its obligations thereunder do not violate (i) the Federal Communications Act of 1934, as amended (the "Communications Act"), (ii) any rules or regulations of the Federal Communications Commission ("FCC") applicable to the Company or its Subsidiary,
(iii) any state telecommunications law, rules or regulations ("State Law") applicable to the Company or its Subsidiary, and (iv) to the best of such counsel's knowledge, any decree from any court, and (b) no consent, approval, authorization or order of or filing with the FCC or any state authority overseeing telecommunications matters ("State Authority"), is necessary for the execution, delivery and performance of the Underwriting Agreement except for consents, approvals, authorizations or orders of or qualifications as have already been obtained and except to the extent that the failure to obtain such consents, approvals, authorizations or orders or to qualify with the FCC or any State Authority would not, individually or in the aggregate, have a material adverse effect on the prospects, condition (financial or otherwise) or in the earnings, business or operations of the Company and its subsidiary, taken as a whole.

(2) Except as described in the Prospectus, (a) each of the Company and its Subsidiary has made all reports and filings, and paid all fees, required by the FCC and the State Authorities, and have all certificates, orders, permits, licenses, authorizations, consents and approvals of and from, and have made all filings and registrations, with the FCC and the State Authorities necessary to own, lease, license and use its properties and assets and to conduct the business now operated by them or intended to be operated by them in the manner described in the Prospectus; and (b) to the best of such counsel's knowledge after due inquiry neither the Company nor its subsidiary has received any notice of proceedings relating to the violation, revocation or modification of any such certificates, orders, permits, licenses, authorizations, consents or approvals, or the qualification or rejection of any such filing or registration, the effect of which, singly or in the aggregate, would have a material adverse effect on the prospects, condition, financial or otherwise, earnings, operations or business of the Company and its subsidiary now operated by them or intended to be operated by them in the manner described in the Prospectus taken as a whole.

(3) To the best of such counsel's knowledge after due inquiry (A) no adverse judgment, decree or order of the FCC or of any State Authority has been issued against the Company or its subsidiary and (B) no litigation, proceeding, inquiry or investigation has been commenced or threatened against the Company or its subsidiary before or by the FCC or any State Authority which, if decided adversely to the Company's interest, would have a material adverse effect on the Company and its subsidiary, taken as a whole.

(4) The statements in the Prospectus under the captions "Risk Factors -- We Are Subject to Continuing and Detailed Regulation by the FCC", "Risk Factors -- Receivers and Antennas Are Not Yet Available", "Risk Factors -- We May Not Be Able to Compete Effectively Against Conventional Radio Stations, the Other Holder of an FCC License to Provide this Service or Other Potential Providers of this Service", "Business -- Competition", and "Business -- Government Regulation", insofar as such statements constitute a summary of the legal matters, documents or proceedings referred to therein, fairly summarize the matters referred to therein.

In rendering their opinion, counsel may rely, as to matters of fact (but not as to legal conclusions), to the extent they deem proper, on certificates of responsible officers of the Company and public officials. The opinion shall not state that it is to be governed or qualified by, or that it is otherwise subject to, any treatise, written policy or other document relating to legal opinions, including, without limitation, the Legal Opinion Accord of the ABA Section of

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Business Law (1991). The opinion shall contain assumptions, limitations, qualifications and exceptions normally included by counsel in transactions of this kind.

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CD RADIO INC.
(a Delaware Corporation)

$125,000,000 aggregate principal amount of 8 3/4% Convertible Subordinated Notes due 2009

TERMS AGREEMENT

September 23, 1999

To: CD Radio Inc.

1221 Avenue of the Americas, 36th Fl.
New York, NY 10020

Ladies and Gentlemen:

This is a Terms Agreement referenced in the Form Underwriting Agreement, filed as an Exhibit to Registration Statement No. 333-86003, the terms of which are hereby incorporated herein. We understand that CD Radio Inc., a Delaware corporation (the "Company"), proposes to issue and sell $125,000,000 aggregate principal amount of its 8 3/4% convertible subordinated debt securities (the "Underwritten Securities"). Subject to the terms and conditions set forth or incorporated by reference herein, we the underwriters named below (the "Underwriters") offer to purchase, severally and not jointly, the principal amount of Underwritten Securities opposite our names set forth below at the purchase price set forth below, and a proportionate share of Option Underwritten Securities set forth below, to the extent any Underwritten Securities or Option Underwritten Securities are purchased.

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Underwriter	Principal Amount of Underwritten Securities
Merrill Lynch, Pierce, Fenner & Smith Incorporated	$ 62,500,000
Lehman Brothers Inc	25,000,000
Banc of America Securities LLC	17,188,000
Bear, Stearns & Co. Inc	20,312,000
Total	$125,000,000

The Underwritten Securities shall have the following terms:

	Debt Securities
Title:	Convertible Subordinated Notes due 2009
Rank:	The Notes will be unsecured obligations of CD Radio and will be subordinated to existing and future senior indebtedness. The Notes will be effectively subordinated to the indebtedness and other obligations of the Company's subsidiaries.
Rating:	CCC-
Aggregate principal amount:	$125,000,000
Principal amount of Option Underwritten Securities:	The Underwriters have an option to purchase up to an additional $18,750,000 aggregate principal amount of the Underwritten Securities (the "Option Underwritten Securities") at the public offering price, less underwriting discount, within 30 days from September 23, 1999 to cover over-allotments.
Denominations:	$1,000 principal amount and integral multiples thereof
Currency of payment:	US dollars
Interest rate or formula:	8.75%
Interest payment dates:	payable semiannually in arrears on March 29 and September 29 of each year commencing March 29, 2000
Regular record dates:	March 14 and September 14
Stated maturity date:	September 29, 2009
Redemption provisions:	The Company may not redeem the Notes prior to September 29, 2002. On or after such date, the Notes are redeemable for cash at any time at the Company's option, in whole or in part, at redemption prices set forth below, plus accrued and unpaid interest to the date of redemption. Notwithstanding the above, the Company will not be entitled to redeem the Notes after September 29, 2002, unless the last reported sale price for the Company's common stock is at least 150% of the conversion price set

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forth below for at least 20 trading days within a period of 30 consecutive days ending within five trading days of the call for redemption.

The table below shows redemption prices of a Note during each twelve-month period set forth below:

Period	Redemption Price
September 29, 2002 through September 28, 2003.....	106.125%
September 29, 2003 through September 28, 2004.....	105.250%
September 29, 2004 through September 28, 2005.....	104.375%
September 29, 2005 through September 28, 2006.....	103.500%
September 29, 2006 through September 28, 2007.....	102.625%
September 29, 2007 through September 28, 2008.....	101.750%
Thereafter.....	100.875%

Sinking fund requirements: None

Conversion provisions: Each Note will be convertible, at the option of the holder, at any time on or prior to maturity, unless previously redeemed or otherwise purchased, into shares of the Company's common stock at a conversion rate of 35.134 shares per $1,000 principal amount of Notes, or a conversion price of $28.4625 per share of common stock. The conversion rate will be subject to adjustment upon the occurrence of certain events affecting the Company's common stock. Subject to certain exceptions, upon conversion, the holder will not receive any cash payment representing any further interest; such accrued cash interest will be deemed paid by the shares of common stock received by the holder on conversion.

Listing requirements: None

Black-out provisions: None

Fixed or Variable Price Offering: Fixed Price Offering

If Fixed Price Offering, initial public offering price per $1,000 principal amount: 100% of the principal amount, plus accrued interest, if any, from September 29, 1999.

Purchase price per Note: 97% of principal amount, plus accrued interest, if any, from September 29, 1999.

Form: The Notes will initially be issued in fully registered book-entry form and will be represented by one or more permanent global Notes without coupons deposited with a custodian for and registered in the name of a nominee of The Depository Trust Company ("DTC") in New York, New York.

Other terms and conditions: All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to the Underwriters at Merrill Lynch & Co., North Tower, World Financial Center, New York, New York 10281, attention of Robert Kramer; notices to the Company shall be directed to the Company at 1221 Avenue of the Americas, 36th Floor, New York, New York 10020,

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attention of Patrick L. Donnelly, Senior Vice President, General Counsel and Secretary.

Closing date and location: September 29, 1999

Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019-7475

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Please accept this offer by signing a copy of this Terms Agreement in the space set forth below and returning the signed copy to us.

Very truly yours,

MERRILL, LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By /s/ Marilyn J. Pugliese

Name: Marilyn J. Pugliese
Title: Authorized Signatory

Acting on behalf of itself and the other named Underwriters.

Accepted:

CD RADIO INC.

By /s/ Patrick L. Donnelly

Name: Patrick L. Donnelly
Title: Senior Vice President, General Counsel and Secretary

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EXECUTION COPY

CD RADIO INC.

AND

U.S. TRUST COMPANY OF TEXAS, N.A.,

as Trustee

FIRST SUPPLEMENTAL INDENTURE

Dated as of September 29, 1999

TO

Indenture

Dated as of September 29, 1999

8-3/4% Convertible Subordinated Notes due 2009

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FIRST SUPPLEMENTAL INDENTURE, dated as of
the 29th day of September 1999 (this "First Supplemental Indenture"), between CD Radio Inc., a corporation duly organized and existing under the laws of the State of Delaware (the "Company") and U.S. Trust Company of Texas, N.A., a national banking association organized under the laws of the United States of America, as trustee (the "Trustee"), under the Indenture dated as of September 29, 1999, between the Company and the Trustee (the "Indenture"); as set forth in Section 9.01 hereto and except as otherwise set forth herein, all terms used and not defined herein are used as defined in the Indenture.

The Company executed and delivered the Indenture to the Trustee to provide for the future issuance of its Securities, to be issued from time to time in series as might be determined by the Company under the Indenture, in an unlimited aggregate principal amount which may be authenticated and delivered thereunder as in the Indenture provided.

Pursuant to the terms of the Indenture, the Company desires to provide for the establishment of a new series of its Securities to be known as its 8-3/4% Convertible Subordinated Notes due 2009 (the "Series 8-3/4% Notes"), the form of such Series 8-3/4% Notes and the terms, provisions and conditions thereof to be as provided in the Indenture and this First Supplemental Indenture.

