SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): February 13, 2009

SIRIUS XM RADIO INC.
(Exact Name of Registrant as Specified in Charter)

Delaware	**0-24710**	**52-1700207**
(State or other Jurisdiction of Incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

1221 Avenue of the Americas, 36th Fl., New York, NY	**10020**
(Address of Principal Executive Offices)	(Zip Code)

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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Item 1.01 Entry into Material Definitive Agreements.

Note Purchase Agreement

On February 13, 2009, Sirius XM Radio Inc. (the "Company," "we" and "us") and its wholly-owned subsidiaries, XM Satellite Radio Holdings Inc. ("XM Holdings"), XM 1500 Eckington LLC and XM Investment LLC entered into a note purchase agreement (the "Note Purchase Agreement") with the purchasers named therein (collectively, the "Purchasers"), whereby the Purchasers exchanged $172,485,000 aggregate principal amount of outstanding 10% Convertible Senior Notes (the "Old Notes") of XM Holdings for a like principal amount XM Holdings' Senior PIK Secured Notes due 2011 (the "New Notes") in a private placement transaction pursuant to an exemption from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act").

The New Notes are fully and unconditionally guaranteed by XM 1500 Eckington LLC and XM Investment LLC (together, the "Subsidiary Guarantors"). The New Notes are secured by a first-priority lien on substantially all of the personal and real estate property of the Subsidiary Guarantors. XM Holdings may, at its option, redeem some or all of the New Notes at any time at 100% of the principal amount prepaid, together with accrued and unpaid interest, if any.

We have agreed to pay to the Purchasers a fee (the "Fee") equal to, at each Purchaser's election, either (i) 833 shares of our common stock (the "Structuring Fee Shares") for every $1,000 principal amount of Old Notes exchanged or (ii) an amount in cash equal to $50 for every $1,000 principal amount of Old Notes exchanged (the "Cash Election"). The total number of Structuring Fee Shares delivered was 59,718,519, and the aggregate cash delivered was approximately $5.1 million. The Structuring Fee Shares were issued pursuant to an exemption from the registration requirements of the Securities Act.

Pursuant to the Note Purchase Agreement, we have filed a prospectus supplement to our existing shelf registration statement naming each of the Purchasers as selling stockholders for the Structuring Fee Shares issued and to be issued to the Purchasers. We also agreed to keep such prospectus supplement continuously usable until the earlier of (i) the six-month anniversary of the issuance of the New Notes, (ii) when all such Structuring Fee Shares are eligible to be sold immediately without volume, manner of sale, filing or other restrictions by our non-affiliates pursuant to Rule 144 of the Securities Act or (iii) when all the Structuring Fee Shares covered by the prospectus supplement have been sold pursuant to a registration statement.

Indenture; Security Agreement

The terms of the New Notes are governed by an indenture, dated as of February 13, 2009, among us, XM Holdings, as issuer, the Subsidiary Guarantors and U.S. Bank National Association, as trustee. The New Notes are fully and unconditionally guaranteed by the Subsidiary Guarantors.

The aggregate principal amount outstanding of the New Notes will be paid on the final maturity date of June 1, 2011. We will pay interest on the principal amount of the New Note at a rate of 10.0% per annum paid in cash from December 1, 2008 to December 1, 2009; at a rate of 10.0% per annum paid in cash and 2.0% per annum paid in kind from December 1, 2009 to December 1, 2010; and at a rate of 10.0% per annum paid in cash and 4.0% per annum paid in kind from December 1, 2010 to the final maturity date. Interest shall be paid semiannually in arrears on June 1 and December 1 of each year.

The New Notes rank equally in right of payment with XM Holdings' existing and future senior indebtedness, and are secured pursuant to a security agreement between the Subsidiary Guarantors and U.S. Bank National Association, as collateral agent (the "Security Agreement"). Pursuant to the Security Agreement, the collateral underlying the security interest in the New Notes consists of a perfected first-priority lien on substantially all of the real and personal property of the Subsidiary Guarantors, which includes certain real estate holdings in Washington D.C., including the XM Holdings corporate headquarters. We have engaged advisors in connection with a financing transaction relating to the XM Holdings corporate headquarters. Pursuant to the indenture, XM Holdings is required to apply the net proceeds of a sale lease-back or other financing transaction of the headquarters to redeem the Notes. Provided that such financing transaction raises proceeds of at least $50 million and XM Holdings uses such proceeds to redeem the Notes, the lien on all such real and personal would be released.

The New Notes may be redeemed at the option of XM Holdings at any time, in whole or in part, at a price equal to 100% of the principal amount thereof plus accrued and unpaid interest. In addition, upon the occurrence of a fundamental change (as defined in the indenture), each holder shall have the right, subject to the terms and conditions of the indenture, to put its New Notes to XM Holdings at a price equal to 100% of the principal amount thereof plus accrued and unpaid interest. The indenture also contains customary covenants, including a covenant limiting mergers and consolidations of XM Holdings and the Subsidiary Guarantors.

The New Notes are also subject to customary events of default, including a cross-payment default and cross-acceleration provision.

Registration Rights Agreement

Pursuant to the Note Purchase Agreement, we also entered into a registration rights agreement, dated as of February 13, 2009 (the "Registration Rights Agreement"), between us, XM Holdings, the Subsidiary Guarantors and the Purchasers, pursuant to which we agreed to use reasonable best efforts to file a shelf registration statement no later than March 17, 2009 to permit resales of the New Notes, to use reasonable best efforts to cause that registration statement to be declared effective as soon as practicable thereafter and to use reasonable best efforts to keep the registration statement effective during the period specified in the Registration Rights Agreement.

In lieu of filing or causing a shelf registration statement to become effective, we may elect to use reasonable best efforts to file an exchange offer registration statement for an offer to exchange the New Notes for exchange notes, to commence an exchange offer promptly after the exchange offer registration statement is declared effective and to complete the exchange offer within 60 days after it is declared effective.

If the shelf registration statement is not declared effective within 180 days after March 17, 2009 or is declared effective but thereafter ceases to be effective or usable, or if the exchange offer is not consummated on or prior to such date, additional interest will accrue on the New Notes at a rate of 0.25% per annum.

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

The response to Item 1.01 is hereby incorporated into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

The response to Item 1.01 is hereby incorporated into this Item 3.02. The Structuring Fee Shares issued to the Purchasers in respect of the Fee referred to in response to Item 1.01 were issued initially in reliance upon the exemption from registration set forth in Section 4(2) of the Securities Act, based on the Purchasers' representations that, among other things, they are "accredited investors" within the meaning of Rule 501 under the Securities Act. We agreed to file a prospectus supplement under an existing shelf registration statement to permit resales by the Purchasers of the Structuring Fee Shares received by them.

The Company also issued an aggregate of 23,400,000 shares of our common stock, par value $0.001 per share, in late January and early February 2009, in exchange for $3,000,000 principal amount of our 2 1/2% Convertible Notes due 2009 (the "2 1/2% Notes") beneficially owned by institutional holders. After giving effect to these exchanges, $171,588,000 aggregate principal amount of the 2 1/2% Notes remained outstanding. The Company did not receive any cash proceeds as a result of the exchange of its common stock for the 2 1/2% Notes, which notes have been or will be retired and cancelled. The Company executed these transactions to reduce its debt and interest cost, increase its equity, and improve its balance sheet. The Company may engage in additional exchanges in respect of its outstanding indebtedness if and as favorable opportunities arise. Any such issuance of the shares of its common stock will be made pursuant to the exemption from the registration requirements of the Securities Act of 1933, as amended, contained in Section 3(a)(9) of such Act.

Item 8.01. Other Events.

On February 13, 2009, we issued a press release announcing that we had entered into the transactions described in Item 1.01 above. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits

(a) Not Applicable.

(b) Not Applicable.

(c) Not Applicable.

(d) Exhibits.

Exhibit	Description of Exhibit
4.1	Note Purchase Agreement, dated February 13, 2009, among Sirius XM Radio Inc., XM Satellite Radio Holdings Inc., XM 1500 Eckington LLC, XM Investment LLC and the purchasers named therein.
4.2	Indenture, dated February 13, 2009, among Sirius XM Radio Inc., XM Satellite Radio Holdings Inc., XM 1500 Eckington LLC, XM Investment LLC and U.S. Bank National Association, as Trustee.
4.3	Security Agreement, dated February 13, 2009, among XM 1500 Eckington LLC, XM Investment LLC and U.S. Bank National Association, as Collateral Trustee.
4.4	Deed of Trust and Security Agreement, dated February 13, 2009, between XM 1500 Eckington LLC, as grantor, and U.S. Bank National Association, as Collateral Trustee for the holders of the New Notes.
4.5	Deed of Trust and Security Agreement, dated February 13, 2009, between XM Investment LLC, as grantor, and U.S. Bank National Association, as Collateral Trustee for the holders of the New Notes.
4.6	Registration Rights Agreement, dated February 13, 2009, among Sirius XM Radio Inc,, XM Satellite Radio Holdings Inc., XM 1500 Eckington LLC, XM Investment LLC and the purchasers named therein.
99.1	Press release dated February 13, 2009.

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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 hereunto duly authorized.

SIRIUS XM RADIO INC.

By: /s/ Patrick L. Donnelly
Patrick L. Donnelly
Executive Vice President, General
Counsel and Secretary

Dated: February 17, 2009

EXHIBITS

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4.5	Deed of Trust and Security Agreement, dated February 13, 2009, between XM Investment LLC, as grantor, and U.S. Bank National Association, as Collateral Trustee for the holders of the New Notes.
4.6	Registration Rights Agreement, dated February 13, 2009, among Sirius XM Radio Inc,, XM Satellite Radio Holdings Inc., XM 1500 Eckington LLC, XM Investment LLC and the purchasers named therein.
99.1	Press release dated February 13, 2009.

EXHIBIT 4.1

EXECUTION VERSION

NOTE PURCHASE AGREEMENT
dated as of February 13, 2009

SIRIUS XM RADIO INC.
XM SATELLITE RADIO HOLDINGS INC.
XM 1500 ECKINGTON LLC
XM INVESTMENT LLC

and

THE PURCHASERS LISTED ON SCHEDULE 1 HERETO

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NOTE PURCHASE AGREEMENT (this "Agreement"), dated as of February 13, 2009, among Sirius XM Radio Inc., a Delaware corporation ("Parent"), XM Satellite Radio Holdings Inc., a Delaware corporation ("XM Satellite"), XM 1500 Eckington LLC, a Delaware limited liability company ("XM Eckington"), XM Investment LLC, a Delaware limited liability company ("XM Investment," and, together with XM Eckington, the "Guarantors"), and the Purchasers listed on Schedule 1 hereto (the "Purchasers").

PRELIMINARY STATEMENT

WHEREAS, in connection with XM Satellite's recapitalization, XM Satellite and Parent will (1) issue senior PIK secured notes due 2011, guaranteed by the Guarantors, in an aggregate principal amount of $172,485,000 (such notes, issued pursuant to the XM Satellite Notes Indenture, the "XM Satellite Notes"); and (2) pay a structuring fee (a "Structuring Fee") to the Purchasers at each Purchaser's election in the form of shares of Common Stock (as defined herein) or cash in exchange for the Purchasers' services in structuring the terms and conditions of the XM Satellite Notes. The Structuring Fee Shares will be issued as set forth in Section 2.3; and

WHEREAS, in connection with XM Satellite's recapitalization, on the Closing Date (as defined herein), the Purchasers will surrender their Existing Convertible Notes (as defined herein) to XM Satellite as set forth in Section 2.2 hereof in exchange for a like principal amount of XM Satellite Notes and the Structuring Fee Shares;

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. As used herein the following terms shall have the meaning specified herein (it being understood that defined terms shall include in the singular number the plural and in the plural the singular):

"Accredited Investor" means any Person that is an "accredited investor" within the meaning of Rule 501.

"Affiliate" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes hereof, "control", when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" shall have the meaning set forth in the preamble hereto.

"Board" means the Board of Directors of Parent or any committee thereof duly authorized to act on behalf of such Board.

"Board of Governors" means the Board of Governors of the Federal Reserve System of the United States of America.

“Business Day” means any day that is not a Saturday, a Sunday or a day on which banking institutions are not required to be open in the State of New York.

“Cash Fee” shall have the meaning set forth in Section 2.3(a).

“Closing” shall have the meaning set forth in Section 2.4.

“Closing Date” shall have the meaning set forth in Section 2.4.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to the Code are to the Code, as in effect at the date of this Agreement, and any subsequent provisions of the Code, amendatory thereof, supplemental thereto or substituted therefor.

“Common Stock” means common stock, par value $0.001 per share, of Parent.

“Delivery Date” shall have the meaning set forth in Section 2.3(b).

“DTC” means The Depository Trust Company.

“Environmental Laws” means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters.

“Environmental Liability” means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense or cost, contingent or otherwise (including any liability for natural resource damages, costs of environmental remediation or indemnities), directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with Parent is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived), (b) prior to the effectiveness of the applicable provisions of the Pension Act, the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA) or, on and after the effectiveness of the applicable provisions of the Pension Act, any failure by any Plan to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA)

applicable to such Plan, in each case whether or not waived, (c) the filing pursuant to, prior to the effectiveness of the applicable provisions of the Pension Act, Section 412(d) of the Code or Section 303(d) of ERISA or, on and after the effectiveness of the applicable provisions of the Pension Act, Section 412(c) of the Code or Section 302(c) of ERISA, of an application for a waiver of the minimum funding standard with respect to any Plan, (d) on and after the effectiveness of the applicable provisions of the Pension Act, a determination that any Plan is, or is expected to be, in "at-risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code), (e) the incurrence by Parent or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan, (f) the receipt by Parent or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan, (f) the incurrence by Parent or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan or (g) the receipt by Parent or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from Parent or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA or, on and after the effectiveness of the applicable provisions of the Pension Act, in endangered or critical status, within the meaning of Section 305 of ERISA.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exchanges" shall have the meaning set forth in Section 2.2.

"Existing Convertible Notes" shall have the meaning set forth in Section 2.2.

"Existing Convertible Notes Indenture" means the Indenture relating to the Existing Convertible Notes, dated as of November 23, 2004, between XM Satellite and The Bank of New York, as Trustee, as amended by the First Supplemental Indenture, dated as of July 24, 2008, between XM Satellite and The Bank of New York Mellon, as Trustee, and as further amended by the Second Supplemental Indenture, dated as of July 28, 2008, among XM Satellite, Parent and The Bank of New York Mellon, as Trustee.

"Financial Statements" shall have the meaning set forth in Section 3.17(b).

"GAAP" means generally accepted accounting principles in the United States of America as in effect from time to time.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government and shall include any self-regulatory organization to whose authority any Person is subject, including but not limited to the Financial Industry Regulatory Authority (FINRA).

"Guarantors" shall have the meaning set forth in the recitals hereto.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes, and all other substances or wastes of any nature regulated, limited or prohibited pursuant to any Environmental Law.

"Indemnitees" shall have the meaning set forth in Section 7.2(a).

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations or financial condition of the Parent and its Subsidiaries, taken as a whole, (b) the business, assets, operations or financial condition of XM Satellite and its Subsidiaries, taken as a whole, (c) the Mortgaged Property, taken as a whole, or (d) the rights of or benefits available to Purchasers pursuant to this Agreement or the XM Satellite Notes Indenture.

"Mortgaged Property" has the meaning set forth in the XM Satellite Notes Indenture.

"Mortgages" has the meaning set forth in the XM Satellite Notes Indenture.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Non-WKSI Shelf" shall have the meaning set forth in Section 4.3.

"Note Guarantees" means the Note Guarantees as defined in the XM Satellite Notes Indenture.

"Organizational Documents" means (i) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by laws, as amended, (ii) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its certificate of articles of organization or formation, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"Parent" shall have the meaning set forth in the preamble hereto.

"Parent SEC Reports" means Parent's Annual Report on Form 10-K for the year ended December 31, 2007; Parent's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2008, June 30, 2008 and September 30, 2008; Parent's Proxy Statement on Schedule 14A, filed on November 4, 2008, for its 2008 Annual Meeting of Stockholders, and any Current Reports on Form 8-K filed by Parent on or after November 12, 2008, together in each case with any documents incorporated by reference therein or exhibits thereto.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Pension Act" means the Pension Protection Act of 2006, as amended from time to time.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or any other entity.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of

ERISA, and in respect of which Parent or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Prospectus Supplement" shall have the meaning set forth in Section 4.2.

"Purchasers" shall have the meaning set forth in the preamble hereto.

"Registration Rights Agreement" shall have the meaning set forth in Section 4.9.

"Registration Statement" shall have the meaning set forth in Section 4.3.

"Regulation T" means Regulation T of the Board of Governors of the Federal Reserve System (or any successor provision), as it may be amended from time to time.

"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System (or any successor provision), as it may be amended from time to time.

"Regulation X" means Regulation X of the Board of Governors of the Federal Reserve System (or any successor provision), as it may be amended from time to time.

"Release" means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment or within or upon any building, structure, facility or fixture.

"SEC" means the Securities and Exchange Commission.

"SEC Reports" means the Parent SEC Reports and the XM Satellite SEC Reports.

"Securities Act" means the Securities Act of 1933, as amended.

"Security Documents" shall have the meaning set forth in the XM Satellite Notes Indenture.

"Shelf Effectiveness Period" shall have the meaning set forth in Section 4.2.

"Structuring Fee" shall have the meaning set forth in the recitals hereto.

"Structuring Fee Shares" shall have the meaning set forth in Section 2.3(a).

"Subsidiary" means, with respect to any Person (for purposes of this definition, the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the total voting power of the Voting Stock or, in the case of a partnership, more than 50% of the equity or more than 50% of the general partnership interests are, as of such date, owned, controlled or held by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Suspension Period" shall have the meaning set forth in Section 4.4.

"Tax" or "Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"Transaction Documents" means, collectively, this Agreement, including the Registration Rights Agreement set forth in Exhibit B herein, the XM Satellite Notes, the Note Guarantees, the XM Satellite Notes Indenture and the Security Documents.

"Trust Indenture Act" or "TIA" shall have the meaning set forth in the XM Satellite Notes Indenture.

"Voting Stock" of a Person means all classes of capital stock of such Person outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"WKSI Shelf" shall have the meaning set forth in Section 3.21.

"XM Eckington" shall have the meaning set forth in the preamble hereto.

"XM Investment" shall have the meaning set forth in the preamble hereto.

"XM Satellite" shall have the meaning set forth in the preamble hereto.

"XM Satellite Notes" shall have the meaning set forth in the preamble hereto.

"XM Satellite Notes Indenture" means the Indenture, to be dated as of the Closing Date, among XM Satellite, the Guarantors, Parent and The Bank of New York Mellon, as Trustee, in the form attached as Exhibit A to this Agreement, relating to the XM Satellite Notes.

"XM Satellite SEC Reports" means XM Satellite's Annual Report on Form 10-K for the year ended December 31, 2007; XM Satellite's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2008, June 30, 2008 and September 30, 2008; the XM Satellite's Proxy Statement on Schedule 14A, filed on June 3, 2008, for its 2008 Annual Meeting of Stockholders, and any Current Reports on Form 8-K filed by XM Satellite on or after November 12, 2008, together in each case with any documents incorporated by reference therein or exhibits thereto.

Section 1.2 Terms Generally. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as in effect on the date hereof, and in the case of the XM Satellite Notes Indenture, as in effect on the Closing Date, (b) any reference herein to any Person shall be construed to include such Person's successors and assigns and (c) the words "including" and "includes" shall mean "including without limitation" and "includes without limitation", as applicable.

Section 1.3 Computation of Time Periods. Unless otherwise stated in this Agreement, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including", the words "to" and "until" each means "to but excluding", and the word "within" means "from and excluding a specified date and to and including a later specified date."

The definitions of all terms defined herein shall include the singular as well as the plural form of such terms and the masculine of such terms as well as the feminine and neuter genders of such terms.

Section 1.4 Accounting Terms. Accounting terms used but not otherwise defined herein shall have the meanings provided in, and be construed in accordance with, GAAP.

ARTICLE II

EXCHANGE OF EXISTING NOTES FOR XM SATELLITE NOTES

Section 2.1 Authorization and Issuance. Prior to the execution and delivery of this Agreement, (a) XM Satellite will authorize the Exchanges, the issue of the XM Satellite Notes and any other matters incident to the Exchanges and will cause the Guarantors to authorize the issue of the Note Guarantees and (b) Parent will authorize the issuance of the Structuring Fee Shares. The XM Satellite Notes shall be in the form specified in the XM Satellite Notes Indenture.

Section 2.2 Exchange of Existing Convertible Notes for XM Satellite Notes

(a) Subject to the terms and conditions of this Agreement, at the Closing, each of the Purchasers shall surrender to XM Satellite for cancellation in accordance with the terms of the Existing Convertible Notes Indenture, the aggregate principal amount of existing 10% Convertible Senior Notes due 2009 (the "Existing Convertible Notes") set forth opposite each such Purchaser's name in Column A on Schedule 1. Each Purchaser shall provide an instruction to The Bank of New York Mellon, as trustee under the Existing Convertible Notes Indenture, to cancel the Existing Convertible Notes so surrendered in the form set forth as Exhibit D. Simultaneously with such surrender, XM Satellite will issue to each of the Purchasers XM Satellite Notes in the aggregate principal amount as set forth opposite such Purchaser's name in Column B on Schedule 1 (which shall be equal to 100% of the aggregate principal amount of the Existing Convertible Notes being so surrendered by such Purchaser) to such Purchaser's account set forth in Column C on Schedule 1 (such exchanges, the "Exchanges"). For the avoidance of doubt, the Existing Convertible Notes shall not be cancelled unless and until the XM Satellite Notes and the Structuring Fee have been delivered.

(b) On or after the Closing Date, each Purchaser hereby further consents and agrees to take such actions as may be required to implement such holder's consent through the book-entry facilities of DTC to effect the transactions discussed herein, including but not limited to instructing its DTC Participant to effect the surrender of Existing Convertible Notes on its behalf through the Deposit/Withdrawal at Custodian (DWAC) procedures of DTC, and hereby authorizes the Company to take any such actions on its behalf. Each Purchaser also consents and agrees to the deliver to the Company on the Closing Date a Substitute Form W-8 or W-9, as applicable, in the form set forth as Exhibit G.

Section 2.3 Structuring Fee; Delivery Date.

(a) Each Purchaser shall be entitled, at its election, to receive either (1) 833 shares of Common Stock per $1,000 aggregate principal amount of Existing Convertible Notes set forth opposite each such Purchaser's name in Column A on Schedule 1, rounded down to the nearest whole number of shares (the "Structuring Fee Shares") or (2) $50 cash per $1,000 aggregate principal amount of Existing Convertible Notes set forth opposite each such Purchaser's name in Column A on Schedule 1 (the "Cash Fee"). No fractional shares shall be delivered. Each Purchaser shall make its election in Column A on Schedule 2 and provide such election to the Company on the date of this Agreement. The Structuring Fee Shares or the Cash Fee shall be delivered by the Company to each Purchaser in accordance with the

instructions provided by the Purchaser in Column B or C, respectively, on Schedule 2. Notwithstanding anything else in this Agreement, the Company shall have no obligation to deliver the Structuring Fee Shares or the Cash Fee to any Purchaser prior to receiving the corresponding election from such Purchaser.

(b) The Structuring Fee Shares and the Cash Fee shall be delivered no later than 2:00 p.m., New York City time, on the Closing Date (the "Delivery Date").

(c) The obligations hereunder of the Purchasers to exchange their Existing Convertible Notes for XM Satellite Notes are several and not joint, and no Purchaser shall have any liability to any Person for the performance or non-performance by any other Purchaser. Each Purchaser shall be entitled to protect and enforce its rights, including the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose.

Section 2.4 Closing. The closing of the Exchanges (the "Closing") and the delivery of the Structuring Fee Shares and/or the Cash Fee, as applicable, will take place on February 13, 2009, no later than 2:00 p.m., New York City time (the "Closing Date"), unless another date or time is agreed to in writing by the parties hereto. The Closing shall be held at the offices of Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, unless another place is agreed to in writing by the parties hereto.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF XM SATELLITE, THE GUARANTORS AND PARENT

XM Satellite, the Guarantors and Parent, jointly and severally, represent and warrant to the Purchasers on and as of the date hereof (after giving pro forma effect to Exchanges) and on the Closing Date that:

Section 3.1 Organization; Powers. XM Satellite, the Guarantors and Parent (a) are duly organized, validly existing and in good standing under the laws of their respective jurisdictions of organization, (b) have all requisite power and authority to own and operate their respective properties, to conduct their business as now conducted and as proposed to be conducted and are qualified to do business in each of their respective jurisdictions, and (c) are in good standing in each jurisdiction where such qualification is required, except where the failure to be so qualified or in good standing, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 3.2 Authorization and; Enforceability of this Agreement. This Agreement is duly executed and delivered by each of XM Satellite, the Guarantors and Parent and this Agreement constitutes a legal, valid and binding obligation of XM Satellite, the Guarantors and Parent, enforceable against each of them in accordance with its terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally and to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 3.3 Authorization and Enforceability of the Exchanges, the XM Satellite Note Indenture, the XM Satellite Notes. the Note Guarantees and the Registration Rights Agreement. The Exchanges (including the issuance of the XM Satellite Notes and the execution and delivery of the XM Satellite Notes Indenture) are within XM Satellite's organizational powers and have been duly authorized

by all necessary corporate action. The issuance and sale of the Note Guarantees are within the organizational powers of the Guarantors and have been duly authorized by all necessary limited liability company action. The XM Satellite Notes Indenture and the XM Satellite Notes constitute legal, valid and binding obligations of XM Satellite, the Guarantors and Parent (in the case of the XM Satellite Notes Indenture), enforceable against them in accordance with their respective terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally and to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). The Registration Rights Agreement constitutes a legal, valid and binding obligation of XM Satellite, the Guarantors and Parent, enforceable against them in accordance with its terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and to public policy.

Section 3.4 Authorization of the Structuring Fee Shares. The issuance of the Structuring Fee Shares is within Parent's organizational powers. The Structuring Fee Shares have been duly authorized by all necessary corporate action, and, when issued and delivered as provided herein, will be duly and validly issued, fully paid and nonassessable, and the issuance of the Structuring Fee Shares is not subject to any preemptive or any similar rights.

Section 3.5 Governmental Consents; No Conflicts. (i) The consummation of the Exchanges, the issuance of the Structuring Fee Shares and the execution, delivery and performance by XM Satellite, the Guarantors and Parent of the Transaction Documents to which they are a party (a) do not require any authorization or approval or other action by, or any notice to or filing with, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) do not and will not violate the charter, bylaws or other organizational documents of Parent or any of its Subsidiaries, (c) do not require any approval of stockholders or any approval or consent of any Person, except for such approvals and consents which will be obtained on or before the Closing Date, and (d) will not (i) violate, conflict with, or result in a breach of or default under any indenture, agreement or other instrument binding upon Parent or any of its Subsidiaries or their respective assets, or give rise to a right thereunder to require any payment to be made by Parent or any of its Subsidiaries or (ii) violate any material order, judgment or decree of any court or other agency of any Governmental Authority binding Parent or any of its Subsidiaries or (iii) violate any provision of any law, regulation or governmental rule applicable to Parent or any of its Subsidiaries, other than, in the case of (a), (b) with respect to Subsidiaries other than XM Satellite and the Guarantors, (c) and (d) above, where the foregoing could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 3.6 Properties.

(a) XM Satellite and the Guarantors each have good title to, or valid leasehold interests in, all real and personal property material to their respective businesses, except for defects in title that do not materially interfere with their respective abilities to conduct their businesses as currently conducted or to utilize such properties for their intended purposes.

(b) XM Satellite and the Guarantors each own or are licensed to use all trademarks, tradenames, copyrights, patents and other intellectual property material to their respective businesses, and the use thereof by each of them does not infringe upon the rights of any other Person, except for such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(c) XM Satellite and the Guarantors have complied with all obligations under all leases to which they are a party, and all such leases are in full force and effect, except, in each case, where the failure so to comply or to be in effect, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. XM Satellite and the Guarantors each enjoy peaceful and undisturbed possession under all such leases, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 3.7 Litigation. There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority now pending against or, to the knowledge of Parent, threatened against or affecting XM Satellite, the Guarantors, Parent or any of their respective properties (a) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (b) that involve the Transaction Documents, the Exchanges (including the sale and issuance of the XM Satellite Notes) or the issuance of the Structuring Fee Shares. No injunction, writ, temporary restraining order or any order of any nature is pending, threatened or has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement, the Exchanges, the issuance of the Structuring Fee Shares or any of the other transactions contemplated by the Transaction Documents.

Section 3.8 Environmental Matters. Except with respect to any matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, none of XM Satellite, the Guarantors or Parent (a) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (b) has become subject to any Environmental Liability, (c) has received notice of any claim with respect to any Environmental Liability or (d) knows of any basis for any Environmental Liability.

Section 3.9 Compliance with Laws and Agreements. Each of XM Satellite, the Guarantors and Parent is in compliance in all respects with all laws, regulations and orders of and restrictions imposed by all Governmental Authorities applicable to each of them or their respective properties and all indentures, agreements and other instruments binding upon each of them or their respective properties, or in respect of the conduct of their respective businesses and the ownership of their respective properties, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 3.10 Investment Company Act. XM Satellite is not, and after giving effect to the Transactions will not be, an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

Section 3.11 Taxes. Each of XM Satellite, the Guarantors and Parent have timely filed or caused to be filed all Tax returns and reports required to have been filed by each of them and have paid or caused to be paid all Taxes required to have been paid by each of them, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which they have set aside on their books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

Section 3.12 ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. With respect to Parent, the present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the

date of the most recent financial statements for Parent reflecting such amounts, exceed by more than $100,000 the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements for Parent reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans by more than $100,000.

Section 3.13 Well-Known Seasoned Issuer Status. As of the last applicable determination date pursuant to Rule 405 under the Securities Act, Parent is a "Well-Known Seasoned Issuer" as defined in Rule 405, including not being as of such determination date an "ineligible issuer" as defined in Rule 405.

Section 3.14 Common Stock. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is listed on the Nasdaq Global Select Market. To Parent's knowledge, there is no action pending to terminate the registration of the Common Stock under the Exchange Act or delist the Common Stock from the Nasdaq Global Select Market, nor has Parent received any written notification that the SEC or NASDAQ is currently contemplating terminating such registration or listing.

Section 3.15 Registration Statement, Prospectus Supplement and Incorporated Documents. The Registration Statement and the documents incorporated or deemed to be incorporated by reference in the Registration Statement (including the Prospectus Supplement), at the time they were filed or hereafter are filed with the SEC, and as of the Closing Date, complied and will comply with the requirements of the Securities Act and the rules and regulations of the SEC thereunder and the Exchange Act and the rules and regulations of the SEC thereunder, and did not and will not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading.

Section 3.16 Subsidiaries; Capital Stock.

(a) Schedule 3.16-1 sets forth, as of the date of this Agreement, the name and jurisdiction of organization of, and the percentage of each class of capital stock owned by XM Satellite or any Subsidiary in each Subsidiary.

(b) The capital stock of Parent has been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on Schedule 3.16-2, as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which Parent is a party requiring, and there is no membership interest or other capital stock of Parent outstanding which upon conversion or exchange would require, the issuance by Parent of any additional membership interests or other capital stock of Parent or other securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other capital stock of Parent.

Section 3.17 SEC Reports; Financial Statements.

(a) Parent and XM Satellite have filed all required reports and other documents with the SEC required to be filed by each of them since January 1, 2008. The information contained or incorporated by reference in the SEC Reports was true and correct in all material respects as of the respective dates of the filing thereof with the SEC (or if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing); and, as of such respective dates, the SEC Reports (taken together with each other SEC Report filed on or prior to such date) did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

All of the SEC Reports, as of their respective dates, complied as to form in all material respects with the applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder.

(b) The financial statements included in the SEC Reports (collectively, the "Financial Statements") fairly present in all material respects the consolidated financial position of the Parent and its Subsidiaries (with respect to the Parent SEC Reports) or XM Satellite and its Subsidiaries (with respect to the XM Satellite SEC Reports) as of the dates indicated, and the results of its operations and cash flows for the periods therein specified, all in accordance GAAP throughout the periods therein specified (except as otherwise noted therein, and in the case of quarterly financial statements except for the absence of footnote disclosure and subject, in the case of interim periods, to normal year-end adjustments).

(c) Except as disclosed in the XM Satellite SEC Reports, XM Satellite and its Subsidiaries have not incurred any liabilities that are of a nature that would be required to be disclosed on a balance sheet of XM Satellite and its Subsidiaries or the footnotes thereto prepared in conformity with GAAP, other than (i) liabilities incurred in the ordinary course of business since October 1, 2008, and (ii) liabilities that would not reasonably be expected to have a Material Adverse Effect.

Section 3.18 Insurance. Parent maintains in force for Parent and its Subsidiaries, with financially sound and reputable insurance companies, and pays all premiums and costs related to, insurance coverage in such amounts (with no greater risk retention) and against such risks as are customarily maintained by companies of established repute engaged in the same or similar businesses as Parent and its Subsidiaries.

Section 3.19 Margin Regulations. Neither the issuance of the XM Satellite Notes in the Exchanges hereunder will not violate the provisions of Regulation T, U or X of the Board.

Section 3.20 No Registration. Subject to compliance by the Purchasers with the representations and warranties set forth in Section 5.1, it is not necessary to register the XM Satellite Notes or the Structuring Fee Shares under the Securities Act or to qualify the XM Satellite Notes Indenture under the TIA in connection with (1) the offer, issue, sale and delivery in the manner contemplated by this Agreement of the XM Satellite Notes to the Purchasers on the Closing Date or (2) the issue and delivery of the Structuring Fee Shares to the Purchasers on the Delivery Date.

Section 3.21 WKSI Shelf. The registration statement on Form S-3ASR filed by Parent with the SEC on December 30, 2008, file number 333-156495 (the "WKSI Shelf") is an "automatic shelf registration statement" as defined in Rule 405, is effective and conforms to the requirements of the Securities Act.

Section 3.22 Prospectus Supplement. Following the filing of the Prospectus Supplement by Parent naming the Purchasers as selling stockholders, the Structuring Fee Shares issued on the Delivery Date will not constitute "restricted securities" within the meaning of Rule 144 under the Securities Act and will be transferable by the Purchasers pursuant to the Registration Statement.

Section 3.23 Brokerage Fees. Neither Parent nor any of its Subsidiaries has paid, or is obligated to pay, to any Person (other than as set forth on Schedule 3.23) any brokerage or finder's fees in connection with the Transactions.

Section 3.24 PATRIOT Act. To the extent applicable, Parent and all its Subsidiaries are in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B,

Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the PATRIOT Act. No part of the proceeds of the XM Satellite Notes will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

Section 3.25 No Bankruptcy. None of Parent or any of its Subsidiaries are a debtor in a case under Title 11 of the United States Code or in any other bankruptcy, receivership, or any other insolvency proceeding in any jurisdiction.

Section 3.26 Concerning the Guarantors. Each Guarantor is organized solely for the purpose of acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating their respective interests in the Mortgaged Property and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing. Neither Guarantor has any liability as a primary obligor or guarantor under any of the debt instruments, indentures or agreements to which the Parent, XM Satellite or any of their respective Subsidiaries is a party. Neither of the Guarantors is a "Restricted Subsidiary" as defined in any of the material indentures or other credit agreements to which Parent is a party. Neither Guarantor has any material indebtedness, and each Guarantor has valid and marketable title to their respective interests in the Mortgaged Property, free and clear of all liens and encumbrances other than those that would not materially adversely affect the operation of the Mortgaged Property.

ARTICLE IV
TRANSACTION COVENANTS

Section 4.1 Maintenance of Parent's WKSI Shelf. Parent shall use reasonable best efforts to keep its WKSI Shelf continuously effective, supplemented and amended as required by the Securities Act and to the extent necessary to ensure that it conforms with the requirements of the Securities Act and the rules and regulations of the SEC promulgated thereunder until at least March 2, 2009; *provided,* that if Parent meets the requirements of a "Well-Known Seasoned Issuer" (as such term is defined in Rule 405 of the Securities Act) on March 2, 2009, Parent shall keep its WKSI Shelf effective, supplemented and amended as required by the Securities Act until the Purchasers have sold all of the Structuring Fee Shares.

Section 4.2 Eligibility to Resell the Structuring Fee Shares under the Parent WKSI Shelf

(a) No later than the Closing Date and subject to receipt of all required information from each Purchaser, substantially in the form of Exhibit F, Parent shall file a supplement to Parent's WKSI Shelf (a "Prospectus Supplement") naming each of the Purchasers as selling stockholders for the Structuring Fee Shares issued to the Purchasers on the Delivery Date. In the event that any Prospectus Supplement filed hereunder is no longer usable for resales of the Structuring Fee Shares by the Purchasers, Parent shall use reasonable best efforts to amend such Prospectus Supplement or shall file an additional Prospectus Supplement to provide for the resale of the Structuring Fee Shares; *provided* that (1) Parent shall not be required to file an additional Prospectus Supplement naming a Purchaser as a selling securityholder earlier than 10 business days after it receives all required information from such Purchaser and (2) Parent shall not be obligated to file an additional Prospectus Supplement for the purpose of naming a Purchaser as a selling securityholder more than once in any calendar month period. In order to sell shares of Common Stock under the Prospectus Supplement, each Purchaser shall provide an instruction to The Bank of New York Mellon, as transfer agent, in the form set forth as Exhibit E.

Other than such delivery and compliance with federal and state securities laws, no other action by such Purchaser shall be necessary to sell Shares of Common Stock under the Prospectus Supplement.

(b) Subject to Section 4.4, Parent agrees to use reasonable best efforts to keep the such Prospectus Supplement continuously usable until the earlier of (i) the six-month anniversary of the Closing Date or (ii) when all such Structuring Fee Shares are eligible to be sold immediately without volume, manner of sale, filing or other restrictions by non-affiliates of Parent pursuant to Rule 144 (or any similar rule then in force, but not Rule 144A) under the Securities Act or (iii) when all the Structuring Fee Shares covered by the Prospectus Supplement have been sold pursuant to the WKSI Shelf or any other registration statement filed by Parent (the "Shelf Effectiveness Period").

Section 4.3 Filing of Parent Non-WKSI Shelf. Prior to losing its status as a "Well-Known Seasoned Issuer," Parent shall file a post-effective amendment to the WKSI Shelf to conform the WKSI Shelf in all respects to the requirements of a non-automatic shelf registration statement filed by a "Seasoned Issuer" (as such term is defined in Rule 405 of the Securities Act) that is not a "Well-Known Seasoned Issuer." Immediately upon losing its status as a "Well-Known Seasoned Issuer," Parent shall file a new non-automatic shelf registration statement on Form S-3 or a post-effective amendment to its existing shelf (in either case, a "Non-WKSI Shelf" and, together with Parent's WKSI Shelf, the "Registration Statement") to provide for the resale of the Structuring Fee Shares subject to the terms and conditions hereof.

Section 4.4 Suspension. Notwithstanding anything else to the contrary, Parent may suspend the availability of the Registration Statement by written notice to the Purchasers for a period not to exceed an aggregate of 15 days in any 90-day period (each such period, a "Suspension Period") if an event occurs and is continuing as a result of which the Registration Statement, any related prospectus, any amendment or supplement thereto, or any document incorporated by reference therein would, in Parent's judgment, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, Suspension Periods shall not exceed an aggregate of 60 days in any 360-day period. Parent shall not specify in the written notice to the Purchasers the nature of the event giving rise to the Suspension Period.

Section 4.5 Covenant Regarding Offerings. If requested by any Purchaser, Parent will use reasonable best efforts to assist the Purchasers in completing any sale process undertaken in connection with the resale of the Notes or any portion thereof as set forth in the Registration Rights Agreement.

Section 4.6 Rules 144 and 144A. Parent shall file the reports required to be filed by it (if so required) under the Securities Act and the Exchange Act in a timely manner and if, at any time Parent is not required to file such reports, it will make publicly available other information necessary to permit sales pursuant to Rule 144 and Rule 144A. Upon the written request of any holder of the XM Satellite Notes, Parent shall deliver to it a written statement as to whether it has complied with such information and requirements.

Section 4.7 Existing Convertible Notes. From the date of this Agreement until the Closing Date, XM Satellite shall not and shall not allow its Subsidiaries to purchase Existing Convertible Notes for cash or exchange new indebtedness for Existing Convertible Notes.

Section 4.8 Covenant to File 8-Ks. Parent will file a Current Report on Form 8-K with the SEC with respect to the Exchanges and the initial issuance of the Structuring Fee Shares no later than one Business Day after the date of this Agreement. Parent will provide drafts of the Form 8-K

required by this Section 4.7 to the Purchasers for their review and comment as soon as practicable before the filing thereof.

Section 4.9 Registration Rights.

XM Satellite, Parent, the Guarantors and the Purchasers shall be bound by the terms, conditions and agreements set forth in Exhibit B (such terms, conditions and agreements, collectively, the "Registration Rights Agreement") as of the date hereof.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE PURCHASERS

Each Purchaser, severally and not jointly, represents to each of XM Satellite, the Guarantors and Parent as of the date hereof and on the Closing Date as follows:

Section 5.1 Purchase Representations and Warranties.

(a) Such Purchaser is acquiring the XM Satellite Notes for its own account or an account that it manages, for investment purposes only and not with a view to any distribution thereof within the meaning of the Securities Act. Such Purchaser is acquiring the Structuring Fee Shares for its own account or an account that it manages and not with a view to any distribution thereof in violation of the Securities Act.

(b) Such Purchaser has received such information as it deems necessary in order to make an investment decision with respect to the XM Satellite Notes and the Structuring Fee Shares and has had the opportunity to ask questions of and receive answers from XM Satellite and its officers and directors and to obtain such additional information which XM Satellite possesses or could acquire without unreasonable effort or expense as such Purchaser deems necessary to verify the accuracy of the information furnished to such Purchaser and has asked such questions, received such answers and obtained such information as it deems necessary to verify the accuracy of the information furnished to such Purchaser.

(c) Such Purchaser is an Accredited Investor.

(d) Such Purchaser understands that neither the XM Satellite Notes nor the Structuring Fee Shares have been registered under the Securities Act or any state or other securities law, that the XM Satellite Notes and the Structuring Fee Shares are being issued by XM Satellite and Parent, respectively, in transactions exempt from the registration requirements of the Securities Act and that the XM Satellite Notes and the Structuring Fee Shares may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration under the Securities Act is available.

(e) Such Purchaser did not employ any broker or finder in connection with the Exchanges or the issuance of the Structuring Fee Shares and no fees or commissions are payable to or by the Purchasers except as forth in this Agreement.

(f) Either (i) no portion of the assets used by the Purchaser to acquire or hold the XM Satellite Notes constitute the assets of any "employee benefit plan" within the meaning of Section 3(3) of ERISA that is subject to Title I of ERISA, plan, individual retirement account or other arrangement that is subject to Section 4975 of the Code or provisions under any other federal, state, local, non-U.S. or other law or regulation that is similar to Section 406 of ERISA or Section 4975 of the Code

(collectively, "Similar Laws") or entity whose underlying assets are considered to include "plan assets" of any such employee benefit plan, plan, account or arrangement or (ii) the acquisition and holding of such XM Satellite Notes will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or a similar violation under any applicable Similar Law.

Section 5.2 Corporate Power; Authorization; Enforceability. The execution, delivery and performance of this Agreement are within such Purchaser's corporate, limited liability company or limited partnership, as the case may be, power and authority and have been duly authorized by all necessary action of such Purchaser, do not conflict with or result in a breach of or violate any of such Purchaser's governing documents or any contract to which such Purchaser is a party or by which its assets are bound or any applicable laws and constitutes a legal, valid and binding agreement of such Purchaser enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law).

Section 5.3 No Actions or Proceedings. There are no legal or governmental actions, suits or proceedings pending or, to any Purchaser's knowledge, threatened against or affecting such Purchaser, or any of its properties or assets which, if adversely determined, in the aggregate, would reasonably be expected to materially and adversely affect the ability of such Purchaser to consummate any of the Exchanges or the receipt of the Structuring Fee Shares.