The Company has requested the Trustee to join with it in the execution and delivery of this First Supplemental Indenture. All requirements necessary to make this First Supplemental Indenture a valid instrument, enforceable in accordance with its terms, and to make the Series 8-3/4% Notes, when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company, have been performed and fulfilled, and the execution and delivery of this First Supplemental Indenture and the Series 8-3/4% Notes, have been in all respects duly authorized.

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NOW, THEREFORE, in consideration of the purchase and acceptance of the Series 8-3/4% Notes by the Holders thereof, and for the purpose of setting forth, as provided in the Indenture, the form of the Series 8-3/4% Notes and the terms, provisions and conditions thereof, the Company covenants and agrees with the Trustee as follows:

ARTICLE I

General Terms and Conditions of
the Series 8-3/4% Notes

SECTION 1.01. Title and Terms. There shall be and is hereby authorized a series of Securities designated the "8-3/4% Convertible Subordinated Notes due 2009", limited in aggregate principal amount to $143,750,000. The Series 8-3/4% Notes shall mature and the principal thereof shall be due and payable, together with all accrued and unpaid interest thereon, on September 29, 2009. The Series 8-3/4% Notes shall be convertible into shares of Common Stock, $0.001 par value, of the Company, as such shares shall be constituted at the time of conversion ("Common Stock"), in accordance with Article IV hereof.

ARTICLE II

Redemption of the Series 8-3/4% Notes

SECTION 2.01. Redemption in Part. If fewer than all of the Series 8-3/4% Notes are to be redeemed, the Trustee will select the Series 8-3/4% Notes to be redeemed in principal amounts of $1,000 or integral multiples thereof by lot, pro rata or by another method the Trustee considers fair and appropriate. If a portion of a Holder's Series 8-3/4% Notes is selected for partial redemption and that Holder converts a portion of those Series 8-3/4% Notes prior to the applicable Redemption Date, the converted portion shall be deemed, solely for purposes of determining the aggregate principal amount of the Series 8-3/4% Notes to be redeemed by the Company, to remain outstanding and to be of the portion selected for redemption.

SECTION 2.02. Redemption at Option of Company. Series 8-3/4% Notes are subject to redemption at the option of the Company as provided in
Section 7.02 hereof.

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ARTICLE III

Repurchase at Option of Holders upon Change In Control

SECTION 3.01. Right to Require Repurchase. In the event that a Change in Control shall occur, each Holder shall have the right, at the Holder's option, to require the Company to repurchase (subject to the provisions of Section 5.03 hereof), and upon the exercise of such right the Company shall repurchase, all of such Holder's Series 8-3/4% Notes, or any portion of the principal amount thereof that is an integral multiple of $1,000 (provided that no single Series 8-3/4% Note may be repurchased in part unless the portion of the principal amount of such Series 8-3/4% Note to be outstanding after such repurchase is equal to $1,000 or an integral multiple of $1,000), on the date (the "Repurchase Date") that is not later than 30 Business Days after the date of the occurrence of a Change in Control for cash at a purchase price equal to 100% of the principal amount plus interest accrued and unpaid to the Repurchase Date (subject to the right of Holders of record on the Regular Record Date to receive interest on the relevant Interest Payment Date) (the "Repurchase Price"). If the Repurchase Date is between a Regular Record Date and the related Interest Payment Date, then the interest payable on such Interest Payment Date shall be paid to the Holder of record of the Series 8-3/4% Note on such Regular Record Date.

SECTION 3.02. Notices; Method of Exercising Repurchase Right, Etc. (a) Unless the Company shall have theretofore called for redemption all of the outstanding Series 8-3/4% Notes, on or before the 15th day after the occurrence of a Change in Control, the Company or, at the written request of the Company, on or before the tenth (10th) day after receipt of such request, the Trustee, at the Company's expense, shall give notice to all Holders of Series 8-3/4% Notes (the "Company Notice") of the occurrence of the Change in Control and of the repurchase right set forth herein arising as a result thereof. If the Company gives such notice of a repurchase right, the Company shall also deliver a copy of such notice of a repurchase right to the Trustee.

Each Company Notice shall state:

(1) the date of such Change in Control and, briefly, the events causing such Change in Control;

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(2) the date by which the Change in Control Purchase Notice (as defined below) must be delivered;

(3) the Repurchase Date;

(4) the Repurchase Price;

(5) a description of the procedure which a Holder must follow to exercise a repurchase right;

(6) the procedures for withdrawing a Change in Control Purchase Notice;

(7) the place or places where such Series 8-3/4% Notes are to be surrendered for payment of the Repurchase Price and accrued interest, if any;

(8) briefly, the conversion rights of Holders of Series 8-3/4% Notes;

(9) the conversion price and any adjustments thereto, the date on which the right to convert the Series 8-3/4% Notes will terminate and the places where such Series 8-3/4% Notes may be surrendered for conversion; and

(10) that Holders who want to convert Series 8-3/4% Notes must satisfy the requirements set forth in the Series 8-3/4% Notes.

No failure of the Company to give the foregoing notice or defect therein shall limit any Holder's right to exercise a repurchase right or affect the validity of the proceedings for the repurchase of Series 8-3/4% Notes.

(b) To exercise a repurchase right, a Holder shall deliver to the Paying Agent or an office or agency maintained by the Company for such purpose in the Borough of Manhattan, The City of New York, prior to the close of business on or before the Repurchase Date written notice of the Holder's exercise of such right (the "Change in Control Purchase Notice"), which notice shall set forth (i) the name of the Holder, the principal amount of the Series 8-3/4% Notes to be repurchased (and, if any Series 8-3/4% Note is to be repurchased in part, the portion of the principal amount thereof to be repurchased and the name of the Person in which the portion thereof to remain outstanding after such repurchase is to be registered) and a statement that an election to exercise the repurchase right is being made thereby pursuant to the applicable provisions of the Series 8-3/4% Notes, and (ii) the certificate numbers of the

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Series 8-3/4% Notes with respect to which the repurchase right is being exercised.

(c) In the event a repurchase right shall be exercised in accordance with the terms hereof, the Company shall pay or cause to be paid to the Paying Agent the Repurchase Price in cash, for payment to the Holder on the Repurchase Date, payable with respect to the Series 8-3/4% Notes (or portion thereof) as to which the repurchase right has been exercised; provided, however, that such Series 8-3/4% Note for which a repurchase right has been exercised has been delivered to the Paying Agent at any time after the notice of exercise of a repurchase right shall have been given. Payment of the Repurchase Price for such Series 8-3/4% Note shall be made promptly following the later of the Business Day following the Repurchase Date and time of delivery of the Series 8-3/4% Note. If the Paying Agent holds money sufficient to pay the Repurchase Price on the Business Day following the Repurchase Date, then, immediately after the Repurchase Date, such Series 8-3/4% Note shall cease to be outstanding and interest will cease to accrue and will be deemed paid regardless of whether such Series 8-3/4% Note has been delivered to the Paying Agent, and all other rights of the Holder shall terminate (other than the right of such Holder to receive the Repurchase Price upon delivery of such Series 8-3/4% Note).

(d) On or prior to the Repurchase Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 6.6 of the Indenture) an amount of money sufficient to pay the Repurchase Price of the Series 8-3/4% Notes which are to be repaid on the Repurchase Date.

(e) If any Series 8-3/4% Note (or portion thereof) surrendered for repurchase shall not be so paid on the Business Day following the Repurchase Date, the principal amount of such Series 8-3/4% Note (or portion thereof, as the case may be) shall, until paid, bear interest from the Repurchase Date at the rate of 8-3/4% per annum, and each Series 8-3/4% Note shall remain convertible into Common Stock in accordance with Article IV herein until the principal of such Series 8-3/4% Note (or portion thereof, as the case may be) shall have been paid or duly provided for.

(f) Any Series 8-3/4% Note which is to be repurchased only in part shall be surrendered to the Trustee (with, if the Company or the Trustee so requires, due

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endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Series 8-3/4% Note without service charge, a new Series 8-3/4% Note or Series 8-3/4% Notes, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the portion of the principal of the Series 8-3/4% Note so surrendered that was not repurchased.

(g) Any Holder that has delivered to the Trustee a Change in Control Purchase Notice shall have the right to withdraw such notice at any time prior to the close of business on the Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent prior to the close of business on such date. The notice of withdrawal shall state the principal amount and the certificate numbers of the Series 8-3/4% Notes as to which the withdrawal notice relates and the principal amount, if any, which remains subject to the notice of exercise of a repurchase right. A Series 8-3/4% Note in respect of which a Holder has exercised its option to require repurchase upon a Change in Control may thereafter be converted into Common Stock only if such Holder withdraws its notice in accordance with the preceding sentence.

SECTION 3.03. Certain Definitions. For purposes of this Article III:

(a) the term "beneficial owner" shall be determined in accordance with Rules l3d-3 and 13d-5 promulgated by the Commission pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), except that a Person shall be deemed to have "beneficial ownership" of all securities that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time; and

(b) the term "Person" shall include any syndicate or group which would be deemed to be a "Person" under Section 13(d)(3) of the Exchange Act.

SECTION 3.04. Change in Control. A "Change in Control" shall be deemed to have occurred at such time after the original issuance of the Series 8-3/4% Notes as:

(a) any Person, other than a Permitted Holder (as defined below), is or becomes the beneficial owner, directly

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or indirectly, of shares of capital stock of the Company entitling such Person to exercise in excess of 40% of the total outstanding voting power of all classes of the Company's capital stock entitled to vote generally in the election of directors;

(b) the Company shall consolidate with, or merge with or into another Person or convey, transfer, lease or otherwise dispose of all or substantially all of its assets to any Person, or any Person consolidates with or merges with or into the Company, in any event pursuant to a transaction in which the Company's outstanding voting stock is converted into or exchanged for cash, securities or other property, other than any such transactions where:

(1) the Company's voting stock is not converted or exchanged at all (except to the extent necessary to reflect a change in the Company's jurisdiction of incorporation) or is converted into or exchanged for (i) voting stock (other than Redeemable Capital Stock) of the surviving or transferee corporation or (ii) voting stock (other than Redeemable Capital Stock) of the surviving or transferee corporation and cash, securities and other property (other than capital stock of the surviving entity) in an amount that could be paid by the Company as a Restricted Payment pursuant to Section 4.04 of the indenture (the "Senior Secured Notes Indenture") dated as of May 15, 1999, governing the Company's 14-1/2% Senior Secured Notes due 2009, and

(2) immediately after such transaction, no Person is the beneficial owner, directly or indirectly, of more than 40% of the total outstanding voting stock of the surviving or transferee corporation;

(c) during any consecutive two-year period, individuals who at the beginning of such period constituted the Board of Directors (together with any new directors whose election to such Board of Directors, or whose nomination for election by the Company's stockholders, was approved by a vote of 66-2/3% of the directors then still in office who were either directors at the beginning of such period of whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors then in office;

(d) the Company is liquidated or dissolved or a special resolution is passed by the Company's stockholders approving the plan of liquidation or dissolution other than

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in a transaction which complies with the provisions described in Article VIII of the Indenture.

"Permitted Holder" means Loral Space & Communications Ltd., and its successors.

"Redeemable Capital Stock" means any class of series of capital stock that, either by its terms, by the terms of any security into which it is convertible or exchangeable or by contract or otherwise, is, or upon the happening of an event or passage of time would be, required to be redeemed prior to the final stated maturity of the Series 8-3/4% Notes or is redeemable at the option of the holder thereof at any time prior to such final stated maturity, or is convertible into or exchangeable for debt securities at any time prior to such final stated maturity; provided, however, that Redeemable Capital Stock shall not include any common stock the holder of which has the right to put to the Company upon certain terminations of employment; and provided further, however, that any class or series of capital stock that would not constitute Redeemable Capital Stock but for provisions thereof giving the holder thereof the right to require the issuer of such capital stock to repurchase or redeem such capital stock upon the occurrence of an "asset sale" or "change of control" occurring prior to the final stated maturity of the Series 8-3/4% Notes shall not constitute Redeemable Capital Stock if the "asset sale" or "change of control" provisions applicable to such class or series of capital stock are no more favorable to the holders of such capital stock in any material respect than the provisions of Section 10.16 of the Senior Secured Notes Indenture and the provisions of this Article III and such class or series of capital stock specifically provides that the issuer of such capital stock will not repurchase or redeem any such stock pursuant to such provision prior to the Company's repurchase of such notes issued under the Senior Secured Notes Indenture as are required to be purchased pursuant to Section 10.16 of the Senior Secured Notes Indenture or the Company's repurchase of such securities as required pursuant to this Article III, as applicable.

SECTION 3.05. References to Repurchase Price. Whenever in this First Supplemental Indenture there is a reference, in any context, to the principal of any Series 8-3/4% Note as of any time, such reference shall be deemed to include reference to the Repurchase Price payable in respect of such Series 8-3/4% Note to the extent that such Repurchase Price is, was or would be so payable at such time, and express mention of the Repurchase Price in any

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provision of this First Supplemental Indenture shall not be construed as excluding the Repurchase Price in those provisions of this First Supplemental Indenture when such express mention is not made.

ARTICLE IV

Conversion

SECTION 4.01. Conversion Privilege and Conversion Price. Subject to and upon compliance with the provisions of this Article IV, at the option of the Holder thereof, any Series 8-3/4% Note or any portion of the principal amount thereof which is $1,000 or an integral multiple of $1,000 may be converted at the principal amount thereof, or of such portion thereof, into fully paid and nonassessable shares of Common Stock of the Company (the "Conversion Shares") at any time following the date of original issuance of Series 8-3/4% Notes at the conversion price, determined as hereinafter provided, in effect at the time of conversion. Such conversion right shall expire at the close of business on the Business Day immediately preceding September 29, 2009, subject, in the case of conversion of any global security, to any rules and procedures of the depositary for such security in effect from time to time (the "Applicable Procedures"). In case a Series 8-3/4% Note or portion thereof has previously been called for redemption at the election of the Company, such conversion right in respect of the Series 8-3/4% Note or portion so called shall expire at the close of business, New York City time, on the Redemption Date, unless the Company defaults in making the payment due upon redemption (in each case subject as aforesaid to any Applicable Procedures with respect to any global security). A Series 8-3/4% Note in respect of which a Holder has delivered a Change in Control Purchase Notice (as defined in Article III hereof) exercising the option of such Holder to require the Company to purchase such Series 8-3/4% Note may be converted only if such notice is withdrawn by a written notice of withdrawal delivered by the Holder to the Paying Agent prior to the close of business on the Repurchase Date, in accordance with the terms of this First Supplemental Indenture and the Indenture.

The price at which shares of Common Stock shall be delivered upon conversion (herein called the "conversion price") shall be initially $28.4625 per share of Common Stock. The conversion price shall be adjusted in certain instances as provided in Section 4.04.

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In case the Company shall, by dividend or otherwise, declare or make a distribution on its Common Stock referred to in paragraph (4) or (5) of Section 4.04 (including dividends or distributions referred to in the last sentence of paragraph (4) of Section 4.04), the Holder of each Series 8-3/4% Note, upon the conversion thereof pursuant to this Article IV subsequent to the close of business on the date fixed for the determination of stockholders entitled to receive such distribution and prior to the effectiveness of the conversion price adjustment in respect of such distribution pursuant to paragraph (4) or (5) of Section 4.04, shall also be entitled to receive for each share of Common Stock into which such Series 8-3/4% Note is converted, the portion of the evidences of indebtedness, shares of capital stock, securities, cash and other property so distributed applicable to one share of Common Stock; provided, however, that, at the election of the Company (whose election shall be evidenced by a Board Resolution) with respect to all Holders so converting, the Company may, in lieu of distributing to such Holder any portion of such distribution not consisting of cash or securities of the Company, pay such Holder an amount in cash equal to the fair market value thereof (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution). If any conversion of a Series 8-3/4% Note described in the immediately preceding sentence occurs prior to the payment date for a distribution to holders of Common Stock which the Holder of the Series 8-3/4% Note so converted is entitled to receive in accordance with the immediately preceding sentence, the Company may elect (such election to be evidenced by a Board Resolution) to distribute to such Holder a due bill for the evidences of indebtedness, shares of capital stock, securities, cash or assets to which such Holder is so entitled; provided that such due bill (i) meets any applicable requirements of the principal national securities exchange or other market on which the Common Stock is then traded and (ii) requires payment or delivery of such evidences of indebtedness, shares of capital stock, securities, cash or assets no later than the date of payment or delivery thereof to holders of Common Stock receiving such distribution.

SECTION 4.02. Exercise of Conversion Privilege. In order to exercise the conversion privilege, the Holder of any Series 8-3/4% Note to be converted shall surrender such Series 8-3/4% Note, duly endorsed or assigned to the Company or in blank, at any office or agency maintained by the Company pursuant to Section 10.2 of the Indenture, accompanied by (a) written notice to the Company at such

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office or agency that the Holder elects to convert such Series 8-3/4% Note or, if less than the entire principal amount thereof is to be converted, the portion thereof to be converted and (b) if shares or any portion of such Series 8-3/4% Note not to be converted are to be issued in the name of a Person other than the Holder thereof, the name of the Person in which to issue such shares.

Except as provided in Section 5.2 of the Indenture, no Holder of Series 8-3/4% Notes will be entitled upon conversion thereof to any payment or adjustment on account of accrued and unpaid interest thereon or on account of dividends on the shares of Common Stock issued in connection therewith. Series 8-3/4% Notes surrendered for conversion during the period from the close of business on any Regular Record Date to the opening of business on the corresponding Interest Payment Date (except Series 8-3/4% Notes called for redemption on a Redemption Date within such period between and including such Regular Record Date and such Interest Payment Date) must be accompanied by payment to the Company in New York Clearing House Funds or other funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount converted.

Series 8-3/4% Notes shall be deemed to have been converted immediately prior to the close of business on the day of surrender of such Series 8-3/4% Notes for conversion in accordance with the foregoing provisions (the "Conversion Date"), and at such time the rights of the Holders of such Series 8-3/4% Notes as Holders shall cease, and the Person or Persons entitled to receive the Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Stock at such time. As promptly as practicable on or after the Conversion Date, but in any event no later than the seventh Business Day following the Conversion Date, the Company shall issue and shall deliver at such office or agency a certificate or certificates for the number of full shares of Common Stock issuable upon conversion, together with payment in lieu of any fraction of a share as provided in Section 4.03.

In the case of any Series 8-3/4% Note which is converted in part only, upon such conversion the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Series 8-3/4% Note or Series 8-3/4% Notes of authorized denominations in aggregate principal amount equal to the unconverted portion of the principal amount of such Series 8-3/4% Note. Any requirements for notice, surrender or

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delivery of Series 8-3/4% Notes pursuant to this Article IV shall, with respect to any global security, be subject to any Applicable Procedures.

SECTION 4.03. Fractions of Shares. No fractional shares of Common Stock shall be issued upon conversion of Series 8-3/4% Notes. If more than one Series 8-3/4% Note shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Series 8-3/4% Notes (or specified portions thereof) so surrendered. Instead of any fractional share of Common Stock which would otherwise be issuable upon conversion of any Series 8-3/4% Note (or specified portions thereof), the Company shall pay a cash adjustment in respect of such fraction in an amount equal to the same fraction of the Closing Price per share of the Common Stock at the close of business on the Trading Day immediately preceding such day or, alternatively, the Company shall round up to the next higher whole share.

"Trading Day" shall mean each day on which the primary securities exchange or quotation system which is used to determine the Closing Price is open for trading or quotation.

"Closing Price" of a single share of Common Stock on any Trading Day shall mean the closing per share sale price for the Common Stock (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid prices and the average ask prices) on such Trading Day as reported in composite transactions for the principal United States securities exchange on which the Common Stock is traded or, if the Common Stock is not listed on a United States national or regional stock exchange, as reported by the National Association of Securities Dealers Automated Quotation System.

SECTION 4.04. Adjustment of Conversion Price. (1) In case the Company shall pay or make a dividend or other distribution on its Common Stock exclusively in Common Stock, the conversion price in effect at the opening of business on the day next following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such conversion price by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination and the denominator shall be the sum of

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such number of shares and the total number of shares constituting such dividend or other distribution, such reduction to become effective immediately after the opening of business on the day next following the date fixed for such determination. For the purposes of this paragraph (1), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company shall not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(2) In case the Company shall pay or make a dividend or other distribution on its Common Stock consisting exclusively of, or shall otherwise issue to all holders of its Common Stock, rights, warrants or options entitling the holders thereof, for a period not exceeding 45 days, to subscribe for or purchase shares of Common Stock at a price per share less than the current market price per share (determined as provided in paragraph (7) of this Section
4.04) of the Common Stock on the date fixed for the determination of stockholders entitled to receive such rights, warrants or options, the conversion price in effect at the opening of business on the day following the date fixed for such determination shall be reduced by multiplying such conversion price by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock which the aggregate of the offering price of the total number of shares of Common Stock so offered for subscription or purchase would purchase at such current market price and the denominator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock so offered for subscription or purchase, such reduction to become effective immediately after the opening of business on the day following the date fixed for such determination. For the purposes of this paragraph (2), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company shall not issue any rights, warrants or options in respect of shares of Common Stock held in the treasury of the Company.