Section 5.4 Ownership of Existing Convertible Notes. Each Purchaser represents and warrants that it is the beneficial owner of, or the investment adviser or manager for the beneficial owner of, the aggregate principal amount of Existing Convertible Notes set forth opposite such Purchaser's name in Column A to Schedule 1 to this Agreement. Each Purchaser further represents that such Existing Convertible Notes are held through the book-entry facilities of DTC by the DTC participant set forth in Column A to Schedule 1 to this Agreement. From the date of this Agreement until the Closing Date, each Purchaser shall not and shall not allow any of its Affiliates to offer, sell, contract to sell or otherwise dispose of, except as provided hereunder, any Existing Convertible Notes surrendered by such Purchaser for exchange hereunder.

Section 5.5 Accuracy of Purchaser Information. Each Purchaser represents and warrants that the information it has provided in writing to the Company in the form of Exhibit F and the information is Schedule 1 is true, correct and complete, as of the date hereof and as of the Closing Date.

ARTICLE VI

CONDITIONS PRECEDENT

Section 6.1 Conditions to Obligations of the Purchasers. Each Purchaser's obligation to consummate the Exchanges on the Closing Date is subject to the satisfaction or express waiver by it prior to the Closing Date of the following conditions, which conditions have been satisfied as of the Closing Date:

(a) Representations and Warranties. The representations and warranties made by XM Satellite, the Guarantors and Parent in Article III of this Agreement and in any of the other Transaction Documents shall be true and correct as of the Closing Date, as though then made.

(b) Performance; No Default under Other Agreements. Each of XM Satellite, the Guarantors and Parent shall have performed and complied in all material respects with all agreements and covenants contained herein and in the Transaction Documents required to be performed or complied with

by them prior to or on the Closing Date (or such compliance shall have been waived on terms and conditions reasonably satisfactory to each Purchaser) and, after giving effect to the issuance and sale of the XM Satellite Notes and the Structuring Fee Shares and the cancellation of the Existing Convertible Notes received pursuant to the Exchanges, no default or event of default shall have occurred and be continuing under (i) the XM Satellite Notes Indenture or (ii) any other material indenture, agreement or other instrument binding upon Parent or its Subsidiaries.

(c) Closing Certificate. XM Satellite, the Guarantors and Parent shall have delivered to the Purchasers closing certificates, dated as of the Closing Date, certifying, among other things, as to (i) the Organizational Documents of XM Satellite, the Guarantors and Parent, certified as of a recent date by an appropriate governmental official, (ii) the incumbency and signatures of their respective applicable officers, and (iii) other corporate proceedings relating to the authorization, execution and delivery of the Transaction Documents.

(d) Continued Listing. Trading or quotation in Parent's Common Stock shall not have been suspended or limited by the SEC or by the NASDAQ, and Parent shall not have received any notice indicating that its shares will be suspended or limited.

(e) Listing Approval. All applicable Structuring Fee Shares to be issued to the Purchasers shall have been approved for listing on the NASDAQ, subject only to notice of issuance.

(f) Opinion of Counsel. The Purchasers shall have received, or shall receive following the delivery of the Structuring Fee Shares and the filing of the Prospectus Supplement, the opinion of Simpson Thacher & Bartlett LLP, counsel for XM Satellite, the Guarantors and Parent, dated the Closing Date and substantially in the form attached hereto as Exhibit C.

(g) Proceedings and Documents. Each Purchaser shall have received a copy of the Transaction Documents, in each case fully executed. XM Satellite and The Bank of New York Mellon shall have executed and delivered the XM Satellite Notes Indenture in the form attached hereto as Exhibit A. The Security Documents shall have been executed and delivered by the respective parties thereto. The Mortgages shall have been recorded and the designated title company shall have executed and delivered the letter contemplated by clause (a)(ii) of the Collateral Requirement (as that term is defined in the XM Satellite Notes Indenture).

(h) PORTAL and CUSIP. The XM Satellite Notes shall be designated PORTAL securities in accordance with the rules and regulations adopted by the NASD relating to the PORTAL Market and all necessary Committee on Uniform Securities Identification Procedure numbers (CUSIP numbers) for the Notes shall have been obtained for creating a market in Notes traded pursuant to Rule 144A under the Securities Act or which are not "restricted securities" for purposes of Rule 144 under the Securities Act.

(i) Exchange Amounts; Structuring Fee Shares. On the Closing Date, each Purchaser shall have received from XM Satellite and Parent, respectively, in exchange for Existing Convertible Notes in the aggregate principal amount set forth in Column A to Schedule 1, the aggregate principal amount of XM Satellite Notes set forth each such Purchaser's name in Column B to Schedule I and the number of Structuring Fee Shares and/or the Cash Fee due on the Closing Date pursuant to Section 2.3(a).

(j) Payment of Expenses. On the Closing Date, each Purchaser and counsel for the Purchasers shall have received from Parent all costs and expenses incurred under this Agreement through the Closing Date for which invoices have been presented (including the reasonable fees and

disbursements of Brown Rudnick LLP, counsel to certain of the Purchasers, to the extent not already paid) by a wire transfer of immediately available funds made on the Closing Date from Parent to bank accounts designated by each Purchaser and counsel to the Purchasers; *provided* that to the extent invoices therefor have not been so presented on the Closing Date, all other fees shall be paid within 30 days of an invoice having been presented to Parent.

(k) No Bankruptcy Filing. On the Closing Date, none of Parent or any of its Subsidiaries shall be a debtor in a bankruptcy case or have filed for bankruptcy (under title 11 of the United States Code or any other bankruptcy, receivership, or any other insolvency proceeding in any jurisdiction).

Section 6.2 Conditions to Obligations of XM Satellite, the Guarantors and Parent. The respective obligations of XM Satellite, the Guarantors and Parent to consummate the Exchanges (including the issuance of the XM Satellite Notes) and to consummate the issuances of the Structuring Fee Shares and/or the delivery of the Cash Fee on the Closing Date are subject to the satisfaction or express waiver by them prior to the Closing Date of the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of the Purchasers in this Agreement shall be true and correct in all material respects on or as of the Closing Date as if made on and as of the Closing Date.

(b) Performance: No Default under Other Agreement. The Purchasers shall have performed and complied in all material respects with all agreements and covenants contained herein required to be performed or complied with by them prior to or on the Closing Date (or such compliance shall have been waived on terms and conditions reasonably satisfactory to XM Satellite) and, after giving effect to the consummation of the Exchanges (including the issuance and sale of the XM Satellite Notes) or the issuances of the Structuring Fee Shares, no default or event of default shall have occurred and be continuing under the XM Satellite Notes Indenture.

Section 6.3 Conditions to Obligations of Each of the Parties. The respective obligations of XM Satellite, the Guarantors and Parent, on the one hand, and each of the Purchasers, severally and not jointly, on the other hand, is subject to the satisfaction or express waiver prior to the Closing Date of the following condition:

(a) Exchanges Permitted by Applicable Law. On the Closing Date, the Exchanges shall (i) be permitted by the laws and regulations of each jurisdiction to which it is subject, and (ii) not violate any applicable law (including Regulation U, Regulation T or Regulation X).

ARTICLE VII

EXPENSES, INDEMNIFICATION AND CONTRIBUTION

Section 7.1 Expenses. XM Satellite will, after presentation of an invoice therefor, reimburse the Purchasers for all reasonable and documented out-of-pocket costs and expenses (including reasonable legal expenses) incurred in enforcing or defending any rights or remedies under this Agreement or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement. XM Satellite will pay, and will save the Purchasers harmless from, all claims in respect of any fees, costs or expenses if any, of brokers and finders in relation to the Exchanges or the issuance of the Structuring Fee Shares.

Section 7.2 Indemnification.

(a) XM Satellite, the Guarantors and Parent, jointly and severally, shall indemnify and hold harmless the Purchasers and each of their respective Affiliates, partners, stockholders, members, directors, officers, agents, employees and controlling persons (collectively, the "Indemnitees") from and against any and all actual losses, claims, damages or liabilities to any such Indemnitee in connection with or as a result of (i) the execution or delivery of this Agreement or the performance by the parties of their respective obligations hereunder and under the XM Satellite Notes Indenture and the Security Documents or the consummation of the transactions contemplated hereby or thereby (including the Exchanges or the issuance of the Structuring Fee Shares); (ii) the issuance of the XM Satellite Notes or the Structuring Fee Shares; (iii) the breach by Parent or any of its Subsidiaries of any representation, warranty or covenant contained in this Agreement or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages or liabilities are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee.

(b)

(i) XM Satellite, the Guarantors and Parent, jointly and severally, shall indemnify and hold harmless the Indemnitees from and against any and all actual losses, claims, damages or liabilities to any such Indemnitee arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading or arising out of any untrue statement or alleged untrue statement of a material fact contained in any issuer free writing prospectus or prospectus relating to the Structuring Fee Shares (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission;

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel to the Purchasers), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under Section 7.2(b)(i) or (ii).

(c) Each Purchaser agrees, severally and not jointly, to indemnify and hold harmless XM Satellite, the Guarantors and Parent, and each of their respective Affiliates, partners, stockholders, members, directors, officers, agents, employees and controlling persons, to the same extent as the indemnity set forth in paragraph (b)(i) above, in each case to the extent, but only to the extent, any losses, claims, damages or liabilities that arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to such Purchaser or furnished to the Company in writing by such Purchaser expressly for use in any Registration Statement, any prospectus or any issuer free writing prospectus (*provided* that, for the

avoidance of doubt, such information shall be deemed to include any free writing prospectus prepared by or on behalf of such Purchaser); *provided*, *however*, that in no event shall the liability of any Purchaser for indemnification under this Section 7.2(c) exceed the amount equal to the net proceeds received by such Purchaser from the sale of securities pursuant to the Registration Statement.

Section 7.3 Contribution.

(a) If the indemnification provided for in Section 7.2 is for any reason unavailable to or insufficient to hold harmless the indemnified person in respect of any or all actual losses, claims, damages or liabilities referred to therein, the indemnifying person shall contribute to the aggregate amount of such actual losses, claims, damages or liabilities incurred by the Indemnitees, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by XM Satellite, the Guarantors and Parent on the one hand and the Indemnitees on the other hand from the Transactions or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of XM Satellite, the Guarantors and Parent on the one hand and of the Indemnitees on the other hand in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations. The obligations of XM Satellite, the Guarantors and Parent pursuant to this Section 7.3(a) shall be joint and several and the obligations of each Purchaser pursuant to this Section 7.3(a) shall be several and not joint.

(b) The relative benefit received by XM Satellite, the Guarantors and Parent in connection with the Transactions shall be equal to the total aggregate principal amount of the Notes (before deducting expenses) received by Sirius XM and the Guarantors. The relative benefit received by an Indemnitee in connection with the Transactions shall be the net proceeds received by the applicable Purchaser in the sale of the Structuring Fee Shares.

(c) The relative fault of XM Satellite, the Guarantors and Parent on the one hand and the Indemnitees on the other hand shall be determined by reference to, among other things, whether the matters for which the Indemnitees are granted indemnification from XM Satellite, the Guarantors and Parent arise pursuant to Section 7.2(a) or, in the case of matters for which the Indemnitees are granted indemnification under Section 7.2(b) or matters for which XM Satellite, the Guarantors and Parent are granted indemnification under Section 7.2(c), whether such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by XM Satellite, the Guarantors and Parent or by the Indemnitees and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(d) XM Satellite, the Guarantors and Parent on the one hand and the Indemnitees on the other hand agree that it would not be just and equitable if contribution pursuant to this Section 7.3 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 7.3. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an Indemnitee and referred to above in this Section 7.3 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Section 7.4 Waiver of Punitive Damages. To the extent permitted by applicable law, none of the parties hereto shall assert, and each hereby waives, any claim against the other parties (including their respective Affiliates, partners, stockholders, members, directors, officers, agents, employees and controlling persons), on any theory of liability for special, indirect, consequential or

punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby and the transactions contemplated hereby (including the Exchanges, the issuance of the XM Satellite Notes and the issuance of the Structuring Fee Shares).

ARTICLE VIII
MISCELLANEOUS

Section 8.1 Notices. Except as otherwise expressly provided herein, all notices and other communications shall have been duly given and shall be effective (a) when delivered, (b) when transmitted via facsimile (or other electronic device) to the number set out below if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (c) the day following the day (except that if such day is not a Business Day, then the next Business Day) on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case to the respective parties at the address set forth below, or at such other address as such party may specify by written notice to the other party hereto:

(a) if to a Purchaser or its nominee, to such Purchaser or its nominee at the address specified in Schedule 1, or at such other address as the Purchaser or its nominee shall have specified to XM Satellite in writing; and

(b) if to XM Satellite, the Guarantors or Parent, to: XM Satellite Radio Holdings Inc., 1221 Avenue of the Americas, 36th Floor, New York, New York 10020, Attention: General Counsel, Facsimile No.: (212) 584-5353, with a copy to: Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, Attention: Gary L. Sellers, Esq., John C. Ericson, Esq. and Lesley Peng, Esq., Facsimile No.: (212) 455-2502, or at such other address as XM Satellite shall have specified to the Purchasers in writing.

Section 8.2 Benefit of Agreement and Assignments.

(a) Except as otherwise expressly provided herein, all covenants, agreements and other provisions contained in this Agreement by or on behalf of any of the parties hereto shall bind, inure to the benefit of and be enforceable by their respective successors and assigns; *provided,* that XM Satellite may not assign or transfer any of its rights or obligations without the prior written consent of the other parties hereto.

(b) Nothing in this Agreement, express or implied, shall give to any Person other than the parties hereto or thereto and their successors and assigns any benefit or any legal or equitable right, remedy or claim under this Agreement.

Section 8.3 No Waiver; Remedies Cumulative. No failure or delay on the part of any party hereto in exercising any right, power or privilege hereunder or under the XM Satellite Notes and no course of dealing between XM Satellite, the Guarantors and Parent and any other party shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under the XM Satellite Notes preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein and in the XM Satellite Notes are cumulative and not exclusive of any rights or remedies that the parties would otherwise have. No notice to or demand on XM Satellite the Guarantors or Parent shall entitle XM Satellite, the Guarantors or Parent to any other or further notice or demand in similar or other circumstances or

constitute a waiver of the rights of the other parties hereto to any other or further action in any circumstances without notice or demand.

Section 8.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto. Delivery of an executed signature page of this Agreement by facsimile (or other electronic device) shall be effective as delivery of a manually executed counterpart hereof.

Section 8.5 Headings. The headings of the sections and subsections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 8.6 Governing Law; Submission to Jurisdiction; Venue.

(a) THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK.

(b) Each of XM Satellite, the Guarantors and Parent submits to the non-exclusive jurisdiction of the courts of the State of New York and the courts of the United States of America, in each case located in the Borough of Manhattan, New York, New York over any suit, action or proceeding arising under or in connection with this Agreement or the transactions contemplated hereby. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any Purchaser may otherwise have to bring any action or proceeding relating to this Agreement against XM Satellite, the Guarantors or Parent, or their respective properties in the courts of any jurisdiction.

(c) Each of XM Satellite, the Guarantors and Parent hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 8.6(a). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 8.1. Nothing in this Agreement shall affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(e) EACH PARTY HERETO HEREBY WAIVES, AND WILL CAUSE EACH OF THEIR RESPECTIVE SUBSIDIARIES TO WAIVE, ANY AND ALL RIGHTS ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT.

Section 8.7 Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable, such provision shall be fully severable to the extent of such illegality,

invalidity or unenforceability and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

Section 8.8 Entirety. This Agreement represents the entire agreement of the parties hereto and thereto, and supersedes all prior agreements and understandings, oral or written, if any, relating to the transactions contemplated herein or therein.

Section 8.9 Survival of Covenants, Indemnities and Representations and Warranties. All covenants, representations and warranties made by XM Satellite herein shall survive the execution and delivery of this Agreement, the enforcement, amendment or waiver of any provision of this Agreement, the consummation of the Exchanges (including the issuance, delivery and transfer of all or any portion of the XM Satellite Notes) or the issuance of the Structuring Fee Shares, and the payment of principal of the XM Satellite Notes, and any other obligations hereunder, regardless of any investigation made at any time by or on behalf of the Purchasers. The obligations of Parent under of Article VIII of this Agreement shall survive the payment or transfer of any XM Satellite Note or Structuring Fee Share, the enforcement, amendment or waiver of any provision of this Agreement and the termination of this Agreement.

Section 8.10 Construction. Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall he applicable whether such action is taken directly or indirectly by such Person, whether or not expressly specified in such provision.

Section 8.11 Incorporation. All Schedules and Exhibits attached hereto are incorporated as part of this Agreement as if fully set forth herein.

Section 8.12 No Personal Obligations. Notwithstanding anything to the contrary contained herein, it is expressly understood and the Purchasers expressly agree that nothing contained herein or in any other document contemplated hereby or thereby (whether from a covenant, representation, warranty or other provision herein or therein) shall create, or be construed as creating, any personal liability of any stockholder, director, officer or employee of XM Satellite, the Guarantors or Parent, respectively, in such Person's capacity as such, with respect to (a) any payment obligation of XM Satellite, the Guarantors or Parent made hereunder or in any other document contemplated hereby or thereby, (b) any obligation of XM Satellite, the Guarantors or Parent to perform any covenant, undertaking, indemnification or agreement, either express or implied, contained herein, (c) any representation or warranty contained herein, (d) any other claim or liability to the Purchasers under or arising under this Agreement or in any other document contemplated hereby or thereby, or (e) any credit extended or loan made hereunder or in any other document contemplated hereby or thereby; provided that nothing herein shall be deemed to be a waiver of claims arising from fraud.

Section 8.13 Currency. Unless otherwise specified, all dollar amounts referred to in this Agreement are in lawful money of the United States.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, XM Satellite Radio Holdings Inc., XM 1500 Eckington LLC, XM Investment LLC, XM Sirius Radio Inc. and each of the Purchasers listed on Schedule 1 hereto have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first set forth above.

XM SATELLITE RADIO HOLDINGS INC.

By: /s/ Patrick L. Donnelly
Name: Patrick L. Donnelly
Title: Secretary

SIRIUS XM RADIO INC.

By: /s/ Patrick L. Donnelly
Name: Patrick L. Donnelly
Title: Executive Vice President, General Counsel and Secretary

XM 1500 ECKINGTON LLC

By: /s/ Patrick L. Donnelly
Name: Patrick L. Donnelly
Title: Secretary

XM INVESTMENT LLC

By: /s/ Patrick L. Donnelly
Name: Patrick L. Donnelly
Title: Secretary

Canyon Capital Arbitrage Master Fund Ltd

By: /s/ Mitchell R. Julis
Name: Mitchell R. Julis
Title: Managing Partner

Canyon Capital Realization Fund (Cayman) Ltd

By: /s/ Mitchell R. Julis
Name: Mitchell R. Julis
Title: Managing Partner

Canyon Capital Realization Fund Mac 18 Ltd

By: /s/ Mitchell R. Julis
Name: Mitchell R. Julis
Title: Managing Partner

Canyon Capital Value Realization Fund Ltd

By: /s/ Mitchell R. Julis
Name: Mitchell R. Julis
Title: Managing Partner

John Handcock High Yield Bond Fund
By: MFC Global Investment Management (U.S.), LLC

By: /s/ Diane Landers
Name: Diane Landers
Title: Vice President, Chief Administrative Officer

John Handcock Funds II High Income Fund
By: MFC Global Investment Management (U.S.), LLC

By: /s/ Diane Landers
Name: Diane Landers
Title: Vice President, Chief Administrative Officer

John Handcock Funds II Strategic Income Fund
By: MFC Global Investment Management (U.S.), LLC

By: /s/ Diane Landers
Name: Diane Landers
Title: Vice President, Chief Administrative Officer

John Handcock High Income Trust
By: MFC Global Investment Management (U.S.), LLC

By: /s/ Diane Landers
Name: Diane Landers
Title: Vice President, Chief Administrative Officer

John Handcock Trust Strategic Income Trust
By: MFC Global Investment Management (U.S.), LLC

By: /s/ Diane Landers
Name: Diane Landers
Title: Vice President, Chief Administrative Officer

John Handcock Strategic Income
By: MFC Global Investment Management (U.S.), LLC

By: /s/ Diane Landers
Name: Diane Landers
Title: Vice President, Chief Administrative Officer

MGF High Yield Fund
By: MFC Global Investment Management (U.S.), LLC

By: /s/ Diane Landers
Name: Diane Landers
Title: Vice President, Chief Administrative Officer

Radcliffe SPC, Ltd., for and on behalf of the Class A Segregated Portfolio

By: /s/ Gerald F. Stahlecker
Name: Gerald F. Stalhecker
Title: Managing Director

Liberty Harbor Master fund I, L.P.

By: Liberty Harbor I GP, LLC, its general partner

By: /s/ Brendan McGovern
Name: Brendan McGovern
Title: Vice President

Long Island International Limited

By: /s/ Adam Janisch
Name: Adam Janisch
Title: Director

Credit Suisse Securities (USA) LLC

By: /s/ Douglas Teresko
Title: Director

Whitebox Convertible Arbitrage Partners, LP

By: /s/ Jonathan Wood
Title: Chief Operating Officer/Director

Whitebox Combined Partners LP

By: /s/ Jonathan Wood
Title: Chief Operating Officer/Director

IAM Mini-Fund 14 Ltd

By: /s/ Jonathan Wood
Title: Chief Operating Officer/Director

Wolverine Convertible Arbitrage Fund Trading Limited

By: Wolverine Asset Management LLC, its General Partner

By: /s/ July Kula
Title: Chief Financial Officer

Exhibit A

Form of Sirius XM Notes Indenture

Exhibit B

Registration Rights Agreement

Exhibit C

Opinion of Simpson Thacher & Bartlett LLP

Exhibit D

Form of Instruction to Trustee to Cancel Notes

February 13, 2009

The Bank of New York
as Trustee (“Trustee”)
of the 10% Senior Convertible Notes due 2009
101 Barclay Street, 8 West
New York, New York 10286
Attention: Corporate Trust Administration
Facsimile No.: (212) 815-5707

Re: Request to Cancel Global Notes

Ladies and Gentlemen:

Reference is made to the Indenture, dated as of November 23, 2004, as amended (the “Indenture”), among XM Satellite Radio Holdings Inc. (the “Issuer”) and the Trustee, relating to $400,000,000 aggregate principal amount of the Issuer’s 10% Convertible Senior Notes (CUSIP Nos. 98375Y AP 1 and 983759 AC 5) (the “Notes”).

We hereby instruct the Trustee and Registrar to cause to be cancelled cancel the Notes delivered herewith in the amounts set forth opposite such Notes on Annex A hereto, each having been tendered to you by the respective holder of such Notes, and to provide evidence of such cancelled notes to the undersigned.

Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms in the Indenture, as applicable.

[*Remainder of the page intentionally left blank*]

Very truly yours,

[PURCHASER]

By: ______________________________

Name: ______________________________

Title: ______________________________

Annex A

Account Number	Principal Amount of Notes Accepted for Tender and to be Cancelled

Exhibit E

Form of Letter to the Transfer Agent for Sales under the Prospectus Supplement

NOTICE OF TRANSFER OF SECURITIES
PURSUANT TO PROSPECTUS SUPPLEMENT

Sirius XM Radio Inc.
1221 Avenue of the Americas, 36th floor
New York, New York 10020
Attention: General Counsel

The Bank of New York Mellon, as Trustee
Corporate Trust Office
101 Barclay Street, 8 West
New York, New York 10286
Attention: Corporate Trust Administration

RE: Sale of Common Stock pursuant to the Sirius XM Radio Inc.'s (the "Company") Prospectus Supplement dated February 13, 2009 (the "Prospectus")

Ladies and Gentlemen:

Please be advised that on February 13, 2009 the undersigned sold $172,485,000 shares of the common stock of the Company (the "Shares"). Such sale was made in a manner described under the captioned "Plan of Distribution" in the Prospectus, and the undersigned has satisfied the prospectus delivery requirement or the notice of registration delivery requirement. As such, please transfer the Shares from [*Name and account of transferor's Registered Holder*] in the Bank of New York Mellon's book entry system to [*Name of transferee's DTC Participant and account information*] on the DWAC system. Please contact [__] with any question regarding the foregoing.

Very truly yours,

Dated: ____________________

By: ____
Print Name: __________________________________
Title: ______________________________________
Address: ____________________________________
Phone: _____________________________________
Fax: _______________________________________

Email: _____________________________________

Exhibit F

Form of Selling Stockholder Questionnaire

SIRIUS XM RADIO INC.
SELLING STOCKHOLDER
QUESTIONNAIRE

The undersigned beneficial owner of shares of common stock, par value $0.001 per share (the "Common Stock"), of Sirius XM Radio Inc. (the "Company") understands that the Company has filed a shelf registration statement on Form S-3 (File No. 333-156495) (the "Shelf Registration Statement") with the Securities and Exchange Commission (the "SEC") and intends to file with the SEC a prospectus supplement (the "Prospectus Supplement") to the Shelf Registration Statement for registration and resale of shares of Common Stock (the "Registrable Common Stock") issued to the undersigned pursuant to the Note Purchase Agreement, by and among the Company, certain stockholders and other parties named therein (the "Note Purchase Agreement").

In order to sell or otherwise dispose of any Registrable Common Stock pursuant to the Shelf Registration Statement, a beneficial owner of Registrable Common Stock generally will be required to be named as a Selling Stockholder in the Prospectus Supplement, deliver the Prospectus Supplement to purchasers of Registrable Common Stock (or a notice of registration pursuant to Rule 173 of the Securities Act of 1933, as amended) and be bound by those provisions of the Note Purchase Agreement applicable to such beneficial owner (including certain indemnification provisions). Beneficial owners are required to complete and deliver this Selling Stockholder Questionnaire so that such beneficial owners may be named as Selling Stockholders in the Prospectus Supplement.

Certain legal consequences may arise from being named as Selling Stockholders in the Prospectus Supplement. Accordingly, holders and beneficial owners of Registrable Common Stock are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a Selling Stockholder in the Prospectus Supplement.

Completed questionnaires should be returned to the Grenfel Calheiros at Simpson Thacher & Bartlett by facsimile at 212-455-2502 or PDF at gcalheiros@stblaw.com, with the original copy to follow to:

Grenfel S. Calheiros
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017

The undersigned beneficial owner (the "Selling Stockholder") of Registrable Common Stock hereby gives notice to the Company of its intention to sell or otherwise dispose of Registrable Common Stock beneficially owned by it and listed below in Item (3) (unless otherwise specified under Item (4)) pursuant to the Shelf Registration Statement.

Please respond to every item, even if your response is “none” or “not applicable.” The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

QUESTIONNAIRE

1. (a) Full Legal Name of Selling Stockholder:

____

(b) Full Legal Name of DTC Participant (if applicable and if not the same as (b) above) through which shares of Common Stock listed in Item (3) below are held:

____

2. Address for Notices to Selling Stockholder:

____

____

Telephone: ______________________________

Fax: ______________________________

Email address: ______________________________

Contact Person: ______________________________

3. Beneficial Ownership of Registrable Common Stock:

Amount of shares of Registrable Common Stock beneficially owned:__________

4. Election to Include Registrable Common Stock in Prospectus Supplement

If less than all, please indicate the number of shares listed in Item (3) above that you elect to include in the Prospectus Supplement: __________

5. (a) Other than as set forth in your response to Item 3 above, do you beneficially own any other securities of the Company that are convertible into or exercisable or exchangeable for Common Stock?

[___] Yes.
[___] No.

(b) If your answer to Item 5(a) above is yes, state the type, the aggregate amount and CUSIP No. of such other securities of the Company beneficially owned by you:

Type: ______________________________

Aggregate amount: ______________________________

CUSIP No.: ______________________________

6. Relationship with the Company:

Except as set forth below, neither the undersigned nor any of its affiliates, directors or principal equity holders (5% or more) has held any position or office or has any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here:

____
____
____

7. Broker-Dealer Status:

Is the Selling Stockholder a registered broker-dealer? Yes [___] No [___]

Note: In general we will be required to identify any registered broker-dealer as an underwriter in the prospectus.

8. Affiliation with Broker-Dealers:

Is the Selling Stockholder an affiliate of a registered broker-dealer? An “affiliate” of a specified person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified.

Yes [___] No [___]

If so, please answer the remaining questions in this section.

A. Please describe the affiliation between the Selling Stockholder and any registered broker-dealers:

____
____
____

B. If the shares of Common Stock were purchased by the Selling Stockholder other than in the ordinary course of business, please describe the circumstances:

____

C. If the Selling Stockholder, at the time of its purchase of the shares of Common Stock, had any agreements or understandings, directly or indirectly, with any person to distribute the shares of Common Stock, please describe such agreements or understandings:

Note: If the Selling Stockholder is an affiliate of a broker-dealer and did not purchase its shares of Common Stock in the ordinary course of business or at the time of the purchase had any agreements or understandings, directly or indirectly, to distribute the shares of Common Stock, we must identify the Selling Stockholder as an underwriter in the prospectus.

9. Beneficial Ownership:

(a) Please state the name of the person or entity who has voting or investment power over the shares of Common Stock held by the Selling Stockholder. Please describe who has or shares: (i) voting power, which includes the power to vote, or to direct the voting of, such security; and/or, (ii) investment power, which includes the power to dispose, or to direct the disposition of, the Common Stock held by the Selling Stockholder directly or indirectly, through any contract, arrangement, understanding, relationship.

(b) Nature of Beneficial Ownership.

If the name of the beneficial owner of the Registrable Common Stock set forth in your response to Item 9(a) above is that of a limited partnership, state the names of the general partners of such limited partnership:

(c) With respect to each general partner listed in Item 9(b) above who is not a natural person, and is not publicly-held, name each shareholder (or holder of partnership interests, if applicable) of such general partner. If any of these named shareholders are not natural persons or publicly-held entities, please provide the same information. This process should be repeated until you reach natural persons or a publicly-held entity.

(d) Name of your controlling shareholder(s) (the "Controlling Entity"). If the Controlling Entity is not a natural person and is not a publicly-held entity, name each shareholder of such Controlling Entity. If any of these named shareholders are not natural persons or publicly-held entities, please provide the same information. This process should be repeated until you reach natural persons or a publicly-held entity.

(e) (i) Full legal name of Controlling Entity(ies) or natural person(s) who have sole or shared voting or dispositive power over the Registrable Common Stock:

(ii) Business address (including street address) (or residence if no business address), telephone number and facsimile number of such person(s):

Address:

Telephone No.:

Fax No.:

(iii) Name of shareholders:

(f) (i) Full legal name of Controlling Entity(ies):

(ii) Business address (including street address) (or residence if no business address), telephone number and facsimile number of such person(s):

Address:

Telephone No.:

(iii) name of shareholders:

10. Plan of Distribution:

Except as set forth below, the undersigned (including its donees or pledgees) intends to distribute the Common Stock listed above in Item (3) pursuant to the Prospectus Supplement only as provided in the Plan of Distribution in the Prospectus Supplement.

State any exceptions here:

The undersigned acknowledges that it understands its obligation to comply with the provisions of the Securities Exchange Act of 1934, as amended, and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Registrable Common Stock pursuant to the Shelf Registration Statement. The undersigned agrees that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

The undersigned hereby acknowledges its obligations under the Note Purchase Agreement to indemnify and hold harmless certain persons set forth therein.

In accordance with the undersigned’s obligation under the Note Purchase Agreement to provide such information as may be required by law for inclusion in the Shelf Registration Statement and the Prospectus Supplement, the undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Shelf Registration Statement remains effective. All notices hereunder shall be made in writing at the address set forth above.

By signing this Selling Stockholder Questionnaire, the undersigned consents to the disclosure of the information contained herein in its answers to Items (1) through (10) above and the inclusion of such information in the Prospectus Supplement. The undersigned understands that such information will be relied upon by the Company without independent investigation or inquiry in connection with the preparation of the Prospectus Supplement.

IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Selling Stockholder Questionnaire to be executed and delivered either in person or by its authorized agent.

Beneficial Owner

____

By: ______________________________
Name:
Title:

Dated: ____________________

Exhibit G

Substitute Form W-8 and Form W-9

EXHIBIT 4.2

EXECUTION COPY

XM SATELLITE RADIO HOLDINGS INC.,

as Issuer,

SIRIUS XM RADIO INC.,

as Parent,

XM 1500 ECKINGTON LLC and

XM INVESTMENT LLC,

as Subsidiary Guarantors,

and

U.S. BANK NATIONAL ASSOCIATION,

as Trustee and Collateral Trustee

Up to $250,000,000 Aggregate Principal Amount

of

Senior PIK Secured Notes due 2011

INDENTURE

Dated as of February 13, 2009

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[INTENTIONALLY OMITTED]

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EXHIBIT A Form of Note

EXHIBIT B Form of Certificate to be Delivered by Transferee in Connection with Transfers to Institutional Accredited Investors

INDENTURE, dated as of February 13, 2009, among XM SATELLITE RADIO HOLDINGS INC., a Delaware corporation (the "**Company**"), SIRIUS XM RADIO INC., a Delaware corporation (the "**Parent**"), XM 1500 ECKINGTON LLC, a Delaware limited liability company, and XM INVESTMENT LLC, a Delaware limited liability company (each, a "**Subsidiary Guarantor**") and U.S. Bank National Association, as trustee (the "**Trustee**").

RECITALS

The Company has duly authorized the creation of an issue of its Senior PIK Secured Notes due 2011 (the "**Notes**") having the terms, tenor, amount and other provisions hereinafter set forth, to be guaranteed by the Subsidiary Guarantors pursuant to this Indenture.

All things necessary to make this Indenture a valid agreement of the Company and the Subsidiary Guarantors, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the holders of the Notes:

ARTICLE I

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1. Definitions.

"Additional Interest" has the meaning set forth in the Registration Rights Agreement.

"**Affiliate**" of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition, "control" when used with respect to any specified person means the power to direct or cause the direction of the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Agent Members**" has the meaning set forth in Section 2.1(c).

"**Applicable Procedures**" means, with respect to any transfer or transaction involving a Global Security or beneficial interest therein, the rules and procedures of the Depositary for such Note, in each case to the extent applicable to such transaction and as in effect from time to time.

"**Average Life**" means, as of the date of determination, with respect to any Indebtedness, the quotient obtained by dividing:

(1) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment

of or redemption or similar payment with respect to such Indebtedness multiplied by the amount of such payment by

(2) the sum of all such payments.

"**Bankruptcy Law**" means Title 11, United States Code, or any similar United States federal or state law for the relief of debtors.

"Board of Directors" means either the board of directors of the Company or Parent, as the case may be, or any duly authorized committee of such board.

"**Board Resolution**" means a resolution of the Board of Directors or any duly appointed committee thereof.

"**Business Day**" means each day of the year other than a Saturday or a Sunday or other day on which banking institutions in the City of New York are required or authorized by law, regulation or executive order to close.

"**Capital Stock**" of any Person means any and all shares, interests (including partnership interests), rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

"**Cash Equivalents**" means:

(a) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States (provided that the full faith and credit of the United States is pledged in support thereof), having maturities of not more than one year from the date of acquisition;

(b) marketable general obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition of the United States (provided that the full faith and credit of the United States is pledged in support thereof) and, at the time of acquisition, having a credit rating of "A" or better from either Standard & Poor's Ratings Group, Inc. or Moody's Investors Service, Inc.;

(c) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits or bankers' acceptances having maturities of not more than one year from the date of acquisition thereof issued by any commercial bank the long-term debt of which is rated at the time of acquisition thereof at least "A" or the equivalent thereof by Standard & Poor's Ratings Group, Inc., or "A" or the equivalent thereof by Moody's Investors Service, Inc., and having combined capital and surplus in excess of $200 million;

(d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (1), (2) and (3) entered into with any bank meeting the qualifications specified in clause (3) above;

(e) commercial paper rated at the time of acquisition thereof at least “A-2” or the equivalent thereof by Standard & Poor’s Ratings Group, Inc. or “P-2” or the equivalent thereof by Moody’s Investors Service, Inc., or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of investments, and in any case maturing within one year after the date of acquisition thereof; and

(f) interests in any investment company or money market fund which invests 95% or more of its assets in instruments of the type specified in clauses (1) through (5) above.

“**Cash Interest**” means the interest on the Notes to be paid in cash.

“**Certificated Securities**” means Notes that are in substantially the form attached hereto as Exhibit A and that do not include the legend called for by footnote 1 thereof.

“**Closing Sale Price**” means with respect to a share of Common Stock on any date, the closing sale price of a share of Common Stock (or, if no closing sale price is reported, the average of the bid and ask prices or, if there is more than one bid or ask price, the average of the average bid and the average ask prices) on such date as reported on a national securities exchange such as the New York Stock Exchange or, if the shares of Applicable Stock are not listed on a national securities exchange, as reported by the Nasdaq National Market system or the Nasdaq SmallCap Market system, as applicable. If the Applicable Stock is not listed for trading on a national securities exchange and not quoted by the Nasdaq National Market or the Nasdaq SmallCap Market on the relevant date, the “Closing Sale Price” shall be the last quoted bid for the Applicable Stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization. If the Applicable Stock is not so quoted, the “Closing Sale Price” shall be the average of the midpoint of the last bid and ask prices for the Applicable Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

“**Collateral**” has the meaning given thereto in Section 12.1(b).

“**Collateral Requirement**” means, at any time, the requirement that at closing:

(a) the Collateral Trustee shall have received (i) counterparts of the Mortgages with respect to the Mortgaged Property duly executed and delivered by the record owner or, subject to receipt of any required consent of the applicable lessor, the lessee, as the case may be, of the Mortgaged Property, (ii) a letter executed and delivered by a nationally recognized title insurance company wherein it agrees to issue a policy or policies of title insurance insuring the Lien of the Mortgages as a valid first Lien on the Mortgaged Property described therein, free of any other Liens except Permitted Liens, which policies shall contain such endorsements as the Holders may reasonably request, and (iii) such surveys, abstracts, appraisals, legal opinions and other documents as the Holders may reasonably request with respect to the Mortgages or the Mortgaged Property;

(b) the Collateral Trustee shall have received counterparts of the Security Agreement duly executed and delivered by each of the Subsidiary Guarantors; and

(c) each of the Subsidiary Guarantors shall have obtained all consents and approvals required to be obtained by it in connection with the execution and delivery of the Mortgages and the Security Agreement, the performance of its obligations thereunder and the granting by it of the Liens thereunder;

provided, that the foregoing definition shall not require the creation or perfection of pledges of or security interests in, or the obtaining of title insurance or legal opinions with respect to, particular assets of the Subsidiary Guarantors if and for so long as, in the reasonable judgment of the Purchasers, the cost (including the burden of compliance with applicable law) of creating or perfecting such pledges or security interests in such assets or obtaining title insurance or legal opinions with respect of such assets shall be excessive in view of the benefits to be obtained by the Collateral Trustee, on behalf of Holders, therefrom.

"**Collateral Trustee**" has the meaning given thereto in Section 12.1(a) until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent successor or successors to such successor.

"Common Stock" means the common stock, $0.001 par value of the Parent as that stock exists on the date of this Indenture or any other Equity Interests of the Parent into which such common stock shall be reclassified or changed.

"**Company Request**" or "**Company Order**" means a written request or order signed in the name of the Company by any two Officers, at least one of whom is the Chief Executive Officer or the Chief Financial Officer.

"**Company**" means the party named as the "Company" in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, means such successor. The foregoing sentence shall likewise apply to any subsequent successor or successors to such successor.

"**Conversion Price**" means, at any time, $1,000 divided by the Conversion Rate in effect at such time, rounded to two decimal places (rounded up if the third decimal place thereof is 5 or more and otherwise rounded down).

"Conversion Rate" means the number of shares of Common Stock issuable upon conversion of each $1,000 of the principal amount of the Notes, which is initially 92.0 shares, subject to adjustments as set forth in this Indenture.

"**Corporate Trust Office**" means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 100 Wall Street, Suite 1600, New York, New York 10005, Attention: Corporate Trust Administration, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee

(or such other address as a successor Trustee may designate from time to time by notice to the Holders and the Company).

“**Custodian**” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

“**Default**” means, when used with respect to the Notes, any event which is, or after notice or passage of time or both would be, an Event of Default.

“**Depositary**” means, with respect to any Global Securities, a securities clearing agency that is registered as such under the Exchange Act and is designated by the Company to act as Depositary for such Global Securities (or any successor securities clearing agency so registered), which shall initially be DTC.

“**DTC**” means The Depository Trust Company, a New York corporation.

“**EDGAR**” has the meaning set forth in Section 6.2(b).

“**Equity Interest**” of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) corporate stock or other equity participations, including partnership interests, whether general or limited, of such Person.

“**Event of Default**” has the meaning set forth in Section 8.1.

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

“**Exchange Notes**” means the Company’s Senior PIK Secured Notes due 2011 issued pursuant to this Indenture in connection with an Exchange Offer pursuant to the Registration Rights Agreement.

“**Exchange Offer**” means the offer by the Company, pursuant to the Registration Rights Agreement, to certain Holders of Notes, to issue and deliver to such Holders, in exchange for the Notes, a like aggregate principal amount of Exchange Notes registered under the Securities Act.

“Fundamental Change” means the occurrence of any of the following events: (i) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person shall be deemed to have beneficial ownership of all shares that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 50% of the total outstanding Voting Stock of the Parent or the Company; (ii) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Parent or the Company (together with any new directors whose election to such Board of Directors or whose nomination for election by the stockholders of the Parent or the Company, as the case may be, was approved by a vote of at least 66-2/3% of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of such Board of Directors then in office;

(iii) the Parent or the Company consolidates with or merges with or into any Person, in any such event pursuant to a transaction in which the outstanding Voting Stock of the Parent or the Company, as the case may be, is changed into or exchanged for cash, securities or other property, or conveys, transfers, sells or otherwise disposes of or leases all or substantially all of its assets to any Person, or any corporation consolidates with or merges into or with the Parent or the Company, as applicable, other than any such transaction where the outstanding Voting Stock of the Parent or Company, as applicable, is not changed or exchanged at all (except to the extent necessary to reflect a change in, the jurisdiction of incorporation of the Parent or the Company, as applicable), or where (A) the outstanding Voting Stock of the Parent or the Company, as the case may be, is changed into or exchanged for cash, securities and other property (other than Equity Interests of the surviving corporation) and (B) the stockholders of the Parent or the Company, as the case may be, immediately before such transaction own, directly or indirectly, immediately following such transaction, more than 50% of the total outstanding Voting Stock of the surviving corporation; (iv) the Parent or the Company is liquidated or dissolved or adopts a plan of liquidation or dissolution other than in a transaction which complies with the provisions described under ARTICLE VII; or (v) the Common Stock ceases to be traded on a national securities exchange or quoted on the Nasdaq National Market or the Nasdaq SmallCap Market or traded on an established automated over-the-counter trading market in the United States.

Notwithstanding the foregoing provisions, a "Fundamental Change" shall not be deemed to have occurred if either:

(1) the Closing Sale Price of the Common Stock for each of at least five Trading Days within:

(i) the period of the ten consecutive Trading Days immediately after the later of the Fundamental Change or the public announcement of the Fundamental Change, in the case of a Fundamental Change resulting; solely from a Fundamental Change in clause (i) of the definition of Fundamental Change; or

(ii) the period of the ten consecutive Trading Days immediately preceding the Fundamental Change, in the case of a Fundamental Change resulting from a Fundamental Change in clauses (ii), (iii) or (iv) of the definition of Fundamental Change; is at least equal to 105% of the quotient where the numerator is the principal amount of a Note and the denominator is the Conversion Rate in effect on each of such five Trading Days, with such calculation being made for each Trading Day; or

(2) in the case of a merger or consolidation described in clause (iii) of the definition of Fundamental Change, at least 90% of the consideration, excluding cash payments for fractional shares and cash payments pursuant to dissenters' appraisal rights, in the merger or consolidation constituting the Fundamental Change, consists of common stock traded on a U.S. national securities exchange or quoted on the Nasdaq National Market or the Nasdaq SmallCap Market (or which shall be so traded or quoted when issued or exchanged in connection with such Fundamental Change).

"Fundamental Change Purchase Date" has the meaning set forth in Section 5.1(a).

“Fundamental Change Purchase Notice” has the meaning set forth in Section 5.1(c).

“Fundamental Change Purchase Price” has the meaning set forth in Section 5.1(a).

“**GAAP**” shall mean generally accepted accounting principles in the United States of America as in effect from time to time.

“**Global Securities**” means Notes that are in substantially the form attached hereto as Exhibit A and that include the information called for by footnotes 1 and 3 thereof and that are deposited with the Depositary or its custodian and registered in the name of the Depositary or its nominee.

“**Hedging Obligations**” of any Person means the obligations of such Person under:

(1) currency exchange or interest rate swap agreements, currency exchange or interest rate cap agreements or currency exchange or interest rate collar agreements; or

(2) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange or interest rate prices.