(3) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of

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Common Stock, the conversion price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and, conversely, in case outstanding shares of Common Stock shall each be combined into a smaller number of shares of Common Stock, the conversion price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(4) Subject to the last sentence of this paragraph (4), in case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock evidences of its indebtedness, shares of any class of capital stock, securities, cash or property (excluding any rights, warrants or options referred to in paragraph (2) of this Section 4.04, any dividend or distribution paid exclusively in cash and any dividend or distribution referred to in paragraph (1) of this Section 4.04), the conversion price shall be reduced so that the same shall equal the price determined by multiplying the conversion price in effect immediately prior to the effectiveness of the conversion price reduction contemplated by this paragraph (4) by a fraction of which the numerator shall be the current market price per share (determined as provided in paragraph (7) of this Section 4.04) of the Common Stock on the date of such effectiveness less the fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution and shall, in the case of securities being distributed for which prior thereto there is an actual or when issued trading market, be no less than the value determined by reference to the average of the Closing Prices in such market over the period specified in the succeeding sentence), on the date of such effectiveness, of the portion of the evidences of indebtedness, shares of capital stock, securities, cash and property so distributed applicable to one share of Common Stock and the denominator shall be such current market price per share of the Common Stock, such reduction to become effective immediately prior to the opening of business on the day next following the later of (a) the date fixed for the payment of such distribution and (b) the date 20 days after the notice relating to such distribution is given pursuant to Section 4.06(a) (such later date of (a) and (b) being referred to as the "Reference Date"). If the Board of Directors determines the fair market value of any distribution for purposes of this

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paragraph (4) by reference to the actual or when issued trading market for any securities comprising such distribution, it must in doing so consider the prices in such market over the same period used in computing the current market price per share pursuant to paragraph (7) of this Section. For purposes of this paragraph (4), any dividend or distribution that includes shares of Common Stock or rights, warrants or options to subscribe for or purchase shares of Common Stock shall be deemed instead to be (a) a dividend or distribution of the evidences of indebtedness, cash, property, shares of capital stock or securities other than such shares of Common Stock or such rights, warrants or options (making any conversion price reduction required by this paragraph (4))
immediately followed by (b) a dividend or distribution of such shares of Common Stock or such rights (making any further conversion price reduction required by paragraph (1) or (2) of this Section 4.04, except (i) the Reference Date of such dividend or distribution as defined in this paragraph (4) shall be substituted as "the date fixed for the determination of stockholders entitled to receive such dividend or other distributions", "the date fixed for the determination of stockholders entitled to receive such rights, warrants or options" and "the date fixed for such determination" within the meaning of paragraphs (1) and (2) of this Section 4.04 and (ii) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of paragraph (1) of this
Section 4.04).

(5) In case the Company shall, by dividend or otherwise, make a distribution to all holders of its Common Stock exclusively in cash in an aggregate amount that, together with (i) the aggregate amount of any other distributions to all holders of its Common Stock made exclusively in cash within the 12 months preceding the date of payment of such distribution and in respect of which no conversion price adjustment pursuant to this paragraph (5) has been made and (ii) the aggregate of any cash plus the fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution), as of the expiration of the tender or exchange offer referred to below, of consideration payable in respect of any tender or exchange offer by the Company or a Subsidiary for all or any portion of the Common Stock concluded within the 12 months preceding the date of payment of such distribution and in respect of which no conversion price adjustment pursuant to paragraph (6) of this Section 4.04 has been made, exceeds

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10% of the product of the current market price per share (determined as provided in paragraph (7) of this Section 4.04) of the Common Stock as of the Trading Day immediately preceding the record date fixed for stockholders entitled to receive such distribution times the number of shares of Common Stock outstanding on such record date, the conversion price shall be reduced so that the same shall equal the price determined by multiplying the conversion price in effect immediately prior to the effectiveness of the conversion price reduction contemplated by this paragraph (5) by a fraction of which the numerator shall be the current market price per share (determined as provided in paragraph (7) of this Section
4.04) of the Common Stock on the date of such effectiveness less an amount equal to the quotient of (x) the excess of such combined amount over such 10% and (y) the number of shares of Common Stock outstanding on the record date and (ii) the denominator of which shall be equal to the current market price on such record date, such reduction to become effective immediately prior to the opening of business on the later of (a) the day following the record date fixed for the payment of such distribution and (b) the date 20 days after the notice relating to such distribution is given pursuant to Section 4.06(a).

(6) In case a successful tender or exchange offer made by the Company or any Subsidiary for all or any portion of the Common Stock shall involve an aggregate consideration having a fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) at the last time (the "Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) that, together with (i) the aggregate of the cash plus the fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution), as of the expiration of the other tender or exchange offer referred to below, of consideration payable in respect of any other tender or exchange offer by the Company or a Subsidiary for all or any portion of the Common Stock concluded within the preceding 12 months and in respect of which no conversion price adjustment pursuant to this paragraph (6) has been made and (ii) the aggregate amount of any distributions to all holders of the Common Stock made exclusively in cash within the preceding 12 months and in respect of which no conversion price adjustment pursuant to paragraph (5) of this Section 4.04 has been made, exceeds 10% of the product of the current market price per share (determined as provided in paragraph (7) of this Section 4.04) of the

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Common Stock on the Expiration Time times the number of shares of Common Stock outstanding (including any tendered shares) on the Expiration Time, the conversion price shall be reduced (but not increased) so that the same shall equal the price determined by multiplying the conversion price in effect immediately prior to the Expiration Time by a fraction of which the numerator shall be (i) the product of the current market price per share (determined as provided in paragraph (7) of this Section 4.04) of the Common Stock on the Trading Day next succeeding the Expiration Time times the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time minus (ii) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and the denominator shall be the product of (i) such current market price per share on the Trading Day next succeeding the Expiration Time times (ii) such number of outstanding shares at the Expiration Time less the number of Purchased Shares, such reduction to become effective immediately prior to the opening of business on the day following the Expiration Time.

(7) For the purpose of any computation under this paragraph and paragraphs (2), (4) and (5) of this Section 4.04, the current market price per share of Common Stock on any date in question shall be deemed to be the average of the daily Closing Prices for the 5 consecutive Trading Days selected by the Company commencing not more than 20 Trading Days before, and ending not later than, the date in question; provided, however, that (i) if the "ex" date (as hereinafter defined) for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the conversion price pursuant to paragraph (1), (2), (3), (4), (5) or (6) above ("Other Event") occurs on or after the 20th Trading Day prior to the date in question and prior to the "ex" date for the issuance or distribution requiring such computation (the "Current Event"), the Closing Price for each Trading Day prior to the "ex" date for such Other Event shall be adjusted by multiplying such Closing Price by the same fraction by which the conversion price is so required to be adjusted as a result of such Other Event, (ii) if the "ex" date for any Other Event occurs after the "ex" date for the Current Event and on or prior to the date in question, the Closing Price for each Trading Day on and after the "ex" date for such

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Other Event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the conversion price is so required to be adjusted as a result of such Other Event, (iii) if the "ex" date for any Other Event occurs on the "ex" date for the Current Event, one of those events shall be deemed for purposes of clauses (i) and (ii) of this proviso to have an "ex" date occurring prior to the "ex" date for the Other Event, and (iv) if the "ex" date for the Current Event is on or prior to the date in question, after taking into account any adjustment required pursuant to clause (ii) of this proviso, the Closing Price for each Trading Day on or after such "ex" date shall be adjusted by adding thereto the amount of any cash and the fair market value on the date in question (as determined in good faith by the Board of Directors in a manner consistent with any determination of such value for purposes of paragraph
(4) or (5) of this Section 4.04, whose determination shall be conclusive and described in a Board Resolution) of the portion of the rights, warrants, options, evidences of indebtedness, shares of capital stock, securities, cash or property being distributed applicable to one share of Common Stock. For the purpose of any computation under paragraph (6) of this Section 4.04, the current market price per share of Common Stock on any date in question shall be deemed to be the average of the daily Closing Prices for the 5 consecutive Trading Days selected by the Company commencing on or after the latest (the "Commencement Date") of (i) the date 20 Trading Days before the date in question, (ii) the date of commencement of the tender or exchange offer requiring such computation and (iii) the date of the last amendment, if any, of such tender or exchange offer involving a change in the maximum number of shares for which tenders are sought or a change in the consideration offered, and ending not later than the Trading Day next succeeding the Expiration Time of such tender or exchange offer (or, if such Expiration Time occurs before the close of trading on a Trading Day, not later than the Trading Day during which the Expiration Time occurs); provided, however, that if the "ex" date for any Other Event (other than the tender or exchange offer requiring such computation) occurs on or after the Commencement Date and on or prior to the Trading Day next succeeding the Expiration Time for the tender or exchange offer requiring such computation, the Closing Price for each Trading Day prior to the "ex" date for such Other Event shall be adjusted by multiplying such Closing Price by the same fraction by which the conversion price is so required to be adjusted as a result of such other event. For purposes of this paragraph, the term "ex" date, (i) when used with respect to any issuance or distribution, means the first date on which the

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Common Stock trades regular way on the relevant exchange or in the relevant market from which the Closing Price was obtained without the right to receive such issuance or distribution, (ii) when used with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective, and (iii) when used with respect to any tender or exchange offer means the first date on which the Common Stock trades regular way on such exchange or in such market after the Expiration Time of such tender or exchange offer.

(8) The Company may make such reductions in the conversion price, in addition to those required by paragraphs (1), (2), (3), (4), (5) and (6) of this Section, as it considers to be advisable in order that any event treated for Federal income tax purposes as a dividend of stock or stock rights shall not be taxable to the recipients, or to diminish the amount of such tax payable.