“**Holder**” means a person in whose name a Note, including any Global Security, is registered on the Registrar’s books.

“Indebtedness” means, with respect to any Person on any date of determination (without duplication):

(1) the principal in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, including, in each case, any premium on such indebtedness to the extent such premium has become due and payable;

(2) all capital lease obligations of such Person and all attributable debt in respect of sale/leaseback transactions entered into by such Person;

(3) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding any accounts payable or other liability to trade creditors arising in the ordinary course of business), in each case only if and to the extent due more than 12 months after the delivery of property;

(4) the principal component of all obligations of such Person for the reimbursement of any obligor on any letter of credit or bankers’ acceptance (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (1) through (3) above) entered into in the ordinary course of business of such Person, to the extent such letters of credit are not drawn upon or, if and to the

extent drawn upon, such drawing is reimbursed no later than the tenth Business Day following payment on the letter of credit;

(5) all obligations of the type referred to in clauses (1) through (4) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any guarantee; and

(6) all obligations of the type referred to in clauses (1) through (5) of other Persons secured by any lien on any property or asset of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the fair market value of such property or assets and the amount of the obligation so secured.

"**Indenture**" means this Indenture, as amended or supplemented from time to time in accordance with the terms hereof, including the provisions of the TIA that are explicitly incorporated in this Indenture by reference to the TIA.

"**Initial Notes**" means up to $250,000,000 aggregate principal amount of the Company's Senior PIK Secured Notes due 2011 issued on the Issue Date.

"**Institutional Accredited Investor**" means an institutional investor that is an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

"**Interest Payment Date**" has the meaning set forth in Exhibit A attached hereto.

"**Issue Date**" means February 13, 2009.

"**Legal Holiday**" means any day other than a Business Day.

"**Lien**" means, with respect to any asset, (i) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (ii) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (iii) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"**Mortgages**" means mortgages, deeds of trust, assignments of leases and rents, leasehold mortgages or other security documents granting a Lien on the Mortgaged Property to secure the Obligations of the Subsidiary Guarantors under the Indenture and the Note Guarantees. The Mortgages shall be reasonably satisfactory in form and substance to the Purchasers.

"**Mortgaged Property**" means, with respect to XM 1500 Eckington LLC, the office building located at 1500 Eckington Place, N.E. Washington, DC 20002, and with respect to XM Investment LLC, the office building located at 60 Florida Avenue N.E., Washington, DC 20002 as more particularly described in the Mortgages.

"**Net Available Cash**" means:

(1) payments in cash or Cash Equivalents received therefrom, in each case net of:

(A) all legal, title and recording tax expenses, commissions and other fees and expenses incurred, and all federal, state, provincial, foreign and local taxes required to be accrued as a liability under GAAP, as a consequence of such event;

(B) the deduction of appropriate amounts provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the property or other assets disposed in such transaction and retained by the Company or any Subsidiary Guarantor after such transaction; and

(C) any portion of the purchase price from a transaction placed in escrow, whether as a reserve for adjustment of the purchase price, for satisfaction of indemnities in respect of such transaction, or otherwise in connection therewith; *provided*, *however*, that upon the termination of that escrow, Net Available Cash shall be increased by any portion of funds in the escrow that are released to the Company or any Subsidiary Guarantor.

"**Notes**" means the Initial Notes, including any PIK Notes issued in respect of Notes and any increase in the principal amount of outstanding Notes as a result of a payment of PIK Interest, the Exchange Notes and any additional Notes issued pursuant to Section 2.1(b), treated as a single class of securities.

"**Note Guarantees**" means the guarantee of the Notes by a Subsidiary Guarantor.

"**Note Liens**" has the meaning set forth in Section 12.1(a).

"**Obligations**" means any principal, interest accruing on or after the filing of any petition of bankruptcy or for reorganization, whether or not a claim for post-filing interest is allowed in such proceeding, penalties, fees, charges, expenses, indemnifications, reimbursement obligations, additional amounts, guarantees and other liabilities or amounts payable under the documentation governing any indebtedness or in respect thereto.

"Officer" means the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer or the Secretary of the Company or Parent, as the case may be.

"Officers' Certificate", when used with respect to the Company or Parent, as the case may be, means a written certificate containing the information specified in Section 14.4 and Section 14.5, signed in the name of the Company or Parent, as applicable, by any two Officers, at least one of whom is the Chief Executive Officer or the Chief Financial Officer, and delivered to the Trustee. An Officers' Certificate given pursuant to Section 6.3 shall be signed by two Officers, one of whom must be the principal executive officer, the principal financial officer or the principal accounting officer of the Company or Parent, as applicable.

"Opinion of Counsel" means a written opinion containing the information specified in Section 14.4 and. Section 14.5, from legal counsel. The counsel may be an employee of, or counsel to, the Company or Parent.

"Parent" means Sirius XM Radio Inc., a Delaware corporation, and its successors and assigns.

"**Paying Agent**" has the meaning set forth in Section 2.3.

"**Permitted Liens**" means, with respect to any Person:

(1) pledges or deposits by such Person under worker's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or United States government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case incurred in the ordinary course of business;

(2) Liens imposed by law, such as carriers', warehousemen's and mechanics' Liens, in each case for sums not yet due or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review and Liens arising solely by virtue of any statutory or common law provision relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution;

(3) Liens for taxes, assessments or other governmental charges not yet subject to penalties for non-payment or which are being contested in good faith by appropriate proceedings;

(4) Liens in favor of issuers of surety bonds or letters of credit issued pursuant to the request of and for the account of such Person in the ordinary course of its business; *provided*, *however*, that such letters of credit do not constitute Indebtedness;

(5) minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said

properties or materially impair their use in the operation of the business of such Person;

(6) Liens securing Indebtedness incurred to finance the construction, purchase or lease of, or repairs, improvements or additions to, property, plant or equipment of such Person; *provided*, *however*, that the Lien may not extend to any other property owned by such Person at the time the Lien is incurred (other than assets and property affixed or appurtenant thereto), and the Indebtedness (other than any interest thereon) secured by the Lien may not be incurred more than 180 days after the later of the acquisition, completion of construction, repair, improvement, addition or commencement of full operation of the property subject to the Lien;

(7) Liens existing on the Issue Date;

(8) Liens on property or shares of Capital Stock of another Person at the time such other Person becomes a Subsidiary of such Person; *provided*, *however*, that the Liens may not extend to any other property owned by such Person;

(9) Liens on property at the time such Person acquires the property, including any acquisition by means of a merger or consolidation with or into such Person; *provided*, *however*, that the Liens may not extend to any other property owned by such Person (other than assets and property affixed or appurtenant thereto);

(10) leases, licenses, subleases and sublicenses of assets (including, without limitation, real property and intellectual property rights) which do not materially interfere with the ordinary conduct of the business of the Company or any of the Subsidiary Guarantors;

(11) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Company and any of the Subsidiary Guarantors in the ordinary course of business;

(12) Liens in connection with advances, deposits, escrows and similar arrangements in the ordinary course of business in respect of retail or automotive distribution arrangements, programming and content acquisitions and extensions;

(13) Liens to secure any Refinancing Indebtedness (including Refinancing Indebtedness with respect to such Refinancing Indebtedness) that Refinances, as a whole, or in part, any Indebtedness secured by any Lien referred to in the foregoing clauses (6), (7), (8) or (9); *provided*, *however*, that:

(A) such new Lien shall be limited to all or part of the same property and assets that secured or, under the written agreements pursuant

to which the original Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof); and

(B) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under the foregoing clauses (6), (7), (8) or (9) above at the time the original Lien became a Permitted Lien and (ii) an amount necessary to pay any fees and expenses, including premiums, related to such Refinancing; and

(14) Liens on the Collateral securing the Notes, the Note Guarantees and other obligations under this Indenture and in respect thereof and any obligations owing under this Indenture or the Security Documents.

"**Person**" or "**person**" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof (and for purposes of the definition of "Fundamental Change" shall also have the meaning set forth in such definition).

"**Personal Property**" means all the personal property of the Subsidiary Guarantors, including accounts, chattel paper, deposit accounts, documents, equipment, financial assets, instruments, inventory, general intangibles, letter of credit rights, money, Cash Equivalents, supporting obligations and products and proceeds thereof.

"**PIK Interest**" means interest paid in the form of (1) an increase in the outstanding principal amount of the Notes or (2) the issuance of PIK Notes.

"**PIK Notes**" means additional Notes issued under this Indenture on the same terms and conditions as the Notes issued on the Issue Date in connection with a payment of PIK Interest.

"**Preferred Stock**," as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

"**Public Notice**" by the Company shall mean publication of a notice in a press release through Dow Jones & Co., Inc., Business Wire or Bloomberg Business News Company or, if such organizations are not in existence at the time of issuance of such press release, such other news or press organization as is reasonably calculated to broadly disseminate the relevant information to the public and publication of such information on the Company's corporate website or through such other public medium as the Company may use at that time.

"**Purchase Agreement**" has the meaning set forth in Section 2.1.

"**Purchasers**" means the purchasers named in the Purchase Agreement.

"**QIB**" means a "qualified institutional buyer" as defined in Rule 144A.

"**Refinance**" means, in respect of any Indebtedness, to refinance, extend, renew, refund, repay, prepay, purchase, redeem, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness. The terms "Refinances," "Refinanced" and "Refinancing" shall have correlative meanings.

"**Refinancing Indebtedness**" means Indebtedness that Refinances any Indebtedness of the Company or any Subsidiary Guarantor existing on the Issue Date or incurred in compliance with this Indenture, including Indebtedness that Refinances Refinancing Indebtedness; *provided*, *however*, that:

(1) such Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being Refinanced and, if such Refinancing Indebtedness is a Subordinated Obligation, no earlier than the later of (x) the Stated Maturity of the Indebtedness being Refinanced and (y) 91 days after the Stated Maturity of the Notes;

(2) such Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is incurred that is equal to or greater than the Average Life of the Indebtedness being Refinanced and, if such Refinancing Indebtedness is a Subordinated Obligation, equal to or greater than the greater of (x) the Average Life of the Indebtedness being Refinanced and (y) the then remaining Average Life of the Notes;

(3) such Refinancing Indebtedness has an aggregate principal amount (or if incurred with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if incurred with original issue discount, the aggregate accreted value) then outstanding (plus fees and expenses, including any premium and defeasance costs) under the Indebtedness being Refinanced; and

(4) if the Indebtedness being Refinanced is subordinated in right of payment to the Notes, such Refinancing Indebtedness (a) is subordinated in right of payment to the Notes at least to the same extent as the Indebtedness being Refinanced, (b) has a Stated Maturity that is at least 91 days after the later of (x) the Stated Maturity of the Notes and (y) the Stated Maturity of the Indebtedness being Refinanced and (c) has an Average Life at the time such Refinancing Indebtedness is incurred that is greater than (x) the Average Life of the Notes and (y) the Average Life of the Indebtedness being Refinanced;

provided further, *however*, that Refinancing Indebtedness shall not include (A) Indebtedness of a Subsidiary that Refinances Indebtedness of the Company or (B) Indebtedness of the Company or a Subsidiary Guarantor that Refinances Indebtedness of another Subsidiary.

"**Register**" has the meaning set forth in Section 2.3.

“**Registrar**” has the meaning set forth in Section 2.3.

“**Registration Rights Agreement**” means the Registration Rights Agreement, dated February 13, 2009, among the Company, the Parent, the Subsidiary Guarantors and the Purchasers, as amended or supplemented from time to time.

“**Regular Record Date**” has the meaning set forth in Exhibit A attached hereto.

“**Responsible Officer**” means, when used with respect to the Trustee, the officer within the corporate trust department of the Trustee, including any vice president, assistant vice president or assistant treasurer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“**Restricted Certificated Security**” means a Certificated Security which is a Transfer Restricted Security.

“**Restricted Global Security**” means a Global Security that is a Transfer Restricted Security.

“**Restricted Security**” means a Restricted Certificated Security or a Restricted Global Security.

“**Rule 144A**” means Rule 144A under the Securities Act (or any successor provision), as it may be amended from time to time.

“**SEC**” means the United States Securities and Exchange Commission, or any successor thereto.

“**Securities Act**” means the United States Securities Act of 1933, as amended, or any successor statute thereto and the rules and regulations thereunder.

“**Security Agreement**” means the Security Agreement among the Company, the Subsidiary Guarantors and the Collateral Trustee, as amended, restated, supplemented or otherwise modified from time to time.

“**Security Documents**” means the Security Agreement, the Mortgages and all security agreements, pledge agreements, collateral assignments, mortgages, deeds of trust, collateral agency agreements. control agreements or other grants or transfers for security executed and delivered by any Subsidiary Guarantor creating (or purporting to create) a Note Lien upon Collateral in favor of the Collateral Trustee to secure Obligations, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms and the provisions of the Security Agreement.

"**Shelf Registration Statement**" means any registration statement to be filed by the Company covering resales by holders of the Initial Notes, as specified in the Registration Rights Agreement.

"**Significant Subsidiary**" means any existing or future, direct or indirect, Subsidiary of the Company that would constitute a "significant subsidiary" as such term is defined under Rule 1-02 of Regulation S-X.

"**Special Record Date**" has the meaning set forth in Exhibit A attached hereto.

"**Stated Maturity**", when used with respect to any Note, means June 1, 2011, and with respect to any other Indebtedness, the date specified in the documents evidencing or governing such Indebtedness as the fixed date on which the final payment of principal of such Indebtedness is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repayment or repurchase of such Indebtedness at the option of the holder thereof upon the happening of any contingency unless such contingency has occurred).

"**Subordinated Obligation**" means, with respect to a Person, any Indebtedness of such Person (whether outstanding on the Issue Date or thereafter incurred) which is subordinate or junior in right of payment to the Notes pursuant to a written agreement to that effect.

"**Subsidiary**" means any person of which at least a majority of the outstanding Voting Stock shall at the time directly or indirectly be owned or controlled by the Company or by one or more Subsidiaries or by the Company and one or more Subsidiaries.

"**Subsidiary Guarantor**" means each party named as a "Subsidiary Guarantor" in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, means such successor. The foregoing sentence shall likewise apply to any subsequent successor or successors to such successor.

"**TIA**" means the United States Trust Indenture Act of 1939 as in effect on the date of this Indenture, *provided, however*, that in the event the TIA is amended after such date, TIA means, to the extent required by any such amendment, the TIA as so amended.

"**Trading Day**" means a day during which trading in securities generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a U.S. national or regional securities exchange, on the Nasdaq National Market system or Nasdaq SmallCap Market system or, if the Common Stock is not listed on a U.S. national or regional securities exchange, and not quoted on the Nasdaq National Market system, on the principal other market on which the Common Stock is then traded (*provided* that no day on which trading of the Common Stock is suspended on such exchange or other trading market will count as a Trading Day) (it being understood that for purposes of this definition a market shall include obtaining quotations as provided in the last sentence of the definition of "Closing Sale Price," if applicable).

"**Transfer Certificate**" has the meaning set forth in Section 2.12(e).

“**Transfer Restricted Security**” has the meaning set forth in Section 2.12(e).

“**Trustee**” means the party named as the “Trustee” in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

“**Unrestricted Certificated Security**” means a Certificated Security that is not a Transfer Restricted Security.

“**Unrestricted Global Security**” means a Global Security that is not a Transfer Restricted Security.

“**U.S. Government Obligations**” means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable at the issuer’s option.

“**Voting Stock**” of a person means the Equity Interest of such person of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of such person (irrespective of whether or not at the time the Equity Interest of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

Section 1.2. Incorporation by Reference of Trust Indenture Act. Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“**indenture securities**” means the Notes.

“**indenture security holder**” means a Holder.

“**indenture to be qualified**” means this Indenture.

“**indenture trustee**” or “**institutional trustee**” means the Trustee.

“**obligor**” on the indenture securities means the Company and the Subsidiary Guarantors.

All other TIA terms used but not defined in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule have the meanings assigned to them by such definitions.

Section 1.3. Rules of Construction.

Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with accounting principles generally accepted in the United States as in effect from time to time;

(c) "or" is not exclusive;

(d) "including" means including, without limitation; and

(e) words in the singular include the plural, and words in the plural include the singular.

Section 1.4. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company, as described in Section 14.2. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.4.

(b) The fact and date of the execution by any person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to such officer the execution thereof. Where such execution is by a signer acting in a capacity other than such signer's individual capacity, such certificate or affidavit shall also constitute sufficient proof of such signer's authority, if it so states. The fact and date of the execution of any such instrument or writing, or the authority of the person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The principal amount and serial number of any Note and the record ownership of Notes shall be proved by the Register maintained by the Registrar for the Notes.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(e) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the

Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Notes shall be computed as of such record date; *provided* that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

ARTICLE II

THE NOTES

Section 2.1. Form and Dating.

(a) The Notes shall be designated as the "Senior PIK Secured Notes due 2011" of the Company. The aggregate principal amount of Notes outstanding shall be limited to $250,000,000 except as provided in Section 2.7 and pursuant to payments of PIK Interest under this Indenture. The Notes shall be unconditionally guaranteed by the Subsidiary Guarantors on a general unsubordinated basis, subject to the limitations described under Article III.

The Initial Notes shall be offered and sold by the Company pursuant to the Purchase Agreement (the "Purchase Agreement") dated as of February 13, 2009 among the Company, the Parent, the Subsidiary Guarantors and the Purchasers named therein.

The Notes and the Trustee's authentication thereof shall be substantially in the form of Exhibit A attached hereto, which is incorporated in and made a part of this Indenture. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage (*provided* that any such notation, legend or endorsement required by usage is in a form acceptable to the Company). The Company shall provide any such notations, legends or endorsements to the Trustee in writing. Each Note shall be dated the date of its authentication.

(b) Additional Notes ranking pari passu with the Initial Notes may be created and issued from time to time by the Company without notice to or consent of the Holders and shall be consolidated with and form a single class with the Initial Notes and shall have the same terms as to status, redemption or otherwise as the Initial Notes; provided that the aggregate principal amount of Notes outstanding shall be limited to $250,000,000 except as provided in Section 2.7 and pursuant to payments of PIK Interest under this Indenture. The Notes (including any Exchange Notes issued in exchange therefor), PIK Notes and additional Notes issued pursuant to this Section 2.1(b) shall be treated as a single class of securities for all purposes under the Indenture.

(c) Restricted Global Securities. The Initial Notes will be offered and sold by the Company to the Purchasers pursuant to the Purchase Agreement. The Initial Notes may thereafter be resold or transferred by the Purchasers, in which case the Notes shall be transferred or resold pursuant to exemptions from the registration requirements of the Securities Act to, among others, to QIBs in reliance on Rule 144A and to Institutional Accredited Investors, subject to the restrictions on transfer set forth herein. All of the Initial Notes shall be issued initially in the form of one or more Restricted Global Securities, which shall be deposited with the Trustee at its Corporate Trust Office, as custodian for the Depositary and registered in the name of DTC or the nominee thereof through its electronic book-entry system, duly executed by the Company and authenticated by the Trustee as hereinafter provided. If any Notes are resold to an Institutional Accredited Investor, the Company shall duly execute and the Trustee shall duly authenticate and deliver, in accordance with Section 2.2, one or more additional Restricted Global Securities, which shall be deposited with the Trustee at its Corporate Trust Office, as custodian for the Depositary and registered in the name of DTC or the nominee thereof and in

which beneficial interests may be held by Institutional Accredited Investors in accordance with the Applicable Procedures. Subject to Section 2.1(a), the aggregate principal amount of the Restricted Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary as hereinafter provided.

(d) Global Securities in General. Each Global Security shall represent such of the outstanding Notes as shall be specified therein and each shall provide that it shall initially represent the aggregate amount of outstanding Notes stated thereon, but that the aggregate amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, repurchases and redemptions of such Notes.

Any adjustment of the aggregate principal amount of a Global Security to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee in accordance with instructions given by the Holder thereof as required by Section 2.12 and shall be made on the records of the Trustee and the Depositary.

Neither any members of, or participants in, the Depositary (collectively, the "**Agent Members**") nor any other persons on whose behalf Agent Members may act may exercise any rights under this Indenture with respect to any Global Security registered in the name of the Depositary or any nominee thereof, or under any such Global Security, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and holder of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing contained herein shall (A) prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or (B) impair, as between the Depositary, its Agent Members and any other person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Note.

(e) Certificated Securities. Certificated Securities will be issued only under the limited circumstances provided in Section 2.12(a)(i).

(f) For purposes of this Indenture, all references to "principal amount" of the Notes shall include any increase in the principal amount of the Notes as a result of a payment of PIK Interest.

Section 2.2. Execution and Authentication. The Notes shall be executed on behalf of the Company by any Officer. The signature of the Officer on the Notes may be manual or facsimile.

A Note bearing the manual or facsimile signature of an individual who was at the time of the execution of the Note an Officer shall bind the Company, notwithstanding that such individual has ceased to hold such office(s) prior to the authentication and delivery of such Notes or did not hold such office(s) at the date of authentication of such Notes.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein duly executed by the Trustee by manual signature of an authorized

signatory, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

The Trustee shall authenticate and deliver: (1) on the Issue Date, the Initial Notes for original issuance in an aggregate principal amount of up to $250,000,000, (2) Exchange Notes for issue only in an Exchange Offer pursuant to the Registration Rights Agreement for a like principal amount of Initial Notes, (3) PIK Notes upon a payment of PIK Interest, in each case upon one or more Company Orders without any further action by the Company and (4) from time to time upon receipt of a Company Order, additional Notes pursuant to Section 2.1(b); provided that the aggregate principal amount of the Notes outstanding at any time may not exceed $250,000,000 except for the amounts issued pursuant to payments of PIK Interest under this Indenture and as provided in Section 2.7. In authenticating such Notes, and accepting the additional responsibilities under this Indenture in relation to such Notes, the Trustee shall receive and shall be fully protected in relying upon:

(a) a copy of the Board Resolution in or pursuant to which the terms and form of the Notes were established, the issuance and sale of, and the terms of, the Notes was authorized, this Indenture was authorized and specified Officers were authorized to establish the form of the Notes and the form of this Indenture, to execute the Notes and this Indenture on behalf of the Company and to take any other necessary actions relating thereto and evidence of any actions taken by authorized Officers pursuant to that Board Resolution, certified by the President, Secretary, an Assistant Secretary or the General Counsel of the Company to have been duly adopted by the Board of Directors or taken by any authorized Officer and to be in full force and effect as of the date of such certificate; and

(b) an Officers' Certificate delivered in accordance with to Section 14.4 and Section 14.5.

The Trustee shall act as the initial authenticating agent. Thereafter, the Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. Certificates of authentication may be executed by the Trustee or a duly authorized authentication agent by manual or facsimile signature.

The Notes shall be issued only in registered form without coupons and only in denominations of $2,000 of principal amount and any integral multiple of $1,000 in excess thereof, except PIK Notes may be issued in minimum denominations of $1.00 and any integral multiple thereof, and any increase in the principal amount of Notes as a result of a payment of PIK Interest may be made in integral multiples of $1.00.

Section 2.3. Registrar and Paying Agent.

The Company shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("**Registrar**"), an office or agency where Notes may be presented for repurchase, redemption or payment ("**Paying Agent**") and an office or agency

where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. Pursuant to Section 6.5, the Company shall at all times maintain a Registrar, Paying Agent and an office or agency where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served in the Borough of Manhattan, New York City. The Registrar shall keep a register of the Notes (the "**Register**") and of their transfer and exchange.

The Company may have one or more co-registrars and one or more additional paying agents. The term Paying Agent includes any additional paying agent, including any named pursuant to Section 6.5.

The Company may enter into an appropriate limited agency agreement with any Registrar, Paying Agent or co-registrar (in each case, if such Registrar, agent or co-registrar is a Person other than the Trustee). Each such agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee of the name and address of any such agent. If the Company fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 9.7.

The Company hereby initially appoints the Trustee as Registrar and Paying Agent in connection with the Notes. The initial office of the Registrar and Paying Agent shall be the office of the Trustee that is located in the Borough of Manhattan, New York City, which office is presently located at 100 Wall Street, Suite 1600, New York, New York 10005.

Section 2.4. Paying Agent to Hold Assets in Trust.

Except as otherwise provided herein, prior to 10:00 a.m., New York City time, on each due date of payments in respect of any Note, the Company shall deposit with the Paying Agent cash (in immediately available funds if deposited on the due date) sufficient to make such payments when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all cash held by the Paying Agent for the making of payments in respect of the Notes and shall notify the Trustee of any default by the Company in making any such payment. The Company at any time may require a Paying Agent to pay all cash held by it to the Trustee, and to account for any funds disbursed by it, and the Trustee may at any time during the continuance of any such default, upon the written request to the Paying Agent, require such Paying Agent to forthwith pay to the Trustee all cash so held in trust. Upon doing so, the Paying Agent shall have no further liability for the cash.

Section 2.5. Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Company shall cause to be furnished to the Trustee on or before each semiannual interest payment date and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders.

Section 2.6. Transfer and Exchange.

(a) Subject to compliance with any applicable additional requirements contained in Section 2.12, when a Note is presented to the Registrar with a request to register a transfer thereof or to exchange such Note for an equal principal amount of Notes of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested; *provided*, *however*, that every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by an assignment form and, if applicable, a transfer certificate, each in the form included in Exhibit A attached hereto and in form satisfactory to the Registrar and each duly executed by the Holder thereof or its attorney duly authorized in writing. To permit registration of transfers and exchanges, upon surrender of any Note for registration of transfer or exchange at an office or agency maintained for such purpose pursuant to Section 2.3, the Company shall execute, and the Trustee shall authenticate, Notes of a like aggregate principal amount at the Registrar's request. Any transfer or exchange shall be without charge, except that the Company or the Registrar may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of the Notes from the Holder requesting such transfer or exchange. The Company shall not be required to make, and the Registrar need not register, transfers or exchanges of Notes selected for redemption (except, in the case of Notes to be redeemed in part, the portion thereof not to be redeemed) or of any Notes for a period of 15 days before a selection of Notes to be redeemed.

Neither the Company, the Registrar nor the Trustee shall be required to exchange or register a transfer of any Notes in respect of which a Fundamental Change Purchase Notice has been given and not withdrawn by the Holder thereof in accordance with the terms of this Indenture (except, in the case of Notes to be repurchased in part, the portion thereof not to be repurchased).

All Notes issued upon any transfer or exchange of Notes shall be valid obligations of the Company, evidencing the same debt and entitled to the same benefits under this Indenture, as the Notes surrendered upon such transfer or exchange.

(b) Any Registrar appointed pursuant to Section 2.3 shall provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by such Registrar of Notes upon transfer or exchange of Notes.

(c) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note between or among Agent Members or other beneficial owners of interests in any Global Security other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.7. Replacement Notes.

If (a) any mutilated Note is surrendered to the Company, the Registrar or the Trustee, or (b) the Company, the Registrar and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, and there is delivered to the Company, the Registrar and the Trustee security or indemnity satisfactory to them to save each of them harmless, then, in the absence of any notice to the Company, the Registrar or the Trustee that such Note has been acquired by a bona fide purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Note or in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount, bearing a certificate number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable or redeemed by the Company pursuant to ARTICLE IV, the Company in its discretion may, instead of issuing a new Note, pay, redeem or repurchase such Note, as the case may be.

Upon the issuance of any new Notes under this Section 2.7, the Company may require the payment of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee or the Registrar) connected therewith.

Every new Note issued pursuant to this Section 2.7 in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 2.7 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

Section 2.8. Outstanding Notes; Determinations of Holders' Action.

Notes outstanding at any time are all the Notes authenticated by the Trustee, except for those cancelled by it, those delivered to it for cancellation, and those described in this Section 2.8 as not outstanding. If a Note is replaced pursuant to Section 2.7, the replaced Note ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser unaware that such Note has been replaced.

Subject to Section 2.12(f), a Note does not cease to be outstanding because the Company or an Affiliate thereof holds the Note; *provided*, *however*, that in determining whether the Holders of the requisite principal amount of Notes have given or concurred in any request, demand, authorization, direction, notice, consent, waiver, or other Act hereunder, Notes owned by the Company or any other obligor upon the Notes or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be outstanding, except that, in determining whether the Trustee shall be protected conclusively in relying upon any such request, demand, authorization, direction, notice, consent, waiver or other Act, only Notes which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Subject to the

foregoing, only Notes outstanding at the time of such determination shall be considered in any such determination.

If the Paying Agent holds, in accordance with the terms of this Indenture, on a redemption date, Fundamental Change Purchase Date or Stated Maturity, as the case may be, money sufficient to pay all principal and interest payable on that date with respect to the Notes (or portions thereof) to be redeemed, repurchased or maturing, as the case may be, then on and after that date, such Notes (or portions thereof) shall cease to be outstanding and interest and Additional Interest, if any, on such Notes (or portions thereof) shall cease to accrue.

Section 2.9. Temporary Notes.

Pending the preparation of definitive Notes, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Notes which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Officers executing such Notes may determine, as conclusively evidenced by their execution of such Notes.

If temporary Notes are issued, the Company shall cause definitive Notes to be prepared without unreasonable delay. After the preparation of definitive Notes, the temporary Notes shall be exchangeable for definitive Notes upon surrender of the temporary Notes at the office or agency of the Company designated for such purpose pursuant to Section 2.3, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Notes of authorized denominations. Until so exchanged the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as definitive Notes.

Section 2.10. Cancellation.

All Notes surrendered for payment, repurchase by the Company pursuant to Article V, redemption or registration of transfer or exchange shall, if surrendered to any person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it or, if surrendered to the Trustee, shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Notes so delivered shall be promptly cancelled by the Trustee. The Company may not issue new Notes to replace Notes that it has redeemed, paid or delivered to the Trustee for cancellation. No Notes shall be authenticated in lieu of or in exchange for any Notes cancelled as provided in this Section 2.10, except as expressly permitted by this Indenture. All cancelled Notes held by the Trustee shall be disposed of by the Trustee in accordance with the Trustee's customary procedure.

Section 2.11. Persons Deemed Owners.

Prior to due presentment of a Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the person in whose name such Note is

registered as the owner of such Note for the purpose of receiving payment of principal of, Fundamental Change Purchase Price, and interest and Additional Interest, if any, on, the Note, and for all other purposes whatsoever, whether or not such Note be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

Section 2.12. Additional Transfer and Exchange Requirements.

(a) Transfer and Exchange of Global Securities.

(i) Certificated Securities shall be issued in exchange for interests in the Global Securities only if (x) the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for the Global Securities or if at any time the Depositary ceases to be a "clearing agency" registered under the Exchange Act, if so required by applicable law or regulation, and a successor Depositary is not appointed by the Company within 90 calendar days or (x) an Event of Default has occurred and is continuing and the Registrar receives a request from the Depository that the notes be issued in definitive form. In any such case, the Company shall execute, and the Trustee shall, upon receipt of a Company Order (which the Company agrees to deliver promptly), authenticate and deliver Certificated Securities in an aggregate principal amount equal to the principal amount of such Global Securities in exchange therefor. Only Restricted Certificated Securities shall be issued in exchange for beneficial interests in Restricted Global Securities, and only Unrestricted Certificated Securities shall be issued in exchange for beneficial interests in Unrestricted Global Securities. Certificated Securities issued in exchange for beneficial interests in Global Securities shall be registered in such names and shall be in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver or cause to be delivered such Certificated Securities to the Persons in whose name such Notes are so registered. Such exchange shall be effected in accordance with the Applicable Procedures.

(ii) Notwithstanding any other provisions of this Indenture other than the provisions set forth in Section 2.12(a)(i), a Global Security may not be transferred except as a whole by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(b) Transfer and Exchange of Certificated Securities. In the event that Certificated Securities are issued in exchange for beneficial interests in Global Securities in accordance with Section 2.12(a)(i), and, on or after such event, Certificated Securities are presented by a Holder to the Registrar with a request:

(x) to register the transfer of the Certificated Securities to a person who will take delivery thereof in the form of Certificated Securities only; or

(y) to exchange such Certificated Securities for an equal principal amount of Certificated Securities of other authorized denominations,

such Registrar shall register the transfer or make the exchange as requested; *provided*, *however*, that the Certificated Securities presented or surrendered for register of transfer or exchange:

(i) shall be duly endorsed or accompanied by a written instrument of transfer in accordance with the proviso in the first paragraph of Section 2.6(a); and

(ii) in the case of a Restricted Certificated Security, such request shall be accompanied by the following additional information and documents, as applicable:

(A) if such Restricted Certificated Security is being delivered to the Registrar by a Holder for registration in the name of such Holder, without transfer, or such Restricted Certificated Security is being transferred to the Company or a Subsidiary of the Company, a certification to that effect from such Holder (in substantially the form set forth in the Transfer Certificate);

(B) if such Restricted Certificated Security is being transferred to a person the Holder reasonably believes is a QIB in compliance with Rule 144A, pursuant to the exemption from the registration requirements of the Securities Act provided by Rule 144 (if available) or pursuant to an effective registration statement under the Securities Act, a certification to that effect from such Holder (in substantially the form set forth in the Transfer Certificate); or

(C) if such Restricted Certificated Security is being transferred pursuant to an exemption from the registration requirements of the Securities Act to an Institutional Accredited Investor (other than to a QIB in accordance with Rule 144A), that, prior to such transfer, furnishes to the Trustee a certificate containing certain representations and warranties by such Institutional Accredited Investor (in substantially the form set forth in Exhibit B), an Opinion of Counsel if required by the Company or the Trustee and a certification to that effect from the Holder (in substantially the form set forth in the Transfer Certificate).

(c) Transfer of a Beneficial Interest in a Restricted Global Security for a Beneficial Interest in an Unrestricted Global Security. Any person having a beneficial interest in a Restricted Global Security may upon request, subject to the Applicable Procedures, transfer such beneficial interest to a person who is required or permitted to take delivery thereof in the form of an Unrestricted Global Security. Upon receipt by the Trustee of written instructions, or such other form of instructions as is customary for the Depositary, from the Depositary or its nominee on behalf of any person having a beneficial interest in a Restricted Global Security and the following additional information and documents in such form as is customary for the Depositary

from the Depositary or its nominee on behalf of the person having such beneficial interest in the Restricted Global Security (all of which may be submitted by facsimile or electronically):

(i) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certification to that effect from the Holder (in substantially the form set forth in the Transfer Certificate); or

(ii) if such beneficial interest is being transferred pursuant to the exemption from the registration requirements of the Securities Act provided by Rule 144, a certification to that effect from the Holder (in substantially the form set forth in the Transfer Certificate), the Trustee, as the Registrar, shall reduce or cause to be reduced the aggregate principal amount of the Restricted Global Security by the appropriate principal amount and shall increase or cause to be increased the aggregate principal amount of the Unrestricted Global Security by a like principal amount. Such transfer shall otherwise be effected in accordance with the Applicable Procedures. If no Unrestricted Global Security is then outstanding, the Company shall execute and the Trustee shall, upon receipt of a Company Order (which the Company agrees to deliver promptly), authenticate and deliver an Unrestricted Global Security.

(d) Transfers of Certificated Securities for Beneficial Interests in Global Securities. In the event that Certificated Securities are issued in exchange for beneficial interests in Global Securities and, thereafter, the events or conditions specified in Section 2.12(a)(i) which required such exchange shall cease to exist, the Company shall mail notice to the Trustee and to the Holders stating that Holders may exchange Certificated Securities for interests in Global Securities by complying with the procedures set forth in this Indenture and briefly describing such procedures and the events or circumstances requiring that such notice be given. Thereafter, if Certificated Securities are presented by a Holder to a Registrar with a request:

(x) to register the transfer of such Certificated Securities to a person who will take delivery thereof in the form of a beneficial interest in a Global Security, which request shall specify whether such Global Security will be a Restricted Global Security or an Unrestricted Global Security, or

(y) to exchange such Certificated Securities for an equal principal amount of beneficial interests in a Global Security, which beneficial interests shall be owned by the Holder transferring such Certificated Securities (*provided* that in the case of such an exchange, Restricted Certificated Securities may be exchanged only for Restricted Global Securities and Unrestricted Certificated Securities may be exchanged only for Unrestricted Global Securities), the Registrar shall register the transfer or make the exchange as requested by canceling such Certificated Security and causing, or directing the Registrar to cause, the aggregate principal amount of the applicable Global Security to be increased accordingly and, if no such Global Security is then outstanding, the Company shall issue and the Trustee shall, upon receipt of a Company Order (which the Company agrees to deliver promptly) authenticate and deliver a new Global Security;

provided, *however*, that the Certificated Securities presented or surrendered for registration of transfer or exchange:

(1) shall be duly endorsed or accompanied by a written instrument of transfer in accordance with the proviso in the first paragraph of Section 2.6(a);

(2) in the case of a Restricted Certificated Security to be transferred for a beneficial interest in an Unrestricted Global Security, such request shall be accompanied by the following additional information and documents, as applicable:

(i) if such Restricted Certificated Security is being transferred pursuant to an effective registration statement under the Securities Act, a certification to that effect from such Holder (in substantially the form set forth in the Transfer Certificate); or

(ii) if such Restricted Certificated Security is being transferred pursuant to the exemption from the registration requirements of the Securities Act provided by Rule 144, a certification to that effect from such Holder (in substantially the form set forth in the Transfer Certificate);

(3) in the case of a Restricted Certificated Security to be transferred or exchanged for a beneficial interest in a Restricted Global Security, such request shall be accompanied by a certification from such Holder (in substantially the form set forth in the Transfer Certificate) to the effect that such Restricted Certificated Security is being transferred to a person the Holder reasonably believes is a QIB (which, in the case of an exchange, shall be such Holder) in compliance with Rule 144A or, in the case of a transfer to an Institutional Accredited Investor (other than to a QIB in accordance with Rule 144A), by a certificate containing certain representations and warranties by such Institutional Accredited Investor (in substantially the form set forth in Exhibit B), an Opinion of Counsel if required by the Company or the Trustee and a certification to that effect from the Holder (in substantially the form set forth in the Transfer Certificate); and

(4) in the case of an Unrestricted Certificated Security to be transferred or exchanged for a beneficial interest in an Unrestricted Global Security, such request need not be accompanied by any additional information or documents.

(e) Legends.

(1) Except as permitted by the following paragraphs (2), (3) and (4), each Global Security and Certificated Security (and all Notes issued in exchange therefor or upon registration of transfer or replacement thereof) shall bear a legend in substantially the form called for by footnote 2 to Exhibit A attached hereto (each a “**Transfer Restricted Security**”), for so long as it is required by this Indenture to bear such legend. Each Transfer Restricted Security shall have attached thereto a certificate (a “**Transfer Certificate**”) in substantially the form called for by footnote 4 to Exhibit A attached hereto.

(2) Upon any sale or transfer of a Transfer Restricted Security (x) pursuant to Rule 144 or (y) pursuant to an effective registration statement under the Securities Act:

(i) in the case of any Restricted Certificated Security, any Registrar shall permit the Holder thereof to exchange such Restricted Certificated Security for an Unrestricted Certificated Security, or (under the circumstances described in Section 2.12(d)) to transfer such Restricted Certificated Security to a transferee who shall take such Note in the form of a beneficial interest in an Unrestricted Global Security, and in each case shall rescind any restriction on the transfer of such Note; and

(ii) in the case of any beneficial interest in a Restricted Global Security, the Trustee shall permit the beneficial owner thereof to transfer such beneficial interest to a transferee who shall take such interest in the form of a beneficial interest in an Unrestricted Global Security and shall rescind any restriction on transfer of such beneficial interest; *provided*, that such Unrestricted Global Security shall continue to be subject to the provisions of Section 2.12(a)(ii).

(3) Upon the expiration of the holding period pursuant to Rule 144 of the Securities Act, the Company shall remove any restriction of transfer on such Note, and the Company shall execute, and the Trustee shall authenticate and deliver Notes that do not bear such legend and that do not have a Transfer Certificate attached thereto.

(f) Transfers to the Company. Nothing contained in this Indenture or in the Notes shall prohibit the sale or other transfer of any Notes (including beneficial interests in Global Securities) to the Company or any of its Subsidiaries. The Company shall ensure that if any such Notes shall be reissued, such reissuance shall comply with applicable law and any Notes reissued as Transfer Restricted Securities shall be assigned a different "CUSIP" number than any other Notes.

(g) Amendments to Rule 144. Notwithstanding any other provision in this Indenture, if Rule 144 as promulgated under the Securities Act is amended to shorten the one-year period under Rule 144, then the references to "one year" in the restrictive legend of each Transfer Restricted Security shall be deemed to refer to such shorter period from and after receipt by the Trustee of the documents described in Section 2.12(d)(2) from the Company or from a Holder of a Transfer Restricted Security; *provided* that a Transfer Restricted Security shall not be deemed to refer to such shorter period if to do so would be prohibited by, or would otherwise cause a violation of, the U.S. federal securities laws applicable at the time. As soon as practicable after a Responsible Officer of the Company receives notice of the effectiveness of any such amendment to shorten the one-year period under Rule 144, unless causing the Transfer Restricted Securities to refer to such shorter period would otherwise be prohibited by, or would otherwise cause a violation of, the U.S. federal securities laws applicable at the time, the Company shall provide to the Trustee the documents described in Section 2.12(d)(2) respecting the effectiveness of such amendment.

Section 2.13. CUSIP Numbers.

The Company may issue the Notes with one or more "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of repurchase or redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a repurchase or redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such repurchase or redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee in writing of any change in the CUSIP numbers.

Section 2.14. Payment of PIK Interest.

(a) The Company shall be entitled make a payment of PIK Interest under this Indenture, at its option, either in cash or by increasing the outstanding principal amount of the Notes or issuing PIK Notes.

(b) With respect to the issuance of any PIK Notes, no later than the relevant Interest Payment Date, the Company shall deliver to the trustee and the Paying Agent (if other than the Trustee), (i) if such PIK Notes are definitive Notes, the required amount of new definitive Notes (rounded up to the nearest whole dollar) and an order to authenticate and deliver such PIK Notes or (ii) if such PIK Notes are Global Notes, an order to increase the outstanding principal amount of Notes by the required amount (rounded up to the nearest whole dollar) (or, if necessary pursuant to the requirements of the Depositary or otherwise, new Global Notes and an order to authenticate and deliver such new Global Notes). Any PIK Notes shall, after being executed and authenticated pursuant to the terms of this Indenture, be (i) if such PIK Notes are definitive Notes, mailed to the person entitled thereto as shown on the Register for the definitive Notes as of the relevant Record Date or (ii) if such PIK Notes are Global Notes, deposited into the account of the Holder or Holders thereof as of the relevant Record Date.

(c) Alternatively, in connection with any payment of PIK Interest, the Company may direct the Paying Agent to make appropriate amendments to the schedule of principal amounts of the relevant Global Notes outstanding for which PIK Notes will be issued and arrange for deposit into the account specified by the Holder or Holders thereof as of the relevant Record Date.

(d) Following an increase in the principal amount of the outstanding Global Notes as a result of a payment of PIK Interest, the Global Notes will bear interest on such increased principal amount from and after the date of such payment. Any PIK Notes issued in certificated form or as new Global Notes will be dated as of the applicable interest payment date and will bear interest from and after such date. All Notes issued pursuant to a payment of PIK Interest will mature on June 1, 2011 and will be governed by, and subject to the terms, provisions and conditions of, this Indenture and shall have the same rights and benefits as the Initial Notes issued on the Issue Date. Any PIK Notes will be issued with the description "PIK" on the face of such PIK Note.

(e) Payment shall be made in such form and terms as specified in this Section 2.14 and the Company shall and the Paying Agent may take additional steps as is necessary to effect such payment.

ARTICLE III

NOTE GUARANTEES

Section 3.1. Note Guarantees.

(a) Subject to the provisions of this Article III and for good and valuable consideration, the receipt of which is hereby acknowledged, each Subsidiary Guarantor hereby fully and unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee hereunder and to the Trustee and its successors and assigns for itself and on behalf of each such Holder, irrespective of the validity and enforceability of this Indenture, the Notes, the Security Documents or the obligations of the Company hereunder and thereunder, the due and punctual payment of principal of (and premium, if any, on) and interest on the Notes when and as the same shall become due and payable, whether on an Interest Payment Date, at the Stated Maturity, by declaration of acceleration, call for redemption or otherwise, according to the terms thereof and of this Indenture. In case of the failure of the Company promptly to make any such payment of principal (and premium, if any, on) or interest, the each Subsidiary Guarantor hereby agrees to make any such payment to be made promptly when and as the same shall become due and payable, whether on an Interest Payment Date, at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise, and as if such payment were made by the Company. In case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether on an Interest Payment Date, at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise, and as if such payment were made by the Company.

(b) Each Subsidiary Guarantor hereby agrees (to the fullest extent permitted by law) that its obligations hereunder shall be as if it were principal debtor and not merely surety, and shall be absolute and unconditional, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder and thereunder, and shall be unaffected by any failure to enforce the provisions of such Note or this Indenture, or any waiver, modification, consent or indulgence granted to the Company with respect thereto, by the Holder of such Note or the Trustee or any other circumstance which may otherwise constitute a legal or equitable discharge of a surety or guarantor. Each Subsidiary Guarantor hereby waives (to the fullest extent permitted by law) diligence, presentment, demand of payment, filing of claims with a court in the event of merger, insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest or notice with respect to such Note or the indebtedness evidenced thereby or with respect to any sinking fund or analogous payment required under such Note and all demands whatsoever, and covenants that the Note Guarantees shall not be discharged except by payment in full of the principal of (and premium, if any, on) and interest on such Note or as otherwise set forth in this Indenture. This is a guaranty of payment and performance and not merely of collectability and the obligations of each Subsidiary Guarantor hereunder is not contingent upon the genuineness, validity, enforceability of this Indenture or any of the Security Documents or any other instrument relating to the creation or performance of the Company's obligation which are the subject of the Note Guarantees or the pursuit by the Trustee of any remedies which the Trustee or the Holders may have with respect thereto at law, in equity or otherwise. The Subsidiary Guarantors shall pay all sums due to the

Trustee hereunder in respect to the Note Guarantees without regard to any counterclaim, setoff, deduction, or defense of any kind and without abatement, suspension, deferment or reduction on account of any occurrence whatsoever. Each Subsidiary Guarantor's obligation hereunder shall be unaffected, and each Subsidiary Guarantor hereby waives and relinquishes any claims based upon any of the following: (a) any amendment or modification of the provisions of this Indenture or any Security Document; (b) any extension of the time for or performance under this Indenture or any of the Security Documents; (c) the release of the Company or any other Subsidiary Guarantor from performance or observance of the terms and conditions contained in the Indenture, any Note or any Security Document, whether by operation of law, the Trustee's voluntary act, or otherwise; (d) any sale, transfer, substitution, exchange or release of any Collateral, or the sale, assignment or foreclosure of any security interest therein in whole or in part; and (e) the filing of any bankruptcy, reorganization or similar proceeding for relief from creditors by or against the Company or any Subsidiary Guarantor or any right or claim or right to cause a marshalling of the assets of any party obligated under the Indenture or Security Documents. No invalidity, irregularity or unenforceability of all or any part of the Guaranteed Notes or the Obligations shall effect, impair or be a defense to the obligations of the Note Guarantors.

(c) The Subsidiary Guarantors shall be subrogated to all rights of the Holder and the Trustee against the Company in respect of any amounts paid to such Holder by the Subsidiary Guarantors pursuant to the provisions of the Note Guarantees; *provided, however*, that the Subsidiary Guarantors shall not be entitled to enforce or to receive any payments arising out of or based upon such right of subrogation until the principal of, premium, if any, and interest on all Notes issued under this Indenture shall have been paid in full.

(d) If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Subsidiary Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Company or the Subsidiary Guarantors, any amount paid by either to the Trustee or such Holder, the Note Guarantees, to the extent theretofore discharged, will be reinstated in full force and effect.

(e) Notwithstanding any provision of this Indenture or any Note Guarantee to the contrary, all rights of the Subsidiary Guarantors hereunder or under the Note Guarantee and all other rights of indemnity, contribution or subrogation under applicable law or otherwise shall be fully subordinated to the indefeasible payment in full in cash of the Obligations. No failure on the part of any Subsidiary Guarantor to make the payments required hereunder or any Note Guarantee (or any other payments required under applicable law or otherwise) shall in any respect limit the obligations and liabilities of any Subsidiary Guarantor with respect to its Obligations hereunder, and each Subsidiary Guarantor shall remain liable for the full amount of the Obligations of such Subsidiary Guarantor hereunder.

(f) Each Subsidiary Guarantor hereby agrees that all Indebtedness and other monetary obligations owed by it to any other Subsidiary Guarantor or any other Subsidiary shall be fully subordinated to the indefeasible payment in full of the Obligations.

Section 3.2. Execution and Delivery of this Indenture.

(a) To evidence the Note Guarantees set forth in Section 3.1, this Indenture shall be executed on behalf of the Subsidiary Guarantors by the Chief Executive Officer, Chief Financial Officer, the President or a Vice President of the Subsidiary Guarantors. The signature of any of these individuals on this Indenture may be manual or facsimile signatures of the present or any future such authorized officer and may be imprinted or otherwise reproduced on this Indenture. If any of these individuals whose signature is on this Indenture no longer holds that office at the time the Company executes and delivers the Note, the Guarantee of the Notes shall be valid nevertheless.

(b) The execution and delivery of any Note by the Company and authentication thereof by the Trustee shall constitute due delivery of the Guarantee of the Notes set forth in this Indenture on behalf of the Guarantors.

Section 3.3. Notice to Trustee.

Each Subsidiary Guarantor shall give prompt written notice to the Trustee of any fact known to the Subsidiary Guarantor which prohibits the making of any payment to or by such Trustee in respect of its Note Guarantee pursuant to the provisions of this Article III other than any agreement in effect on the date hereof.

Section 3.4. Article Not to Prevent Events of Default.

The failure to make a payment on account of principal of (and premium, if any, on) or interest on the Notes by reason of any provision of this Article III shall not be construed as preventing the occurrence of an Event of Default.

Section 3.5. Release of Note Guarantees.

A Subsidiary Guarantor shall be deemed to have discharged its Note Guarantee, and the Note Guarantee shall be released with respect to the Notes related thereto, and the provisions thereof shall no longer be in effect:

(a) in connection with any Note Lien released in whole with respect to such Subsidiary Guarantor pursuant to the terms of this Indenture. Upon delivery by the Company to the Trustee of an Officers' Certificate and an Opinion of Counsel to the effect that such sale or other disposition was made by the Company in accordance with the provisions of this Indenture, the Trustee will execute any documents reasonably required in order to evidence the release of such Subsidiary Guarantor from its obligation under its Note Guarantee;

(b) in connection with any sale or other disposition of all of the Voting Stock of such Subsidiary Guarantor to a Person that is not (either before or after giving effect to such transaction) the Company or a Subsidiary of the Company. Upon delivery by the Company to the Trustee of an Officers' Certificate and an Opinion of Counsel to the effect that such sale or other disposition was made by the Company in accordance with the provisions of this Indenture, the Trustee will execute any documents reasonably required in order to evidence the release of such Subsidiary Guarantor from its obligation under the Note Guarantee;

(c) upon defeasance or satisfaction and discharge of this Indenture; or

(d) with the consent of the Holders of a majority in principal amount of the Notes.

If not released from its obligations under its Note Guarantee as provided for in this Section 3.5, the Subsidiary Guarantor will remain liable for the due and punctual payment of principal of (and premium, if any, on) and interest on the Notes and for the other obligations of such Subsidiary Guarantor under this Indenture as provided for in this Article III.

Section 3.6. Amendment, Etc.

No amendment, modification or waiver of any provision of this Indenture relating to a Subsidiary Guarantors or consent to any departure by such Subsidiary Guarantors or any other Person from any such provision shall in any event be effective unless it is signed by such Subsidiary Guarantor and the Trustee.

Section 3.7. Limitation on Liability.

The Subsidiary Guarantors, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Note Guarantees of the Subsidiary Guarantors not constitute a fraudulent transfer, fraudulent conveyance or fraudulent obligation for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to the Note Guarantees. To effectuate the foregoing intention, each of the Trustee, the Holders and the Subsidiary Guarantors hereby irrevocably agree that the obligations of the Subsidiary Guarantors hereunder shall be limited to the maximum amount as shall not, after giving effect to such maximum amount and all other contingent and fixed liabilities of the Subsidiary Guarantors that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Subsidiary Guarantor in respect of the obligations of such other Subsidiary Guarantor under this Article III that are relevant under such laws, result in the obligations of the Subsidiary Guarantors under the Note Guarantees constituting a fraudulent transfer, fraudulent conveyance or fraudulent obligation.

ARTICLE IV

REDEMPTION

Section 4.1. Optional Redemption. The Company may, at its option, redeem some or all of the Notes at any time and from time to time at a redemption price equal to 100.0% of the aggregate principal amount plus accrued and unpaid interest on the Notes, if any, to the applicable redemption date (subject to the right of Holders on the relevant record date to receive principal and interest due on the relevant Payment Date).

Section 4.2. Notices to Trustee. If the Company elects to redeem Notes, it shall notify the Trustee in writing of the redemption date, the principal amount of Notes to be redeemed, the redemption price and the paragraph of the Notes pursuant to which the redemption will occur.

The Company shall give each notice to the Trustee provided for in this Section at least 35 days before the redemption date unless the Trustee consents to a shorter period. Such notice shall be accompanied by an Officers' Certificate and an Opinion of Counsel from the Company to the effect that such redemption will comply with the conditions herein.

Section 4.3. Selection of Notes to Be Redeemed If fewer than all the Notes are to be redeemed, the Trustee shall select the Notes to be redeemed pro rata to the extent practicable. The Trustee shall make the selection from outstanding Notes not previously called for redemption. Notes and portions of them the Trustee selects for redemption shall be in the principal amount of $2,000 or an integral multiple of $1,000 in excess thereof. Provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption. The Trustee shall notify the Company promptly of the Notes or portions of Notes to be redeemed.

Section 4.4. Notice of Redemption. At least 30 days but not more than 60 days before a date for redemption of Notes, the Company shall mail or cause to be mailed a notice of redemption by first-class mail to each Holder to be redeemed at such Holder's registered address.

The notice shall identify the Notes to be redeemed and shall state:

(1) the redemption date;

(2) the redemption price;

(3) the name and address of the Paying Agent;

(4) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price, plus accrued interest;

(5) that, unless the Company defaults in making such redemption payment, interest on Notes (or portion thereof) called for redemption ceases to accrue on and after the redemption date;

(6) the "CUSIP" number, ISIN or "Common Code" number, if any, printed on the Notes being redeemed; and

(7) that no representation is made as to the correctness or accuracy of the "CUSIP" number, ISIN, or "Common Code" number, if any, listed in such notice or printed on the Notes.

At the Company's request, delivered at least 5 days before the date such notice is to be given to the Holder (unless a shorter period shall be acceptable to the Trustee), the Trustee shall give the notice of redemption in the Company's name and at the Company's expense. In such event, the Company shall provide the Trustee with the information required by this Section.

Section 4.5. Effect of Notice of Redemption. Once notice of redemption is mailed, Notes called for redemption become due and payable on the redemption date and at the redemption price stated in the notice. Upon surrender to the Paying Agent, such Notes shall be

paid at the redemption price stated in the notice, plus accrued interest to the redemption date (subject to the right of Holders of record on the relevant record date to receive interest due on the related Interest Payment Date), and such Notes shall be canceled by the Trustee. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.

Section 4.6. Deposit of Redemption Price. Prior to the redemption date, the Company shall deposit with the Paying Agent (or, if the Company or a Subsidiary is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the redemption price of and accrued interest on all Notes to be redeemed on that date other than Notes or portions of Notes called for redemption which have been delivered by the Company to the Trustee for cancellation.

Section 4.7. Notes Redeemed in Part. Upon surrender of a Note that is redeemed in part, the Company shall execute and the Trustee shall authenticate for the Holder (at the Company's expense) a new Note equal in principal amount to the unredeemed portion of the Note surrendered.

ARTICLE V

PURCHASE AT THE OPTION OF HOLDERS UPON A FUNDAMENTAL CHANGE

Section 5.1. Fundamental Change Put.

(a) In the event that a Fundamental Change shall occur at any time prior to the Stated Maturity, each Holder shall have the right, at the Holder's option, but subject to the provisions of this Section 5.1, to require the Company to purchase, and upon the exercise of such right, the Company shall purchase, all of such Holder's Notes, or any portion of the principal amount thereof that is equal to $1,000 or an integral multiple thereof, as directed by such Holder pursuant to this Section 5.1, on the date designated by the Company (the "**Fundamental Change Purchase Date**") that is a Business Day no later than 35 Business Days after the date of notice pursuant to Section 5.1(b) of the occurrence of a Fundamental Change (subject to extension to comply with applicable law). The Company shall be required to purchase such Notes at a purchase price in cash equal to 100% of the principal amount plus any accrued and unpaid interest and Additional Interest, if any, to, but excluding, the Fundamental Change Purchase Date (the "**Fundamental Change Purchase Price**"). In the event that a Fundamental Change Purchase Date is a date that is after any Regular Record Date but on or before the corresponding Interest Payment Date, the Company shall be required to pay accrued and unpaid interest and Additional Interest, if any, to the holder of the repurchased Note on the Regular Record Date if different from the Holder on the Regular Record Date.

(b) No later than 20 Business Days after the occurrence of a Fundamental Change, the Company shall mail a written notice of the Fundamental Change by first class mail to the Trustee (and the Paying Agent if the Trustee is not then acting as Paying Agent) and to each Holder at its address shown in the Register of the Registrar, and to beneficial owners as required by applicable law. The notice shall include a form of Fundamental Change Purchase Notice to be completed by the Holder and shall briefly state, as applicable:

(i) the date of such Fundamental Change and, briefly, the events constituting such Fundamental Change;

(ii) the date by which the Fundamental Change Purchase Notice must be delivered to the Paying Agent in order for a Holder to exercise the purchase right pursuant to this Section 5.1;

(iii) the Fundamental Change Purchase Date;

(iv) the Fundamental Change Purchase Price;

(v) the name and address of the Paying Agent;

(vi) that the Notes must be surrendered to the Paying Agent to collect payment;

(vii) that the Fundamental Change Purchase Price for any Note as to which a Fundamental Change Purchase Notice has been duly given and not withdrawn shall be paid promptly following the later of the Fundamental Change Purchase Date and the time of surrender of such Note as described in Section 5.1(b)(ix);

(viii) the procedures the Holder must follow to exercise rights under this Section 5.1;

(ix) the procedures for withdrawing a Fundamental Change Purchase Notice, including a form of notice of withdrawal;

(x) that, unless the Company defaults in making payment of such Fundamental Change Purchase Price, interest and Additional Interest, if any, on Notes surrendered for purchase by the Company shall cease to accrue on and after the Fundamental Change Purchase Date; and

(xi) the CUSIP number(s) of the Notes.

At the Company's request, the Trustee shall give the Company's notice of a Fundamental Change at the Company's expense;*provided*, *however*, that the Company makes such request at least five Business Days (unless a shorter period shall be satisfactory to the Trustee) prior to the date by which such notice of purchase right must be given to the Holders in accordance with this Section 5.1(b); *provided*, *further*, that the text of such notice shall be prepared by the Company.

If any of the Notes is in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the procedures of the Depositary applicable to the purchase of Global Securities.

Simultaneously with delivering the written notice pursuant to this Section 5.1(b), the Company shall make a Public Notice containing all information specified in such written notice.

(c) A Holder may exercise its rights specified in clause (a) of this Section 5.1 upon delivery of a written notice (which shall be in substantially the form included on the reverse side of the Notes entitled "Option of Holder to Elect Purchase" hereto and which may be delivered by letter, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of Global Securities, may be delivered electronically or by other means in accordance with the Applicable Procedures) of the exercise of such rights (a "**Fundamental Change Purchase Notice**") to the Paying Agent at any time on or before the 20th Business Day after the date of the Company's notice of the Fundamental Change (subject to extension to comply with applicable law).

The Fundamental Change Purchase Notice delivered by a Holder shall state (i) if Certificated Securities, the serial number or numbers of the Note or Notes which the Holder shall deliver to be purchased (if not certificated, the notice must comply with Applicable Procedures), (ii) the portion of the principal amount of the Note which the Holder shall deliver to be purchased, which portion must be $1,000 or an integral multiple thereof (or the entire principal amount of the Notes held by such Holder) and (iii) that such Note shall be purchased pursuant to the terms and conditions specified in the Notes and this Indenture.

Delivery of a Note (together with all necessary endorsements) to the Paying Agent by book-entry transfer or physical delivery prior to, on or after the Fundamental Change Purchase Date at the offices of the Paying Agent (or otherwise complying with the Applicable Procedures in the case of the Global Securities) is a condition to receipt by the Holder of the Fundamental Change Purchase Price therefor; *provided, however*, that such Fundamental Change Purchase Price shall be so paid pursuant to this Section 5.1 only if the Note so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Fundamental Change Purchase Notice, as determined by the Company.

The Company shall purchase from the Holder thereof, pursuant to this Section 5.1, a portion of a Note if the principal amount of such portion is $1,000 or an integral multiple thereof. Provisions of the Indenture that apply to the purchase of all of a Note also apply to the purchase of such portion of such Note.

A Paying Agent shall promptly notify the Company of the receipt by it of any Fundamental Change Purchase Notice or written withdrawal thereof.

Anything herein to the contrary notwithstanding, in the case of Global Securities, any Fundamental Change Purchase Notice may be delivered or withdrawn and such Notes may be surrendered or delivered for purchase in accordance with the Applicable Procedures as in effect from time to time.

(d) Notwithstanding the foregoing provisions of this Section 5.1, the Company shall not be required to issue a Fundamental Change Purchase Notice upon a Fundamental Change (i) if a third party issues a Fundamental Change Purchase Notice in the manner, at the times and otherwise in compliance with the requirements set forth in Section 5.1(b) applicable to a Fundamental Change Purchase Notice made by the Company and otherwise complies with the provisions of this Article V as if it were the Company and purchases, and pays for, all Notes validly tendered and not withdrawn pursuant to such Fundamental Change Purchase Notice and

(ii) provided that if such third party fails to comply with any of the provisions of this Article V, the Company shall as promptly as reasonably practicable deliver the Fundamental Change Purchase Notice in accordance with, and otherwise comply with, all provisions of this Article V.

Section 5.2. Effect of Fundamental Change Purchase Notice.

(a) Upon receipt by the Paying Agent of the Fundamental Change Purchase Notice specified in Section 5.1(c), the Holder of the Note in respect of which such Fundamental Change Purchase Notice was given shall (unless such Fundamental Change Purchase Notice is withdrawn as specified in the following paragraph) thereafter be entitled to receive the Fundamental Change Purchase Price with respect to such Note. Such Fundamental Change Purchase Price shall be paid to such Holder, subject to receipt of cash by the Paying Agent, promptly following the later of (i) the Fundamental Change Purchase Date with respect to such Note (provided the conditions in Section 5.1(c) have been satisfied) and (ii) the time of book-entry transfer or delivery of such Note to the Paying Agent by the Holder thereof in the manner required by Section 5.1(c).

(b) A Fundamental Change Purchase Notice may be withdrawn by means of a written notice (which may be delivered by letter, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of Global Securities, may be delivered electronically or by other means in accordance with the Applicable Procedures) of withdrawal delivered by the Holder to the Paying Agent at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Purchase Date (or such later time as may be required by applicable law), specifying (i) the principal amount of the Note or portion thereof (which must be a principal amount of $1,000 or an integral multiple thereof) with respect to which such notice of withdrawal is being submitted, (ii) if certificated Notes have been issued, the serial numbers of the withdrawn Notes, or if not certificated, such notice must comply with Applicable Procedures, and (ii) the principal amount, if any, which remains subject to the Fundamental Change Purchase Notice. If a Fundamental Change Purchase Notice has been properly withdrawn pursuant to this Section 5.2(b) prior to the Fundamental Change Purchase Date, the Company shall not be obligated to purchase those Notes so identified in such notice of withdrawal.

Section 5.3. Deposit of Fundamental Change Purchase Price.

Prior to 10:00 a.m., New York City time, on the applicable Fundamental Change Purchase Date, the Company shall irrevocably deposit with the Paying Agent an amount of cash (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Fundamental Change Purchase Price of all the Notes or portions thereof which are to be purchased as of such Fundamental Change Purchase Date.

If the Paying Agent holds, in accordance with the terms hereof, at 10:00 a.m., New York City time, on the Business Day following the applicable Fundamental Change Purchase Date, cash sufficient to pay the Fundamental Change Purchase Price of any Notes for which a Fundamental Change Purchase Notice has been tendered and not withdrawn pursuant to Section 5.2(b), then, on such Fundamental Change Purchase Date, such Notes shall cease to be outstanding and interest and Additional Interest, if any, on such Notes shall cease to accrue,

whether or not such Notes are delivered to the Paying Agent, and the rights of the Holders in respect thereof shall terminate (other than the right to receive the Fundamental Change Purchase Price upon delivery of such Notes).

The Company shall make a Public Notice of the aggregate principal amount of Notes purchased as a result of such Fundamental Change on or as soon as practicable after the Fundamental Change Purchase Date.

Section 5.4. Certificated Securities Purchased in Part

Any Certificated Security that is to be purchased only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and promptly after the Fundamental Change Purchase Date the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without charge, a new Note or Notes, of any authorized denomination or denominations as may be requested by such Holder, in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered that is not purchased.

Section 5.5. Covenant to Comply With Securities Laws Upon Purchase of Notes

When complying with the provisions of Article V, and subject to any exemptions available under applicable law, the Company shall:

(a) if such offer or purchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or purchase, (i) if applicable, comply with Rule 13e-4 and Rule 14e-1 (or any successor provision) under the Exchange Act and (ii) file the related Schedule TO (or any successor schedule, form or report) if required under the Exchange Act; and

(b) otherwise comply with all applicable federal and state securities laws so as to permit the rights and obligations under this ARTICLE V to be exercised in the time and in the manner specified therein.

Section 5.6. Repayment to the Company.

To the extent that the aggregate amount of cash deposited by the Company pursuant to Section 5.3 exceeds the aggregate Fundamental Change Purchase Price of the Notes or portions thereof which the Company is obligated to purchase as of the Fundamental Change Purchase Date then, promptly after the Fundamental Change Purchase Date, the Paying Agent shall return any such excess to the Company together with interest, if any, thereon.

ARTICLE VI

COVENANTS

Section 6.1. Payment of Notes.

The Company shall pay interest on the Notes as provided in the Notes. The Company shall promptly make all payments in respect of the Notes on the dates and in the manner provided in the Notes or pursuant to this Indenture. Principal and Fundamental Change Purchase Price, redemption price and accrued and unpaid Cash Interest and Additional Interest, if any, shall be considered paid on the applicable date due if on such date the Paying Agent holds, in accordance with this Indenture, money sufficient to pay all such amounts then due. The Company shall, to the fullest extent permitted by law, pay interest on overdue principal and overdue installments of interest and Additional Interest, if any, at the rate borne by the Notes per annum. All references in this Indenture or the Notes to interest shall, without duplication, be deemed to include Additional Interest, if any, payable pursuant to the Registration Rights Agreement.

PIK Interest shall be paid in the manner provided in Section 2.14. Any payment of PIK Interest shall be considered paid, if not paid in cash, on the date it is due if on such date (1) if PIK Notes (including PIK Notes that are Global Notes) have been issued therefor, such PIK Notes have been authenticated in accordance with the terms of this Indenture and (2) if the payment of PIK Interest is made by increasing the principal amount of Global Notes then authenticated, the Trustee has increased the principal amount of Global Notes then authenticated by the required amount.

The Company will not be required to make any payment on the Notes due on any day which is not a Business Day until the next succeeding Business Day. The payment made on the next Business Day will be treated as though it were paid on the original due date and no interest will be payable on the payment date for the additional period of time.

Payment of the principal of and interest and Additional Interest, if any, on the Notes shall be 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.

Subject to Section 5.1, the Company shall pay interest and Additional Interest, if any, on the Notes to the Person in whose name the Notes are registered at the close of business on the Regular Record Date next preceding the corresponding Interest Payment Date. Any such interest and Additional Interest, if any, not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may be paid (a) to the Person in whose name the Notes are registered at the close of business on a Special Record Date for the payment of such defaulted interest and Additional Interest, if any, to be fixed by the Trustee, notice whereof shall be given to the Holders not less than 10 calendar days prior to such Special Record Date or (b) at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange.

The Holder must surrender the Notes to the Paying Agent to collect payment of principal. Payment of cash interest and Additional Interest, if any, on Certificated Securities in the aggregate principal amount of $5,000,000 or less shall be made by check mailed to the address of the Person entitled thereto as such address appears in the Register, and payment of cash interest and Additional Interest, if any, on Certificated Securities in aggregate principal amount in excess of $5,000,000 shall be made by wire transfer in immediately available funds if requested in writing by the Holder, otherwise by check mailed to the address of the Holder. Notwithstanding the foregoing, so long as the Notes are registered in the name of a Depositary or its nominee, all payments with respect to the Notes shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee. At the Stated Maturity, interest and Additional Interest, if any, on Certificated Securities will be payable at the office or agency of the Trustee, Registrar and Paying Agent as described in Section 6.5 herein.

Section 6.2. SEC and Other Reports to the Trustee.

(a) The Company and Parent shall ensure delivery to the Trustee within 15 calendar days after it files such annual and quarterly reports, information, documents and other reports with the SEC, copies of its annual report and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company or Parent is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act in accordance with TIA Section 314(a). In the event the Company or Parent is at any time no longer subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, it shall continue to provide the Trustee with reports containing substantially the same information as would have been required to be filed with the SEC had the Company or Parent continued to have been subject to such reporting requirements. In such event, such reports shall be provided at the times the Company or Parent would have been required to provide reports had it continued to have been subject to such reporting requirements. The Company and Parent also shall comply with the other provisions of TIA Section 314(a). Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's or Parent's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely conclusively on Officers' Certificates). The Trustee shall have no duty or responsibility to review such reports, information or documents. In the event that the Company or Parent shall provide the Trustee with any such report and shall not have filed such report on EDGAR, the Trustee shall promptly mail copies of such reports to each Holder (other than reports provided solely pursuant to TIA Section 314(a)).

(b) Each of the Company and Parent intends to file the reports referred to in paragraph (a) above in this Section 6.2 hereof with the SEC in electronic form pursuant to Regulation S-T of the SEC using the SEC's Electronic Data Gathering, Analysis and Retrieval ("**EDGAR**") system. Compliance with the foregoing shall constitute delivery by the Company or Parent of such reports to the Trustee in compliance with the provisions of Section 6.2(a) and TIA Section 314(a). The Trustee shall have no duty to search for or obtain any electronic or other filings that the Company or Parent makes with the SEC, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of the reports, information and documents to the Trustee pursuant to this Section 6.2(b) shall be solely for the purposes of compliance with this

Section 6.2(b) and with TIA Section 314(a). The Trustee's receipt of such reports, information and documents shall not constitute notice to it of the consent thereof or of any matter determinable from the content thereof, including the Company's or Parent's compliance with any of its covenants hereunder, as to which the Trustee is entitled to rely upon Officers' Certificates.

Section 6.3. Compliance Certificate.

The Company and Parent shall deliver to the Trustee within 120 calendar days after the end of each fiscal year of the Company or Parent, as applicable, an Officers' Certificate, stating whether or not to the knowledge of the signers thereof, the Company is in compliance with all conditions and covenants under this Indenture.

Section 6.4. Further Instruments and Acts.

Upon request of the Trustee, or as otherwise necessary, the Company and Parent shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 6.5. Maintenance of Office or Agency of the Trustee, Registrar and Paying Agent.

The Company shall maintain in the Borough of Manhattan, New York, New York, an office or agency of the Trustee, Registrar and Paying Agent where Notes may be presented or surrendered for payment, where Notes may be surrendered for registration of transfer, exchange, repurchase or redemption and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The office of the Trustee presently located at 100 Wall Street, Suite 1600, New York 10005, shall initially be such office or agency for all of the aforesaid purposes. The Company shall give prompt written notice to the Trustee of the location, and of any change in the location, of any such office or agency (other than a change in the location of the office of the Trustee). If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 14.2.

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided*, *however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan.

Section 6.6. Delivery of Information Required Under Rule 144A.

Prior to the expiration of the holding period applicable to sales of the Notes under Rule 144 of the Securities Act (or any successor provision), upon the request of a Holder or any beneficial owner of Notes, the Company shall, during any period in which it is not subject to Section 13 or 15(d) of the Exchange Act, promptly furnish or cause to be furnished the information required pursuant to Rule 144A(d)(4) under the Securities Act to such Holder or any beneficial owner of Notes, or to a prospective purchaser of any such security designated by any

such holder, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act in connection with the resale of any such security. Whether a person is a beneficial owner shall be determined by the Company to the Company's reasonable satisfaction.

Section 6.7. Waiver of Stay, Extension or Usury Laws.

The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury or other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive the Company from paying all or any portion of the principal amount or Fundamental Change Purchase Price in respect of Notes, or any interest and Additional Interest, if any, on such amounts, as contemplated herein, or which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

Section 6.8. Statement by Officers as to Default.

The Company shall deliver to the Trustee, as soon as practicable and in any event within five Business Days after the Company becomes aware of the occurrence of any Default or Event of Default that is continuing, an Officers' Certificate setting forth the details of such Default or Event of Default and the action which the Company proposes to take with respect thereto.

Section 6.9. Redemption of Notes.

Upon the occurrence of a sale/leaseback, other financing, sale or other disposition of substantially all of the Mortgaged Property or any other Collateral of a Subsidiary Guarantor to a Person that is not (either before or after giving effect to such transaction) the Company or a Subsidiary or other Affiliate of the Company (but excluding any transaction subject to Article VII where the recipient is required to become the obligor of the Notes or the Note Guarantees, as applicable), the Company covenants to use all Net Available Cash received by the Company and/or any Subsidiary Guarantor, as the case may be, in connection with such transaction to make a redemption of the Notes pursuant to Article IV of this Indenture within 60 days of receipt; provided, however, that the foregoing provisions of this Section 6.9 shall not be construed to authorize the Company or any Subsidiary Guarantor to engage in any sale/leaseback, other financing, sale or other disposition transaction except as permitted hereunder.

ARTICLE VII

SUCCESSOR CORPORATION

Section 7.1. When Company or Subsidiary Guarantors May Merge or Transfer Assets.

Neither the Company nor any of the Subsidiary Guarantors, as the case may be, shall consolidate with or merge with or into any other person or convey, transfer, sell, lease or otherwise dispose of all or substantially all of its properties and assets to any person, unless:

(a) either (i) the Company or such Subsidiary Guarantor, as the case may be, shall be the continuing corporation or (ii) the Person (if other than the Company or such Subsidiary Guarantor, as the case may be) formed by such consolidation or into which the Company or such Subsidiary Guarantor, as the case may be, is merged or the Person which acquires by conveyance, transfer, sale, lease or other disposition all or substantially all of the properties and assets of the Company or such Subsidiary Guarantor, as the case may be, substantially as an entirety (1) shall be organized and validly existing under the laws of the United States or any State thereof or the District of Columbia and (2) shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all of the obligations of the Company or such Subsidiary Guarantor, as the case may be, under the Notes, the Note Guarantees (in the case of the Subsidiary Guarantors), this Indenture, the Security Documents and the Registration Rights Agreement;

(b) immediately after giving effect to such transaction, no Default shall have occurred and be continuing; and

(c) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer, sale, lease or other disposition and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this ARTICLE VII and that all conditions precedent herein provided for relating to such transaction have been satisfied.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise) of the properties and assets of one or more Subsidiaries, which, if such assets were owned by the Company, together with the assets of all of the other Subsidiaries of the Company, would constitute all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company unless such transfer is to the Company or another Subsidiary.

The successor Person formed by such consolidation or into which the Company or the Subsidiary Guarantors, as the case may be, is merged or the successor Person to which such conveyance, transfer, sale, lease or other disposition is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company or the Subsidiary Guarantors, as the case may be, under this Indenture with the same effect as if such successor had been named as the Company or the Subsidiary Guarantors, as the case may be, herein; and thereafter, except in the case of a conveyance, transfer, sale, lease or other disposition and any obligations the Company or the Subsidiary Guarantors, as the case may be, may have under a supplemental indenture, the Company or the Subsidiary Guarantors, as the case may be, shall be discharged from all obligations and covenants under this Indenture, the Notes and the Note Guarantees, as applicable. Subject to Section 11.6, the Company or the Subsidiary Guarantors, as the case may be, the Trustee and the successor Person shall enter into a supplemental indenture to evidence the

succession and substitution of such successor Person and such discharge and release of the Company or the Subsidiary Guarantors, as the case may be.

Notwithstanding the foregoing, nothing contained in this Indenture or in the Notes or the Note Guarantees will prevent:

(1) any consolidation or merger of a Subsidiary Guarantor with or into the Company or any other Subsidiary Guarantor;

(2) any sale or conveyance of the property of a Subsidiary Guarantor as an entirety or substantially as an entirety to the Company or any other Subsidiary Guarantor; or

(3) any Subsidiary Guarantor may consolidate with or merge with or into any other person or convey, transfer, sell, lease or otherwise dispose of all or substantially all of its properties and assets to any Subsidiary or Affiliate of the Company so long as such Subsidiary or Affiliate (1) shall be organized and validly existing under the laws of the United States or any State thereof or the District of Columbia, (2) shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all of the obligations of the Company or such Subsidiary Guarantor, as the case may be, under the Notes, the Note Guarantees (in the case of the Subsidiary Guarantors), this Indenture, the Security Documents and the Registration Rights Agreement and (3) such Subsidiary or Affiliate is an entity whose sole permitted business purpose is to own the real property and other assets now owned by such Subsidiary Guarantor.

ARTICLE VIII

DEFAULTS AND REMEDIES

Section 8.1. Events of Default.

So long as any Notes are outstanding, each of the following shall be an "**Event of Default**":

(a) the failure by the Company to pay the principal of (or premium, if any, on) any Note when the same becomes due and payable at a date fixed for prepayment thereof or otherwise, as therein provided or as provided in this Indenture;

(b) the failure by the Company to pay any accrued and unpaid interest or Additional Interest, if any, on any Note, in each case, when due and payable, and such default shall continue for a period of 30 days;

(c) the Note Guarantees shall for any reason cease to be in full force and effect or be declared null and void or any responsible officer of the Subsidiary Guarantors, as the case may be, denies that it has any further liability under the Note Guarantees or gives notice to such effect, other than by reason of the termination of this Indenture or the release of the Note Guarantees in accordance with this Indenture;

(d) the failure by the Company to provide notice in the event of a Fundamental Change in accordance with Section 5.1(b);

(e) any Lien purported to be created under any Security Document shall at any time cease to be, or shall be asserted by the Subsidiary Guarantors not to be, a valid and perfected Lien on any material portion of the Collateral intended to be covered thereby (to the extent perfection by filing, registration, recordation or possession is required by this Indenture or the Security Documents), with the priority required by the applicable Security Document, except as a result of the sale or other disposition of the applicable Collateral in a transaction permitted under this Indenture;

(f) the failure by the Company or Parent to perform or observe any other term, covenant or agreement contained in the Notes, the Indenture or the Security Documents (other than a term, covenant or agreement a default in whose performance or whose breach is elsewhere in this Section 8.1 specifically dealt with) for a period of 60 days after written notice of such failure has been given, by certified mail, (1) to the Company or Parent by the Trustee or (2) to the Company or Parent and the Trustee by the Holders of at least 25% in aggregate principal amount of the Notes then outstanding;

(g) there shall have occurred a default under any credit agreement, mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness of the Company or any of its Subsidiaries for borrowed money whether such indebtedness now exists, or is created after the date of this Indenture, which default (i) involves the failure to pay principal of or any premium or interest on such indebtedness when such indebtedness becomes due and payable at the stated maturity thereof, and such default shall continue after any applicable grace period or (ii) results in the acceleration of such indebtedness prior to the stated maturity thereof (without such acceleration being rescinded or annulled), and, in each case, the principal amount of any such indebtedness, together with the principal amount of any other such indebtedness so unpaid at its stated maturity or the stated maturity of which has been so accelerated, aggregates $35,000,000 or more;

(h) there shall be a failure by the Company or any of its Subsidiaries to pay final judgments not covered by insurance aggregating in excess of $35,000,000, which judgments are not paid, discharged or stayed for a period of 60 calendar days;

(i) the Company or any Significant Subsidiary, or any group of two or more Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary, pursuant to or under or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case or proceeding;

(ii) consents to the entry of any order for relief against it in an involuntary case or proceeding or the commencement of any case against it;

(iii) consents to the appointment of a Custodian of it or for any substantial part of its property;

(iv) makes a general assignment for the benefit of its creditors;

(v) files a petition in bankruptcy or answer or consent seeking reorganization or relief; or

(vi) consents to the filing of such petition or the appointment of or taking possession by a Custodian;

(j) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Company or any Significant Subsidiary in an involuntary case or proceeding, or adjudicates the Company or any Significant Subsidiary insolvent or bankrupt;

(ii) appoints a Custodian of the Company or any Significant Subsidiary or for any substantial part of the property of either; or

(iii) orders the winding up or liquidation of the Company or any Significant Subsidiary,

and the order of decree remains unstayed and in effect for 60 days; and

(k) the failure by the Company to purchase any Note, or any portion thereof, in accordance with ARTICLE V, upon the exercise by the Holder of such Holder's right to require the Company to purchase such Notes pursuant thereto (which was not withdrawn pursuant to Section 5.2(b)) hereof.

Section 8.2. Acceleration.

If an Event of Default (other than an Event of Default specified in Section 8.1(i) or Section 8.1(j) with respect to the Company) occurs and is continuing (including an Event of Default specified in Section 8.1(i) or Section 8.1(j) with respect to one or more Significant Subsidiaries), the Trustee by notice to the Company, or the Holders of at least 25% in aggregate principal amount of the Notes at the time outstanding by notice to the Company and the Trustee, may declare the principal of (including any principal on account of PIK Interest), and accrued and unpaid interest (including any accrued PIK Interest) and Additional Interest, if any, on, all the Notes to be immediately due and payable. Upon such a declaration, such accelerated amount shall be due and payable immediately.

If an Event of Default specified in Section 8.1(i) or Section 8.1(j) occurs with respect to the Company and is continuing, the principal of (including any principal on account of PIK Interest), and accrued and unpaid interest and Additional Interest, if any, (including any accrued PIK Interest) on, all the Notes shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, by notice to the Trustee (and without notice to any other Holder) may rescind an

acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of the principal of, premium, if any, or any accrued and unpaid interest and Additional Interest, if any, that have become due solely as a result of acceleration and if all amounts due to the Trustee under Section 9.7 have been paid. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

Section 8.3. Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may, but shall not be obligated to, pursue any available remedy to collect the payment of the principal plus accrued and unpaid interest and Additional Interest, if any, on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if the Trustee does not possess any of the Notes or does not produce any of the Notes in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of, or acquiescence in, the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 8.4. Waiver of Past Defaults.

Subject to Section 8.7 and Section 11.2, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding, by notice to the Trustee (and without notice to any other Holder), may waive an existing Default and its consequences except:

(a) a Default described in Section 8.1(a) or Section 8.1(b); or

(b) a Default in respect of any provision of this Indenture or the Notes, which, under Section 11.2, cannot be amended or modified without the consent of each Holder affected thereby.

When a Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or impair any consequent right. This Section 8.4 shall be in lieu of Section 316(a)1(B) of the TIA and such Section 316(a)1(B) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 8.5. Control by Majority.

The Holders of a majority in aggregate principal amount of the Notes at the time outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines in good faith is prejudicial to the rights of other Holders or would involve the Trustee in personal liability unless the Trustee is offered indemnity satisfactory to it. This Section 8.5 shall be in lieu of Section 316(a)1(A) of the TIA and such Section 316(a)1(A) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 8.6. Limitation on Suits.

A Holder may not pursue any remedy with respect to this Indenture or the Notes unless:

(a) the Holder gives to the Trustee written notice stating that an Event of Default is continuing;

(b) the Holders of at least 25% in aggregate principal amount of the Notes at the time outstanding make a written request to the Trustee to pursue the remedy;

(c) such Holder or Holders offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against any loss, liability or expense;

(d) the Trustee does not comply with the request within 60 days after receipt of such notice, request and offer of security or indemnity; and

(e) the Holders of a majority in aggregate principal amount of the Notes at the time outstanding do not give the Trustee a direction inconsistent with the request during such 60-day period.

A Holder may not use this Indenture to prejudice the rights of any other Holder or to obtain a preference or priority over any other Holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

Section 8.7. Rights of Holders to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of the principal, Fundamental Change Purchase Price, interest and Additional Interest, if any, in respect of the Notes held by such Holder, on or after the respective due dates expressed in the Notes and in this Indenture, or to bring suit for the enforcement of any such payment on or after such respective dates, is absolute and unconditional and shall not be impaired or affected adversely without the consent of such Holder.

Section 8.8. Collection Suit by Trustee.

If an Event of Default described in Section 8.1(a) or Section 8.1(b) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company or another obligor on the Notes for the whole amount owing with respect to the Notes and the amounts provided for in Section 9.7.

Section 8.9. Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Notes or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal, Fundamental Change Purchase Price, interest and Additional Interest, if any, in respect of the Notes shall then be due

and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of any such amount) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal, Fundamental Change Purchase Price, interest and Additional Interest, if any, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel or any other amounts due the Trustee under Section 9.7) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 9.7.

Nothing contained herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 8.10. Priorities.

If the Trustee collects any money pursuant to this ARTICLE VIII, it shall pay out the money in the following order:

FIRST: to the Trustee and Collateral Trustee for amounts due under Section 9.7;

SECOND: to Holders for amounts due and unpaid on the Notes for the principal, Fundamental Change Purchase Price, interest and Additional Interest, if any as the case may be, ratably, without preference or priority of any kind, according to such amounts due and payable on the Notes; and

THIRD: the balance, if any, to the Company or the Subsidiary Guarantor, as the case may be.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 8.10. At least 10 calendar days prior to such record date, the Trustee shall mail to each Holder and the Company a notice that states the record date, the payment date and the amount to be paid.

Section 8.11. Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant (other than the Trustee) in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 8.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 8.7 or a suit by Holders of more than 10% in aggregate principal amount of the Notes at the time outstanding. This Section 8.11 shall be in lieu of Section 315(e) of the TIA and such Section 315(e) is hereby expressly excluded from this Indenture, as permitted by the TIA.

ARTICLE IX

TRUSTEE

Section 9.1. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise of those rights and powers as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the Trustee need perform only those duties that are specifically set forth in this Indenture and no others; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture, but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein.

This Section 9.1(b) shall be in lieu of Section 315(a) of the TIA and such Section 315(a) is hereby expressly excluded from this Indenture, as permitted by the TIA.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this clause (c) does not limit the effect of clause (b) of this Section 9.1;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 8.5.

(d) The Trustee may refuse to perform any duty or exercise any right or power or extend or risk its own funds or otherwise incur any financial liability unless it receives indemnity reasonably satisfactory to it against any loss, liability or expense.

(e) Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee (acting in any capacity hereunder) shall be under no liability for interest on any money received by it hereunder unless otherwise agreed in writing with the Company.

(f) The Trustee shall comply with the reporting requirements set forth in Section 313 of the TIA.

Section 9.2. Rights of Trustee.

Subject to, in the case of the Trustee, its duties and responsibilities under the TIA and this Indenture and, in the case of the Collateral Trustee, its duties and responsibilities under this Indenture and the Security Agreement,

(a) the Trustee or Collateral Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document (whether in its original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) whenever in the administration of this Indenture the Trustee or Collateral Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee or Collateral Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officers' Certificate;

(c) the Trustee or Collateral Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee or Collateral Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(d) the Trustee or Collateral Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith which it reasonably believes to be authorized or within its rights or powers conferred under this Indenture;

(e) the Trustee or Collateral Trustee may consult with counsel selected by it and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and in reliance on such advice or Opinion of Counsel;

(f) the Trustee or Collateral Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders, pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Trustee or Collateral Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby;

(g) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(h) the Trustee or Collateral Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee or Collateral Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee or Collateral Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(i) the Trustee or Collateral Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee or Collateral Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee or Collateral Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture;

(j) the rights, privileges, protections, immunities and benefits given to the Trustee or Collateral Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee or Collateral Trustee in each of its capacities hereunder, and to each agent, custodian and other person employed to act hereunder;

(k) the Trustee or Collateral Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded; and

(l) to the extent permitted by the TIA, in no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

Section 9.3. Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee; provided that the Trustee must comply with Section 9.10 and Section 9.11. Any Paying Agent, Registrar or co-registrar may do the same with like rights.