(9) No adjustment in the conversion price shall be required unless such adjustment would require an increase or decrease of at least 1% in the conversion price; provided, however, that any adjustments which by reason of this paragraph (9) are not required to be made shall be carried forward and taken into account in any subsequent adjustment.

(10) In the event that the Company distributes assets, debt securities, rights, warrants or options (other than those referred to in paragraph (2) above) pro rata to holders of Common Stock, and the fair market value of the portion of assets, debt securities, rights, warrants or options applicable to one share of Common Stock distributed to holders of Common Stock exceeds the Average Sale Price (as defined below) per share of Common Stock, or such Average Sale Price exceeds such fair market value by less than $1.00, then so long as any such assets, debt securities, rights, options or warrants have not expired or been redeemed by the Company, the Company shall make proper provision so that the Holder of any Series 8-3/4% Note upon conversion, rather than being entitled to an adjustment in the conversion price, will be entitled to receive upon such conversion, in addition to the Conversion Shares, a number of assets, debt securities, rights, warrants and options to be determined as follows: (i) if such conversion occurs on or prior to the date for the distribution to the holders of assets, debt securities, rights, warrants or options of separate certificates evidencing such assets, debt

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securities, rights, warrants or options (the "Distribution Date"), the same number of assets, debt securities, rights, warrants or options to which a holder of a number of shares of Common Stock equal to the number of Conversion Shares is entitled at the time of such conversion in accordance with the terms and provisions of and applicable to the assets, debt securities, rights, warrants or options being distributed, and (ii) if such conversion occurs after such Distribution Date, the same number of assets, debt securities, rights, warrants or options to which a holder of the number of shares of Common Stock into which the principal amount of such Series 8-3/4% Note so converted was convertible immediately prior to such Distribution Date would have been entitled on such Distribution Date in accordance with the terms and provisions of and applicable to the assets, debt securities, rights, warrants or options.

"Average Sale Price" means the average of the Closing Prices of the Common Stock for the shorter of (i) 30 consecutive Trading Days ending on the last full Trading Day prior to the Time of Determination (as defined below) with respect to the rights, options, warrants or distribution in respect of which the Average Sale Price is being calculated, or (ii) the period (x) commencing on the date next succeeding the first public announcement of (a) the issuance of rights, options or warrants or (b) the distribution, in each case, in respect of which the Average Sale Price is being calculated and (y) proceeding through the last full Trading Day prior to the Time of Determination with respect to the rights, options, warrants or distribution in respect of which the Average Sale Price is being calculated, or (iii) the period, if any, (x) commencing on the date next succeeding the Ex-Dividend Time (as defined below) with respect to the next preceding (a) issuance of rights, warrants or options or (b) distribution, in each case, for which an adjustment is required by the provisions of Section 4.04(2) or (10) and (y) proceeding through the last full Trading Day prior to the Time of Determination with respect to the rights, options, warrants, or distribution in respect of which the Average Sale Price is being calculated. If the Ex-Dividend Time (or in the case of a subdivision, combination or reclassification, the effective date with respect thereto) with respect to a dividend, subdivision, combination or reclassification to which Section 4.04(1) or (3) applies occurs during the period applicable for calculating "Average Sale Price" pursuant to the definition in the preceding sentence, "Average Sale Price" shall be calculated for such period in a manner determined in good faith by the Board of Directors to reflect the impact of

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such dividend, subdivision, combination or reclassification on the Closing Price of the Common Stock during such period.

"Time of Determination" means the time and date of the earlier of (i) the determination of stockholders entitled to receive rights, warrants or options or a distribution, in each case, to which this Section 4.04(10) applies and (ii) the time ("Ex-Dividend Time") immediately prior to the commencement of "ex-dividend" trading for such rights, options, warrants or distribution on the New York Stock Exchange or such other national or regional exchange or market on which the shares of Common Stock are listed or quoted.

SECTION 4.05. Notice of Adjustments of Conversion Price. Whenever the conversion price is adjusted as herein provided:

(a) the Company shall compute the adjusted conversion price in accordance with Section 4.04 and shall prepare a certificate signed by the Chief Financial Officer of the Company setting forth the adjusted conversion price and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall forthwith be filed (with a copy to the Trustee) at each office or agency maintained for the purpose of conversion of Series 8-3/4% Notes pursuant to Section 10.2 of the Indenture; and

(b) a notice stating that the conversion price has been adjusted and setting forth the adjusted conversion price shall forthwith be required, and as soon as practicable after it is required, such notice shall be mailed by the Company to all Holders at their last addresses as they shall appear in the Security Register.

SECTION 4.06. Notice of Certain Corporate Action. In case:

(a) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require a conversion price adjustment pursuant to paragraph (5) of Section 4.04; or

(b) the Company shall authorize the granting to all holders of its Common Stock of rights, warrants or options to subscribe for or purchase any shares of capital stock of any class or of any other rights

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(excluding rights distributed pursuant to any stockholder rights plan); or

(c) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding shares of Common Stock), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or

(d) of the voluntary or involuntary dissolution, liquidation or winding, up of the Company; or

(e) the Company or any Subsidiary of the Company shall commence a tender or exchange offer for all or a portion of the Company's outstanding shares of Common Stock (or shall amend any such tender or exchange offer);

then the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of Series 8-3/4% Notes pursuant to Section 10.2 of the Indenture, and shall cause to be mailed to all Holders at their last addresses as they shall appear in the Security Register, at least 20 days (or 10 days in any case specified in clause (a) or (b) above) prior to the applicable record, effective or expiration date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or granting of rights, warrants or options, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights, warrants or options are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up, or (z) the date on which such tender offer commenced, the date on which such tender offer is scheduled to expire unless extended, the consideration offered and the other material terms thereof (or the material terms of any amendment thereto).

SECTION 4.07. Company's Obligation Regarding Common Stock. The Company shall at all times reserve and keep available, free from preemptive rights, out of its

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authorized but unissued Common Stock, solely for the purpose of effecting the conversion of Series 8-3/4% Notes, the whole number of shares of Common Stock then issuable upon the conversion in full of all outstanding Series 8-3/4% Notes.

Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Series 8-3/4% Notes, the Company will take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue shares of such Common Stock at such adjusted Conversion Price.

The Company covenants that if any shares of Common Stock to be provided for the purpose of conversion of Series 8-3/4% Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued upon conversion, the Company will in good faith and as expeditiously as practicable endeavor to secure such registration or approval, as the case may be.

The Company further covenants that so long as the Common Stock shall be listed or quoted on the New York Stock Exchange, the Nasdaq Stock Market (National Market), or any other national securities exchange the Company will, if permitted by the rules of such exchange, list and keep listed so long as the Common Stock shall be so listed on such market or exchange, all Common Stock issuable upon conversion of the Series 8-3/4% Notes.

SECTION 4.08. Taxes on Conversions. The Company will pay any and all taxes that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Series 8-3/4% Notes pursuant hereto. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the Holder of the Series 8-3/4% Note or Series 8-3/4% Notes to be converted, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of any such tax, or has established to the satisfaction of the Company that such tax has been paid.

SECTION 4.09. Covenant as to Common Stock. The Company covenants that all shares of Common Stock which may be issued upon conversion of Series 8-3/4% Notes shall upon

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issue be newly issued (and not treasury shares) and be duly authorized, validly issued, fully paid and nonassessable and, except as provided in Section 4.08, the Company shall pay all taxes, liens and charges with respect to the issue thereof.

SECTION 4.10. Cancellation of Converted Securities. All Series 8-3/4% Notes delivered for conversion shall be delivered to the Trustee to be cancelled by or at the direction of the Trustee, which shall dispose of the same as provided in Section 3.9 of the Indenture.

SECTION 4.11. Provisions in Case of Reclassification, Consolidation, Merger or Sale of Assets. In the event that the Company shall be a party to any transaction (including any (i) recapitalization or reclassification of the Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination of the Common Stock), (ii) any consolidation of the Company with, or merger of the Company into, any other person, any merger of another person into the Company (other than a merger which does not result in a reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Company), (iii) any sale or transfer of all or substantially all of the assets of the Company or (iv) any compulsory share exchange) pursuant to which the Common Stock is converted into the right to receive other securities, cash or other property, then lawful provision shall be made as part of the terms of such transaction whereby the Holder of each Series 8-3/4% Note then Outstanding shall have the right thereafter to convert such Series 8-3/4% Note only into (subject to funds being legally available for such purpose under applicable law at the time of such conversion) the kind and amount of securities, cash and other property receivable upon such transaction by a holder of the number of shares of Common Stock into which such Series 8-3/4% Note might have been converted immediately prior to such transaction. The Company or the person formed by such consolidation or resulting from such merger or which acquired such assets or which acquired the Company's shares of Common Stock, as the case may be, shall execute and deliver to the Trustee a supplemental indenture establishing such rights. Such supplemental indenture shall provide for adjustments which, for events subsequent to the effective date of such supplemental indenture, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article. The above provisions of this Section 4.11 shall similarly apply to successive transactions of the foregoing type.

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SECTION 4.12. Company's Obligation. All calculations, adjustments, conversions and other determinations under this Article IV shall be the sole responsibility and obligation of the Company. The Trustee (a) shall have no obligation to review, challenge or contest any such calculation, adjustment, conversion or other determination and (b) shall not be liable for any default or error by the Company under this Article IV.

ARTICLE V

Subordination of Series 8-3/4% Notes

SECTION 5.01. Series 8-3/4% Notes Subordinate to Senior Indebtedness. The Company covenants and agrees, and each Holder of a Series 8-3/4% Note, by such Holder's acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article V, the indebtedness represented by the Series 8-3/4% Notes and the payment of the principal of (and premium, if any) and interest on each and all of the Series 8-3/4% Notes and all obligations of the Company under the Indenture are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness.

SECTION 5.02. Payment over of Proceeds Upon Dissolution, Etc. In the event of (a) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relative to the Company or to its creditors, as such, or to its assets, or (b) any liquidation, dissolution or other winding-up of the Company, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (c) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of the Company, then and in any such event the holders of Senior Indebtedness shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Senior Indebtedness, or provision shall be made for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Indebtedness, before the Holders of the Series 8-3/4% Notes are entitled to receive any payment on account of principal of (or premium, if any) or interest on the Series 8-3/4% Notes, and to that end the holders of Senior Indebtedness shall be entitled to receive, for application to the payment thereof, any payment or distribution of any kind or character, whether in cash,

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property or securities, which may be payable or deliverable in respect of the Series 8-3/4% Notes in any such case, proceeding, dissolution, liquidation or other winding-up or event.