Section 9.4. Trustee's Disclaimer.

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Company's use or application of the proceeds from the Notes, it shall not be responsible for any statement in any registration statement for the Notes under the Securities Act or in any offering document for the Notes, this Indenture or the Notes (other than its certificate of authentication), or the determination as to which beneficial owners are entitled to receive any notices hereunder.

Section 9.5. Notice of Defaults.

If a Default occurs and if it is known to the Trustee, the Trustee shall give to each Holder notice of the Default within 90 calendar days after it occurs or, if later, within 15 calendar days after it is known to the Trustee, unless such Default shall have been cured or waived before the giving of such notice. Notwithstanding the preceding sentence, except in the case of a Default described in Section 8.1(a), Section 8.1(b) or Section 8.1(k), the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interest of the Holders. The preceding sentence shall be in lieu of the proviso to Section 315(b) of the TIA and such proviso is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 9.6. Reports by Trustee to Holders.

Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, the Trustee shall mail to each Holder a brief report dated as of such May 15 that complies with TIA Section 313(a), if required by such Section 313(a). The Trustee also shall comply with TIA Section 313(b).

A copy of each report at the time of its mailing to Holders shall be filed with the SEC and each securities exchange, if any, on which the Notes are listed. The Company agrees to notify the Trustee promptly whenever the Notes become listed on any securities exchange and of any delisting thereof.

Section 9.7. Compensation and Indemnity.

The Company agrees to:

(a) pay to the Trustee from time to time such compensation as the Company and the Trustee shall from time to time agree in writing for all services rendered by it hereunder (which compensation shall not be limited (to the extent permitted by law) by any provision of law in regard to the compensation of a trustee of an express trust);

(b) reimburse the Trustee upon its request for all expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the compensation and the reasonable expenses, advances and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its own negligence or willful misconduct; and

(c) fully indemnify the Trustee or any predecessor Trustee and their agents for, and to hold them harmless against, any and all loss, damage, claim, liability, cost or expense (including attorney's fees and expenses, and taxes (other than taxes based upon, measured by or determined by the income of the Trustee)) incurred without the Trustee's negligent action, negligent failure to act or willful misconduct, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim (whether asserted by the Company or any Holder or any other person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, or in connection with enforcing the provisions of this Section 9.7.

With regard to its indemnification rights under this Section 9.7(c) where the Company has assumed the defense in any action or proceeding, the Trustee shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Company shall pay the reasonable fees and expenses of such separate counsel; provided, however, that the Trustee may only employ separate counsel at the expense of the Company if in the judgment of the Trustee (i) a conflict of interest exists by reason of common representation or (ii) there are legal defenses available to the Trustee that are different from or are in addition to those available to the Company or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

To secure the Company's payment obligations in this Section 9.7, the Trustee shall have a lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay the principal amount, Fundamental Change Purchase Price or interest and Additional Interest, if any, as the case may be, on particular Notes.

The Company's payment obligations pursuant to this Section 9.7 shall survive the discharge of this Indenture and the resignation or removal of the Trustee. When the Trustee incurs expenses after the occurrence of a Default specified in Section 8.1(i) or Section 8.1(j), the expenses including the reasonable charges and expenses of its counsel, are intended to constitute expenses of administration under any Bankruptcy Law.

Section 9.8. Replacement of Trustee.

The Trustee or Collateral Trustee may resign by so notifying the Company; provided, however, that no such resignation shall be effective until a successor Trustee or Collateral Trustee has accepted its appointment pursuant to this Section 9.8. The Holders of a majority in aggregate principal amount of the Notes at the time outstanding may remove the Trustee or Collateral Trustee by so notifying the Trustee or Collateral Trustee and the Company. The Company shall remove the Trustee or Collateral Trustee if:

(a) the Trustee fails to comply with Section 9.10;

(b) the Trustee or Collateral Trustee is adjudged bankrupt or insolvent;

(c) a receiver or public officer takes charge of the Trustee or Collateral Trustee or its property; or

(d) the Trustee or Collateral Trustee otherwise becomes incapable of acting.

If the Trustee or Collateral Trustee resigns or is removed or if a vacancy exists in the office of Trustee or Collateral Trustee for any reason, the Company shall promptly appoint, by resolution of its Board of Directors, a successor Trustee or Collateral Trustee.

A successor Trustee or Collateral Trustee shall deliver a written acceptance of its appointment to the retiring Trustee or Collateral Trustee and to the Company satisfactory in form and substance to the retiring Trustee or Collateral Trustee and the Company. Thereupon the resignation or removal of the retiring Trustee or Collateral Trustee shall become effective, and the successor Trustee or Collateral Trustee shall have all the rights, powers and duties of the Trustee or Collateral Trustee under this Indenture. The successor Trustee or Collateral Trustee shall mail a notice of its succession to Holders. The retiring Trustee or Collateral Trustee shall promptly transfer all property held by it as Trustee or Collateral Trustee to the successor Trustee or Collateral Trustee, upon payment of all the retiring Trustee's or Collateral Trustee's fees and expenses then due and payable and subject to the lien provided for in Section 9.7.

If a successor Trustee or Collateral Trustee does not take office within 30 days after the retiring Trustee or Collateral Trustee resigns or is removed, the retiring Trustee or Collateral Trustee, the Company or the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may petition at the expense of the Company any court of competent jurisdiction at the expense of the Company for the appointment of a successor Trustee or Collateral Trustee.

If the Trustee fails to comply with Section 9.10, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Section 9.9. Successor Trustee by Merger.

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

Section 9.10. Eligibility; Disqualification.

The Trustee and any successor Trustee shall at all times satisfy the requirements of TIA Sections 310(a)(1) and 310(b). The Trustee (or its parent holding company) shall have a combined capital and surplus of at least $50,000,000 as set forth in its most recent published annual report of condition. Nothing contained herein shall prevent the Trustee from filing with the SEC the application referred to in the penultimate paragraph of TIA Section 310(b). If at any

time the Trustee shall cease to be eligible in accordance with the provisions of this Section 9.10, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 9.11. Preferential Collection of Claims Against Company.

The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

ARTICLE X

DISCHARGE OF INDENTURE; LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 10.1. Discharge of Liability on Notes; Legal Defeasance and Covenant Defeasance.

(a) When (i) the Company delivers to the Trustee all outstanding Notes (other than Notes replaced or repaid pursuant to Section 2.7) for cancellation or (ii) all outstanding Notes have become due and payable (whether at the Stated Maturity, Fundamental Change Purchase Date or upon acceleration, or on a redemption date as a result of the mailing of a notice of redemption pursuant to Article IV hereof) and the Company irrevocably deposits with the Paying Agent cash sufficient to pay all amounts due and owing on all outstanding Notes (other than Notes replaced pursuant to Section 2.7), and if in either case the Company pays all other sums payable hereunder by the Company, then this Indenture shall, subject to Section 9.7, cease to be of further effect. The Trustee shall join in the execution of a document prepared by the Company acknowledging satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers' Certificate and Opinion of Counsel and at the cost and expense of the Company.

(b) Subject to Sections 10.1(c) and 10.2, the Company at any time may terminate (1) all its obligations under the Notes and this Indenture ("legal defeasance option") or (2) its obligations under Article V, Sections 6.2, 6.4, 6.5, Article XII and the operation of Sections 8.01(e), 8.01(f) (with respect to the covenants so defeased), 8.01(g), 8.01(h) and 8.01(k) and the limitations contained in Section 7.1(b) ("covenant defeasance option"). The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

If the Company exercises its legal defeasance option, payment of the Notes may not be accelerated because of an Event of Default with respect thereto. If the Company exercises its covenant defeasance option, payment of the Notes may not be accelerated because of an Event of Default specified in Sections 8.01(e), 8.01(f) (with respect to the covenants so defeased), 8.01(g), 8.01(h) and 8.01(k) or because of the failure of the Company to comply with Section 7.1(b).

Upon satisfaction of the conditions set forth herein and upon request of the Company, the Trustee shall acknowledge in writing the discharge of those obligations that the Company terminates.

(c) Notwithstanding clauses (a) and (b) above, the Company's obligations in Sections 2.4, 2.5, 2.6, 2.7, 2.8, 9.7 and 9.8 and in this Article X shall survive until the Notes have been paid in full. Thereafter, the Company's obligations in Sections 9.7, 10.4 and 10.5 shall survive.

Section 10.2. Conditions to Legal Defeasance or Covenant Defeasance. The Company may exercise its legal defeasance option or its covenant defeasance option only if:

(1) the Company irrevocably deposits in trust with the Trustee money or U.S. Government Obligations for the payment of principal of (and premium, if any, on) and interest on the Notes to maturity or redemption, as the case may be;

(2) the Company delivers to the Trustee a certificate from a nationally recognized firm of independent accountants expressing their opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal of (and premium, if any, on) and interest when due on all the Notes to maturity or redemption, as the case may be;

(3) 123 days pass after the deposit is made, and during the 123-day period no Default specified in Sections 8.1(i) or (j) with respect to the Company occurs which is continuing at the end of the period;

(4) the deposit does not constitute a default under any other agreement binding on the Company;

(5) the Company delivers to the Trustee an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;

(6) in the case of the legal defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (B) since the date of this Indenture there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred;

(7) in the case of the covenant defeasance option, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders will not recognize income, gain or loss for federal income tax

purposes as a result of such covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred;

(8) the Company delivers to the Trustee an Opinion of Counsel in the jurisdiction or organization of the Company (if other than the United States) to the effect that (A) Holders will not recognize income, gain or loss income tax purposes of such jurisdiction as a result of such deposit and defeasance, and will be subject to income tax of such jurisdiction on the same amounts, and in the same manner and at the same times as would have been the case if such deposit and defeasance, had not occurred; and

(9) the Company delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Notes as contemplated by this Article X have been complied with.

Before or after a deposit, the Company may make arrangements satisfactory to the Trustee for the redemption of Notes at a future date in accordance with Article IV.

Section 10.3. Deposited Monies to Be Held in Trust by Trustee.

Subject to Section 10.4, all monies deposited with the Trustee pursuant to Section 10.1 shall be held in trust for the sole benefit of the Holders. Such deposited monies shall be applied by the Trustee to the payment, either directly or through any paying agent, to the holders of the particular Notes for the payment of which such monies have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest and Additional Interest, if any.

Section 10.4. Repayment to the Company.

The Trustee and the Paying Agent shall return to the Company upon written request any cash or securities held by them for the payment of any amount with respect to the Notes that remains unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, Holders entitled to the cash or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person and the Trustee and the Paying Agent shall have no further liability to the Holders with respect to such cash or securities for that period commencing after the return thereof.

Section 10.5. Indemnity for Government Obligations.

The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

Section 10.6. Reinstatement.

If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article X by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture, and the Notes so discharged or defeased shall be revived and reinstated as though no deposit had occurred pursuant to this Article X until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article X; provided, however, that, if the Company has made any payment of interest on or principal of any Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE XI

AMENDMENTS

Section 11.1. Without Consent of Holders of Notes.

The Company, Parent, the Subsidiary Guarantors (with respect to the Note Guarantees), the Trustee and the Collateral Trustee, but only if such amendment effects the rights or obligations of the Collateral Trustee hereunder, may amend this Indenture, the Notes, the Security Documents or the Note Guarantees without the consent of any Holder to:

(a) add to the covenants of the Company, Parent or the Subsidiary Guarantors for the benefit of the Holders of Notes;

(b) surrender any right or power herein conferred upon the Company, the Subsidiary Guarantors (with respect to the Note Guarantees) or Parent;

(c) provide for the assumption of the Company's or the Subsidiary Guarantors' obligations to the Holders of Notes in the case of a merger, consolidation, conveyance, transfer, sale, lease or other disposition pursuant to ARTICLE VII;

(d) comply with the requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;

(e) make any changes or modifications necessary in connection with the registration of the Notes under the Securities Act as contemplated in the Registration Rights Agreement; provided, however, that such action pursuant to this clause (g) does not, in the good faith opinion of the Board of Directors (as evidenced by a Board Resolution), adversely affect the interests of the Holders of Notes in any material respect;

(f) to evidence and provide the acceptance of the appointment of a successor trustee hereunder;

(g) add additional guarantees with respect to the Notes or to add additional Collateral to secure the Notes;

(h) cure any ambiguity or correct or supplement any provision in this Indenture, the Notes, the Note Guarantees or any Security Document which may be inconsistent with any other provision herein or which is otherwise defective, or to make any other provisions with respect to matters or questions arising under this Indenture, the Notes, the Note Guarantees or any Security Document which the Company, the Subsidiary Guarantors or Parent may deem necessary or desirable and which shall not be inconsistent with the provisions of this Indenture; provided, however, that such action pursuant to this clause (h) does not, in the good faith opinion of the Board of Directors (as evidenced by a Board Resolution), adversely affect the interests of the Holders of Notes in any material respect;

(i) evidence the succession of another Person to the Company, Parent, the Subsidiary Guarantors or any other obligor upon the Notes, and the assumption by any such successor of the covenants of the Company, Parent, the Subsidiary Guarantors or such obligor herein and in the Notes, in each case in compliance with the provisions of this Indenture;

(j) add or modify any other provisions herein with respect to matters or questions arising hereunder which the Company, Parent, the Subsidiary Guarantors and the Trustee may deem necessary or desirable and which shall not adversely affect the interests of the Holders of Notes; or

(k) to provide for the issuance of Exchange Notes or additional Notes pursuant to Section 2.1(b).

Section 11.2. With Consent of Holders of Notes.

Except as provided below in this Section 11.2, this Indenture, the Notes or the Note Guarantees may be amended, modified or supplemented, and noncompliance in any particular instance with any provision of this Indenture, the Notes or the Note Guarantees may be waived, in each case with the written consent or affirmative vote of the Holders of at least a majority of the principal amount of the Notes at the time outstanding.

Without the written consent or the affirmative vote of each Holder of Notes affected thereby (in addition to the written consent or the affirmative vote of the holders of at least a majority of the principal amount of the Notes at the time outstanding), an amendment or waiver under this Section 11.2 may not:

(a) change the maturity of the principal amount of, or the payment date of any installment of interest or Additional Interest, if any, on, any Note;

(b) reduce the principal amount or Fundamental Change Purchase Price of, or interest or Additional Interest, if any, on, any Note;

(c) change the currency of payment of the principal amount or Fundamental Change Purchase Price of, or interest or Additional Interest, if any, on, any Note from U.S. Dollars;

(d) impair or adversely affect the rate of accrual of interest or Additional Interest, if any, on any Note, or the manner of calculation thereof;

(e) impair the right of any Holder to institute suit for the enforcement of any payment or with respect to any Note;

(f) modify the Company's obligation to maintain a Registrar or Paying Agent, and an office or agency where notices and demands to or upon the Company or Parent in respect of the Notes, the Note Guarantees and this Indenture may be served in the Borough of Manhattan, New York City;

(g) release the Subsidiary Guarantors from its Note Guarantees, except as provided in this Indenture;

(h) release any material Collateral, except as provided herein and in the Security Documents;

(i) reduce the percentage of the principal amount of the outstanding Notes the written consent or affirmative vote of whose Holders is required for any such amendment, modification or supplement;

(j) reduce the percentage of the principal amount of the outstanding Notes the written consent or affirmative vote of whose Holders is required to rescind an acceleration and its consequences or for any waiver of any past Default provided for in this Indenture;

(k) waive any matter set forth in Section 8.4(a) or Section 8.4(b);

It shall not be necessary for the consent of the Holders under this Section 11.2 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 11.2 becomes effective, the Company shall mail to each Holder a notice briefly describing the amendment.

Section 11.3. Compliance with Trust Indenture Act.

Every supplemental indenture executed pursuant to this Article shall comply with the TIA.

Section 11.4. Revocation and Effect of Consents, Waivers and Actions.

Until an amendment, waiver or other action by Holders becomes effective, a consent thereto by a Holder of a Note hereunder is a continuing consent by the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same obligation as the consenting Holder's Note, even if notation of the consent, waiver or action is not made on the Note. However, any such Holder or subsequent Holder may revoke the consent, waiver or action as to such Holder's Note or portion of the Note if the Trustee receives the notice of revocation

before the date the amendment, waiver or action becomes effective. After an amendment, waiver or action becomes effective, it shall bind every Holder.

Section 11.5. Notation on or Exchange of Notes.

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this ARTICLE XI may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for outstanding Notes.

Section 11.6. Trustee to Sign Supplemental Indentures.

The Trustee shall sign any supplemental indenture authorized pursuant to this ARTICLE XI if the amendment contained therein does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign such supplemental indenture. In signing such supplemental indenture the Trustee shall receive, and (subject to the provisions of Section 9.1) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

Section 11.7. Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

ARTICLE XII

COLLATERAL AND SECURITY

Section 12.1. The Collateral. (a) U.S. Bank National Association is appointed to act as the initial trustee of the collateral (in such capacity, the "**Collateral Trustee**"), and the Collateral Trustee shall have the privileges, powers and immunities as set forth herein and in the Security Documents. The due and punctual payment of principal of (and premium, if any, on) and interest on the Notes when and as the same shall become due and payable, whether on an Interest Payment Date, at the Stated Maturity, by declaration of acceleration, call for redemption or otherwise, interest on the overdue principal of and interest (to the extent permitted by law), if any, on the Notes and the performance of all other obligations of the Subsidiary Guarantors under this Indenture, the Notes, the Note Guarantees and the Security Documents, according to the terms hereunder or thereunder, shall be secured a first-priority Lien (collectively, the "**Note Liens**") in the Collateral as provided in the Security Documents to which the Subsidiary Guarantors has entered into simultaneously with the execution of this Indenture and will be secured by all of the Collateral pledged pursuant thereto and pursuant to any Security Documents hereafter delivered as permitted by this Indenture. The Company and the Subsidiary Guarantors hereby agree that the Collateral Trustee shall hold the Collateral in trust for the benefit of all of the Holders and the Trustee, in each case pursuant to the terms of this Indenture and the Security Documents, and the Collateral Trustee is hereby authorized to execute and deliver the Security Documents.

(b) The collateral shall initially be comprised of a perfected first-priority Lien on the Mortgaged Property and the Personal Property, subject to Permitted Liens (the "**Collateral**"). For the avoidance of doubt, the Collateral shall not include any other property of the Company or the Subsidiary Guarantors.

(c) Each Holder, by its acceptance of any Notes and the related Note Guarantees, consents and agrees to the terms of the Security Documents (including, without limitation, the provisions providing for foreclosure) as the same may be in effect or may be amended from time to time in accordance with their terms and authorizes and directs the Trustee and the Collateral Trustee to perform their respective obligations and exercise their respective rights under the Security Documents in accordance therewith.

(d) The Trustee and each Holder, by accepting the Notes and the related Note Guarantees, acknowledges that, as more fully set forth in the Security Documents, the Collateral as now or hereafter constituted shall be held for the benefit of all the Holders and the Trustee, and that the Note Liens and the Security Documents in respect of the Trustee and the Holders are subject to and qualified and limited in all respects by the Security Documents and actions that may be taken thereunder.

Section 12.2. Maintenance of Collateral. The Subsidiary Guarantors shall use their best efforts to maintain the Collateral in good, safe and insurable operating order, condition and repair (ordinary wear and tear excepted) and do all other acts as may be reasonably necessary or appropriate to maintain and preserve the value of the Collateral, except where the failure to maintain such value would not have a material adverse effect on the Collateral. The Subsidiary

Guarantors shall pay all real estate and other taxes (except for those being contested in good faith and for which adequate reserves have been made), and maintain in full force and effect all material permits and certain insurance coverages, except to the extent that the failure to maintain such permits and coverages follows the sale, in accordance with this Indenture, of the assets to which such permits or coverages relate or where such failure would not have a material adverse effect on the Collateral.

Section 12.3. Further Assurances; Insurance.

(a) The Subsidiary Guarantors shall, at their sole expense, do all acts reasonably requested by the Collateral Trustee which may be reasonably necessary to confirm that the Collateral Trustee holds, for the benefit of the Holders and the Trustee, duly created, enforceable and perfected Note Liens and security interests in the Collateral as contemplated by this Indenture and the Security Documents.

(b) The Subsidiary Guarantors shall, at their sole expense, execute, acknowledge and deliver such documents and instruments and take all such further actions (including the filing and recording of Uniform Commercial Code financing statements, fixture filings, mortgages, deeds of trust and other documents), (i) that may be required under any applicable law or regulation to cause the Collateral Requirement to be and remain satisfied at all times or (ii) that the Trustee or Collateral Trustee may reasonably request for purposes of implementing or effectuating the provisions of this Indenture and the Security Documents, or of more fully perfecting or renewing the rights of the Collateral Trustee in the Collateral or ensuring the priority of the Note Liens, all at the expense of the Subsidiary Guarantors.

(c) The Subsidiary Guarantors will:

(1) keep the Collateral adequately insured at all times by financially sound and reputable insurers;

(2) maintain such other insurance, to such extent and against such risks (and with such deductibles, retentions and exclusions), including fire and other risks insured against by extended coverage and coverage for acts of terrorism, as is customary with companies in the same or similar businesses operating in the same or similar locations, including public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any Collateral;

(3) maintain such other insurance as may be required by law; and

(4) maintain such other insurance as may be required by the Security Documents.

Each such policy of insurance shall (a) name the Collateral Trustee, on behalf of Holders, as an additional insured thereunder, (b) in the case of each casualty insurance policy, contain a loss payable clause or endorsement, reasonably satisfactory in form and substance to the Trustee, that names the Collateral Trustee, on behalf of Holders, as the loss payee thereunder and (c) provide for at least 30 days' prior written notice to the Trustee of any cancellation of such policy.

(d) The Company will otherwise comply with the provisions of TIA §314(b).

(e) To the extent applicable, the Company will cause TIA §313(b), relating to reports, and TIA §314(d), relating to the release of property and the substitution therefore of any property to be pledged as Collateral for the Notes and the Note Guarantees thereof, to be complied with. Any certificate or opinion required by TIA §314(d) may be made by an Officer of the Company except in cases where TIA §314(d) requires that such certificate or opinion be made by an independent Person, which Person will be an independent engineer, appraiser or other expert selected or reasonably satisfactory to the Trustee. Notwithstanding anything to the contrary in this Section 11.03(e), the Company will not be required to comply with all or any portion of TIA §314(d) if it determines, in good faith based on advice of counsel, that under the terms of TIA §314(d) and/or any interpretation or guidance as to the meaning thereof of the SEC and its staff, including "no action" letters or exemptive orders, all or any portion of TIA §314(d) is inapplicable to one or a series of released Collateral.

Section 12.4. Impairment of Security Interest. Neither the Company nor any Subsidiary Guarantors shall take or omit to take any action which would materially adversely affect or impair the Note Liens in favor of the Collateral Trustee and the Holders with respect to the Collateral. Neither the Company nor any Subsidiary Guarantors shall grant to any Person, or permit any Person to retain (other than the Collateral Trustee), any interest whatsoever in the Collateral, other than the Permitted Liens. Neither the Company nor any Subsidiary Guarantors shall enter into any agreement that requires the proceeds received from any sale of Collateral to be applied to repay, redeem, defease or otherwise acquire or retire any Indebtedness of any Person, other than as permitted by this Indenture, the Notes, the Note Guarantees and the Security Documents. The Company shall, and shall cause each Subsidiary Guarantor to, at its sole cost and expense, execute and deliver all such agreements and instruments as necessary or as the Collateral Trustee or Trustee shall reasonably request to more fully or accurately describe the assets and property intended to be Collateral or the obligations intended to be secured by the Security Documents.

Section 12.5. Release of Note Liens.

(a) The Note Liens will be released with respect to the Notes and/or a Note Guarantee, as applicable:

(i) in whole, upon satisfaction and discharge of this Indenture;

(ii) in whole, upon legal defeasance or covenant defeasance of the Notes and/or the Note Guarantees;

(iii) in whole, upon payment in full of the principal of (and premium, if any, on), interest on and all other Obligations on the Notes;

(iv) with the consent of each Holder affected thereby (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, Notes);

(v) in part, as to any asset constituting Collateral other than the Mortgaged Property with a fair market value of less than $1,000,000 that is sold or otherwise disposed in a transaction or series of transactions that are part of a common plan by the Company or the Subsidiary Guarantors to any Person, other than the Company or any Subsidiary (but excluding any transaction subject to Article VII where the recipient is required to become the obligor of the Notes or the Note Guarantees, as applicable), to the extent of the interest sold or disposed of;

(vi) in whole with respect to a Subsidiary Guarantor, upon a sale/leaseback, other financing, sale or other disposition of substantially all of the Mortgaged Property or other Collateral of such Subsidiary Guarantor to a Person that is not (either before or after giving effect to such transaction) the Company or a Subsidiary or other Affiliate of the Company (but excluding any transaction subject to Article VII where the recipient is required to become the obligor of the Notes or the Note Guarantees, as applicable); *provided, however*, that (1) in the case of the Mortgaged Property, (a) the total proceeds received by the Company or any Subsidiary Guarantor in connection with such transaction are at least equal to the fair market value (as determined in good faith by the Board of Directors of the Company) of such Collateral and (b) Net Available Cash of at least $50,000,000 in immediately available funds is received by the Company or such Subsidiary Guarantor at closing of such sale/leaseback, other financing, sale or other disposition; and (2) in the case of the Mortgaged Property and any other Collateral not subject to Section 12.5(a)(v) above, all Net Available Cash received is used within 60 days of receipt to make a partial or full redemption of the Notes pursuant to Article IV of this Indenture; and

(vii) automatically upon the release thereof by the consent of at least 66-2/3% in principal amount of the Notes then outstanding;

provided, that, in the case of any release in whole pursuant to clause (a)(iii) above, all amounts owing to the Trustee under this Indenture, the Notes, the Note Guarantees and the Security Documents have been paid.

(b) To the extent required pursuant to Section 314(d) of the TIA, the Company and each Subsidiary Guarantor will furnish to the Trustee and the Collateral Trustee, prior to each proposed release of Collateral pursuant to the Security Documents and this Indenture:

(i) an Officers' Certificate and an Opinion of Counsel to the effect that all conditions precedent provided for in this Indenture and the Security Documents to such release have been complied with; and

(ii) all documents required by TIA §314(d), this Indenture and the Security Documents.

Upon compliance by the Company or the Subsidiary Guarantors, as the case may be, with the conditions precedent set forth above, and if required by this Indenture upon delivery by the

Company or the Subsidiary Guarantors to the Trustee and the Collateral Trustee an Opinion of Counsel to the effect that such conditions have been complied with, the Trustee or the Collateral Trustee shall promptly cause to be released and reconveyed to the Company, or the relevant Subsidiary Guarantor, as the case may be, the released Collateral, and the Trustee and Collateral Trustee shall promptly execute and deliver to the Company or the relevant Subsidiary Guarantor, as the case may be, such instruments of release or reconveyance and other documents as the Company or the relevant Subsidiary Guarantor may request.

(c) Notwithstanding anything to the contrary herein, the Company and its Subsidiaries shall not be required to comply with all or any portion of TIA §314(d) if they determine, in good faith based on advice of counsel, that under the terms of that section and/or any interpretation or guidance as to the meaning thereof of the Commission and its staff, including "no action" letters or exemptive orders, all or any portion of TIA §314(d) is inapplicable to the released Collateral.

(d) The Company and the Subsidiary Guarantors may, among other things, without any release or consent by the Trustee, conduct ordinary course activities with respect to Collateral as provided for in the Collateral Agreement. The Company shall deliver to the Trustee and the Collateral Trustee, within 30 calendar days following the end of each six-month period beginning on June 1 and December 1 of any year, an Officers' Certificate to the effect that all releases and withdrawals during the preceding six-month period (or since the Issue Date, in the case of the first such certificate) pursuant to this Section 12.5(d) in which no release or consent of the Trustee and the Collateral Trustee was obtained in the ordinary course of the Company's and the Subsidiary Guarantors' business were not prohibited by this Indenture.

Section 12.6. Acknowledgment by Holders. By acceptance of the benefits hereof, each Holder (i) irrevocably appoints the Collateral Trustee and authorizes the Collateral Trustee to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Trustee by the terms of the Security Documents and this Indenture, together with such powers as are reasonably incidental thereto; and (ii) acknowledges and consents to the provisions of this Indenture and the Security Documents, and that it shall not be entitled to the benefits of the Security Documents or this Indenture except pursuant to the terms and conditions thereof.

Section 12.7. Trust Indenture Act. For purposes of this Article XII only, "TIA" or "Trust Indenture Act" shall mean the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbbb) as in effect on the Issue Date to the extent permitted by law.

ARTICLE XIII

[INTENTIONALLY OMITTED]

ARTICLE XIV

MISCELLANEOUS

Section 14.1. Trust Indenture Act Controls. If any provision of this Indenture limits, qualifies, or conflicts with the duties imposed by Section 318(c) of the TIA, such section of the

TIA shall control. If any provision of this Indenture expressly modifies or excludes any provision of the TIA that may be so modified or excluded under the TIA, the Indenture provision so modifying or excluding such provision of the TIA shall be deemed to apply.

Section 14.2. Notices. Any request, demand, authorization, notice, waiver, consent or communication shall be in writing and delivered in person (including by commercial courier services) or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by facsimile transmission (confirmed by guaranteed overnight courier) to the following facsimile numbers:

if to the Parent:

Sirius XM Radio Inc.
1221 Avenue of the Americas, 36th Floor
New York, New York 10020
Attention: General Counsel
Facsimile: (212) 584-5353

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Gary Sellers, Esq.
Facsimile: (212) 455-2502

if to the Company or the Subsidiary Guarantors:

XM Satellite Radio Holdings Inc.
1500 Eckington Place, N.E.
Washington, DC 20002
Attention: Chief Financial Officer
Facsimile: (202) 969-7113

if to the Trustee:

U.S. Bank National Association
100 Wall Street, Suite 1600
New York, NY 10005
Attention: Corporate Trust Services
Facsimile No.: (212) 809-4993

The Company, Parent, the Subsidiary Guarantors or the Trustee by notice given to the other in the manner provided above may designate additional or different addresses for subsequent notices or communications.

Any notice or communication given to a Holder shall be mailed to the Holder, by first-class mail, postage prepaid, at the Holder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed,

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not received by the addressee.

If the Company or Parent mails a notice or communication to the Holders, it shall mail a copy to the Trustee and each Registrar, Paying Agent, or co-registrar.

Section 14.3. Communication by Holders with Other Holders.

Holders may communicate pursuant to Section 312(b) of the TIA with other Holders with respect to their rights under this Indenture or the Notes. The Company, the Trustee, the Registrar, the Paying Agent and anyone else shall have the protection of TIA Section 312(c).

Section 14.4. Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Company to the Trustee to take any action under this Indenture (except in connection with the original issuance of Notes), the Company shall furnish to the Trustee:

(a) an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 14.5. Statements Required in Certificate or Opinion.

Each Officers' Certificate or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(a) a statement that each person making such Officers' Certificate or Opinion of Counsel has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Officers' Certificate or Opinion of Counsel are based;

(c) a statement that, in the opinion of each such person, he has made such examination or investigation as is necessary to enable such person to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement that, in the opinion of such person, such covenant or condition has been complied with.

In giving such Opinion of Counsel, counsel may rely as to factual matters on an Officer's Certificate or on certificates of public officials.

Section 14.6. Separability Clause.

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 14.7. Rules by Trustee, Paying Agent and Registrar.

The Trustee may make reasonable rules for action by or a meeting of Holders. The Registrar and the Paying Agent may make reasonable rules for their functions.

Section 14.8. Legal Holidays.

If any specified date (including a date for giving notice) is a Legal Holiday, the action shall be taken on the next succeeding day that is not a Legal Holiday, and, if the action to be taken on such date is a payment in respect of the Notes, no interest, if any, shall accrue for the intervening period.

Section 14.9. Governing Law; Waiver of Jury Trial; Submission to Jurisdiction; Service of Process.

This Indenture shall be governed by, and construed in accordance with, the laws of the State of New York.

EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES, THE NOTE GUARANTEES OR THE TRANSACTION CONTEMPLATED HEREBY.

The Company submits to the non-exclusive jurisdiction of the courts of the State of New York and the courts of the United States of America, in each case located in the Borough of Manhattan, New York, New York over any suit, action or proceeding arising under or in connection with this Indenture or the transactions contemplated hereby or the Notes or the Note Guarantees. The Company waives, to the fullest extent permitted by applicable law, any objection that it may have to the venue of any suit, action or proceeding arising under or in connection with this Indenture or the transactions contemplated hereby or the Notes or the Note Guarantees in the courts of the State of New York or the courts of the United States of America, in each case located in the Borough of Manhattan, New York, New York, or that such suit, action or proceeding brought in the courts of the State of New York or the courts of the United States of America, in each case located in the Borough of Manhattan, New York, New York, was brought in an inconvenient court and agrees not to plead or claim the same.

The Company agrees to irrevocably appoint CT Corporation System or another similar Person in New York, New York as its authorized agent for service of process in accordance with the provisions of this Section 14.9.

Section 14.10. No Recourse Against Others.

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, in any Note or in the Note Guarantees, or because of any indebtedness evidenced thereby, shall be had against any incorporator, as such, or against any past, present or future stockholder, officer or director, as such, of the Company, the Subsidiary Guarantors or of any successor, either directly or through the Company, the Subsidiary Guarantors or any successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived, the fullest extent permitted by applicable law, and released by the acceptance of the Notes and the Note Guarantees by the Holders and as part of the consideration for the issue of the Notes and the Note Guarantees.

Section 14.11. Successors.

All agreements of the Company, the Subsidiary Guarantors and Parent in this Indenture, the Note Guarantees and the Notes shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successor.

Section 14.12. Multiple Originals.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

Section 14.13. Force Majeure.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this Indenture on behalf of the respective parties hereto as of the date first above written.

XM SATELLITE RADIO HOLDINGS INC., as Issuer

By: /s/ Patrick L. Donnelly
Name: Patrick L. Donnelly
Title: Secretary

SIRIUS XM RADIO INC., as Parent

By: /s/ Patrick L. Donnelly
Name: Patrick L. Donnelly
Title: Executive Vice President, General Counsel, and Secretary

XM 1500 ECKINGTON LLC, as Subsidiary Guarantor

By: /s/ Patrick L. Donnelly
Name: Patrick L. Donnelly
Title: Secretary

XM INVESTMENT LLC, as Subsidiary Guarantor

By: /s/ Patrick L. Donnelly
Name: Patrick L. Donnelly
Title: Secretary

U.S. BANK NATIONAL ASSOCIATION, as Trustee and Collateral Trustee

By: /s/ Thomas E. Tabor
Name: Thomas E. Tabor
Title: Vice President

EXHIBIT A

CUSIP/CINS [ ]

Senior PIK Secured Notes due 2011

No. 1 $172,485,000

XM SATELLITE RADIO HOLDINGS INC.

promises to pay to CEDE & CO. or registered assigns, the principal sum of $172,485,000 Dollars on June 1, 2011.

Interest Payment Dates: December 1 and June 1

Record Dates: November 15 and May 15

Dated: February 13, 2009

XM SATELLITE RADIO HOLDINGS INC.

By: ______________________________
Name:
Title:

By: ______________________________
Name:
Title:

This is one of the Notes referred to in the within-mentioned Indenture:

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: ______________________________
Authorized Signatory

[THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID") FOR PURPOSES OF SECTIONS 1271 ET SEQ. OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. THE ISSUE DATE OF THIS SECURITY IS [___], [___]. FOR INFORMATION REGARDING THE ISSUE PRICE, THE YIELD TO MATURITY AND THE AMOUNT OF OID PER $1,000 OF PRINCIPAL AMOUNT, PLEASE CONTACT XM SATELLITE RADIO HOLDINGS INC. AT 1500 ECKINGTON PLACE, N.E., WASHINGTON, DC 20002, ATTENTION: CHIEF FINANCIAL OFFICER.]

Senior PIK Secured Notes due 2011

[THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (IV) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE ISSUERS.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("DTC"), TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE 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 INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.][1]

[THIS NOTE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS,

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1 This legend should be included only if the Note is a Global Security.

EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) (A "QIB"), OR (B) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT) (AN "IAI"), (2) AGREES THAT IT WILL NOT, WITHIN THE TIME PERIOD REFERRED TO UNDER RULE 144 (TAKING INTO ACCOUNT THE PROVISIONS OF RULE 144(d) UNDER THE SECURITIES ACT, IF APPLICABLE) UNDER THE SECURITIES ACT AS IN EFFECT ON THE DATE OF THE TRANSFER OF THIS NOTE, RESELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) TO A PERSON WHOM THE HOLDER REASONABLY BELIEVES IS A QIB PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QIB IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT, (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) TO AN IAI THAT, PRIOR TO SUCH TRANSFER, FURNISHES TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE REGISTRATION OF TRANSFER OF THIS NOTE (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE) AND AN OPINION OF COUNSEL ACCEPTABLE TO THE COMPANY THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT OR (F) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND, IN EACH CASE, IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS, AND (3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS NOTE OR AN INTEREST HEREIN IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THIS NOTE OR ANY INTEREST HEREIN WITHIN THE TIME PERIOD REFERRED TO ABOVE, THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO THE TRUSTEE. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANINGS GIVEN TO THEM BY RULE 902 OF REGULATION S UNDER THE SECURITIES ACT. THE INDENTURE CONTAINS A PROVISION REQUIRING THE TRUSTEE TO REFUSE TO REGISTER ANY TRANSFER OF THIS NOTE IN VIOLATION OF THE FOREGOING RESTRICTIONS.][2]

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

This Note is one of a duly authorized issue of Senior PIK Secured Notes due 2011 (the "**Notes**") of XM SATELLITE RADIO HOLDINGS INC., a Delaware corporation (including any successor corporation under the Indenture hereinafter referred to, the "**Company**"), issued under an Indenture, dated as of February 13, 2009 (the "**Indenture**"), among the Company,

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2 This legend should be included only if the Note is a Transfer Restricted Security.

Sirius XM Radio Inc., the Subsidiary Guarantors named therein and U.S. Bank National Association, as Trustee (the "**Trustee**"). The terms of the Note include those stated in the Indenture, those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended ("**TIA**"), and those set forth in this Note. This Note is subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of all such terms. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Note and the terms of the Indenture, the terms of the Indenture shall control. Capitalized terms used but not defined herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. Interest.

The Company promises to pay interest on the principal amount of this Note at 10.0% Cash Interest per annum from December 1, 2008 to December 1, 2009; at 10.0% Cash Interest per annum and 2.0% PIK Interest per annum from December 1, 2009 to December 1, 2010; and 10.0% Cash Interest per annum and 4.0% PIK Interest per annum from December 1, 2010 to the Stated Maturity. The Company shall pay interest semiannually in arrears on June 1 and December 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an "Interest Payment Date"). Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from [December 1, 2008][the date of issuance]; provided that the first Interest Payment Date shall be [June 1, 2009].

The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, except as provided in the Indenture, be paid to the Person in whose name this Note (or one or more predecessor Notes) is registered at the close of business on the regular record date for such interest, which shall be the May 15 or November 15 (whether or not a Business Day), as the case may be, next preceding the corresponding Interest Payment Date (a "**Regular Record Date**").

Any such interest and Additional Interest, if any, not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may be paid (a) to the Person in whose name this Note (or one or more predecessor Notes) 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 (a "**Special Record Date**"), notice whereof shall be given to Holders not less than 10 calendar days prior to such Special Record Date, or (b) at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. Interest on the Notes shall be computed on the basis of a 360-day year of twelve 30-day months.

If the Holder elects to require the Company to purchase this Note pursuant to Section 6 of this Note, on a date that is after the Regular Record Date and on or before the corresponding Interest Payment Date, interest and Additional Interest, if any, accrued and unpaid hereon to, but excluding, the Fundamental Change Purchase Date shall be paid to the same Holder to whom the Company pays the principal of this Note. Interest and Additional Interest, if any, accrued and

unpaid hereon at the Stated Maturity also shall be paid to the same Holder to whom the Company pays the principal of this Note.

The Company will not be required to make any payment on the Notes due on any day which is not a Business Day until the next succeeding Business Day. The payment made on the next Business Day will be treated as though it were paid on the original due date and no interest will be payable on the payment date for the additional period of time.

All references herein to interest accrued or payable as of any date shall, without duplication, be deemed to include Additional Interest, if any, payable pursuant to the Registration Rights Agreement.

2. Method of Payment.

Payment of the principal of and Cash Interest on the Notes shall be 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. The Holder must surrender the Notes to the Paying Agent to collect payment of principal. Payment of Cash Interest and Additional Interest, if any, on Certificated Securities in the aggregate principal amount of $5,000,000 or less shall be made by check mailed to the address of the Person entitled thereto as such address appears in the Register, and payment of Cash Interest and Additional Interest, if any, on Certificated Securities in aggregate principal amount in excess of $5,000,000 shall be made by wire transfer in immediately available funds if requested in writing by the Holder, otherwise by check mailed to the address of the Holder. Notwithstanding the foregoing, so long as the Notes are registered in the name of a Depositary or its nominee, all payments principal and Cash Interest with respect to the Notes shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee. At the Stated Maturity, interest and Additional Interest, if any, on Certificated Securities will be payable at the office or agency of the Trustee, Registrar and Paying Agent described in the Indenture.

PIK Interest shall paid in the manner provided in paragraph 1 of this Note and Section 2.14 of the Indenture. Any payment of PIK Interest shall be considered paid, if not paid in cash, on the date it is due if on such date (1) if PIK Notes (including PIK Notes that are Global Notes) have been issued therefor, such PIK Notes have been authenticated in accordance with the terms of the Indenture and (2) if the payment of PIK Interest is made by increasing the principal amount of Global Notes then authenticated, the Trustee has increased the principal amount of Global Notes then authenticated by the relevant amount.

3. Paying Agent and Registrar and Collateral Trustee.

Initially, U.S. Bank National Association, shall act as Paying Agent and Registrar and Collateral Trustee. The Company may appoint and change any Paying Agent and Registrar and Collateral Trustee without notice, other than notice to the Trustee; *provided* that the Company shall at all times maintain a Registrar and Paying Agent and Collateral Trustee and an office or agency where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served in the Borough of Manhattan, New York City, which shall initially be an office or agency of the Trustee.

4. Indenture.

The Notes are senior secured obligations of the Company initially in an aggregate principal amount of up to $250,000,000. The Indenture does not limit other indebtedness of the Company, secured or unsecured.

5. Redemption.

The Company may, at its option and in accordance with Section 4.1 of the Indenture, redeem some or all of the Notes at any time and from time to time at a Redemption Price equal to 100.0% of the aggregate principal amount plus accrued and unpaid interest on the Notes, if any, to the applicable Redemption Date (subject to the right of Holders on the relevant record date to receive principal and interest due on the relevant Interest Payment Date).

6. Purchase at the Option of the Holder Upon a Fundamental Change.

In the event that a Fundamental Change shall occur at any time prior to the Stated Maturity, each Holder shall have the right, at the Holder's option, but subject to the provisions of the Indenture, to require the Company to purchase all of such Holder's Notes, or any portion of the principal amount thereof that is equal to $1,000 or an integral multiple thereof. The Company shall be required to purchase such Notes at a purchase price in cash equal to 100% of the principal amount plus any accrued and unpaid interest and Additional Interest, if any to, but excluding, the Fundamental Change Purchase Date. To exercise such right, a Holder shall deliver a Fundamental Change Purchase Notice to the Paying Agent at any time on or before the 20th Business Day after the date of the Company's notice of the Fundamental Change (subject to extension to comply with applicable law).

Holders have the right to withdraw any Fundamental Change Purchase Notice by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

If the Paying Agent holds, in accordance with the terms hereof, at 10:00 a.m., New York City time, on the Business Day following the applicable Fundamental Change Purchase Date, cash sufficient to irrevocably pay the Fundamental Change Purchase Price of any Notes for which a Fundamental Change Purchase Notice has been tendered and not withdrawn pursuant to the Indenture, then, on such Fundamental Change Purchase Date such Notes shall cease to be outstanding and interest and Additional Interest, if any, on such Notes shall cease to accrue, whether or not such Notes are delivered to the Paying Agent, and the rights of the Holders in respect thereof shall terminate (other than the right to receive the Fundamental Change Purchase Price upon delivery of such Notes).

7. [Intentionally Omitted].

8. Denominations; Transfer; Exchange.

The Notes shall be issued in fully registered form, without coupons, in denominations of $2,000 of the principal amount and integral multiples of $1,000 in excess thereof. A Holder may transfer or exchange Notes in accordance with the Indenture. The Registrar may require a

Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Company shall not be required to make, and the Registrar need not register, transfers or exchanges of (i) any Notes in respect of which a Fundamental Change Purchase Notice has been given and not withdrawn by the Holder thereof in accordance with the terms of this Indenture (except, in the case of Notes to be repurchased in part, the portion thereof not to be repurchased), or (ii) Notes selected for redemption (except, in the case of Notes to be redeemed in part, the portion thereof not to be redeemed) or of any Notes for a period of 15 days before a selection of Notes to be redeemed.

9. Persons Deemed Owners.

The registered Holder of this Note may be treated as the owner of this Note for all purposes.

10. Unclaimed Money or Securities.

The Trustee and the Paying Agent shall return to the Company upon written request any cash or securities held by them for the payment of any amount with respect to the Notes that remains unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, Holders entitled to the money or securities must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

11. [Intentionally Omitted].

12. Amendment; Waiver.

Subject to certain exceptions set forth in the Indenture, (i) the Indenture, the Notes or the Note Guarantees may be amended with the written consent or affirmative vote of the Holders of at least a majority in aggregate principal amount of the outstanding Notes and (ii) certain Defaults may be waived with the written consent or affirmative vote of the Holders of a majority in aggregate principal amount of the outstanding Notes.

The Company, the Parent, the Subsidiary Guarantors (with respect to the Note Guarantees) and the Trustee may amend the Indenture, the Notes, the Security Documents or the Note Guarantees without the consent of any Holder to (a) add to the covenants of the Company, Parent or the Subsidiary Guarantors for the benefit of the Holders of Notes; (b) surrender any right or power herein conferred upon the Company, the Subsidiary Guarantors (with respect to the Note Guarantees) or the Parent; (c) provide for the assumption of the Company's or the Subsidiary Guarantors' obligations to the Holders of Notes in the case of a merger, consolidation, conveyance, transfer, sale, lease or other disposition pursuant to Article VII of the Indenture; (d) comply with the requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA; (e) make any changes or modifications necessary in connection with the registration of the Notes under the Securities Act as contemplated in the Registration Rights Agreement; *provided*, *however*, that such action pursuant to this clause (e) does not, in the good faith opinion of the Board of Directors (as evidenced by a Board Resolution), adversely affect the interests of the Holders of Notes in any material respect; (f) to evidence and provide the acceptance of the appointment of a successor trustee under the Indenture; (g) add additional guarantees with respect to the Notes or additional Collateral to

secure the Notes; (h) cure any ambiguity, correct or supplement any provision in the Indenture, the Notes, the Note Guarantees or any Security Document which may be inconsistent with any other provision of the Indenture, the Notes, the Note Guarantees or any Security Document or which is otherwise defective, or to make any other provisions with respect to matters or questions arising under the Indenture, the Notes, the Note Guarantees or any Security Document which the Company, the Subsidiary Guarantors or Parent may deem necessary or desirable and which shall not be inconsistent with the provisions of the Indenture; *provided*, *however*, that such action pursuant to this clause (h) does not, in the good faith opinion of the Board of Directors (as evidenced by a Board Resolution), adversely affect the interests of the Holders of Notes in any material respect; (i) to evidence the succession of another Person to the Company, Parent or the Subsidiary Guarantors or any other obligor upon the Notes, and the assumption by any such successor of the covenants of the Company, Parent or the Subsidiary Guarantors or such obligor herein and in the Notes and the Note Guarantees, in each case in compliance with the provisions of this Indenture; or (j) add or modify any other provisions herein with respect to matters or questions arising hereunder which the Company, Parent, the Subsidiary Guarantors and the Trustee may deem necessary or desirable and which shall not adversely affect the interests of the Holders of Notes.

13. Defaults and Remedies.

If any Event of Default, other than as a result of certain events of bankruptcy, insolvency or reorganization of the Company as specified in the Indenture, occurs and is continuing, the principal amount of all the Notes may be declared due and payable in the manner and with the effect provided in the Indenture. If an Event of Default occurs as a result of certain events of bankruptcy, insolvency or reorganization of the Company as provided in the Indenture, the principal amount of all the Notes shall become due and payable immediately without any declaration or other act on the part of the Trustee or any Holder, all as and to the extent provided in the Indenture.

14. Trustee Dealings with the Company.

Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

15. No Recourse Against Others.

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, in any Note or the Note Guarantees, or because of any indebtedness evidenced thereby, shall be had against any incorporator, as such, or against any past, present or future stockholder, officer or director, as such, of the Company, the Subsidiary Guarantors or of any successor, either directly or through the Company, the Subsidiary Guarantors or any successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived, to the fullest extent permitted by applicable law, and released by the acceptance of the Notes by the Holders and as part of the consideration for the issue of the Notes and the Note Guarantees.

16. Authentication.

This Note shall not be valid or obligatory for any purpose until an authorized signatory of the Trustee (or a duly authorized authentication agent) signs, manually or by facsimile on the other side of this Note.

17. Abbreviations.

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with right of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

18. INDENTURE TO CONTROL; GOVERNING LAW.

IN THE CASE OF ANY CONFLICT BETWEEN THE PROVISIONS OF THIS NOTE, THE INDENTURE AND THE NOTE GUARANTEES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PROVISIONS OF THE INDENTURE SHALL CONTROL. THE INDENTURE, THIS NOTE AND THE NOTE GUARANTEES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Company shall furnish to any Holder upon written request and without charge a copy of the Indenture which has in it the text of this Note in larger type. Requests may be made to:

XM Satellite Radio Holdings Inc.
1500 Eckington Place, N.E.
Washington, D.C. 20002
Attention: Chief Financial Officer
Facsimile: (202) 969-7113

19. Registration Rights.

The Holders of the Notes may be entitled to the benefits of a Registration Rights Agreement, dated as of February 13, 2009, among the Company, the Parent, the Subsidiary Guarantors and the Purchasers named therein, as amended, modified or supplemented in accordance therewith, including the receipt of Additional Interest upon a Registration Default (as defined in such agreement).

ASSIGNMENT FORM

To assign this Note, fill in the form below:

I or we assign and transfer this Note to

____

(Insert assignee’s soc. sec. or tax ID no.)

____

(Print or type assignee’s name, address and zip code)

and irrevocably appoint __________________________________ agent to transfer this Note on the books of the Company. The agent may substitute another to act for him.

Your Signature(s):

Date:

(Sign exactly as your name(s) appears on the other side of this Note)

Signature Guaranteed

Participant in a Recognized Signature

Guarantee Medallion Program

By: ____________________________________

Authorized Signatory

OPTION OF HOLDER TO ELECT PURCHASE

If you wish to have this Note purchased by the Company pursuant to ARTICLE V (Purchase at the Option of Holders Upon a Fundamental Change) of the Indenture, check the box: ARTICLE V ☐.

If you wish to have a portion of this Note purchased by the Company pursuant to ARTICLE V of the Indenture, as applicable, state the amount (in principal amount): $__________.

If certificated, the serial numbers of the Notes to be delivered for purchase are:

Any purchase of Notes pursuant hereto shall be pursuant to the terms and conditions specified in the Indenture.

Your Signature(s):

Date:

(Sign exactly as your name(s) appears on the other side of this Note)

Signature Guaranteed

Participant in a Recognized Signature

Guarantee Medallion Program

By:

Authorized Signatory

TRANSFER CERTIFICATE[3]

Re: Senior PIK Secured Notes due 2011 (the "**Notes**") of XM Satellite Radio Holdings Inc. (the "**Company**")

This certificate relates to $__________ principal amount of Notes owned in (check applicable box)

☐ book-entry ☐ definitive form by__________ (the "**Transferor**").

The Transferor has requested a Registrar or the Trustee to exchange or register the transfer of such Notes.

In connection with such request and in respect of each such Note, the Transferor does hereby certify that the Transferor is familiar with transfer restrictions relating to the Notes as provided in Section 2.6 and Section 2.12 of the Indenture dated as of February 13, 2009 among the Company, Sirius XM Radio Inc., the Subsidiary Guarantors named therein and U.S. Bank National Association, as Trustee (the "**Indenture**"), and the transfer of such Note is being made pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "**Securities Act**") (check applicable box) or the transfer or exchange, as the case may be, of such Note does not require registration under the Securities Act because (check applicable box):

☐ Such Note is being acquired for the Transferor's own account, without transfer; or

☐ Such Note is being transferred to the Company or a Subsidiary; or

☐ Such Note is being transferred to a person that the Transferor reasonably believes is a "qualified institutional buyer," as defined in, and in compliance with, Rule 144A under the Securities Act; or

☐ Such Note is being transferred pursuant to the exemption from the registration requirements of the Securities Act under Rule 144 (or any successor thereto) ("**Rule 144**") under the Securities Act; or

☐ Such Note is being transferred pursuant to an effective registration statement under the Securities Act; or

☐ Such Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act to an institutional investor that is an "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) that, prior to the transfer, furnishes to the Trustee such certifications and opinion of counsel required by the Company or the Trustee.

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[3] This certificate should only be included if this Security is a Transfer Restricted Security.

The Transferor acknowledges and agrees that, if the transferee will hold any such Notes in the form of beneficial interests in a global Note that is a "restricted security" within the meaning of Rule 144 under the Securities Act, then such transfer can be made only pursuant to Rule 144A under the Securities Act and such transferee must be a "qualified institutional buyer," as defined in Rule 144A, or an institutional investor that is an "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act).

Date:

____

Signature(s) of Transferor

(If the registered owner is a corporation, partnership or fiduciary, the title of the person signing on behalf of such registered owner must be stated.)

Signature Guaranteed

Participant in a Recognized Signature

Guarantee Medallion Program

By: ________________________

Authorized Signatory

EXHIBIT B

[FORM OF CERTIFICATE TO BE DELIVERED BY TRANSFEREE IN CONNECTION WITH TRANSFERS TO INSTITUTIONAL ACCREDITED INVESTORS]

[Date]

U.S. Bank National Association, as Trustee
100 Wall Street, Suite 1600
New York, New York 10005
Attention: [______________________________]

Re: XM Satellite Radio Holdings Inc.

Ladies and Gentlemen:

In connection with the undersigned's proposed purchase of $__________ aggregate principal amount of Senior PIK Secured Notes due 2011 (the '**Securities**") of XM Satellite Radio Holdings Inc. (the "**Company**"), the undersigned confirms, represents and warrants that:

(1) The undersigned is an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended (the "**Securities Act**") (an "**Institutional Accredited Investor**").

(2) (A) Any purchase of the Securities by the undersigned will be for the undersigned's own account or for the account of one or more other Institutional Accredited Investors or as fiduciary for the account of one or more trusts, each of which is an "accredited investor" within the meaning of Rule 501(a)(7) under the Securities Act and for each of which the undersigned exercises sole investment discretion or (B) the undersigned is a "bank" within the meaning of Section 3(a)(2) of the Securities Act or a "savings and loan association" or other institution described in Section 3(a)(5)(A) of the Securities Act that is acquiring the Securities as fiduciary for the account of one or more institutions for which the undersigned exercises sole investment discretion.

(3) The undersigned has such knowledge and experience in financial and business matters that the undersigned is capable of evaluating the merits and risks of its investment in the Securities, and the undersigned and any accounts for which it is acting is each able to bear the economic risk of its or their investment.

(4) The undersigned has been given an opportunity to ask questions and receive answers concerning the terms and conditions of the Securities and to obtain any additional information which the Company possesses or can acquire without reasonable effort or expense that is necessary to verify the accuracy of the information furnished.

(5) The undersigned is not acquiring the Securities with a view to distribution thereof or with any present intention of offering or selling any Securities, except as permitted below; *provided* that the disposition of the undersigned's property and the

property of any accounts for which the undersigned is acting as fiduciary will remain at all times within the undersigned's control.

(6) The undersigned understands that the Securities have not been registered under the Securities Act or any applicable state securities laws.

(7) The undersigned agrees, on its own behalf and on behalf of each account for which the undersigned acquires any Securities, that if in the future the undersigned decides to resell or otherwise transfer such Securities within one year after the original issuance of the Notes, such Securities may be resold or otherwise transferred only:

(A) to the Company or any subsidiary thereof;

(B) with respect to Notes only, to a person which is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) and otherwise in compliance with Rule 144A under the Securities Act;

(C) pursuant to the exemption from registration provided by Rule 144 under the Securities Act (if available);

(D) pursuant to an exemption from the registration requirements under the Securities Act to a person whom the purchaser reasonably believes is an Institutional Accredited Investor that prior to such transfer, furnishes to you (and the Trustee or the Transfer Agent, as the case may be) a signed letter substantially in the form of this letter, a transfer certificate substantially in the form provided in the Indenture and an opinion of counsel; or

(E) pursuant to a registration statement which has been declared effective under the Securities Act and continues to be effective at the time of such transfer.

The undersigned further agrees to provide to any person purchasing any of the Securities from us a written notice advising such purchaser that resales of the Securities are restricted as stated herein.

(8) The undersigned understands that, on any proposed resale of any Securities, the undersigned shall be required to furnish to the Trustee or the Transfer Agent, as the case may be, and the Company such certifications, legal opinions and other information as you and the Company may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. The undersigned further understands that the Securities purchased by the undersigned will bear a legend to the foregoing effect.

Each of the Company, the Trustee or the Transfer Agent, as the case may be, and the Purchasers are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

By: ____________________________________

Name:
Title:
Address:

EXHIBIT 4.3

EXECUTION

SECURITY AGREEMENT

dated as of February 13, 2009

among

XM 1500 ECKINGTON LLC

and

XM INVESTMENT LLC

as Grantors

and

U.S. BANK NATIONAL ASSOCIATION,

as Collateral Trustee

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EXHIBIT A – FORM OF SECURITY AGREEMENT SUPPLEMENT

SECURITY AGREEMENT

This SECURITY AGREEMENT (this "Agreement"), dated as of February 13, 2009, made among XM 1500 ECKINGTON LLC, a Delaware limited liability company ("XM Eckington"), XM INVESTMENT LLC, a Delaware Limited Liability Company ("XM Investment" and together with XM Eckington, the "Grantors") and U.S. Bank National Association, acting as collateral trustee ("Collateral Trustee") for the benefit of the Secured Parties (as defined below).

RECITALS

A. XM SATELLITE RADIO HOLDINGS INC., a Delaware corporation (the "Company"), SIRIUS XM RADIO INC., a Delaware corporation, (the "Parent"),the Grantors and U.S. Bank National Association, as Trustee ("Trustee"), have entered into that certain Indenture dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture"), pursuant to which the Company may issue up to $250,000,000 aggregate principal amount at maturity of its Senior PIK Secured Notes due 2011 (the "Notes").

B. The Grantors have guaranteed the obligations of the Company under the Indenture and the Notes.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, each Grantor and Collateral Trustee, for and on behalf of itself and the Secured Parties, agree as follows:

1. DEFINITIONS.

1.1 General Definitions. In this Agreement, the following terms shall have the following meanings:

"Accounts" shall mean all "accounts" as defined in Article 9 of the UCC, excluding assets described in the definition of Excluded Collateral.

"Agreement" shall have the meaning set forth in the preamble.

"Books" shall mean books and records of Grantors (including all of their Records indicating, summarizing, or evidencing assets (including the Collateral) or liabilities, all Records relating to Grantor's business operations or financial conditions, and all of their goods. or General Intangibles related to such information.

"Capital Lease Obligations" shall mean a liability in respect of a capital lease that at the time any determination thereof is to be made would be required to be capitalized on a balance sheet in accordance with GAAP.

"Capital Stock" shall mean:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Chattel Paper" shall mean all "chattel paper" as defined in Article 9 of the UCC, including, without limitation, "electronic chattel paper" or "tangible chattel piper", as each term is defined in Article 9 of the UCC, excluding assets described in the definition of Excluded Collateral.

"Collateral" shall have the meaning set forth in Section 2.1.

"Collateral Trustee" shall have the meaning set forth in the preamble.

"Commercial Tort Claims" shall mean all "commercial tort claims" as defined in Article 9 of the UCC, including, without limitation, the commercial tort claims listed on Schedule 4.4(e), excluding assets described in the definition of Excluded Collateral.

"Commodities Accounts" shall mean all "commodity accounts" as defined in Article 9 of the UCC, excluding assets described in the definition of Excluded Collateral.

"Communications Act" shall mean the Communications Act of 1934, as amended, and the rules and regulations of the FCC, as from time to time in effect.

"Controlled Foreign Corporation" shall mean "controlled foreign corporation" as defined in the United States Internal Revenue Code of 1986, as amended from time to time.

"Copyrights" shall mean (i) copyrights and copyright registrations, including, without limitation, the copyright registrations listed onSchedule 4.2(A) and (A) all renewals thereof, (B) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (C) the right to sue for past, present and future infringements and dilutions thereof, (D) the goodwill of any Grantor's business symbolized by the foregoing and connected therewith, and (E) all of any Grantor's rights corresponding thereto throughout the world; and (ii) all proceeds of any and all of the foregoing, including, without limitation, licensed royalties and proceeds of infringement suits, in each case, excluding assets described in the definition of Excluded Collateral.

"Deposit Accounts" shall mean all "deposit accounts" as defined in Article 9 of the UCC, excluding assets described in the definition of Excluded Collateral.

"Document" shall mean "document" as defined in Article 9 of the UCC, excluding assets described in the definition of Excluded Collateral.

"Equipment" shall mean all equipment (whether or not any such equipment is so attached to the real property that it constitutes fixtures), machinery, machine tools, motors, furniture, satellites, furnishings, vehicles (including motor vehicles), tools, parts, goods (other than consumer goods, farm products, or Inventory), wherever located, including all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, excluding assets described in the definition of Excluded Collateral.

"Excluded Collateral" shall mean all of each Grantor's right, title, and interest in and to each of the following:

(a) any licenses issued by the FCC to any Grantor, including, without limitation, the licenses more fully described on Schedule 1.1 to the extent, but only to the extent that such Grantor is prohibited from granting a security interest therein pursuant to the Communications Act of 1934, as amended, and the policies and regulations promulgated thereunder, but the Collateral expressly includes, to the maximum extent permitted by law, all rights incident or appurtenant to such licenses and the rights to receive all proceeds derived from or in connection with the sale, assignment or transfer of such licenses;

(b) any assets, agreements, leases, permits or licenses or other property that are not permitted to be subjected to a Lien hereunder without the consent of third parties, which consent has not been obtained, to the extent that the requirement of such consent is not rendered ineffective (meaning that such Lien would not create a default with respect to such assets, agreements, leases, permits or licenses or other property) by Article 9 of the UCC; and

(c) the outstanding capital stock of a Controlled Foreign Corporation in excess of 65% of the voting power of all classes of capital stock of such Controlled Foreign Corporation entitled to vote; provided that immediately upon the amendment of the United States Internal Revenue Code of 1986, as amended, to allow the pledge of a greater percentage of the voting power of capital stock in a Controlled Foreign Corporation without adverse tax consequences, the Collateral shall include, and each Grantor shall be deemed to have granted a security interest in, such greater percentage of capital stock of the applicable Controlled Foreign Corporation.

"FCC" shall mean the Federal Communications Commission or any Governmental Body succeeding to the functions thereof.

"Financial Asset" shall mean any "financial asset" as defined in Article 8 of the UCC, excluding assets described in the definition of Excluded Collateral.

"GAAP" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time.

"General Intangibles" shall mean any "general intangible" as defined in Article 9 of the UCC, excluding assets described in the definition of Excluded Collateral.

"Governmental Body" shall mean any nation or government, any state or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any court or arbitrator.

"Grantor" shall have the meaning set forth in the preamble hereof.

"Instrument" shall mean any "instrument" as defined in Article 9 of the UCC, excluding assets described in the definition of Excluded Collateral.

"Intellectual Property" shall mean, collectively, the Copyrights, the Patents, the Trademarks and the Intellectual Property Licenses.

"Intellectual Property Licenses" shall mean all rights under or interest in any Patent, Trademark or Copyright license agreements with any other party, whether a Grantor is a licensee or licensor under any such license agreement, excluding assets described in the definition of Excluded Collateral; provided, however, that Intellectual Property Licenses shall not include any license agreement in effect as of the date hereof which by its terms prohibits the grant of the security interest contemplated by this Agreement and which prohibition is not rendered ineffective (meaning that such Lien would not create a default under such license agreement) by Article 9 of the UCC, except that upon the termination of such prohibitions for any reason whatsoever, such license agreement shall be deemed to be included in Intellectual Property Licenses.

"Inventory" shall mean any "inventory" as defined in Article 9 of the UCC, excluding assets described in the definition of Excluded Collateral.

"Investment Property" shall mean all "investment property" as defined in Article 9 of the UCC, including all Securities, Securities Accounts and Commodities Accounts, excluding assets described in the definition of Excluded Collateral.

"Letter-of-Credit Right" shall mean any "letter-of-credit right" as defined in Article 9 of the UCC, excluding assets described in the definition of Excluded Collateral.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest and any filing of or agreement to give any financing statement, under the UCC (or equivalent statutes) of any jurisdiction.

"Material" shall mean, with respect to any subject matter in the context of any representation, warranty or covenant under this Agreement that can be expressed in monetary terms, an amount in excess of $5,000,000.

"Money" shall mean "money" as defined in Article 9 of the UCC, excluding assets described in the definition of Excluded Collateral.

"Notes" shall have the meaning set forth in the Recitals hereof.

“Patents” shall mean all (i) patents and patent applications, including, without limitation, the patents and patent applications listed onSchedule 4.2(B), and (A) all extensions and adjustments thereof, (B) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements thereof, (C) the right to sue for past, present and future infringements thereof, and (D) all of Grantor’s rights corresponding thereto throughout the world; and (ii) proceeds of any and all of the foregoing, including, without limitation, license royalties and proceeds of infringement suits, excluding assets described in the definition of Excluded Collateral.

“Permitted Liens” shall mean Liens that constitute “Permitted Liens” within the meaning of each of the Secured Agreements or are otherwise not prohibited under any of the Secured Agreements.

“Purchase Money Obligations” shall mean obligations incurred in accordance with the Secured Agreements for the purpose of financing all or any part of the purchase price or cost of acquisition, construction, installation or improvement of property, plant equipment or other assets used in the business of any Grantor; provided that the Liens attributable to such obligations cover only the assets acquired, constructed, installed or improved with such financing.

“Record” shall mean information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Secured Obligations” shall have the meaning specified in Section 3.1.

“Secured Parties” shall mean (a) the Holders, (b) the Collateral Trustee, and (c) the permitted successors and assigns of each of the foregoing.

“Securities Accounts” shall mean all “securities accounts” as defined in Article 8 of the UCC, excluding assets described in the definition of Excluded Collateral.

“Security” shall mean any “security” as defined in Article 8 of the UCC, excluding assets described in the definition of Excluded Collateral.

“Security Agreement Supplement” shall mean any supplement to this agreement in substantially the form ofExhibit A.

“Subsidiary” shall have the meaning set forth in the Indenture.

“Supporting Obligation” shall mean any “supporting obligation” as defined in Article 9 of the UCC, excluding assets described in the definition of Excluded Collateral.

“Trademarks” shall mean (i) all trademarks, trade names, registered trademarks. trademark applications, service marks, registered service marks and service mark applications, including, without limitation, the trade names, registered trademarks, trademark applications, registered service marks and service mark applications listed on Schedule 4.2(C), and (A) all renewals thereof, (B) all income, royalties, damages and payments now and hereafter due or

payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (C) the right to sue for past, present and future infringements and dilutions thereof, (D) the goodwill of any Grantor's business symbolized by the foregoing and connected therewith, and (E) all of any Grantor's rights corresponding thereto throughout the world; and (ii) all proceeds of any and all of the foregoing, including, without limitation, license royalties and proceeds of infringement suits, in each case, excluding assets described in the definition of Excluded Collateral.

"Trustee" shall have the meaning set forth in the Recitals.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York or, when the context requires, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction.

1.2 Definitions; Interpretation. All capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Indenture or, if not defined therein, in the UCC. References to "Sections," "Exhibits" and "Schedules" shall be to Sections, Exhibits and Schedules, as the case may be, of this Agreement unless otherwise specifically provided. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC.

2. GRANT OF SECURITY.

2.1 Grant of Security. Each Grantor hereby grants to Collateral Trustee for its benefit and the benefit of the Secured Parties, a first priority security interest and continuing lien on all of such Grantor's right, title and interest in, to and under all property of such Grantor including, but not limited to the following, in each case whether now owned or existing or hereafter acquired or arising and wherever located (collectively, "Collateral"):

(A) Accounts;

(B) Books;

(C) Chattel Paper;

(D) Commercial Tort Claims;

(E) Deposit Accounts;

(F) Documents;

(G) Equipment;

(H) Financial Assets;

(I) General Intangibles;

(J) Intellectual Property;

(K) Inventory;

(L) Investment Property;

(M) Instruments;

(N) Letter-of-Credit Rights;

(O) Money;

(P) Cash Equivalent Investments, or other assets of any Grantor that now or hereafter come into the possession, custody, or control of Collateral Trustee;

(Q) to the extent not otherwise included above, all Supporting Obligations relating to any of the foregoing;

(R) to the extent not otherwise included above, all other personal property of the Grantors of any kind or description; and

(S) to the extent not otherwise included above, all of the proceeds and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering any or all of the foregoing;

provided, however, notwithstanding anything herein to the contrary, in no event shall the Collateral include any Excluded Collateral.

3. SECURITY FOR OBLIGATIONS.

3.1 Security for Obligations. With respect to each Grantor, this Agreement secures, and the Collateral granted by such Grantor is collateral security for, the prompt and complete payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C, §362(a) (and any successor provision thereof)), of all obligations of such Grantor hereunder and under the Note, the Note Guarantee, the Indenture and the other Security Documents (the "Secured Obligations").

3.2 Obligations Remain. Anything contained herein to the contrary notwithstanding (a) each Grantor shall remain liable under any partnership agreement or limited liability company agreement relating to any partnership interest or limited liability company interest included in the Collateral and any other contracts and agreements included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed; and (b) Collateral Trustee shall not have any obligation or liability under any partnership agreement or limited liability company agreement relating to any partnership interest or limited liability company interest included in the Collateral and any other contracts and agreements included in the Collateral by reason of this Agreement, nor shall Collateral Trustee be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

4. REPRESENTATIONS AND WARRANTIES AND COVENANTS.

4.1 Generally.

(a) Representations and Warranties. Each Grantor hereby represents and warrants on the date hereof that:

(A) it is the sole legal and beneficial owner of the Collateral with respect to which it is granting a security interest hereunder free and clear of all Liens other than Permitted Liens;

(B) upon the filing of all UCC financing statements naming such Grantor as "Debtor" and Collateral Trustee as "Secured Party" and describing the Collateral, in the filing offices set forth opposite such Grantor's name on Schedule 4.1 hereof and, to the extent not subject to Article 9 of the UCC, upon the recordation of the security interest granted hereunder in Patents, Trademarks and Copyrights in the applicable patent, trademark and copyright registries (including the United States Patent and Trademark Office and the United States Copyright Office), the security interests granted to Collateral Trustee hereunder will constitute valid and, to the extent that a security interest in such Collateral can be perfected by the filing of financing statements under the UCC, perfected first priority Liens (subject in the case of priority only to Permitted Liens);

(C) no authorization, approval or other action by. and no notice to or filing with, any Governmental Body is required for either (i) the pledge or grant by any Grantor of the Liens purported to be created in favor of Collateral Trustee hereunder or (ii) the exercise by Collateral Trustee of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (A) for the filings contemplated by Section 4.1(a)(ii) above, (B) as may be required, in connection with the disposition of any Investment

Property, by laws generally affecting the offering and sale of Securities and (C) to the extent any consents or approvals are required under the Assignment of Claims Act of 1940 or the Communications Act; and

(D) in the case of Material Instruments and Material Investment Property consisting of certificated securities, upon delivery of such instruments and the certificates representing such certificated securities (in the case of such certificated securities, duly endorsed or accompanied by duly executed instruments of assignment of transfer in blank) Collateral Trustee will have a first priority perfected security interest in such Instruments and Investment Property (subject in the case of priority only to Permitted Liens).

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(A) except for the security interest created by this Agreement, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral, except Permitted Liens, and such Grantor shall (A) defend the Collateral against all Persons at any time claiming any interest therein and (B) file such financing or continuation statements, or amendments thereto, as may be requested by the Collateral Trustee to preserve the perfection of the security interests granted hereunder;

(B) it shall not use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral;

(C) it shall not change Grantor's name or jurisdiction of organization unless it shall have (a) notified Collateral Trustee in writing, by executing and delivering to Collateral Trustee a completed Security Agreement Supplement, substantially in the form of Exhibit A attached hereto, together with a supplement to Schedule 4.1, at least thirty (30) days prior to any such change, identifying such new proposed name or jurisdiction of organization and (b) taken all actions necessary to maintain the continuous validity and perfection of Collateral Trustee's security interest in the Collateral intended to be granted hereby;

(D) it shall make payment of (i) all taxes, assessments, license fees, levies and other charges of Governmental Bodies imposed upon it which if unpaid, would be reasonably likely to become a Lien on the Collateral that is not a Permitted Lien, and (ii) all claims (including, without limitation, claims for labor, services, materials

and supplies) for sums which have become due and payable and which by law have or are reasonably likely to become a Lien upon any of the Collateral other than a Permitted Lien; and

(E) upon such Grantor or any officer of such Grantor obtaining knowledge thereof, it shall promptly notify Collateral Trustee in writing of the levy of any legal process against the Collateral or any portion thereof.

4.2 Intellectual Property.

(a) Representations and Warranties. Except with respect to any patents that have expired or been abandoned on the date hereof, each Grantor hereby represents and warrants, on the date hereof, that Schedule 4.2 sets forth a true and complete list of all United States federal registrations of and applications for Patents, Trademarks, and registered Copyrights owned by such Grantor and material to the business of such Grantor.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees as follows:

(A) except as permitted under the Indenture and the Security Documents, it shall not do any act or omit to do any act whereby any of the Intellectual Property which is material to the business of such Grantor may lapse, or become abandoned, dedicated to the public, or unenforceable, or which would adversely affect the validity, grant, or enforceability of the security interest granted therein or herein;

(B) it shall take all reasonable steps in the United States Patent and Trademark Office and the United States Copyright Office, to pursue any application and maintain any registration of each Trademark, Patent, and Copyright owned by such Grantor and material to its business which is now or shall become included in the Collateral constituting Intellectual Property (except for such Intellectual Property with respect to which such Grantor has determined in the exercise of its commercially reasonable judgment that it shall not seek registration) including, but not limited to, those items on Schedule 4.2(A), (B) and (C);

(C) it shall (i) within 15 calendar days after either the end of each calendar year or the request of the Collateral Trustee (at the written direction of the Secured Parties), report to Collateral Trustee (1) any new application that has been filed during the preceding calendar year in the name of such Grantor to register any Intellectual Property not constituting Excluded Collateral with the United States Patent and Trademark Office or the United States Copyright Office, and (2) any new registration of such Intellectual

Property by any such office, in each case, by executing and delivering to Collateral Trustee a completed Security Agreement Supplement, substantially in the form of Exhibit A attached hereto, together with a supplement to Schedule 4.2 and (ii) provide Collateral Trustee, within ten (10) days prior to any filing described in clause (i)(1) of this Paragraph (C), written notice of such filing; provided, however, that any failure to comply with the requirements of this clause (ii) shall not constitute a Default if (I) the actions previously taken in connection with this Agreement are effective, and following such filing will continue to be effective, to create and perfect the security interest intended to be created hereby in the Intellectual Property to which such filing relates, (II) such filing relates to Intellectual Property that is not reasonably expected to be material to the business of such Grantor at the time of such filing, or (III) such failure is subsequently remedied at a time when no other Lien (other than a Permitted Lien) on the Intellectual Property to which such filing relates shall have attached and become perfected; and

(D) if requested by the Collateral Trustee (such request to be given at the written request of the Holders) in connection with the actions required pursuant to Section 4.2(b)(C), it shall promptly execute and deliver to Collateral Trustee any document required to acknowledge, confirm, register, record, or perfect Collateral Trustee's interest in any part of the new Intellectual Property, whether now owned or hereafter acquired.

4.3 Investment Property.

(a) Representations and Warranties. Each Grantor hereby represents and warrants, that on the date hereof:

(A) Schedule 4.3 sets forth under the headings "Pledged Stock," "Pledged LLC Interests," and "Pledged Partnership Interests", all equity interests of Subsidiaries and all other Material equity interests owned by any Grantor included in the Collateral and such equity interests constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective companies thereof to the extent indicated on such Schedule;

(B) it is the record and beneficial owner of the equity interests included in the Collateral free of all Liens, rights or claims of other Persons other than Permitted Liens; and

(C) Schedule 4.3 sets forth under the heading "Pledged Debt" all of the Material issued and outstanding Indebtedness evidenced by an instrument or certificated security of the respective issuers thereof owing to such Grantor.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(A) it shall not vote to enable or take any other action to: (a) amend or terminate any partnership agreement, limited liability company agreement, certificate of incorporation, by-laws or other organizational documents in any way that adversely affects the validity, perfection or priority of Collateral Trustee's security interest, (b) permit any of its Subsidiaries to dispose of all or a material portion of their assets in a manner which would be prohibited under the Indenture or (c) cause any issuer of any partnership interests or limited liability company interests included in the Collateral which are not securities (for purposes of the UCC) on the date hereof to elect or otherwise take any action to cause such partnership interests or limited liability company interests to be treated as securities for purposes of the UCC unless such Grantor shall take all steps necessary to establish Collateral Trustee's "control" thereof;

(B) it shall report to the Collateral Trustee the acquisition of any new Material Investment Property not previously disclosed hereunder promptly following the acquisition thereof by delivering to Collateral Trustee a completed Security Agreement Supplement, substantially in the form of Exhibit A attached hereto, together with a supplement to Schedule 4.3, reflecting such new Investment Property. To the extent that any Investment Property specified on such Schedule 4.3 constitutes certificated Capital Stock of a Subsidiary or Material certificated Securities, such Grantor shall deliver such certificates to the Collateral Trustee, together with undated stock powers executed in blank. Notwithstanding the foregoing, it is understood and agreed that the security interest of Collateral Trustee shall attach to all Investment Property immediately upon any Grantor's acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a supplement to Schedule 4.3 as required hereby;

(C) in the event such Grantor receives any dividends, interest, distributions or any securities or other property on account of any Collateral, then such dividends, interest, distributions, securities and other property shall be included in the definition of Collateral without further action; and

(D) each Grantor consents to the grant by any other Grantor of a security interest in all Investment Property to Collateral Trustee.

(c) Voting and Distributions.

(A) So long as no Event of Default shall have occurred and be continuing. subject to applicable laws:

(A) each Grantor shall be entitled to exercise or refrain from exercising any and all voting and otter consensual rights pertaining to the Investment Property or any part thereof for any purpose not inconsistent with the terms of this Agreement or any Secured Agreement; and

(B) Collateral Trustee shall promptly execute and deliver (or cause to be executed and delivered) to each Grantor all proxies and other instruments as such Grantor may from time to time reasonably request for the purpose of enabling such Grantor to exercise the voting and other consensual rights it is entitled to exercise pursuant to clause (A) above.

(B) Upon the occurrence and during the continuation of an Event of Default, subject to applicable laws and the terms of the Indenture:

(A) all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in Collateral Trustee who shall thereupon have the sole right to exercise such voting and other consensual rights; and

(B) in order to permit Collateral Trustee to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (1) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to Collateral Trustee all proxies, dividend payment orders and other instruments as necessary or as Collateral Trustee (at the written direction of the Secured Parties) may from time to time reasonably request and (2) each Grantor acknowledges that Collateral Trustee may utilize the power of attorney set forth in Section 6.

4.4 Documents, Chattel Paper, Instruments and Deposit Accounts.

(a) If requested by the Collateral Trustee in writing (such request to be given at the written direction of the Holders), each Grantor shall deliver to the Collateral Trustee all Collateral consisting of Material Documents, Material Chattel Paper, Material promissory notes and Material Instruments (in each case, accompanied by stock powers, allonges or other instruments of transfer executed in blank, as applicable) promptly after such Grantor receives the same.

(b) If requested by the Collateral Trustee in writing (such request to be given at the written direction of the Holders), each Grantor shall use commercially reasonable efforts (which shall be deemed to not include any obligation to pay money to any third party other than reasonable attorney's fees and expenses of the third party or other *de minimus* payments) to obtain authenticated control agreements from each issuer of uncertificated Securities, securities intermediary, or commodities intermediary issuing or holding any Material Financial Assets for the account of such Grantor.

(c) If requested by the Collateral Trustee in writing (such request to be given at the written direction of the Holders), each Grantor shall use commercially reasonable efforts (which shall include customary fees charged by third parties that act as intermediaries but shall not be deemed to include any obligation to pay money to any third party other than reasonable attorney's fees and expenses of the third party or other *de minimus* payments) to obtain a control agreement with each bank or financial institution holding a Material Deposit Account for such Grantor, which agreement shall be in form and substance reasonably satisfactory to the Collateral Trustee.

(d) Each Grantor shall take all steps necessary to grant the Collateral Trustee control of all Material electronic chattel paper in accordance with the UCC.

(e) Each Grantor hereby represents and warrants, on the date hereof, thatSchedule 4.4(e) sets forth all Material Commercial Tort Claims held by such Grantor against third parties. If requested by the Collateral Trustee in writing (such request to be given at the written request of the Holders), each Grantor shall identify any new Material Commercial Tort Claims held by it at such time and shall deliver a completed Security Agreement Supplement, substantially in the form of Exhibit A attached hereto, together with a supplement to Schedule 4.4(e) identifying such new Commercial Tort Claims.

Upon the occurrence and during the continuance of an Event of Default, each Grantor shall not, without the Collateral Trustee's prior written consent (such consent to be given at the written direction of the Holders), grant any extension of the time of payment for any of the Accounts, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any Person liable for the payment thereof or allow any credit or discount whosoever thereon, other than extensions, credit, discounts, compromises or settlements granted or made in the ordinary course of business and consistent with its current practices and in accordance with prudent and standard practices used in the industry in which such Grantor is engaged.

5. FURTHER ASSURANCES.

5.1 Further Assurances

(a) Each Grantor agrees. that from time to time, at the expense of such Grantor, it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or reasonably requested by Collateral Trustee (such request to be given at the written request of the Secured Parties) in order to create and/or maintain the validity, perfection or priority of and protect or enforce any security interest granted or purported to be granted hereby or to enable Collateral Trustee to exercise and enforce its rights and remedies hereunder with respect to any Collateral; provided, however, that (i) so long as no Default of Event of Default shall have occurred and be continuing, such Grantor shall not be required to take any actions to perfect or protect the security interest granted hereunder or enable the Collateral Trustee to exercise and enforce its rights and remedies with respect to the Collateral other than as is expressly required pursuant to Sections 4.1, 4.2, 4.3 and 4.4 hereof and (ii) in no event shall such Grantor be obligated to obtain consents, waivers, acknowledgment or access agreements from any landlord, bailee or other similar party. Without limiting the generality of the foregoing, each Grantor shall:

(A) at any reasonable time and upon reasonable notice by Collateral Trustee, exhibit the Collateral to and allow inspection of the Collateral by Collateral Trustee, or persons designated by Collateral Trustee; and

(B) appear in and defend any action or proceeding that may affect Grantor's title to or Collateral Trustee's security interest in all or any part of the Collateral.

(b) Each Grantor hereby authorizes Collateral Trustee to file a Record or Records, including, without limitation, financing or continuation statements, and amendments thereto, in all jurisdictions and with all filing offices as are necessary or advisable to perfect the security interest granted to Collateral Trustee herein, and the Collateral Trustee hereby authorizes each Grantor to make any such filings contemplated by this Section 5.1(b). Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as is necessary, advisable or customary to ensure the perfection of the security interest in the Collateral granted to Collateral Trustee herein. Each Grantor shall, promptly upon request by Collateral Trustee (such request to be given at the written request of the Holders), furnish to Collateral Trustee statements and schedules further identifying and describing the Collateral, all in reasonable detail.

(c) Each Grantor hereby authorizes Collateral Trustee to modify this Agreement after obtaining such Grantor's approval of or signature to such modification by amending Schedule 4.2 to include reference to any right, title or interest in any existing Intellectual Property or any Intellectual Property acquired or developed by any Grantor after the execution hereof or to delete any reference to any right, title or interest in any Intellectual Property in which any Grantor no longer has or claims any right, title or interest; provided such approval or signature of Grantor shall not be required so long as an Event of Default exists.

6. ATTORNEY-IN-FACT.

6.1 Power of Attorney. Each Grantor hereby irrevocably appoints Collateral Trustee (such appointment being coupled with an interest) as such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor then in effect, from time to time in its discretion to take any action permitted under this Agreement and to execute any instrument that it may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, the following:

(a) upon the occurrence and during the continuance of any Event of Default, to obtain and adjust insurance required to be maintained by Grantors pursuant to the Secured Agreements;

(b) upon the occurrence and during the continuance of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(c) upon the occurrence and during the continuance of any Event of Default, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (b) above, subject in all respects to the rights of any lender under the Credit Agreement to receive, endorse and collect the same;

(d) upon the occurrence and during the continuance of any Event of Default, to file any claims or take any action or institute any proceedings necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of Collateral Trustee with respect to any of the Collateral;

(e) to prepare and file any UCC financing statements against such Grantor as debtor;

(f) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the lien and security interest granted herein in the Intellectual Property in the name of such Grantor as assignor;

(g) to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including, without limitation, access to pay or discharge taxes or Liens (other than Permitted Liens) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same, any such payments made by Collateral Trustee to become obligations of such Grantor to Collateral Trustee, due and payable immediately without demand; and

(h) upon the occurrence and during the continuance of any Event of Default and subject to the provisions of the UCC, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Collateral Trustee were the absolute owner thereof for all purposes, and to do, at Collateral Trustee's option ,and such Grantor's expense, at any time or from time to time, all acts and things necessary to protect, preserve or realize upon the Collateral and Collateral Trustee's

security interest therein in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

6.2 No Duty on the Part of Collateral Trustee. The powers conferred on Collateral Trustee hereunder are solely to protect the interests of Collateral Trustee in the Collateral and shall not impose any duty upon Collateral Trustee to exercise any such powers. Collateral Trustee shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct. No provision of this Agreement shall require Collateral Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

7. REMEDIES.

7.1 Generally.

(a) Upon the occurrence and during the continuation of any Event of Default, Collateral Trustee may, subject to the requirements of the Indenture and applicable law, including regulatory requirements, exercise any and all remedies and other rights provided under this Agreement and by applicable law, including, without limitation, the following:

(A) require Grantors to, and Grantors hereby agree that they shall at their expense and promptly upon request of Collateral Trustee forthwith, assemble all or part of the Collateral as directed by Collateral Trustee and make it available to Collateral Trustee at a place to be designated by Collateral Trustee that is reasonably convenient to all parties;

(B) enter onto the property where any Collateral is located and take possession thereof with or without judicial process if such may be done without a breach of the peace; and

(C) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent Collateral Trustee may deem commercially reasonable.

(b) The Collateral Trustee may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party upon default under the UCC or any other applicable laws and also may without notice, except as specified below, sell, lease, assign, grant an option or options to purchase or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker’s board or at any of Collateral Trustee’s offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as Collateral Trustee may deem commercially reasonable. Each Grantor agrees that, to the extent

notice of sale shall be required by law, at least ten days' notice to the each Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Trustee shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Trustee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(c) All amounts and proceeds (including checks and other instruments) received by any Grantor in respect of amounts due to such Grantor in respect of the Collateral or any portion thereof following the occurrence and during the continuance of an Event of Default shall be received in trust for the benefit of Collateral Trustee, shall be segregated from other funds of such Grantor and shall be forthwith paid over or delivered to Collateral Trustee in the same form as so received (with any necessary endorsement) to be held as cash Collateral and applied as provided by Section 7.2 following the occurrence and during the continuance of an Event of Default. Upon demand from Collateral Trustee, Grantors shall not adjust, settle or compromise the amount or payment of any such amount or release wholly or partly any obligor with respect thereto or allow any credit or discount thereon.

(d) Each Grantor hereby expressly waives and covenants not to assert any appraisement, valuation, extension, redemption or similar laws, now or at any time hereafter in force, which might delay, prevent or otherwise impede the performance or enforcement of this Agreement.