In the event that, notwithstanding the foregoing provisions of this Section 5.02, the Trustee or the Holder of any Series 8-3/4% Note shall have received any payment or distribution of assets of the Company prohibited by the foregoing paragraph of any kind or character, whether in cash, property or securities, before all Senior Indebtedness is paid in full or payment thereof provided for, and if, at or prior to the time of such payment or distribution, written notice that such payment or distribution is prohibited by the foregoing paragraph shall have been actually given to a Responsible Officer of the Trustee or, as the case may be, such Holder, then and in such event such payment or distribution shall be paid over or delivered forthwith to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment or distribution of assets of the Company for application to the payment of all Senior Indebtedness remaining unpaid, to the extent necessary to pay all Senior Indebtedness in full, after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness.

For purposes of this Article V only, the words "cash, property or securities" shall not be deemed to include shares of capital stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment which in either case are subordinated in right of payment to all Senior Indebtedness which may at the time be outstanding to substantially the same extent as, or to a greater extent than, the Series 8-3/4% Notes are so subordinated as provided in this Article V. The consolidation of the Company with, or the merger of the Company into, another Person or the liquidation or dissolution of the Company following the conveyance or transfer of its properties and assets substantially as an entirety to another Person upon the terms and conditions set forth in Article VIII of the Indenture shall not be deemed a dissolution, winding-up, liquidation, reorganization, assignment for the benefit of creditors or marshalling of assets and liabilities of the Company for the purposes of this
Section 5.02 if the Person formed by such consolidation or into which the Company is merged or which acquires by conveyance or transfer such properties and assets substantially as an entirety, as the

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case may be, shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions set forth in Article VIII of the Indenture.

SECTION 5.03. No Payment When Senior Indebtedness in Default.
(a) In the event and during the continuation of any default in the payment of principal of (or premium, if any) or interest on any Senior Indebtedness beyond any applicable grace period with respect thereto (unless and until such payment default shall have been cured or waived in writing by the holders of such Senior Indebtedness), or (b) any default (other than a payment default) with respect to Senior Indebtedness occurs and is continuing that permits the acceleration of the maturity thereof and judicial proceedings shall be pending with respect to any such default or the Company receives written notice of such default (a "Senior Indebtedness Default Notice"), then no payment shall be made by the Company on account of principal of (or premium, if any) or interest on the Series 8-3/4% Notes or on account of the purchase or other acquisition of Series 8-3/4% Notes (including pursuant to Article II of the Indenture and Articles II, III and IV herein). Notwithstanding the foregoing, payments with respect to the Series 8-3/4% Notes may resume and the Company may acquire Series 8-3/4% Notes for cash when (x) the default with respect to the Senior Indebtedness is cured or waived or ceases to exist or (y) in the case of a default described in (b) above, 179 or more days pass after the Senior Indebtedness Default Notice is received by the Company; provided, that the terms of the Indenture and this First Supplemental Indenture otherwise permit the payment or acquisition of the Series 8-3/4% Notes at that time. If the Company receives a Senior Indebtedness Default Notice, then a similar notice received within nine months thereafter relating to the same default on the same issue of Senior Indebtedness shall not be effective to prevent the payment or acquisition of the Series 8-3/4% Notes as described in the first sentence of this Section 5.03(a). In addition, no payment may be made on the Series 8-3/4% Notes if any Series 8-3/4% Notes are declared due and payable prior to their Stated Maturity by reason of the occurrence of an Event of Default until the earlier of (1) 120 days after the date of such acceleration or (2) the payment in full of all Senior Indebtedness, but only if such payment is then otherwise permitted under the terms of the Indenture and this First Supplemental Indenture.

In the event that, notwithstanding the foregoing, the Company shall make any payment to the Trustee or the Holder of any Series 8-3/4% Note prohibited by the foregoing

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provisions of this Section 5.03, and if, at or prior to the time of such payment, written notice that such payment is prohibited by the foregoing paragraph shall have been actually given to a Responsible Officer of the Trustee or, as the case may be, such Holder, then and in such event such payment shall be paid over and delivered forthwith to the Company.

The provisions of this Section 5.03 shall not apply to any payment with respect to which Section 5.02 would be applicable.

SECTION 5.04. Payment Permitted If No Default. Nothing contained in this Article V or elsewhere herein or in the Indenture or in any of the Series 8-3/4% Notes shall prevent (a) the Company, at any time except during the pendency of any case, proceeding, dissolution, liquidation or other winding-up, assignment for the benefit of creditors or other marshaling of assets and liabilities of the Company referred to in Section 5.02 or except under the conditions described in Section 5.03, from making payments at any time of principal of (and premium, if any) or interest on the Series 8-3/4% Notes, or
(b) the application by the Trustee of any money deposited with it hereunder to the payment of or on account of the principal of (and premium, if any) or interest on the Series 8-3/4% Notes or the retention of such payment by the Holders, if, two Business Days prior to such application by the Trustee, the Trustee had not received written notice that such payment would be prohibited by the provisions of this Article V.

SECTION 5.05. Subrogation to Rights of Holders of Senior Indebtedness. Subject to the payment in full of all Senior Indebtedness, and until the Series 8-3/4% Notes are paid in full, the Holders of the Series 8-3/4% Notes shall be subrogated (equally and ratably with the holders of all indebtedness of the Company which by its express terms is subordinated to indebtedness of the Company to substantially the same extent as the Series 8-3/4% Notes are subordinated and is entitled to like rights of subrogation) to the rights of the holders of such Senior Indebtedness to receive payments and distributions of cash, property and securities applicable to the Senior Indebtedness to the extent that payments and distributions otherwise payable to Holders of Series 8-3/4% Notes have been applied to the payment of Senior Indebtedness as provided by this Article V. For purposes of such subrogation, no payments or distributions to the holders of the Senior Indebtedness of any cash, property or securities to which the Holders of the Series 8-3/4% Notes or the Trustee would be entitled, except for the

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provisions of this Article V, and no payments over pursuant to the provisions of this Article V to the holders of Senior Indebtedness by Holders of the Series 8-3/4% Notes or the Trustee, shall, as among the Company, its creditors other than holders of Senior Indebtedness and the Holders of the Series 8-3/4% Notes, be deemed to be a payment or distribution by the Company to or on account of the Senior Indebtedness.

SECTION 5.06. Provisions Solely To Define Relative Rights. The provisions of this Article V are and are intended solely for the purpose of defining the relative rights of the Holders of the Series 8-3/4% Notes on the one hand and the holders of Senior Indebtedness on the other hand. Nothing contained in this Article V or elsewhere herein or in the Indenture or in the Series 8-3/4% Notes is intended to or shall

(a) impair, as among the Company, its creditors other than holders of Senior Indebtedness and the Holders of the Series 8-3/4% Notes, the obligation of the Company, which is absolute and unconditional (and which, subject to the rights under this Article V of the holders of Senior Indebtedness, is intended to rank equally with all other general obligations of the Company), to pay to the Holders of the Series 8-3/4% Notes the principal of (and premium, if any) and interest on the Series 8-3/4% Notes as and when the same shall become due and payable in accordance with their terms; or

(b) affect the relative rights against the Company of the Holders of the Series 8-3/4% Notes and creditors of the Company other than the holders of Senior Indebtedness; or

(c) prevent the Trustee or the Holder of any Series 8-3/4% Notes from exercising all remedies otherwise permitted by applicable law upon default under the Indenture and this First Supplemental Indenture, subject to the rights, if any, under this Article V of the holders of Senior Indebtedness to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

SECTION 5.07. Trustee to Effectuate Subordination. Each Holder of a Series 8-3/4% Note by his acceptance thereof authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this

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Article V and appoints the Trustee his attorney-in-fact for any and all such purposes.

SECTION 5.08. No Waiver of Subordination Provisions. No right of any present or future holder of any Senior Indebtedness to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of the Indenture and this First Supplemental Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Series 8-3/4% Notes, without incurring responsibility to the Holders of the Series 8-3/4% Notes and without impairing or releasing the subordination provided in this Article V or the obligations hereunder of the Holders of the Series 8-3/4% Notes to the holders of Senior Indebtedness, do any one or more of the following:

(i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Indebtedness, or otherwise amend or supplement in any manner Senior Indebtedness or any instrument evidencing the same or any agreement under which Senior Indebtedness is outstanding;

(ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Indebtedness;

(iii) release any Person liable in any manner for the collection of Senior Indebtedness;

(iv) exercise or refrain from exercising any rights against the Company and any other Person;

(v) apply any and all sums received from time to time to the Senior Indebtedness.

SECTION 5.09. Notice to Trustee. The Company shall give prompt written notice to the Trustee if, to the Company's knowledge, any payment to or by the Trustee in respect of the Series 8-3/4% Notes is prohibited by this

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Article V. Notwithstanding the provisions of this Article V or any other provision of the Indenture or this First Supplemental Indenture, the Trustee shall not be charged with knowledge that any payment to or by the Trustee in respect of the Series 8-3/4% Notes is prohibited by this Article V, unless and until the Trustee shall have received written notice thereof from the Company or a holder of Senior Indebtedness or from any trustee therefor; and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 6.1 of the Indenture, shall be entitled in all respects to assume that no facts exist that would prohibit any payment in respect of the Series 8-3/4% Notes; provided, however, that if the Trustee shall not have received the notice provided for in this Section 5.09 at least two Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including the payment of the principal of (and premium, if any) or interest on any Series 8-3/4% Note), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purpose for which such money was received and shall not be affected by any notice to the contrary which may be received by it within two Business Days prior to such date.

Subject to the provisions of Section 6.1 of the Indenture, the Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Indebtedness (or a trustee therefor) to establish that such notice has been given by a holder of Senior Indebtedness (or a trustee therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article V, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article V, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 5.10. Reliance on Judicial Order or Certificate of Liquidating Agent. Upon any payment or distribution of assets of the Company referred to in this Article V, the Trustee, subject to the provisions of Section 6.1 of the Indenture, and the Holders of the Series

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8-3/4% Notes shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Series 8-3/4% Notes, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article V.