7.2 Application of Proceeds. Any cash held by Collateral Trustee as Collateral and all cash proceeds received by Collateral Trustee in respect of any sale of, collection from or other realization upon all or any part of the Collateral shall be held by Collateral Trustee as Collateral for, and then or at any time thereafter applied (after the payment of any amounts payable to Collateral Trustee pursuant to Section 11.2 hereof) in whole or in part by Collateral Trustee for the benefit of the Secured Parties against the Secured Obligations in such order of application as is required by the Indenture. Any surplus of such cash or cash proceeds held by Collateral Trustee and remaining after payment of all of the Secured Obligations shall be paid over to the Grantors or to whomsoever may be lawfully entitled to receive such surplus.

7.3 Investment Property. Each Grantor acknowledges and agrees that Collateral Trustee may elect, with respect to the offer or sale of any or all of the Collateral constituting Investment Property or Securities, to conduct such offer and sale in such a manner as to avoid the need for registration or qualification of the Collateral or the offer and sale thereof under any federal or state securities laws and that Collateral Trustee is authorized to comply with any limitation or restriction in connection with such sale as counsel may advise Collateral Trustee is necessary in order to avoid any violation of applicable law or avoid obtaining approval of the sale or of the purchaser by any Governmental Body, including, without limitation, compliance with such procedures as may restrict the number of prospective bidders and purchasers, requiring that such prospective bidders and purchasers have certain qualifications, and restricting such prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or resale of such Collateral, Each Grantor further acknowledges and agrees that any such transaction may be at prices and on

terms less favorable than those which may be obtained through a public sale and not subject to such restrictions and agrees that, notwithstanding the foregoing, Collateral Trustee is under no obligation to conduct any such public sale and may elect to impose any or all of the foregoing restrictions, or any other restrictions which may be necessary or desirable in order to avoid any such registration or qualification, at its sole discretion or with the consent or direction of the Secured Parties.

7.4 Intellectual Property.

(a) Anything contained herein to the contrary notwithstanding, upon the occurrence and during the continuation of an Event of Default:

(A) Collateral Trustee shall have the right (but not the obligation) to bring suit or otherwise commence any action or proceeding in the name of any Grantor, Collateral Trustee or otherwise, in Collateral Trustee’s sole discretion, to enforce any Intellectual Property which is material to such Grantor’s business, in which event such Grantor shall, at the request of Collateral Trustee, do any and all lawful acts and execute any and all documents required by Collateral Trustee in aid of such enforcement and such Grantor shall promptly, upon demand, reimburse and indemnify Collateral Trustee as provided in Section 10 hereof in connection with the exercise of its rights under this Section, and, to the extent that Collateral Trustee shall elect not to bring suit to enforce any Intellectual Property which is material to such Grantor’s business as provided in this Section, such Grantor agrees to use all reasonable measures, whether by action, suit, proceeding or otherwise, to prevent the infringement of any such Intellectual property by others and for that purpose agrees to diligently maintain any action, suit or proceeding against any Person so infringing as shall be necessary to prevent such infringement;

(B) upon written demand from Collateral Trustee, each Grantor shall grant, assign, convey or otherwise transfer to Collateral Trustee all of such Grantor’s right, title and interest in and to the Intellectual Property and shall execute and deliver to Collateral Trustee such documents as are necessary or appropriate to carry out the intent and purposes of this Agreement;

(C) each Grantor agrees that such an assignment and/or recording shall be applied to reduce the Secured Obligations outstanding only to the extent that Collateral Trustee receives cash proceeds in respect of the sale of, or other realization upon, the Intellectual Property; and

(D) Collateral Trustee shall have the right to notify, or require each Grantor to notify, any obligors with respect to amounts due or to

become due to such Grantor in respect of the Intellectual Property, of the existence of the security interest created herein, to direct such obligors to make payment of all such amounts directly to Collateral Trustee, and, upon such notification and at the expense of such Grantor, to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done.

(b) If (i) an Event of Default shall have occurred and no longer be continuing, (ii) no other Event of Default shall have occurred and be continuing, (iii) an assignment or other transfer to Collateral Trustee of any rights, title and interests in and to the Intellectual Property shall have been previously made and shall have become absolute and effective, and (iv) the Secured Obligations shall not have become immediately due and payable, upon the written request of any Grantor, Collateral Trustee shall promptly execute and deliver to such Grantor, at such Grantor's sole cost and expense, such assignments or other transfers as may be necessary to reassign to such Grantor any such rights, title and interests as may have been assigned to Collateral Trustee as aforesaid, subject to any disposition thereof that may have been made by Collateral Trustee; provided, after giving effect to such reassignment, Collateral Trustee's security interest granted pursuant hereto, as well as all other rights and remedies of Collateral Trustee granted hereunder, shall continue to be in full force and effect; and provided further, the rights, title and interests so reassigned shall be free and clear of any Liens granted by or on behalf of Collateral Trustee.

(c) Solely for the purpose of enabling Collateral Trustee to exercise rights and remedies under this Section 7 and at such time as Collateral Trustee shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to Collateral Trustee, to the extent it has the right to do so an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Grantor), subject, in the ease of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located.

7.5 FCC Licenses.

Notwithstanding anything to the contrary contained in this Agreement or the Indenture, to the extent that any FCC license is included in the Collateral, the Collateral Trustee will not take any action pursuant to any document referred to above which would constitute or result in any assignment of any FCC license or any change of control (whether de jure or de facto) of any Grantor or subsidiary of any Grantor if such assignment of any FCC license or change of control would require, under then existing law, the prior approval of the FCC without first obtaining such prior approval of the FCC. Upon the occurrence of an Event of Default or at any time thereafter during the continuance thereof, subject to terms and conditions of this Agreement, each Grantor agrees to take any action that Collateral Trustee may reasonably request in order to obtain from the FCC such approval as may be necessary to enable Collateral Trustee to exercise and enjoy the full rights and benefits granted to Collateral Trustee by this Agreement and the other documents referred to above, including specifically, at the cost and

expense of each Grantor, the use of its best efforts to assist in obtaining approval of the FCC for any action or transaction contemplated by this Agreement for which such approval is or shall be required by law, and specifically, without limitations, upon request, to prepare, sign and file with the FCC the assignor's or transferor's portion of any application or applications for consent to the assignment of license or transfer of control necessary or appropriate under the FCC's rules and regulations for approval of (i) any sale or other disposition of the Collateral by or on behalf of Collateral Trustee, or (ii) any assumption by Collateral Trustee of voting rights in the Collateral effected in accordance with the terms of this Agreement. It is understood and agreed that all foreclosure and related actions will be made in accordance with the Communications Act and other applicable FCC regulations and published policies and decisions.

8. CONTINUING SECURITY INTEREST; TERMINATION AND RELEASE.

(a) This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until the payment in full of all of the Secured Obligations, (ii) be binding upon the each Grantor, its successors and assigns and (iii) inure, together with the rights and remedies of Collateral Trustee hereunder, to the benefit of Collateral Trustee, the Secured Parties and their respective successors, transferees and assigns.

(b) Subject to Section 314(d) of the Trust Indenture Act of 1939, notwithstanding anything to the contrary in this Section 8, (i) the security interests created under this Agreement shall terminate upon the discharge of the Note Guarantee by the Subsidiary Grantors and the release of the Note Guarantee with respect to the Notes related thereto, pursuant to Section 3.5 of the Indenture, and (ii) the security interests created under this Agreement with respect to any Collateral that is permitted to be released pursuant to Section 12.5 of the Indenture shall automatically be released and, in each case, the Collateral Trustee shall, at the request and expense of any Grantor (and, if requested by the Collateral Trustee, upon the delivery of an officer's certificate by the Company certifying that such release is permitted under the Secured Agreements), cause to be assigned, transferred and delivered, against receipt but without recourse, warranty or representation whatsoever, all Collateral subject to such termination or release, as applicable, to or on the order of such Grantor, and shall execute and deliver to such Grantor at Grantor's expense such documents and instruments as such Grantor may reasonably request to evidence the release of such Collateral from the Lien of this Agreement, including, without limitation, any UCC termination statements and any filings with the United States Patent and Trademark Office or the United States Copyright Office.

9. STANDARD OF CARE; SECURED PARTY MAY PERFORM.

The powers conferred on Collateral Trustee hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, Collateral Trustee shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Collateral Trustee shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which Collateral Trustee accords its own similar property. None of the Collateral Trustee, any Secured Party or any of their

respective directors, officers, employees or agents shall be liable for failure to demand. collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or otherwise. If any Grantor fails to perform any agreement contained herein, Collateral Trustee may itself perform, or cause performance of, such agreement, and the expenses of Collateral Trustee incurred in connection therewith shall be payable by each Grantor under Section 11.2 hereof. The Collateral Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

10. INDEMNITY.

(a) Each Grantor agrees to jointly and severally indemnify and hold harmless Collateral Trustee and the Secured Parties, the respective affiliates of Collateral Trustee and the Secured Parties, and the respective officers, directors, employees, agents (including, without limitation each of their counsel), and controlling persons of Collateral Trustee and the Secured Parties, and each such affiliate (each, an "Indemnified Party") from and against any and all claims, actions and suits whether groundless or otherwise, and from and against any and all liabilities, losses, damages and costs and expenses (including, without limitation, the reasonable fees and disbursements of counsel and with respect to Collateral Trustee, reasonably allocated costs and expenses of in-house counsel and legal staff) of every nature and character arising out of or in connection with any actual or threatened claim, litigation, investigation or proceeding relating to this Agreement or the Secured Agreements or the transactions contemplated hereby or thereby (other than any such actions or expenses resulting, as determined by a final order of a court of competent jurisdiction, from the gross negligence or willful misconduct of the Indemnified Party seeking indemnification hereunder), in each case including, without limitation, the reasonable fees and disbursements of counsel and allocated costs of in-house counsel and legal staff incurred in connection with any such claim investigation, litigation or other proceeding whether or not such Indemnified Party is a party thereto, and each Grantor agrees to reimburse each Indemnified Party, upon demand, for all out-of-pocket costs and expenses (including, without limitation, the reasonable fees and disbursements of counsel and with respect to Collateral Trustee and the Secured Parties, reasonably allocated costs and expenses of in-house counsel and legal staff) incurred in connection with any of the foregoing. In litigation, or the preparation therefor, Indemnified Parties shall each be entitled to select their own counsel and, in addition to the foregoing indemnity, each Grantor agrees to pay promptly the reasonable fees and expenses of such counsel. If, and to the extent that the obligations of any Grantor under this Section 10 are unenforceable for any reason, such Grantor hereby agrees to make the maximum contribution to the payment in satisfaction of such obligations which is permissible under applicable law.

(b) No Grantor shall make any claim against any Indemnified Party for any special, indirect or consequential damages in respect of any breach or wrongful conduct (whether the claim therefor is based in contract, tort or duty imposed by law) in connection with, arising out of or in any way related to the transactions contemplated by, and the relationship established by the Secured Agreements, or any act, omission or event occurring in connection therewith, and

hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in such Grantor's favor.

(c) The covenants contained in this Section 10 shall survive payment or satisfaction in full of all other of the Secured Obligations.

11. MISCELLANEOUS.

11.1 Notices. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to a Grantor or Collateral Trustee shall be sent to such Person's address as set forth in the Indenture. All such notices and other communications shall, when mailed or telecopied, be effective when deposited in the mails or transmitted by telecopier, respectively.

11.2 Expenses. Each Grantor will upon demand make payment to Collateral Trustee of any and all reasonable out-of-pocket sums, costs and expenses, which Collateral Trustee may pay or incur pursuant to the provisions of this Agreement or in perfecting, defending, protecting or enforcing this Agreement or the security interests granted herein or in enforcing payment of all of the Secured Obligations or otherwise in connection with the provisions hereof, including, but not limited to court costs, reasonable collection charges, reasonable travel expenses, and reasonable attorneys' fees and expenses (including with respect to Collateral Trustee, the reasonable allocated posts and expenses of in-house counsel and legal staff) all of which together with interest at the highest rate then payable under the Indenture, shall be part of the Secured Obligations. The covenants in this Section 11.2 shall survive payment or satisfaction in full of all other of the Secured Obligations.

11.3 Amendments and Waivers. Subject to the requirements of Article 11 of the Indenture, any consent or approval required or permitted by this Agreement to be given by Collateral Trustee may be given, and any term of this Agreement, may be amended, and the performance or observance by the Grantors of any terms of this Agreement, or the continuance of any Default or Event of Default may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Grantors and the written consent of Collateral Trustee. No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon. No course of dealing or delay or omission on the part of Collateral Trustee or any Secured Party in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. No notice to or demand upon the Grantors shall entitle the Grantors to other or further notice or demand in similar or other circumstances. Upon the delivery of any Security Agreement Supplement, the supplemental schedules thereto shall be incorporated into and become a part of and supplement the respective schedules to this Agreement; and each reference to such Schedules shall mean and be a reference to such Schedules as supplemented pursuant to such Security Agreement Supplement.

11.4 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective successors and assigns including all persons who become bound as Grantor to this Agreement. No Grantor shall, except as permitted under the Secured Agreements, assign any right, duty or obligation hereunder.

11.5 Independence of Covenants. All covenants hereunder shall have given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

11.6 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements made herein shall survive the execution and delivery hereof. Notwithstanding anything herein or implied by law to the contrary, the agreements of Grantors set forth in Sections 10 and 11.2 shall survive the payment of the Secured Obligations under the Indenture and the termination hereof.

11.7 No Waiver; Remedies Cumulative. No failure or delay on the part of Collateral Trustee in the exercise of any power, right or privilege hereunder or under any Secured Agreement shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights, powers and remedies existing under this Agreement and the Secured Agreements are cumulative, and not exclusive of, any rights or remedies otherwise available, Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

11.8 Marshaling; Payments Set Aside. The Collateral Trustee shall not be under any obligation to marshal any assets in favor of any Grantor or any other Person or against or in payment of any or all of the Secured Obligations.

11.9 Severability. In case any provision in or obligation hereunder shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

11.10 Headings. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

11.11 Applicable law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any conflicts of laws principles thereof other than New York General Obligations Law Sections 5-1401 and 5-1402.

11.12 Consent To Jurisdiction. Each Grantor agrees to irrevocably appoint CT Corporation System or another similar Person in New York, New York as its authorized agent for service of process. Each Grantor submits to the non-exclusive jurisdiction of the courts of the State of New York and the courts of the United States of America, in each case located in the Borough of Manhattan, New York, New York over any suit, action or proceeding arising under or in connection with this Indenture or the transactions contemplated hereby or the Notes or the

Note Guarantees. Each Grantor waives any objection that it may have to the venue of any suit, action or proceeding arising under or in connection with this Agreement, the Indenture, the Security Documents or the transactions contemplated hereby or the Notes or the Note Guarantees in the courts of the State of New York or the courts of the United States of America, in each case located in the Borough of Manhattan, New York, New York, or that such suit, action or proceeding brought in the courts of the State of New York or the courts of the United States of America, in each case located in the Borough of Manhattan, New York, New York, was brought in an inconvenient court and agrees not to plead or claim the same.

11.13 Waiver of Jury Trial. Each of the Grantors hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement, the Indenture, the Notes, the Note Guarantees, the Security Documents or the transaction contemplated hereby.

11.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

11.15 Effectiveness. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Collateral Trustee of written or telephonic notification of such execution and authorization of delivery thereof.

11.16 Entire Agreement. This Agreement and the Indenture embody the entire agreement and understanding between Grantors and Collateral Trustee and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. There are no unwritten oral agreements between the parties.

11.17 Trust Indenture Act Controls. If any provision of this Agreement limits, qualifies or conflicts with the duties imposed by the Trust Indenture Act of 1939 as in effect on the date of this Agreement, the imposed duties shall control.

(Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, Grantors and Collateral Trustee have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

XM 1500 ECKINGTON LLC.

By: /s/ Patrick L. Donnelly
Name: Patrick L. Donnelly
Title: Secretary

XM INVESTMENT LLC

By: /s/ Patrick L. Donnelly
Name: Patrick L. Donnelly
Title: Secretary

(Continuation of Signature Page)

U.S. BANK NATIONAL ASSOCIATION,
as Collateral Trustee

By: /s/ Thomas E. Tabor
Name:
Title:

SCHEDULE 1.1
TO SECURITY AGREEMENT

Current FCC Licenses, Special Temporary Authorizations (“STAs”), and Pending Applications

1. Satellite

None

2. Earth Stations

None

3. Terrestrial Repeaters

None

4. Experimental Licenses to Test Terrestrial Repeaters

None

SCHEDULE 4.1
TO SECURITY AGREEMENT

Financing Statement Filing Offices:

Name of Grantor	Filing Jurisdiction(s)
XM 1500 Eckington LLC	Secretary of State of the State of Delaware
XM Investment LLC	Secretary of State of the State of Delaware

SCHEDULE 4.2
TO SECURITY AGREEMENT

INTELLECTUAL PROPERTY

A. Copyrights:

No registered copyrights.

B. Patents:

No registered patents.

C. Federally Registered Trademarks/Service Marks, and Trademark/Service Mark Applications:

No registered trademarks or applications.

SCHEDULE 4.3
TO SECURITY AGREEMENT

MATERIAL INVESTMENT PROPERTY

Pledged Stock:

None.

Pledged Partnership Interests:

None.

Pledged LLC Interests:

None.

Pledged Debt:

None.

SCHEDULE 4.4(e)
TO SECURITY AGREEMENT

COMMERCIAL TORT CLAIMS

None.

EXHIBIT A
TO SECURITY AGREEMENT

FORM OF SECURITY AGREEMENT SUPPLEMENT

This SECURITY AGREEMENT SUPPLEMENT, dated [mm/dd/yy] (the 'Supplement"), is delivered pursuant to the Security Agreement, dated as of February 13, 2009, made among XM 1500 ECKINGTON LLC, XM INVESTMENT LLC and U.S. Bank National Association, as Collateral Trustee. Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement. This Supplement is being delivered pursuant to Section [___][1] of the Security Agreement.

Grantor hereby confirms, as of the date first written above, the grant to Collateral Trustee set forth in the Security Agreement of, does hereby grant to Collateral Trustee, for the benefit of itself and the Secured Parties, a security interest in all of Grantor's right, title and interest in and to all Collateral to secure the Secured Obligations, in each case whether now or hereafter existing or in which Grantor now has or hereafter acquires an interest and wherever the same may be located and hereby agrees, as of the date first above written, to continue to be bound as a Grantor by all of the terms and provisions of the Security Agreement, as supplemented by this Security Agreement Supplement. Grantor hereby represents and warrants that the attached Supplements to Schedules accurately and completely set forth all additional information with respect to the Grantor currently required pursuant to the Security Agreement and hereby agrees that such Supplements to Schedules shall constitute part of the Schedules to the Security Agreement.

IN WITNESS WHEREOF, Grantor has caused this Security Agreement Supplement to be duly executed and delivered by its duly authorized officer as of [mm/dd/yy].

[NAME OF GRANTOR]

By: ______________________________
Name:
Title:

---

1 Insert Section 4.1(b)(iii), 4.2(b)(iii), 4.3(b)(ii), 4.4(e), as applicable.

SUPPLEMENT TO SCHEDULE 4.1
TO SECURITY AGREEMENT

Additional Information:

Financing Statements:

Name of Grantor	Filing Jurisdiction(s)

SUPPLEMENT TO SCHEDULE 4.2
TO SECURITY AGREEMENT

Additional Information:

(A) Copyrights:

(B) Patents:

(C) Trademarks:

SUPPLEMENT TO SCHEDULE 4.3
TO SECURITY AGREEMENT

MATERIAL INVESTMENT PROPERTY

SUPPLEMENT TO SCHEDULE 4.3
TO SECURITY AGREEMENT

Additional Information:

Pledged Stock:

Pledged Partnership Interests:

Pledged LLC Interests:

Pledged Debt:

SUPPLEMENT TO SCHEDULE 4.4
TO SECURITY AGREEMENT

COMMERCIAL TORT CLAIMS

SUPPLEMENT TO SCHEDULE 4.4(e)
TO SECURITY AGREEMENT

COMMERCIAL TORT CLAIMS

EXHIBIT 4.4

EXECUTION COPY

XM 1500 ECKINGTON LLC,

as Grantor,

to

STEWART TITLE OF MARYLAND INC., as Trustee

for the benefit of

U.S. BANK NATIONAL ASSOCIATION

as Collateral Trustee,

as Beneficiary

DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

Dated: As of February 13, 2009

Location: 1500 Eckington Place NE
Washington, DC 20002-2194

PREPARED BY AND UPON
RECORDATION RETURN TO:

Brown, Rudnick LLP
One Financial Center
Boston, Massachusetts 02111
Attention: Steven B. Levine, Esquire
Edward S. Hershfield, Esquire

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS SECURITY AGREEMENT AND FIXTURE FILING (the "Security Instrument") is made as of the 13th day of February, 2009, by XM 1500 ECKINGTON LLC, a Delaware limited liability company having an address c/o XM Satellite Radio Holdings Inc., 1221 Avenue of the Americas, 36th Floor, New York, New York 10020, Attention: General Counsel, as grantor ("Grantor") in favor of STEWART TITLE OF MARYLAND INC., a Maryland corporation, having its principal place of business at 409 Washington Avenue, Towson, Maryland 21204, as trustee ("Trustee") for the benefit of U.S. BANK NATIONAL ASSOCIATION, having an address at 100 Wall Street, Suite 1600, New York, NY 10005, Attention: Corporate Trust Services, as Collateral Trustee (in such capacity, "Beneficiary") for the ratable benefit of the holders of the Notes referred to below (collectively, the "Holders", each of which is severally called "Holder").

RECITALS:

Grantor is party to that certain Indenture dated as of February 13, 2009 (together with all extensions, renewals, modifications, substitutions, amendments, restatements, and replacements thereof, the "Indenture") among XM Satellite Radio Holdings Inc., a Delaware corporation (the "Company"), Sirius XM Radio Inc., a Delaware corporation (the "Parent"), Grantor, as a Subsidiary Guarantor, XM Investment LLC, a Delaware limited liability company, as a Subsidiary Guarantor, and U.S. BANK National Association, as Indenture Trustee, pursuant to which, among other things, Grantor guarantees full payment and performance of all of the obligations of the Company to the Holders of the promissory notes (together with all extensions, renewals, modifications, substitutions, amendments, restatements, and replacements thereof, collectively, the "Notes") issued under the Indenture, including without limitation the repayment of the principal sum of TWO HUNDRED FIFTY MILLION AND 00/100 DOLLARS ($250,000,000.00) in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Indenture, with principal and interest to be payable in accordance with the terms and conditions provided in the Indenture.

Grantor desires to secure the payment of the Debt (as defined inArticle 2) and the performance of all of its obligations under the Indenture and the Other Obligations (as defined in Article 2).

ARTICLE — 1. GRANTS OF SECURITY

1.1 Property Mortgaged. Grantor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Trustee, its successors and assigns, for the benefit of Beneficiary, and grant a security interest to Beneficiary and Trustee in, the following property, rights, interests and estates now owned, or hereafter acquired by Grantor (collectively, the "Property") with power of sale and right of entry and possession:

(a) Real Estate. The land more particularly described on Exhibit A which is annexed hereto and made a part hereof ("Land") together with the improvements and other structures now or hereafter situated thereon (such improvements being sometimes called the "Improvements") together with all rights, privileges, tenements, hereditaments, appurtenances,

easements, including, but not limited to, rights and easements for access and egress and utility connections, and other rights now or hereafter appurtenant thereto ("Real Estate");

(b) Fixtures. All real estate fixtures or items which by agreement of the parties may be deemed to be such fixtures, now or hereafter owned by Grantor, or in which Grantor has or hereafter obtains an interest, and now or hereafter located in or upon the Real Estate, or now or hereafter attached to, installed in, or used in connection with any of the Real Estate, including, but not limited to, any and all portable or sectional buildings, bathroom, plumbing, heating, lighting, refrigerating, ventilating and air-conditioning apparatus and equipment, garbage incinerators and receptacles, elevators and elevator machinery, boilers, furnaces, stoves, tanks, motors, sprinkler and fire detection and extinguishing systems, doorbell and alarm systems, window shades, screens, awnings, screen doors, storm and other detachable windows and doors, mantels, partitions, built-in cases, counters and other fixtures whether or not included in the foregoing enumeration ("Fixtures");

(c) Additional Appurtenances. All bridges, easements, rights of way, licenses, privileges, hereditaments, permits and appurtenances hereafter belonging to or enuring to the benefit of the Real Estate and all right, title and interest of Grantor in and to the land lying within any street or roadway adjoining any of the Real Estate and all right, title and interest of Grantor in and to any vacated or hereafter vacated streets or roads adjoining any of the Real Estate and any and all reversionary or remainder rights ("Additional Appurtenances");

(d) Awards. All of the right, title and interest of Grantor in and to any award or awards heretofore made or hereafter to be made by any municipal, county, state or federal authorities to the present or any subsequent owners of any of the Real Estate or the Land, or the Improvements, or the Fixtures, or the Additional Appurtenances, or the Leases or the Personal Property, including, without limitation, any award or awards, or settlements or payments, or other compensation hereafter made resulting from (x) condemnation proceedings or the taking of the Real Estate, or the Land, or the Improvements, or the Fixtures, or the Additional Appurtenances, or the Leases or the Personal Property, or any part thereof, under the power of eminent domain, or (y) the alteration of grade or the location or discontinuance of any street adjoining the Land or any portion thereof, or (z) any other injury to or decrease in value of the Property ("Awards");

(e) Leases. All leases now or hereafter entered into of the Real Estate, or any portion thereof, and all rents, issues, profits, revenues, earnings and royalties therefrom (collectively, "Rents"), and all right, title and interest of Grantor thereunder, including, without limitation, cash, letters of credit, or securities deposited thereunder to secure performance by the tenants or occupants of their obligations thereunder, whether such cash, letters of credit, or securities are to be held until the expiration of the terms of such leases or occupancy agreements or applied to one or more of the installments of rent coming due prior to the expiration of such terms including, without limitation, the right to receive and collect the rents thereunder ("Leases"); and

(f) Personal Property. All tangible and intangible personal property now owned or at any time hereafter acquired by Grantor of every nature and description, and location whether or not used in any way in connection with the Real Estate, the Fixtures, the Additional

Appurtenances, or any other portion of the Property, including, without limitation express or implied upon the generality of the foregoing, all Equipment, Goods, Inventory, Fixtures, Accounts, Instruments, Documents and General Intangibles (as each such capitalized term is defined in the Uniform Commercial Code in effect in the District of Columbia ("Uniform Commercial Code")) and further including, without any such limitation, the following whether or not included in the foregoing: materials; supplies; furnishings; chattel paper; money; bank accounts; security deposits; utility deposits; any insurance or tax reserves deposited with Beneficiary; any cash collateral deposited with Beneficiary; claims to rebates, refunds or abatements of real estate taxes or any other taxes; contract rights; plans and specifications; licenses, permits, approvals and other rights; the rights of Grantor under contracts with respect to the Real Estate or any other portion of the Property; signs, brochures, advertising, the name by which the Property is known and any variation of the words thereof, and good will; copyrights, service marks, and all goodwill associates therewith; and trademarks; all proceeds paid for any damage or loss to all or any portion of the Real Estate, the Fixtures, the Additional Appurtenances, any other Personal Property or any other portion of the Property ("Insurance Proceeds"); all Awards; all Leases; all books and records; and all proceeds, products, additions, accessions, substitutions and replacements to any one or more of the foregoing (collectively, the "Personal Property").

1.2 Assignment of Rents. Grantor hereby absolutely and unconditionally assigns to Beneficiary and Trustee Grantor's right, title and interest in and to all current and future Leases and Rents; it being intended by Grantor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2, Beneficiary and Trustee grants to Grantor a revocable license to collect and receive the Rents.

1.3 Security Agreement. Grantor hereby grants to Beneficiary a continuing security interest in all of the Property in which a security interest may be granted under the Uniform Commercial Code as including, without limitation, the Fixtures and the Personal Property, together with all proceeds and products, whether now or at any time hereafter acquired and whether or not used in any way in connection with the development, construction, marketing or operation of the Real Estate, to secure all Obligations (as defined in Section 2.3).

This instrument is intended to take effect as a security agreement pursuant to the Uniform Commercial Code and is to be filed as a financing statement pursuant to the Uniform Commercial Code.

1.4 Pledge of Monies Held. Grantor hereby pledges to Beneficiary any Net Proceeds (as defined in Section 4.2) and condemnation awards or payments described in Section 3.5 which are held by Beneficiary, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Beneficiary and Trustee, and the successors and assigns of Beneficiary and Trustee, forever;

IN TRUST, WITH POWER OF SALE, to secure all of Grantor's obligations under the Indenture, including without limitation Grantor's obligation to pay to the Holders the Debt at the time and in the manner provided for its payment in the Indenture and in this Security Instrument.

PROVIDED, HOWEVER, these presents are upon the express condition that, if Grantor shall well and truly pay to the Holders the Debt at the time and in the manner provided in the Indenture and this Security Instrument, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Indenture, these presents and the estate hereby granted shall cease, terminate and be void.

ARTICLE — 2. DEBT AND OBLIGATIONS SECURED

2.1 Debt. This Security Instrument and the grants, assignments and transfers made inArticle 1 are given for the purpose of securing the following, in such order of priority as is set forth in the Indenture (the "Debt"):

(a) the payment of the indebtedness evidenced by the Indenture which Grantor guaranties in the Indenture in lawful money of the United States of America;

(b) the payment of interest, default interest, late charges and other sums, as provided in the Indenture, this Security Instrument or the Other Security Documents (as defined in Section 3.2);

(c) the payment of all other moneys agreed or provided to be paid by Grantor in the Indenture, this Security Instrument or the Other Security Documents;

(d) the payment of all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; and

(e) the payment of all sums advanced and costs and expenses incurred by the Holders in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Grantor or the Holders.

2.2 Other Obligations. This Security Instrument and the grants, assignments and transfers made inArticle 1 are also given for the purpose of securing the following (the "Other Obligations"):

(a) the performance of all other obligations of Grantor contained herein;

(b) the performance of each obligation of Grantor contained in the Indenture or in any other agreement given by Grantor to the Holders which is for the purpose of further securing the obligations secured hereby, and any amendments, modifications and changes thereto; and

(c) the performance of each obligation of Grantor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Indenture, this Security Instrument or the Other Security Documents.

2.3 Debt and Other Obligations. Grantor's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively below as the "Obligations."

ARTICLE — 3. GRANTOR COVENANTS

Grantor covenants and agrees that:

3.1 Payment of Debt. Grantor will pay the Debt at the time and in the manner provided in the Indenture and in this Security Instrument.

3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Indenture and (b) all and any of the documents other than the Indenture or this Security Instrument now or hereafter executed by Grantor and/or others and by or in favor of Beneficiary, including without limitation the Indenture and any other documents which wholly or partially secure or guaranty payment of the Indenture (the "Other Security Documents"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

3.3 Insurance.

(a) Grantor shall obtain and maintain, or cause to be maintained, insurance for Grantor and the Property providing at least the following coverages:

(i) comprehensive all risk insurance on the Improvements and the Personal Property, including contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, in each case (A) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Security Instrument shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions; and (C) providing for no deductible in excess of $250,000;

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined single limit of not less than $2,000,000; and (B) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; and (4) blanket contractual liability for all written and oral contracts;

(iii) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance

provided for in Subsection 3.3(a)(i) written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to Subsection 3.3 (a)(i), (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(iv) workers' compensation, subject to the statutory limits of the state in which the Property is located, and employer's liability insurance with a limit of at least $1,000,000 per accident and per disease per employee, and $1,000,000 for disease aggregate in respect of any work or operations on or about the Property, or in connection with the Property or its operation (if applicable);

(v) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Beneficiary; and

(vi) flood hazard insurance if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area"; and

(vii) such other insurance as may be required pursuant to the terms of the Indenture.

(b) All insurance provided for in Subsection 3.3 (a) hereof shall be obtained under valid and enforceable policies (the "Policies" or in the singular, the "Policy"), in such forms and as may be reasonably satisfactory to Beneficiary, issued by financially sound and responsible insurance companies authorized to do business in the state in which the Property is located and approved by Beneficiary. The insurance companies must have a general policy rating of A or better and a financial class of VI or better by A.M. Best Company, Inc.. Not less than thirty (30) days prior to the expiration dates of the Policies theretofore furnished to Beneficiary pursuant to Subsection 3.3(a), certified copies of the Policies (or certificates evidencing the coverage afforded thereby) marked "premium paid" or accompanied by evidence reasonably satisfactory to Beneficiary of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Grantor to Beneficiary.

(c) Grantor shall not obtain (i) any umbrella or blanket liability or casualty Policy unless Beneficiary's interest is included therein as provided in this Security Instrument and such Policy is issued by a Qualified Insurer, or (ii) separate insurance concurrent in form or contributing in the event of loss with that required in Subsection 3.3(a) to be furnished by, or which may be reasonably required to be furnished by, Grantor. In the event Grantor obtains separate insurance or an umbrella or a blanket Policy, Grantor shall notify Beneficiary of the same and shall cause certified copies of each Policy (or certificates evidencing the coverage afforded thereby) to be delivered as required in Subsection 3.3(a). Any blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Subsection 3.3(a).

(d) All Policies of insurance provided for or contemplated by Subsection 3.3(a), except for the Policy referenced in Subsection 3.3(a)(v), shall name Beneficiary and

Grantor as the insured or additional insured, as their respective interests may appear, and in the case of property damage, boiler and machinery, and flood insurance, shall contain a so-called New York standard non-contributing mortgagee clause in favor of Beneficiary providing that the loss thereunder shall be payable to Beneficiary.

(e) All Policies of insurance provided for in Subsection 3.3(a) shall contain clauses or endorsements to the effect that:

(i) the Policy shall not be materially changed (other than to increase the coverage provided thereby) or cancelled without at least 30 days' written notice to Beneficiary; and

(ii) each Policy shall provide that the issuers thereof shall give written notice to Beneficiary if the Policy has not been renewed thirty (30) days prior to its expiration.

(f) If at any time Beneficiary is in receipt of written evidence that all insurance required hereunder is not in full force and effect, Beneficiary shall have the right, without notice to Grantor to obtain such insurance coverage as is required hereunder, and all expenses incurred by Beneficiary in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Grantor to Beneficiary upon demand.

(g) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Grantor shall give prompt notice of such damage to Beneficiary and, at the election of Grantor, either redeem Notes in the principal amount equal to the Net Proceeds payable in connection with such fire or other casualty, or shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty, with such alterations as may be reasonably approved by Beneficiary (the "Restoration") and otherwise in accordance with Section 4.2 of this Security Instrument; it being understood, however, that if Grantor elects to restore the Property, Grantor shall not be obligated to restore the Property to the precise condition of the Property prior to any casualty or other damage or injury to the Property if the restoration or repair to be performed shall have no material effect on the fair market value of the Property as compared to the fair market value of the Property if the same had been restored or repaired to its precise condition immediately prior to such taking or casualty. If Grantor elects to restore the Property, Grantor shall pay all costs of such Restoration whether or not such costs are covered by insurance.

3.4 Payment of Taxes, etc.

(a) Subject to Grantor's rights to contest the same as provided below, Grantor shall pay all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes"), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and all charges for utility services provided to the Property prior to the date the same would become delinquent. Grantor will deliver to Beneficiary, within ten (10)

days of a request by Beneficiary's, evidence reasonably satisfactory to Beneficiary that the Taxes, Other Charges and utility service charges have been so paid, are not then delinquent or are being contested. Upon request of Beneficiary, Grantor shall furnish to Beneficiary paid receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent, unless the same are being contested in accordance with the terms hereof.

(b) After prior written notice to Beneficiary, Grantor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes or Other Charges, provided that (i) no Event of Default (as defined in Article 9) has occurred and is continuing, (ii) Grantor is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Taxes from Grantor and from the Property or Grantor shall have paid all of the Taxes under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Grantor is subject and shall not constitute a default thereunder, and (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost.

3.5 Condemnation. Grantor, within ten (10) days of becoming aware of the institution of the actual or threatened commencement of any condemnation or eminent domain proceeding, shall notify Beneficiary of the pendency of such proceedings, and shall deliver to Beneficiary copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise, the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Beneficiary, after the deduction of expenses of collection, to the reduction or discharge of the Debt. If the Property or any portion thereof is taken by a condemning authority, Grantor shall, at its option, either redeem Notes in the principal amount equal to the Net Proceeds (as defined in Section 4.2(b)) payable in connection with such condemnation, or promptly commence and diligently prosecute the restoration of the Property in accordance with, and otherwise comply with the provisions of, Section 4.2. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Beneficiary of the award or payment, Beneficiary shall have the right, whether or not a deficiency judgment on the Indenture shall have been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to redeem the Notes and repay and other outstanding Debt.

3.6 Leases and Rents. No future Lease shall be executed without Beneficiary's approval, which shall not be unreasonably withheld. Upon request, Grantor shall furnish Beneficiary with executed copies of all Leases. All future Leases shall provide that they are subordinate to this Security Instrument and that the lessee shall attorn to the Beneficiary, and by acceptance of this Security Instrument, Beneficiary agrees to enter into a customary non-disturbance agreement with the tenant under any such future Lease, which agreement shall be in form and substance reasonably satisfactory to Beneficiary.

3.7 Maintenance of Property. Grantor shall cause the Property to be maintained in a good and safe condition and repair, reasonable wear and tear excepted. The Improvements shall not be removed or demolished without the consent of Beneficiary. Grantor shall, in accordance with prudent business practices, repair, replace or rebuild any part of the Property which may be

destroyed by any casualty, or become damaged, worn or dilapidated, or which may be affected by any proceeding of the character referred to in Section 3.5 hereof, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

3.8 Waste. Grantor shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy.

3.9 Compliance With Laws. Grantor shall comply in all material respects with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting or which may be interpreted to affect the Property, or the use thereof ("Applicable Laws").

3.10 Liens. Grantor will never permit to be created or exist in respect of the Property or any part thereof any lien or security interest other than the liens or security interests hereof and other than Permitted Exceptions (as defined in Section 5.1).

ARTICLE — 4. — SPECIAL COVENANTS

Grantor covenants and agrees that:

4.1 Single Purpose Entity. It has not and shall not:

(a) engage in any business or activity other than the ownership, operation, leasing and maintenance of the Property, and activities incidental thereto;

(b) acquire or own any material assets other than (i) the Property, and (ii) such incidental Personal Property as may be necessary for the operation of the Property;

(c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Beneficiary's consent;

(d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Beneficiary, amend, modify, terminate or fail to comply with the provisions of Grantor's organizational documents, as same may be further amended or supplemented, if such amendment, modification, termination or failure to comply would adversely affect the ability of Grantor to perform its obligations hereunder, under the Indenture or under the Other Security Documents;

(e) own any subsidiary or make any investment in, any person or entity without the consent of Beneficiary;

(f) commingle its assets with the assets of any of its members, general partners, affiliates, principals or of any other person or entity;

(g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt, except for trade payables and leases of personal property in the ordinary course of its business of owning, leasing and operating the Property, provided that such debt is paid when due;

(h) become insolvent and fail to pay its debts and liabilities from its assets as the same shall become due;

(i) fail to maintain its records, books of account and bank accounts separate and apart from those of the members, general partners, principals and affiliates of Grantor and any other person or entity;

(j) enter into any contract or agreement with any member, general partner, principal or affiliate of Grantor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, general partner, principal or affiliate of Grantor;

(k) seek the dissolution or winding up in whole, or in part, of Grantor;

(l) except pursuant to the Indenture and the Security Documents, hold itself out to be responsible for the debts of another person;

(m) make any loans or advances to any third party, including any member, general partner, principal or affiliate of Grantor;

(n) fail to file its own tax returns;

(o) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Grantor is responsible for the debts of any third party (including any member, general partner, principal or affiliate of Grantor, or any member, general partner, principal or affiliate thereof), except pursuant to the Indenture and the Security Documents ;

(p) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; or

(q) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors.

4.2 Restoration. The following provisions shall apply in connection with any Restoration of the Property which Grantor elects to do:

(a) If the Net Proceeds (as defined in Section 4.2(b)) shall be less than $500,000 (the ‘Net Proceeds Threshold”) and the costs of completing the Restoration shall be less than the Net Proceeds Threshold, the Net Proceeds will be disbursed by Beneficiary to

Grantor upon receipt, provided that all of the conditions set forth in Subsection 4.1(b)(i) are met and Grantor delivers to Beneficiary a written undertaking to commence and complete, with all due diligence, the Restoration in accordance with the terms of this Security Instrument.

(b) If the Net Proceeds are equal to or greater than the Net Proceeds Threshold or the costs of completing the Restoration is equal to or greater than the Net Proceeds Threshold, Beneficiary shall make the net amount of all insurance or condemnation proceeds received by Beneficiary pursuant to this Security Instrument as a result of such damage, destruction or condemnation, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same (the "Net Proceeds") available for the Restoration in accordance with the provisions of this Subsection 4.1(b).

(i) The Net Proceeds shall be made available to Grantor for the Restoration, provided that each of the following conditions are met:

(A) no Event of Default shall have occurred and be continuing;

(B) Grantor shall commence the Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such damage or destruction occurs) and shall diligently pursue the same to satisfactory completion;

(C) Beneficiary shall be reasonably satisfied that the Net Proceeds and other funds of Grantor are available to complete the Restoration and that the Restoration will be completed on or before the maturity date of the Notes;

(D) the Property and the use thereof after the Restoration will be in compliance in all material respects with and permitted under all applicable zoning laws, ordinances, rules and regulations;

(E) in the event that the Net Proceeds are proceeds of condemnation (I) the portion of the Land that is subject to such condemnation does not include any material means of access, facilities or amenities that are necessary for the continued use, occupation and operation of the Improvements in a manner substantially the same as immediately prior to such condemnation, and (II) the nature and scope of such condemnation would not make it impracticable, in Beneficiary's reasonable determination, even after Restoration, to use, occupy and operate the Improvements as an economically viable whole; and

(F) the Restoration shall be done and completed by Grantor in an expeditious and diligent fashion and in compliance in all material respects with all applicable governmental laws, rules and regulations.

(ii) The Net Proceeds shall be held by Beneficiary and, until disbursed in accordance with the provisions of this Subsection 4.2(b), shall constitute additional security for the Obligations. The Net Proceeds shall be disbursed by Beneficiary to, or as directed by,

Grantor from time to time during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Beneficiary that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded to the reasonable satisfaction of Beneficiary and discharged of record, or in the alternative fully insured to the reasonable satisfaction of Beneficiary by the title company insuring the lien of this Security Instrument.

(iii) For any Restoration expected to cost in excess of $2,500,000 (a "Material Restoration"), the plans and specifications required in connection with the Restoration shall be subject to prior review and acceptance by Beneficiary and by an independent consulting engineer selected by Beneficiary (the "Casualty Consultant"), such acceptance not to be unreasonably withheld, conditioned or delayed. Beneficiary shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Material Restoration. The identity of the contractors, subcontractors and materialmen engaged in any Material Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance by Beneficiary and the Casualty Consultant, not to be unreasonably withheld, conditioned or delayed. All costs and expenses incurred by Beneficiary in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Grantor.

(iv) In no event shall Beneficiary be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus, at the option of Beneficiary, the Casualty Retainage. The term "Casualty Retainage" as used in this Subsection 4.2(b) shall mean an amount equal to 10% of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until such time as the Casualty Consultant certifies to Beneficiary that Net Proceeds representing 50% of the required Restoration have been disbursed. There shall be no Casualty Retainage with respect to costs actually incurred by Grantor for work in place in completing the last 50% of the required Restoration. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Subsection 4.2(b), be less than the amount actually held back by Grantor from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Beneficiary that the Restoration has been completed in accordance with the provisions of this Subsection 4.2(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate governmental and quasi-governmental authorities, and Beneficiary receives evidence reasonably satisfactory to Beneficiary that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage, provided, however, that Beneficiary will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Beneficiary that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, and the contractor,

subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Beneficiary or by the title company insuring the lien of this Security Instrument.

(v) Beneficiary shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) The excess, if any, of the Net Proceeds deposited with Beneficiary after the Casualty Consultant certifies to Beneficiary that the Restoration has been completed in accordance with the provisions of this Subsection 4.2(b), and the receipt by Beneficiary of evidence satisfactory to Beneficiary that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Beneficiary to Grantor, provided no Event of Default shall have occurred and shall be continuing.