SECTION 5.11. Trustee Not Fiduciary for Holders of Senior Indebtedness. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Series 8-3/4% Notes or to the Company or to any other Person cash, property or securities to which any holders of Senior Indebtedness shall be entitled by virtue of this Article V or otherwise.

SECTION 5.12. Rights of Trustee as Holder of Senior Indebtedness; Preservation of Trustee's Rights. The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article V with respect to any Senior Indebtedness which may at any time be held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in the Indenture or this First Supplemental Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article V shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.7 of the Indenture.

SECTION 5.13. Article Applicable to Paying Agents. In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article V shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article V in addition to or in place of the Trustee; provided, however, that
Section 5.12 shall not apply to the

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Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

SECTION 5.14. Certain Conversions Deemed Payment. For the purposes of this Article V only, (1) the issuance and delivery of junior securities upon conversion of Series 8-3/4% Notes in accordance with Article IV shall not be deemed to constitute a payment or distribution on account of the principal of or premium or interest on Series 8-3/4% Notes or on account of the purchase or other acquisition of Series 8-3/4% Notes, and (2) the payment, issuance or delivery of cash, property or securities (other than junior securities) upon conversion of a Series 8-3/4% Note shall be deemed to constitute payment on account of the principal of such Series 8-3/4% Note. For the purposes of this Section 5.14, the term "junior securities" means (a) shares of any stock of any class of the Company and (b) securities of the Company which are subordinated in right of payment to the prior payment in full of all Senior Indebtedness which may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Series 8-3/4% Notes are so subordinated as provided in this Article V. Nothing contained in this Article V or elsewhere in the Indenture or this First Supplemental Indenture or in the Series 8-3/4% Notes is intended to or shall impair, as among the Company, its creditors other than holders of Senior Indebtedness and the Holders of the Series 8-3/4% Notes, the right, which is absolute and unconditional, of the Holder of any Series 8-3/4% Note to convert such Series 8-3/4% Note in accordance with Article IV.

ARTICLE VI

Defaults and Remedies

SECTION 6.01. Events of Default. "Event of Default", wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be occasioned by the provisions of Article V or be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of any interest upon any Series 8-3/4% Note when it becomes due and payable, and continuance of such default for a period of 31 days

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(whether or not such payment is prohibited by the provisions of Article V hereof); or

(2) default in (i) the payment of the principal of any Series 8-3/4% Note when it becomes due and payable, or (ii) the payment of the redemption price as set forth in Section 7.02 herein (the "Redemption Price") with respect to any Series 8-3/4% Note when it becomes due and payable (whether or not such payment is prohibited by the provisions of Article V hereof); or

(3) failure by the Company to provide the notice of a Change in Control in accordance with Section 3.02 hereof or default in the payment of the Repurchase Price in respect of any Series 8-3/4% Note on the Repurchase Date therefor (whether or not such payment is prohibited by the provisions of Article V hereof); or

(4) failure by the Company to deliver shares of Common Stock (together with cash in lieu of fractional shares) when such Common Stock (or cash in lieu of fractional shares) is required to be delivered following conversion of a Series 8-3/4% Note and continuation of such default for a period of 10 days; or

(5) default in the performance, or breach, of any covenant or warranty of the Company contained in the Series 8-3/4% Notes, the Indenture or in this First Supplemental Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Series 8-3/4% Notes then Outstanding, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(6) a default under any bonds, debentures, notes or other evidences of indebtedness for money borrowed of the Company or under any mortgages, indentures or instruments under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the Company, whether such indebtedness now exists or shall hereafter be created,

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which indebtedness, individually or in the aggregate, has a principal amount outstanding in excess of $10,000,000, which default shall have resulted in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable, without such indebtedness having been discharged, or such acceleration having been rescinded or annulled, within a period of 20 days after there shall have been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Series 8-3/4% Notes then Outstanding, a written notice specifying such default and requiring the Company to cause such indebtedness to be discharged or cause such acceleration to be rescinded or annulled and stating that such notice is a "Notice of Default" hereunder (unless such default has been cured or waived); or

(7) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company or a Subsidiary in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company or a Subsidiary bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or a Subsidiary under any applicable Federal or State law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or a Subsidiary or of any substantial part of their respective properties, or ordering the winding up or liquidation of the affairs of the Company or a Subsidiary, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; or

(8) the commencement by the Company or a Subsidiary of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by either the Company or a Subsidiary to the entry of a decree or order for relief in respect of the Company or a Subsidiary in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization

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or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against either the Company or a Subsidiary, or the filing by either the Company or a Subsidiary of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by either the Company or a Subsidiary to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or a Subsidiary or of any substantial part of their respective properties, or the making by either the Company or a Subsidiary of an assignment for the benefit of creditors, or the admission by either the Company or a Subsidiary in writing of an inability to pay the debts of either the Company or a Subsidiary generally as they become due, or the taking of corporate action by the Company or a Subsidiary in furtherance of any such action.

SECTION 6.02. Acceleration of Maturity; Rescission and Annulment. If an Event of Default (other than an Event of Default specified in Section 6.01(7) or (8)) occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Series 8-3/4% Notes then Outstanding may declare the principal of all the Series 8-3/4% Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal and any accrued interest thereon shall become immediately due and payable. If an Event of Default specified in Section 6.01(7) or (8) occurs, the principal of, and accrued interest on, all the Series 8-3/4% Notes shall automatically, and without any declaration or other action on the part of the Trustee or any Holder, become immediately due and payable. Upon any such acceleration, no payment may be made to Holders of Series 8-3/4% Notes until the earlier of (1) 120 days or more after the date of such acceleration and (2) the payment in full of all Senior Indebtedness, but only if such payment is then otherwise permitted under the terms of the Indenture and this First Supplemental Indenture.

At any time after such a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article VI provided, the Holders of a majority in principal amount of the Series 8-3/4% Notes then Outstanding, by written notice to the

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Company and the Trustee, may rescind and annul such declaration and its consequences if

(1) the Company has paid or deposited with the Trustee a sum sufficient to pay

(A) all overdue interest on all Series 8-3/4% Notes,

(B) the principal of (and premium, if any, on) any Series 8-3/4% Notes which have become due otherwise than by such declaration of acceleration and interest thereon at the rate borne by the Series 8-3/4% Notes,

(C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate borne by the Series 8-3/4% Notes, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel;

and

(2) all Events of Default, other than the nonpayment of the principal of Series 8-3/4% Notes which have become due solely by such declaration of acceleration, have been cured or waived as provided in
Section 6.13.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

SECTION 6.03. Company Notice to Trustee. The Company shall file with the Trustee written notice of the occurrence of any default or Event of Default within five Business Days of the Company's becoming aware of such default or Event of Default.

ARTICLE VII

Form of Series 8-3/4% Notes

SECTION 7.01. Form of Face of Series 8-3/4% Note. The Series 8-3/4% Notes and the Trustee's Certificate of Authentication to be endorsed thereon are to be substantially in the following forms:

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[Legend for Global Security only]

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC, AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

CD Radio Inc.
8-3/4% Convertible Subordinated Note due 2009

Registered $[ ],000,000

No. R-[ ] CUSIP 125127AJ9

CD RADIO INC., a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Company", which term includes any successor under the Indenture hereinafter referred to), for value received, hereby promises to pay to

or registered assigns, the principal sum of $[ ],000,000 at the office or agency of the Company in the Borough of Manhattan, The City of New York, on September 29, 2009 in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and to pay interest on said principal sum semiannually on March 29 and September 29 of each year, commencing March 29, 2000 (each an "Interest Payment Date"), at said office or agency, in like coin or

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currency, at the rate of 8-3/4% per annum, until the principal hereof is paid or made available for payment. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the March 14 or September 14 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Series 8-3/4% Notes not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Series 8-3/4% Notes may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture.

Payment of the principal of, premium, if any, and interest on this Security will be made at the Corporate Trust Office, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts either by (i) mailing a check for such interest, payable to or upon the written order of the Person entitled thereto pursuant to Section 3.8 of the Base Indenture (as defined herein) or
(ii) transfer to an account maintained by the payee located inside the United States.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

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IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

CD RADIO INC.

By:

Name:

Title:

By:

Name:

Title:

SECTION 7.02. Form of Reverse of Series 8-3/4% Note. This Security is one of a duly authorized issue of Securities of the Company designated as its 8-3/4% Convertible Subordinated Notes due 2009 (herein called the "Securities"), limited in aggregate principal amount to $143,750,000, issued and to be issued under an Indenture, dated as of September 29, 1999 (the "Base Indenture"), as supplemented by the First Supplemental Indenture thereto, dated as of September 29, 1999 (together with the Base Indenture, herein referred to as the "Indenture"), between the Company and U.S. Trust Company of Texas, N.A., as Trustee for the Holders of Securities issued under said Indenture (herein called the "Trustee", which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the holders of Senior Indebtedness and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered.

Subject to and upon compliance with the provisions of the Indenture, the Holder of this Security is entitled, at his option, at any time on or before the close of business on the Business Day immediately preceding September 29, 2009, or in case this Security or a portion hereof is called for redemption, then in respect of this Security or such portion hereof until and including, but (unless the Company defaults in making the payment due upon

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redemption or repurchase) not after, the close of business on the Business Day immediately preceding the Redemption Date or Repurchase Date, as the case may be, to convert this Security (or any portion of the principal amount hereof which is U.S.$1,000 or an integral multiple thereof), at the principal amount hereof, or of such portion, into fully paid and nonassessable shares of Common Stock of the Company at a conversion price equal to $28.4625 aggregate principal amount of Securities for each share of Common Stock (or at the current adjusted conversion price if an adjustment has been made as provided in Article IV of the First Supplemental Indenture) by surrender of this Security, duly endorsed or assigned to the Company or in blank, to the Company at its office or agency in the Borough of Manhattan, The City of New York, accompanied by the conversion notice hereon executed by the Holder hereof evidencing such Holder's election to convert this Security, or if less than the entire principal amount hereof is to be converted, the portion hereof to be converted, and, in case such surrender shall be made during the period from the close of business on any Regular Record Date to the opening of business on the corresponding Interest Payment Date (unless this Security or the portion hereof being converted has been called for redemption on a Redemption Date within such period between and including such Regular Record Date and such Interest Payment Date), also accompanied by payment in funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of this Security then being converted. Subject to the aforesaid requirement for payment of interest and, in the case of a conversion after the close of business on any Regular Record Date and on or before the corresponding Interest Payment Date, to the right of the Holder of this Security (or any Predecessor Security) of record at such Regular Record Date to receive an installment of interest (even if the Security has been called for redemption on a Redemption Date within such period), no payment or adjustment is to be made on conversion for interest accrued hereon or for dividends on the Common Stock issued on conversion. No fractions of shares or scrip representing fractions of shares will be issued on conversion, but instead of any fractional interest the Company shall pay a cash adjustment or round up to the next higher whole share as provided in Article IV of the First Supplemental Indenture. The conversion price is subject to adjustment as provided in Article IV of the First Supplemental Indenture. In addition, the Indenture provides that in case of certain reclassifications, consolidations, mergers, sales or transfers of assets or other transactions pursuant to which the Common Stock is converted into the right to receive

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other securities, cash or other property, the Indenture shall be amended, without the consent of any Holders of Securities, so that this Security, if then outstanding, will be convertible thereafter, during the period this Security shall be convertible as specified above, only into the kind and amount of securities, cash and other property receivable upon the transaction by a holder of the number of shares of Common Stock into which this Security might have been converted immediately prior to such transaction (assuming such holder of Common Stock failed to exercise any rights of election and received per share the kind and amount received per share by a plurality of non-electing shares).

The Company will furnish to any Holder, upon request and without charge, copies of the Certificate of Incorporation and By-laws of the Company then in effect. Any such request may be addressed to the Company.

The Securities may not be redeemed at the option of the Company prior to September 29, 2002. The Securities (other than those Securities that have been converted in accordance with the terms of the Indenture) are subject to redemption at the option of the Company upon not less than 30 days' or more than 60 days' notice by mail (unless a shorter notice is deemed satisfactory by the Trustee), as a whole or from time to time in part, at any time on or after September 29, 2002; provided, however, that the Company will not be entitled to redeem the Securities after September 29, 2002, unless the last reported sale price for the Company's common stock is at least 150% of the conversion price for at least 20 Trading Days within a period of 30 consecutive days ending within five Trading Days of the call for redemption. The Redemption Prices (expressed as percentages of the principal amount) shall be as set forth below for Securities redeemed during the following 12-month periods:

Period	Redemption Price
September 29, 2002 through September 28, 2003	106.125%
September 29, 2003 through September 28, 2004	105.250%
September 29, 2004 through September 28, 2005	104.375%
September 29, 2005 through September 28, 2006	103.500%
September 29, 2006 through September 28, 2007	102.625%
September 29, 2007 through September 28, 2008	101.750%

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and thereafter at a Redemption Price equal to 100.875% of the principal amount, together, in the case of any such redemption, with accrued interest to (but not including) the Redemption Date (subject to the right of holders of record on the Regular Record Date to receive interest on the related Interest Payment Date). Any redemption of Securities must be in integral multiples of $1,000.

If fewer than all of the Securities are to be redeemed, the Trustee will select the Securities to be redeemed in principal amounts at maturity of $1,000 or integral multiples thereof by lot, pro rata or by another method the Trustee considers fair and appropriate. If a portion of a Holder's Securities is selected for partial redemption and that holder converts a portion of those Securities prior to the redemption, the converted portion shall be deemed, solely for purposes of determining the aggregate principal amount of the Securities to be redeemed by the Company, to be of the portion selected for redemption.

In certain circumstances involving a Change in Control, each Holder shall have the right to require the Company to repurchase all or part of its Securities at a repurchase price equal to 100% of the principal amount thereof, together with accrued and unpaid interest through the Repurchase Date (subject to the right of holders of record on the Regular Record Date to receive interest on the related Interest Payment Date).

The Securities do not have the benefit of any sinking fund.

In the event of redemption, conversion or repurchase of this Security in part only, a new Security or Securities for the unredeemed, unconverted or unrepurchased portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness, and this Security is issued subject to the provisions of the First Supplemental Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and

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(c) appoints the Trustee his attorney-in-fact for any and all such purposes.

If an Event of Default shall occur and be continuing, the principal of all the Securities may be declared due and payable in the manner and with the effect provided in Article V of the Base Indenture and in Article VI of the First Supplemental Indenture.

Subject to certain conditions set forth in the Base Indenture, the Company at any time may terminate some or all of its obligations under the Securities and the Indenture if the Company deposits with the Trustee money or Government Obligations for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in aggregate principal amount of the Securities at the time Outstanding. The Indenture also contains provisions permitting the Holders of a majority in aggregate principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, premium, if any, and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed or to convert this Security as provided in the Indenture.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the Corporate Trust Office duly endorsed by, or accompanied

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by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form without coupons in denominations of $1,000 and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, upon request of, and delivery of not less than three Business Days notice to, the Company and the Trustee, a beneficial owner of interests in a permanent global security may exchange such interests for a definitive Note of like tenor and aggregate principal amount in certificated form.

The depositary with respect to the Notes shall be the Depository Trust Company.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not payment of or on this Security is overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

Interest on this Security shall be computed on the basis of a 360-day year of twelve 30-day months. In the event that any date on which interest is payable on the Series 8-3/4% Notes is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay).

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

THE INDENTURE AND THIS SECURITY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

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SECTION 7.03. Form of Trustee's Certificate of Authentication.

This is one of the Securities referred to in the within-mentioned Indenture.

Dated: U.S. Trust Company of Texas, N.A., as Trustee

By

_____

Authorized Signatory

SECTION 7.04. Form of Conversion Notice.

CONVERSION NOTICE

To: CD Radio Inc.

The undersigned Holder of this Security hereby irrevocably

exercises the option to convert this Security, or the portion hereof (which is $1,000 or an integral multiple thereof) below designated, at any time following the date of original issuance thereof, into shares of Common Stock in accordance with the terms of the Indenture referred to in this Security, and directs that the shares issuable and deliverable upon conversion, together with any check in payment for a fractional share and any Security representing any unconverted principal amount hereof, be issued and delivered to the registered owner hereof unless a different name has been provided below. If shares or any portion of this Security not converted are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith a certificate in proper form certifying that the applicable restrictions on transfer have been complied with. Any amount required to be paid by the undersigned on account of interest accompanies this Security.

The undersigned hereby agrees that, promptly after request of the Company, he or it will furnish such proof in support of this certification as the Company or the Security

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Registrar for the Common Stock may, from time to time, request.

Dated:

Signature*

Signature Guaranty

If shares or Securities are to be registered in the name of a Person other than the Holder, please print such Person's name and address:*

Principal amount to be converted (if less than all): $_____,000

Name

Social Security or Taxpayer Identification Number

Street Address

City, State and Zip Code

* Signature(s) must be guaranteed by an eligible guarantor institution (banks, stock brokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program) pursuant to Securities and Exchange Commission Rule 17Ad-15 if shares of Common Stock are to be delivered, or unconverted Securities are to be issued, other than to and in the name of the registered owner.

ARTICLE VIII

Original Issue of Series 8-3/4% Notes

SECTION 8.01. Original Issue. Series 8-3/4% Notes in the aggregate principal amount equal to $125,000,000 may, upon execution of this First Supplemental Indenture, be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and make available for delivery said Series 8-3/4%

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Notes to or upon a Company Order. Upon delivery to the Trustee of a Company Order certifying that the option for an additional amount described in the Terms Agreement relating to the Series 8-3/4% Notes dated September 23, 1999 between the Company and the Underwriters listed therein has been validly exercised, up to an additional $18,750,000 of Series 8-3/4% Notes may be authenticated by the Trustee.

ARTICLE IX

Defeasance and Covenant Defeasance

SECTION 9.01. Applicability. The Company hereby elects, pursuant to Section 14.1 of the Indenture, to make Sections 14.2 and 14.3 thereof applicable to the Series 8-3/4% Notes.

SECTION 9.02. References. (a) With respect to the Series 8-3/4% Notes, references to Section 5.1 or 5.2 of the Indenture shall be deemed to be references to Section 6.01 or 6.02 hereof.

(b) With respect to the Series 8-3/4% Notes, references in
Section 14.4(a) of the Indenture to "Stated Maturity" shall be deemed to mean "Stated Maturity, or any Redemption Date or Repurchase Date, or upon conversion or otherwise". References in Section 14.4(a) of the Indenture to "Trustee" shall be deemed to mean "Trustee, the Paying Agent or the Conversion Agent".

ARTICLE X

Supplemental Indentures

SECTION 10.01. Amendment to Section 9.1 of Indenture. Each of clauses (4) and (5) of Section 9.1 of the Indenture is hereby deleted in its entirety with respect to the Series 8-3/4% Notes and the remaining clauses in such Section are deemed re-numbered accordingly to give effect to such deletion.

SECTION 10.02. Amendment of Section 9.2 of Indenture. Clause
(1) of Section 9.2 of the Indenture is hereby deleted in its entirety with respect to the

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Series 8-3/4% Notes and replaced in its entirety with the following:

"(1) reduce the principal amount, Repurchase Price or Redemption Price with respect to any Note, or extend the Stated Maturity of any Note or alter the manner of payment or rate of interest on any Note or make any Note payable in money or securities other than that stated in the Note, or reopen the Series 8-3/4% Notes for issuances of additional Securities of such series, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption or repayment at the option of the Holder, on or after the Redemption Date or the Repurchase Date, as the case may be);".

ARTICLE XI

Miscellaneous Provisions

SECTION 11.01. Defined terms. Except as otherwise expressly provided in this First Supplemental Indenture or in the form of Series 8-3/4% Note or otherwise clearly required by the context hereof or thereof, all terms used herein or in said form of Series 8-3/4% Note that are defined in the Indenture shall have the several meanings respectively assigned to them thereby.

SECTION 11.02. Indenture. The Indenture, as supplemented by this First Supplemental Indenture, is in all respects ratified and confirmed. This First Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

SECTION 11.03. Trustee. The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this First Supplemental Indenture.

SECTION 11.04. Execution in Counterparts. This First Supplemental Indenture may be executed in any number of counterparts each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed as of the day and year first above written.

CD RADIO INC.,

by /s/ Patrick L. Donnelly

Name: Patrick L. Donnelly
Title: Senior Vice President, General Counsel and Secretary

U.S. TRUST COMPANY OF TEXAS, N.A.,
as Trustee,

by /s/ Patricia Gallagher

Name: Patricia Gallagher
Title: Authorized Officer

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