(c) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Grantor as excess Net Proceeds pursuant to Subsection 4.2(b)(vi) may be retained and applied by Beneficiary toward redemption of the Notes, whether or not then due and payable in such order, priority and proportions as Beneficiary in its discretion shall deem proper or, at the discretion of Beneficiary, the same may be paid, either in whole or in part, to Grantor for such purposes as Beneficiary shall designate, in its discretion. If Beneficiary shall receive and retain Net Proceeds, the lien of this Security Instrument shall be reduced only by the amount thereof received and retained by Beneficiary and actually applied by Beneficiary in redemption of the Notes and repayment of any other outstanding Debt.

ARTICLE — 5. REPRESENTATIONS AND WARRANTIES

Grantor represents and warrants to Beneficiary that:

5.1 Warranty of Title. Grantor has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Grantor possesses an unencumbered fee simple absolute estate in the Land and the Improvements, and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Security Instrument (the "Permitted Exceptions"). Grantor shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Beneficiary and/or Trustee against the claims of all persons whomsoever (other than the holders of Permitted Exceptions).

5.2 Status of Property. No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or, if located within any such area, Grantor has obtained and will maintain the insurance prescribed in Section 3.3 hereof.

5.3 No Foreign Person. Grantor is not a "foreign person" within the meaning of Sections 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

5.4 Separate Tax Lot. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

5.5 Leases. (a) Grantor is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid and enforceable; and (c) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated.

ARTICLE — 6. OBLIGATIONS AND RELIANCES

6.1 Relationship of Grantor and Beneficiary. The relationship between Grantor and Beneficiary is solely that of debtor and creditor, and Beneficiary has no fiduciary or other special relationship with Grantor, and no term or condition of any of the Indenture, this Security Instrument and the Other Security Documents shall be construed so as to deem the relationship between Grantor and Beneficiary to be other than that of debtor and creditor.

6.2 No Reliance on Beneficiary. The members, general partners, principals and (if Grantor is a trust) beneficial owners of Grantor are experienced in the ownership and operation of properties similar to the Property, and Grantor and Beneficiary are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Grantor is not relying on Beneficiary's expertise, business acumen or advice in connection with the Property.

6.3 No Beneficiary Obligations.

(a) Notwithstanding the provisions of Subsections 1.1(f) and (l) or Section 1.2, Beneficiary is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Beneficiary pursuant to this Security Instrument, the Indenture or the Other Security Documents, including without limitation any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Beneficiary shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Beneficiary.

ARTICLE — 7. FURTHER ASSURANCES

7.1 Recording of Security Instrument, etc. Grantor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the Other Security Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be reasonably required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Beneficiary in, the Property. Grantor will pay

all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Indenture, this Security Instrument, the Other Security Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

7.2 Further Acts, etc. Grantor will, at the cost of Grantor, and without expense to Beneficiary, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Beneficiary shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Beneficiary and Trustee the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound to convey or assign to Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Grantor, on demand, will execute and deliver and hereby authorizes Beneficiary to execute in the name of Grantor or without the signature of Grantor to the extent Beneficiary may lawfully do so, one or more financing statements to evidence more effectively the security interest of Beneficiary in the Property. Grantor grants to Beneficiary an irrevocable power of attorney, coupled with an interest, and after the occurrence and during the continuance of an Event of Default, Beneficiary may use such power of attorney for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary at law and in equity, including, without limitation such rights and remedies available to Beneficiary pursuant to this Section 7.2.

7.3 Debt Credit and Documentary Stamp Laws.

(a) Grantor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt.

(b) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to this Security Instrument or impose any other tax or charge on the same, Grantor will pay for the same, with interest and penalties thereon, if any.

7.4 Flood Area. After Beneficiary’s request, Grantor shall deliver evidence satisfactory to Beneficiary that no portion of the Improvements is situated in a federally designated “special flood hazard area.”

ARTICLE — 8. — DUE ON SALE/ENCUMBRANCE

8.1 No Sale/Encumbrance. Grantor agrees that Grantor shall not, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, in each case except as expressly permitted by the Indenture.

ARTICLE — 9. DEFAULT

9.1 Events of Default. The term "Event of Default" as used in this Security Instrument shall mean an "Event of Default" as defined in the Indenture or any default under any other term, covenant or condition of this Security Agreement which remains uncured for sixty (60) days after written notice of such default has been given, by certified mail to the XM Satellite Radio Holdings Inc. and Sirius XM Radio Inc., by the Beneficiary.

ARTICLE — 10. RIGHTS AND REMEDIES

10.1 Remedies. Upon the occurrence of any Event of Default, Grantor agrees that Beneficiary may or acting by or through Trustee may, take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

(a) in accordance with the terms of the Indenture, declare the entire unpaid Debt to be immediately due and payable;

(b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Grantor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein;

(f) recover judgment on the Indenture either before, during or after any proceedings for the enforcement of this Security Instrument or the Other Security Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Grantor or of any person, firm or other entity liable for the payment of the Debt;

(h) subject to any applicable law, the license granted to Grantor under Section 1.2 shall automatically be revoked and Beneficiary may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Grantor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Grantor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Grantor agrees to surrender possession of the Property and of such books, records and accounts to Beneficiary upon demand, and thereupon Beneficiary may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Beneficiary deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Grantor with respect to the Property, whether in the name of Grantor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Grantor to pay monthly in advance to Beneficiary, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Grantor; (vi) require Grantor to vacate and surrender possession of the Property to Beneficiary or to such receiver and, in default thereof, Grantor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Beneficiary shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Beneficiary, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Beneficiary or Trustee may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Grantor at its expense to assemble the Personal Property and make it available to Beneficiary at a convenient place acceptable to Beneficiary. Any notice of sale, disposition or other intended action by Beneficiary or Trustee with respect to the Personal Property sent to Grantor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Grantor;

(j) surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and

proportion as Beneficiary in its discretion shall deem proper, and in connection therewith, Grantor hereby appoints Beneficiary as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Grantor to collect such Insurance Premiums; or

(k) pursue such other remedies as Beneficiary may have under applicable law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

10.2 Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Beneficiary pursuant to the Indenture, this Security Instrument or the Other Security Documents, shall be applied by Beneficiary to the redemption of the Notes and the payment of any other outstanding Debt in accordance with the terms and provisions of the Indenture.

10.3 Right to Cure Defaults. Upon the occurrence of any Event of Default or if Grantor fails to make any payment or to do any act as herein provided, Beneficiary may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder, make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary or Trustee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 10.3, shall constitute a portion of the Debt and shall be due and payable to Beneficiary upon demand. All such costs and expenses incurred by Beneficiary shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents and shall be immediately due and payable upon demand by Beneficiary therefor.

10.4 Actions and Proceedings. Beneficiary or Trustee has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Grantor, which Beneficiary, in its discretion, decides should be brought to protect its interest in the Property.

10.5 Recovery of Sums Required To Be Paid. Beneficiary shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Beneficiary or Trustee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Grantor existing at the time such earlier action was commenced.

10.6 Other Rights, etc.

(a) The failure of Beneficiary or Trustee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Grantor shall not be relieved of Grantor's obligations hereunder by reason of (i) the failure of Beneficiary or Trustee to comply with any request of Grantor to take any action to foreclose this

Security Instrument or otherwise enforce any of the provisions hereof or of the Indenture or the Other Security Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Beneficiary extending the time of payment or otherwise modifying or supplementing the terms of the Indenture, this Security Instrument or the Other Security Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Grantor, and Beneficiary shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Beneficiary's possession.

(c) The rights of Beneficiary or Trustee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Beneficiary shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Beneficiary nor Trustee shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

10.7 Right to Release Any Portion of the Property. Beneficiary may release any portion of the Property for such consideration as Beneficiary may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Beneficiary for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Beneficiary may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

ARTICLE — 11. INDEMNIFICATION

11.1 Mortgage and/or Intangible Tax. Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties (as defined in this Section below) from and against any and all losses imposed upon or incurred by or asserted against any such party and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument. For purposes of this Security Instrument, the term "Indemnified Parties" means Beneficiary, any person or entity in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Debt (including, but not limited to, Holders, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Debt for the benefit of third parties), as well as the respective directors, officers, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing.

ARTICLE — 12. ENVIRONMENTAL MATTERS

12.1 Environmental Covenants. Grantor covenants and agrees that: (a) all uses and operations on or of the Property, whether by Grantor or any other person or entity, shall be in compliance in all material respects with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Substances in, on, under or from the Property; (c) there shall be no Hazardous Substances in, on, or under the Property, except those that are both (i) in compliance with all Environmental Laws and with permits issued pursuant thereto and (ii) fully disclosed to Beneficiary in writing; (d) Grantor shall keep the Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Grantor or any other person or entity (the "Environmental Liens"); (e) Grantor shall, at its sole cost and expense, comply with all reasonable written requests of Beneficiary to (i) reasonably effectuate Remediation of any condition (including but not limited to a Release of a Hazardous Substance) in, on, under or from the Property; (ii) comply in all material respects with any Environmental Law; (iii) comply in all material respects with any directive from any governmental authority; and (iv) take any other reasonable action necessary or appropriate for protection of human health or the environment; (f) Grantor shall not do or allow any tenant or other user of the Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the Property), impairs or may impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property; and (g) Grantor shall promptly notify Beneficiary in writing of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication of which Grantor becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to Hazardous Substances or Remediation thereof, possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Article 12. "Environmental Law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors

Appropriation Act. "Environmental Law" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law: conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property. "Hazardous Substances" include but are not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives. "Release" of any Hazardous Substance includes but is not limited to any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances. "Remediation" includes but is not limited to any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of any Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to in Article 12.

12.2 Beneficiary's Rights. Beneficiary and any other person or entity designated by Beneficiary, including but not limited to any receiver, any representative of a governmental entity, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to, conducting any environmental assessment or audit (the scope of which shall be determined in Beneficiary's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Grantor shall cooperate with and provide access to Beneficiary and any such person or entity designated by Beneficiary.

12.3 Environmental Indemnification. Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses and costs of Remediation (whether or not performed voluntarily), engineers' fees, environmental consultants' fees, and costs of investigation (including but not limited to sampling, testing, and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas) imposed upon or incurred by or asserted against any Indemnified Parties, and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any presence of any Hazardous Substances in, on, above, or under the Property; (b) any past, present or threatened Release of Hazardous Substances in, on, above, under or from the Property; (c) any activity by Grantor, any person or entity affiliated with

Grantor or any tenant or other user of the Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by Grantor, any person or entity affiliated with Grantor or any tenant or other user of the Property in connection with any actual or proposed Remediation of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action; (e) any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including but not limited to any failure by Grantor, any person or entity affiliated with Grantor or any tenant or other user of the Property to comply with any order of any governmental authority in connection with any Environmental Laws; (f) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in this Article 12; (h) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Property, including but not limited to costs to investigate and assess such injury, destruction or loss; (i) any acts of Grantor or other users of the Property in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Substances owned or possessed by such Grantor or other users, at any facility or incineration vessel owned or operated by another person or entity and containing such or similar Hazardous Materials; (j) any acts of Grantor or other users of the Property, in accepting any Hazardous Substances for transport to disposal or treatment facilities, incineration vessels or sites selected by Grantor or such other users, from which there is a Release, or a threatened Release of any Hazardous Substance which causes the incurrence of costs for Remediation; (k) any personal injury, wrongful death, or property damage arising under any statutory or common law or tort law theory, including but not limited to damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Property; and (l) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to Article 12.

ARTICLE — 13. WAIVERS

13.1 Marshalling and Other Matters. Grantor hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Grantor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Grantor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

13.2 Waiver of Notice. Grantor shall not be entitled to any notices of any nature whatsoever from Beneficiary or Trustee except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Beneficiary or Trustee

to Grantor and except with respect to matters for which Beneficiary or Trustee is required by applicable law to give notice, and Grantor hereby expressly waives the right to receive any notice from Beneficiary or Trustee with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Beneficiary or Trustee to Grantor.

13.3 WAIVER OF TRIAL BY JURY. GRANTOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE DEBT EVIDENCED BY THE INDENTURE, THIS SECURITY INSTRUMENT, THE INDENTURE, OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF BENEFICIARY, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

ARTICLE — 14. NOTICES

14.1 Notices. All notices or other written communications hereunder shall be given in the manner set forth in the Indenture.

ARTICLE — 15. APPLICABLE LAW

15.1 CHOICE OF LAW. THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OF THIS SECURITY INSTRUMENT, AND THE DETERMINATION OF DEFICIENCY JUDGMENTS, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY.

15.2 Usury Laws. This Security Instrument and the Indenture are subject to the express condition that at no time shall Grantor be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Indenture to either civil or criminal liability as a result of being in excess of the maximum interest rate which Grantor is permitted by applicable law to contract or agree to pay. If by the terms of this Security Instrument or the Indenture, Grantor is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the Security Instrument and the Indenture shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Indenture. All sums paid or agreed to be paid to Beneficiary for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Indenture until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

15.3 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

ARTICLE — 16. DEFINITIONS

16.1 General Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word “Grantor” shall mean “each Grantor and any subsequent owner or owners of the Property or any part thereof or any interest therein,” the word “Beneficiary” shall mean “Beneficiary and any subsequent trustee under the Indenture,” the word “Trustee” shall mean “Trustee and any substitute trustee of the estates, properties, powers, trusts and rights conferred upon Trustee pursuant to this Security Instrument,” the word “Indenture” shall mean “the Indenture and any other evidence of indebtedness secured by this Security Instrument,” the word “person” shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, the word “Property” shall include any portion of the Property and any interest therein, and the phrases “attorneys’ fees” and “counsel fees” shall include any and all attorneys’, paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Beneficiary in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

ARTICLE — 17. MISCELLANEOUS PROVISIONS

17.1 No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Grantor or Beneficiary, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

17.2 Liability. If Grantor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Grantor and Beneficiary and their respective successors and assigns forever.

17.3 Inapplicable Provisions. If any term, covenant or condition of the Indenture or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Indenture and this Security Instrument shall be construed without such provision.

17.4 Headings, etc. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

17.5 Duplicate Originals; Counterparts. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

17.6 Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

17.7 Subrogation. If any or all of the proceeds of the Indenture have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Beneficiary shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Beneficiary and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Grantor's obligations hereunder, under the Indenture and the Other Security Documents and the performance and discharge of the Other Obligations.

ARTICLE — 18. LOCAL LAW PROVISIONS

The Indenture, this Security Instrument and the Other Security Documents evidence a business transaction and not a transaction for personal, family, household, or agricultural purposes.

Notwithstanding anything contained elsewhere in this Security Instrument to the contrary, the maximum aggregate amount of principal to be secured hereunder at any one time is $50,000,000.

ARTICLE — 19. DEED OF TRUST PROVISIONS

19.1 Concerning the Trustee. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving notice to Grantor and to Beneficiary. Beneficiary may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Beneficiary may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall

thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Beneficiary. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

19.2 Trustee's Fees. Grantor shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

19.3 Certain Rights. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Indenture, this Security Instrument or the Other Security Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable area, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

19.4 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

19.5 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by the Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

19.6 Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in the Trustee's place.

IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by Grantor the day and year first above written.

XM 1500 ECKINGTON LLC, a Delaware limited liability company

BY: /s/ Patrick L. Donnelly

Name: Patrick L. Donnelly

Title: Secretary

EXHIBIT A

(Description of Land)

All of those lots or parcels of land located in County, District of Columbia and more particularly described as follows:

ALL that certain real property and the improvements thereon located in the District of Columbia and further described as follows:

Lots numbered Twenty-nine (29) and Thirty (30) in square numbered Thirty-five Hundred Eighteen (3518), in the subdivision made by Judd and Detwiler, incorporated, as per plat recorded in the Office of the Surveyor for the District of Columbia in fiber 159 at folio 159.

AND BEING the same property conveyed to Consortium One Eckington, LLC., by Deed from Judd & Detwiler, Inc., a District of Columbia corporation, dated June 29, 1998 and recorded July 6, 1998 as Instrument No. 9800052509.

EXHIBIT 4.5

EXECUTION COPY

XM INVESTMENT LLC,

as Grantor,

to

STEWART TITLE OF MARYLAND INC., as Trustee

for the benefit of

U.S. BANK NATIONAL ASSOCIATION

as Collateral Trustee,

as Beneficiary

DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

Dated: As of February 13, 2009

Location: 1500 Eckington Place NE
Washington, DC 20002-2194

PREPARED BY AND UPON
RECORDATION RETURN TO:

Brown, Rudnick LLP
One Financial Center
Boston, Massachusetts 02111
Attention: Steven B. Levine, Esquire
Edward S. Hershfield, Esquire

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the “Security Instrument”) is made as of the 13TH day of February, 2009, by XM INVESTMENT LLC, a Delaware limited liability company having an address c/o XM Satellite Radio Holdings Inc., 1221 Avenue of the Americas, 36th Floor, New York, New York 10020, Attention: General Counsel, as grantor (“Grantor”) in favor of STEWART TITLE OF MARYLAND INC., a Maryland corporation, having its principal place of business at 409 Washington Avenue, Towson, Maryland 21204, as trustee (“Trustee”) for the benefit of U.S. BANK NATIONAL ASSOCIATION, having an address at 100 Wall Street, Suite 1600, New York, NY 10005, Attention: Corporate Trust Services, as Collateral Trustee (in such capacity, “Beneficiary”) for the ratable benefit of the holders of the Notes referred to below (collectively, the “Holders”, each of which is severally called “Holder”).

RECITALS:

Grantor is party to that certain Indenture dated as of February 13, 2009 (together with all extensions, renewals, modifications, substitutions, amendments, restatements, and replacements thereof, the “Indenture”) among XM Satellite Radio Holdings Inc., a Delaware corporation (the “Company”), Sirius XM Radio Inc., a Delaware corporation (the “Parent”), XM 1500 Eckington LLC, a Delaware limited liability company, as a Subsidiary Guarantor, Grantor, as a Subsidiary Guarantor, and U.S. BANK National Association, as Indenture Trustee, pursuant to which, among other things, Grantor guarantees full payment and performance of all of the obligations of the Company to the Holders of the promissory notes (together with all extensions, renewals, modifications, substitutions, amendments, restatements, and replacements thereof, collectively, the “Notes”) issued under the Indenture, including without limitation the repayment of the principal sum of TWO HUNDRED FIFTY MILLION AND 00/100 DOLLARS ($250,000,000.00) in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Indenture, with principal and interest to be payable in accordance with the terms and conditions provided in the Indenture.

Grantor desires to secure the payment of the Debt (as defined inArticle 2) and the performance of all of its obligations under the Indenture and the Other Obligations (as defined in Article 2).

ARTICLE — 1. GRANTS OF SECURITY

1.1 Property Mortgaged. Grantor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Trustee, its successors and assigns, for the benefit of Beneficiary, and grant a security interest to Beneficiary and Trustee in, the following property, rights, interests and estates now owned, or hereafter acquired by Grantor (collectively, the “Property”) with power of sale and right of entry and possession:

(a) Real Estate. The land more particularly described on Exhibit A which is annexed hereto and made a part hereof (“Land”) together with the improvements and other structures now or hereafter situated thereon (such improvements being sometimes called the “Improvements”) together with all rights, privileges, tenements, hereditaments, appurtenances,

easements, including, but not limited to, rights and easements for access and egress and utility connections, and other rights now or hereafter appurtenant thereto ("Real Estate");

(b) Fixtures. All real estate fixtures or items which by agreement of the parties may be deemed to be such fixtures, now or hereafter owned by Grantor, or in which Grantor has or hereafter obtains an interest, and now or hereafter located in or upon the Real Estate, or now or hereafter attached to, installed in, or used in connection with any of the Real Estate, including, but not limited to, any and all portable or sectional buildings, bathroom, plumbing, heating, lighting, refrigerating, ventilating and air-conditioning apparatus and equipment, garbage incinerators and receptacles, elevators and elevator machinery, boilers, furnaces, stoves, tanks, motors, sprinkler and fire detection and extinguishing systems, doorbell and alarm systems, window shades, screens, awnings, screen doors, storm and other detachable windows and doors, mantels, partitions, built-in cases, counters and other fixtures whether or not included in the foregoing enumeration ("Fixtures");

(c) Additional Appurtenances. All bridges, easements, rights of way, licenses, privileges, hereditaments, permits and appurtenances hereafter belonging to or enuring to the benefit of the Real Estate and all right, title and interest of Grantor in and to the land lying within any street or roadway adjoining any of the Real Estate and all right, title and interest of Grantor in and to any vacated or hereafter vacated streets or roads adjoining any of the Real Estate and any and all reversionary or remainder rights ("Additional Appurtenances");

(d) Awards. All of the right, title and interest of Grantor in and to any award or awards heretofore made or hereafter to be made by any municipal, county, state or federal authorities to the present or any subsequent owners of any of the Real Estate or the Land, or the Improvements, or the Fixtures, or the Additional Appurtenances, or the Leases or the Personal Property, including, without limitation, any award or awards, or settlements or payments, or other compensation hereafter made resulting from (x) condemnation proceedings or the taking of the Real Estate, or the Land, or the Improvements, or the Fixtures, or the Additional Appurtenances, or the Leases or the Personal Property, or any part thereof, under the power of eminent domain, or (y) the alteration of grade or the location or discontinuance of any street adjoining the Land or any portion thereof, or (z) any other injury to or decrease in value of the Property ("Awards");

(e) Leases. All leases now or hereafter entered into of the Real Estate, or any portion thereof, and all rents, issues, profits, revenues, earnings and royalties therefrom (collectively, "Rents"), and all right, title and interest of Grantor thereunder, including, without limitation, cash, letters of credit, or securities deposited thereunder to secure performance by the tenants or occupants of their obligations thereunder, whether such cash, letters of credit, or securities are to be held until the expiration of the terms of such leases or occupancy agreements or applied to one or more of the installments of rent coming due prior to the expiration of such terms including, without limitation, the right to receive and collect the rents thereunder ("Leases"); and

(f) Personal Property. All tangible and intangible personal property now owned or at any time hereafter acquired by Grantor of every nature and description, and location whether or not used in any way in connection with the Real Estate, the Fixtures, the Additional

Appurtenances, or any other portion of the Property, including, without limitation express or implied upon the generality of the foregoing, all Equipment, Goods, Inventory, Fixtures, Accounts, Instruments, Documents and General Intangibles (as each such capitalized term is defined in the Uniform Commercial Code in effect in the District of Columbia ("Uniform Commercial Code")) and further including, without any such limitation, the following whether or not included in the foregoing: materials; supplies; furnishings; chattel paper; money; bank accounts; security deposits; utility deposits; any insurance or tax reserves deposited with Beneficiary; any cash collateral deposited with Beneficiary; claims to rebates, refunds or abatements of real estate taxes or any other taxes; contract rights; plans and specifications; licenses, permits, approvals and other rights; the rights of Grantor under contracts with respect to the Real Estate or any other portion of the Property; signs, brochures, advertising, the name by which the Property is known and any variation of the words thereof, and good will; copyrights, service marks, and all goodwill associates therewith; and trademarks; all proceeds paid for any damage or loss to all or any portion of the Real Estate, the Fixtures, the Additional Appurtenances, any other Personal Property or any other portion of the Property ("Insurance Proceeds"); all Awards; all Leases; all books and records; and all proceeds, products, additions, accessions, substitutions and replacements to any one or more of the foregoing (collectively, the "Personal Property").

1.2 Assignment of Rents. Grantor hereby absolutely and unconditionally assigns to Beneficiary and Trustee Grantor's right, title and interest in and to all current and future Leases and Rents; it being intended by Grantor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2, Beneficiary and Trustee grants to Grantor a revocable license to collect and receive the Rents.

1.3 Security Agreement. Grantor hereby grants to Beneficiary a continuing security interest in all of the Property in which a security interest may be granted under the Uniform Commercial Code as including, without limitation, the Fixtures and the Personal Property, together with all proceeds and products, whether now or at any time hereafter acquired and whether or not used in any way in connection with the development, construction, marketing or operation of the Real Estate, to secure all Obligations (as defined in Section 2.3).

This instrument is intended to take effect as a security agreement pursuant to the Uniform Commercial Code and is to be filed as a financing statement pursuant to the Uniform Commercial Code.

1.4 Pledge of Monies Held. Grantor hereby pledges to Beneficiary any Net Proceeds (as defined in Section 4.2) and condemnation awards or payments described in Section 3.5 which are held by Beneficiary, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Beneficiary and Trustee, and the successors and assigns of Beneficiary and Trustee, forever;

IN TRUST, WITH POWER OF SALE, to secure all of Grantor's obligations under the Indenture, including without limitation Grantor's obligation to pay to the Holders the Debt at the time and in the manner provided for its payment in the Indenture and in this Security Instrument.

PROVIDED, HOWEVER, these presents are upon the express condition that, if Grantor shall well and truly pay to the Holders the Debt at the time and in the manner provided in the Indenture and this Security Instrument, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Indenture, these presents and the estate hereby granted shall cease, terminate and be void.

ARTICLE — 2. DEBT AND OBLIGATIONS SECURED

2.1 Debt. This Security Instrument and the grants, assignments and transfers made inArticle 1 are given for the purpose of securing the following, in such order of priority as is set forth in the Indenture (the "Debt"):

(a) the payment of the indebtedness evidenced by the Indenture which Grantor guaranties in the Indenture in lawful money of the United States of America;

(b) the payment of interest, default interest, late charges and other sums, as provided in the Indenture, this Security Instrument or the Other Security Documents (as defined in Section 3.2);

(c) the payment of all other moneys agreed or provided to be paid by Grantor in the Indenture, this Security Instrument or the Other Security Documents;

(d) the payment of all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; and

(e) the payment of all sums advanced and costs and expenses incurred by the Holders in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Grantor or the Holders.

2.2 Other Obligations. This Security Instrument and the grants, assignments and transfers made inArticle 1 are also given for the purpose of securing the following (the "Other Obligations"):

(a) the performance of all other obligations of Grantor contained herein;

(b) the performance of each obligation of Grantor contained in the Indenture or in any other agreement given by Grantor to the Holders which is for the purpose of further securing the obligations secured hereby, and any amendments, modifications and changes thereto; and

(c) the performance of each obligation of Grantor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Indenture, this Security Instrument or the Other Security Documents.

2.3 Debt and Other Obligations. Grantor's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively below as the "Obligations."

ARTICLE — 3. GRANTOR COVENANTS

Grantor covenants and agrees that:

3.1 Payment of Debt. Grantor will pay the Debt at the time and in the manner provided in the Indenture and in this Security Instrument.

3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Indenture and (b) all and any of the documents other than the Indenture or this Security Instrument now or hereafter executed by Grantor and/or others and by or in favor of Beneficiary, including without limitation the Indenture and any other documents which wholly or partially secure or guaranty payment of the Indenture (the "Other Security Documents"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

3.3 Insurance.

(a) Grantor shall obtain and maintain, or cause to be maintained, insurance for Grantor and the Property providing at least the following coverages:

(i) comprehensive all risk insurance on the Improvements and the Personal Property, including contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, in each case (A) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Security Instrument shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions; and (C) providing for no deductible in excess of $250,000;

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined single limit of not less than $2,000,000; and (B) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; and (4) blanket contractual liability for all written and oral contracts;

(iii) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements (A) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance

provided for in Subsection 3.3(a)(i) written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to Subsection 3.3 (a)(i), (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(iv) workers' compensation, subject to the statutory limits of the state in which the Property is located, and employer's liability insurance with a limit of at least $1,000,000 per accident and per disease per employee, and $1,000,000 for disease aggregate in respect of any work or operations on or about the Property, or in connection with the Property or its operation (if applicable);

(v) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Beneficiary; and

(vi) flood hazard insurance if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area"; and

(vii) such other insurance as may be required pursuant to the terms of the Indenture.

(b) All insurance provided for in Subsection 3.3 (a) hereof shall be obtained under valid and enforceable policies (the "Policies" or in the singular, the "Policy"), in such forms and as may be reasonably satisfactory to Beneficiary, issued by financially sound and responsible insurance companies authorized to do business in the state in which the Property is located and approved by Beneficiary. The insurance companies must have a general policy rating of A or better and a financial class of VI or better by A.M. Best Company, Inc.. Not less than thirty (30) days prior to the expiration dates of the Policies theretofore furnished to Beneficiary pursuant to Subsection 3.3(a), certified copies of the Policies (or certificates evidencing the coverage afforded thereby) marked "premium paid" or accompanied by evidence reasonably satisfactory to Beneficiary of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Grantor to Beneficiary.

(c) Grantor shall not obtain (i) any umbrella or blanket liability or casualty Policy unless Beneficiary's interest is included therein as provided in this Security Instrument and such Policy is issued by a Qualified Insurer, or (ii) separate insurance concurrent in form or contributing in the event of loss with that required in Subsection 3.3(a) to be furnished by, or which may be reasonably required to be furnished by, Grantor. In the event Grantor obtains separate insurance or an umbrella or a blanket Policy, Grantor shall notify Beneficiary of the same and shall cause certified copies of each Policy (or certificates evidencing the coverage afforded thereby) to be delivered as required in Subsection 3.3(a). Any blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Subsection 3.3(a).

(d) All Policies of insurance provided for or contemplated by Subsection 3.3(a), except for the Policy referenced in Subsection 3.3(a)(v), shall name Beneficiary and

Grantor as the insured or additional insured, as their respective interests may appear, and in the case of property damage, boiler and machinery, and flood insurance, shall contain a so-called New York standard non-contributing mortgagee clause in favor of Beneficiary providing that the loss thereunder shall be payable to Beneficiary.

(e) All Policies of insurance provided for in Subsection 3.3(a) shall contain clauses or endorsements to the effect that:

(i) the Policy shall not be materially changed (other than to increase the coverage provided thereby) or cancelled without at least 30 days' written notice to Beneficiary; and

(ii) each Policy shall provide that the issuers thereof shall give written notice to Beneficiary if the Policy has not been renewed thirty (30) days prior to its expiration.

(f) If at any time Beneficiary is in receipt of written evidence that all insurance required hereunder is not in full force and effect, Beneficiary shall have the right, without notice to Grantor to obtain such insurance coverage as is required hereunder, and all expenses incurred by Beneficiary in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Grantor to Beneficiary upon demand.

(g) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Grantor shall give prompt notice of such damage to Beneficiary and, at the election of Grantor, either redeem Notes in the principal amount equal to the Net Proceeds payable in connection with such fire or other casualty, or shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty, with such alterations as may be reasonably approved by Beneficiary (the "Restoration") and otherwise in accordance with Section 4.2 of this Security Instrument; it being understood, however, that if Grantor elects to restore the Property, Grantor shall not be obligated to restore the Property to the precise condition of the Property prior to any casualty or other damage or injury to the Property if the restoration or repair to be performed shall have no material effect on the fair market value of the Property as compared to the fair market value of the Property if the same had been restored or repaired to its precise condition immediately prior to such taking or casualty. If Grantor elects to restore the Property, Grantor shall pay all costs of such Restoration whether or not such costs are covered by insurance.

3.4 Payment of Taxes, etc.

(a) Subject to Grantor's rights to contest the same as provided below, Grantor shall pay all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes"), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and all charges for utility services provided to the Property prior to the date the same would become delinquent. Grantor will deliver to Beneficiary, within ten (10)

days of a request by Beneficiary's, evidence reasonably satisfactory to Beneficiary that the Taxes, Other Charges and utility service charges have been so paid, are not then delinquent or are being contested. Upon request of Beneficiary, Grantor shall furnish to Beneficiary paid receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent, unless the same are being contested in accordance with the terms hereof.

(b) After prior written notice to Beneficiary, Grantor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes or Other Charges, provided that (i) no Event of Default (as defined in Article 9) has occurred and is continuing, (ii) Grantor is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Taxes from Grantor and from the Property or Grantor shall have paid all of the Taxes under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Grantor is subject and shall not constitute a default thereunder, and (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost.

3.5 Condemnation. Grantor, within ten (10) days of becoming aware of the institution of the actual or threatened commencement of any condemnation or eminent domain proceeding, shall notify Beneficiary of the pendency of such proceedings, and shall deliver to Beneficiary copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise, the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Beneficiary, after the deduction of expenses of collection, to the reduction or discharge of the Debt. If the Property or any portion thereof is taken by a condemning authority, Grantor shall, at its option, either redeem Notes in the principal amount equal to the Net Proceeds (as defined in Section 4.2(b)) payable in connection with such condemnation, or promptly commence and diligently prosecute the restoration of the Property in accordance with, and otherwise comply with the provisions of, Section 4.2. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Beneficiary of the award or payment, Beneficiary shall have the right, whether or not a deficiency judgment on the Indenture shall have been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to redeem the Notes and repay and other outstanding Debt.

3.6 Leases and Rents. No future Lease shall be executed without Beneficiary's approval, which shall not be unreasonably withheld. Upon request, Grantor shall furnish Beneficiary with executed copies of all Leases. All future Leases shall provide that they are subordinate to this Security Instrument and that the lessee shall attorn to the Beneficiary, and by acceptance of this Security Instrument, Beneficiary agrees to enter into a customary non-disturbance agreement with the tenant under any such future Lease, which agreement shall be in form and substance reasonably satisfactory to Beneficiary.

3.7 Maintenance of Property. Grantor shall cause the Property to be maintained in a good and safe condition and repair, reasonable wear and tear excepted. The Improvements shall not be removed or demolished without the consent of Beneficiary. Grantor shall, in accordance with prudent business practices, repair, replace or rebuild any part of the Property which may be

destroyed by any casualty, or become damaged, worn or dilapidated, or which may be affected by any proceeding of the character referred to in Section 3.5 hereof, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

3.8 Waste. Grantor shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy.

3.9 Compliance With Laws. Grantor shall comply in all material respects with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting or which may be interpreted to affect the Property, or the use thereof ("Applicable Laws").

3.10 Liens. Grantor will never permit to be created or exist in respect of the Property or any part thereof any lien or security interest other than the liens or security interests hereof and other than Permitted Exceptions (as defined in Section 5.1).

ARTICLE — 4. — SPECIAL COVENANTS

Grantor covenants and agrees that:

4.1 Single Purpose Entity. It has not and shall not:

(a) engage in any business or activity other than the ownership, operation, leasing and maintenance of the Property, and activities incidental thereto;

(b) acquire or own any material assets other than (i) the Property, and (ii) such incidental Personal Property as may be necessary for the operation of the Property;

(c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Beneficiary's consent;

(d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Beneficiary, amend, modify, terminate or fail to comply with the provisions of Grantor's organizational documents, as same may be further amended or supplemented, if such amendment, modification, termination or failure to comply would adversely affect the ability of Grantor to perform its obligations hereunder, under the Indenture or under the Other Security Documents;

(e) own any subsidiary or make any investment in, any person or entity without the consent of Beneficiary;

(f) commingle its assets with the assets of any of its members, general partners, affiliates, principals or of any other person or entity;

(g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt, except for trade payables and leases of personal property in the ordinary course of its business of owning, leasing and operating the Property, provided that such debt is paid when due;

(h) become insolvent and fail to pay its debts and liabilities from its assets as the same shall become due;

(i) fail to maintain its records, books of account and bank accounts separate and apart from those of the members, general partners, principals and affiliates of Grantor and any other person or entity;

(j) enter into any contract or agreement with any member, general partner, principal or affiliate of Grantor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, general partner, principal or affiliate of Grantor;

(k) seek the dissolution or winding up in whole, or in part, of Grantor;

(l) except pursuant to the Indenture and the Security Documents, hold itself out to be responsible for the debts of another person;

(m) make any loans or advances to any third party, including any member, general partner, principal or affiliate of Grantor;

(n) fail to file its own tax returns;

(o) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Grantor is responsible for the debts of any third party (including any member, general partner, principal or affiliate of Grantor, or any member, general partner, principal or affiliate thereof), except pursuant to the Indenture and the Security Documents ;

(p) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; or

(q) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors.

4.2 Restoration. The following provisions shall apply in connection with any Restoration of the Property which Grantor elects to do:

(a) If the Net Proceeds (as defined in Section 4.2(b)) shall be less than $500,000 (the 'Net Proceeds Threshold") and the costs of completing the Restoration shall be less than the Net Proceeds Threshold, the Net Proceeds will be disbursed by Beneficiary to

Grantor upon receipt, provided that all of the conditions set forth in Subsection 4.1(b)(i) are met and Grantor delivers to Beneficiary a written undertaking to commence and complete, with all due diligence, the Restoration in accordance with the terms of this Security Instrument.

(b) If the Net Proceeds are equal to or greater than the Net Proceeds Threshold or the costs of completing the Restoration is equal to or greater than the Net Proceeds Threshold, Beneficiary shall make the net amount of all insurance or condemnation proceeds received by Beneficiary pursuant to this Security Instrument as a result of such damage, destruction or condemnation, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting the same (the "Net Proceeds") available for the Restoration in accordance with the provisions of this Subsection 4.1(b).

(i) The Net Proceeds shall be made available to Grantor for the Restoration, provided that each of the following conditions are met:

(A) no Event of Default shall have occurred and be continuing;

(B) Grantor shall commence the Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such damage or destruction occurs) and shall diligently pursue the same to satisfactory completion;

(C) Beneficiary shall be reasonably satisfied that the Net Proceeds and other funds of Grantor are available to complete the Restoration and that the Restoration will be completed on or before the maturity date of the Notes;

(D) the Property and the use thereof after the Restoration will be in compliance in all material respects with and permitted under all applicable zoning laws, ordinances, rules and regulations;

(E) in the event that the Net Proceeds are proceeds of condemnation (I) the portion of the Land that is subject to such condemnation does not include any material means of access, facilities or amenities that are necessary for the continued use, occupation and operation of the Improvements in a manner substantially the same as immediately prior to such condemnation, and (II) the nature and scope of such condemnation would not make it impracticable, in Beneficiary's reasonable determination, even after Restoration, to use, occupy and operate the Improvements as an economically viable whole; and

(F) the Restoration shall be done and completed by Grantor in an expeditious and diligent fashion and in compliance in all material respects with all applicable governmental laws, rules and regulations.

(ii) The Net Proceeds shall be held by Beneficiary and, until disbursed in accordance with the provisions of this Subsection 4.2(b), shall constitute additional security for the Obligations. The Net Proceeds shall be disbursed by Beneficiary to, or as directed by,

Grantor from time to time during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Beneficiary that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded to the reasonable satisfaction of Beneficiary and discharged of record, or in the alternative fully insured to the reasonable satisfaction of Beneficiary by the title company insuring the lien of this Security Instrument.

(iii) For any Restoration expected to cost in excess of $2,500,000 (a "Material Restoration"), the plans and specifications required in connection with the Restoration shall be subject to prior review and acceptance by Beneficiary and by an independent consulting engineer selected by Beneficiary (the "Casualty Consultant"), such acceptance not to be unreasonably withheld, conditioned or delayed. Beneficiary shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Material Restoration. The identity of the contractors, subcontractors and materialmen engaged in any Material Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance by Beneficiary and the Casualty Consultant, not to be unreasonably withheld, conditioned or delayed. All costs and expenses incurred by Beneficiary in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Grantor.

(iv) In no event shall Beneficiary be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus, at the option of Beneficiary, the Casualty Retainage. The term "Casualty Retainage" as used in this Subsection 4.2(b) shall mean an amount equal to 10% of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until such time as the Casualty Consultant certifies to Beneficiary that Net Proceeds representing 50% of the required Restoration have been disbursed. There shall be no Casualty Retainage with respect to costs actually incurred by Grantor for work in place in completing the last 50% of the required Restoration. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Subsection 4.2(b), be less than the amount actually held back by Grantor from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Beneficiary that the Restoration has been completed in accordance with the provisions of this Subsection 4.2(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate governmental and quasi-governmental authorities, and Beneficiary receives evidence reasonably satisfactory to Beneficiary that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage, provided, however, that Beneficiary will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Beneficiary that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, and the contractor,

subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Beneficiary or by the title company insuring the lien of this Security Instrument.

(v) Beneficiary shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) The excess, if any, of the Net Proceeds deposited with Beneficiary after the Casualty Consultant certifies to Beneficiary that the Restoration has been completed in accordance with the provisions of this Subsection 4.2(b), and the receipt by Beneficiary of evidence satisfactory to Beneficiary that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Beneficiary to Grantor, provided no Event of Default shall have occurred and shall be continuing.

(c) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Grantor as excess Net Proceeds pursuant to Subsection 4.2(b)(vi) may be retained and applied by Beneficiary toward redemption of the Notes, whether or not then due and payable in such order, priority and proportions as Beneficiary in its discretion shall deem proper or, at the discretion of Beneficiary, the same may be paid, either in whole or in part, to Grantor for such purposes as Beneficiary shall designate, in its discretion. If Beneficiary shall receive and retain Net Proceeds, the lien of this Security Instrument shall be reduced only by the amount thereof received and retained by Beneficiary and actually applied by Beneficiary in redemption of the Notes and repayment of any other outstanding Debt.

ARTICLE — 5. REPRESENTATIONS AND WARRANTIES

Grantor represents and warrants to Beneficiary that:

5.1 Warranty of Title. Grantor has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Grantor possesses an unencumbered fee simple absolute estate in the Land and the Improvements, and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Security Instrument (the "Permitted Exceptions"). Grantor shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Beneficiary and/or Trustee against the claims of all persons whomsoever (other than the holders of Permitted Exceptions).

5.2 Status of Property. No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or, if located within any such area, Grantor has obtained and will maintain the insurance prescribed in Section 3.3 hereof.

5.3 No Foreign Person. Grantor is not a "foreign person" within the meaning of Sections 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

5.4 Separate Tax Lot. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

5.5 Leases. (a) Grantor is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid and enforceable; and (c) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated.

ARTICLE — 6. OBLIGATIONS AND RELIANCES

6.1 Relationship of Grantor and Beneficiary. The relationship between Grantor and Beneficiary is solely that of debtor and creditor, and Beneficiary has no fiduciary or other special relationship with Grantor, and no term or condition of any of the Indenture, this Security Instrument and the Other Security Documents shall be construed so as to deem the relationship between Grantor and Beneficiary to be other than that of debtor and creditor.

6.2 No Reliance on Beneficiary. The members, general partners, principals and (if Grantor is a trust) beneficial owners of Grantor are experienced in the ownership and operation of properties similar to the Property, and Grantor and Beneficiary are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Grantor is not relying on Beneficiary's expertise, business acumen or advice in connection with the Property.

6.3 No Beneficiary Obligations.

(a) Notwithstanding the provisions of Subsections 1.1(f) and (l) or Section 1.2, Beneficiary is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Beneficiary pursuant to this Security Instrument, the Indenture or the Other Security Documents, including without limitation any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Beneficiary shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Beneficiary.

ARTICLE — 7. FURTHER ASSURANCES

7.1 Recording of Security Instrument, etc. Grantor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the Other Security Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be reasonably required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Beneficiary in, the Property. Grantor will pay

all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Indenture, this Security Instrument, the Other Security Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

7.2 Further Acts, etc. Grantor will, at the cost of Grantor, and without expense to Beneficiary, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Beneficiary shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Beneficiary and Trustee the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound to convey or assign to Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Grantor, on demand, will execute and deliver and hereby authorizes Beneficiary to execute in the name of Grantor or without the signature of Grantor to the extent Beneficiary may lawfully do so, one or more financing statements to evidence more effectively the security interest of Beneficiary in the Property. Grantor grants to Beneficiary an irrevocable power of attorney, coupled with an interest, and after the occurrence and during the continuance of an Event of Default, Beneficiary may use such power of attorney for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary at law and in equity, including, without limitation such rights and remedies available to Beneficiary pursuant to this Section 7.2.

7.3 Debt Credit and Documentary Stamp Laws.

(a) Grantor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt.

(b) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to this Security Instrument or impose any other tax or charge on the same, Grantor will pay for the same, with interest and penalties thereon, if any.

7.4 Flood Area. After Beneficiary’s request, Grantor shall deliver evidence satisfactory to Beneficiary that no portion of the Improvements is situated in a federally designated “special flood hazard area.”

ARTICLE — 8. — DUE ON SALE/ENCUMBRANCE

8.1 No Sale/Encumbrance. Grantor agrees that Grantor shall not, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, in each case except as expressly permitted by the Indenture.

ARTICLE — 9. DEFAULT

9.1 Events of Default. The term "Event of Default" as used in this Security Instrument shall mean an "Event of Default" as defined in the Indenture or any default under any other term, covenant or condition of this Security Agreement which remains uncured for sixty (60) days after written notice of such default has been given, by certified mail to XM Satellite Radio Holdings Inc. and Sirius XM Radio Inc. by the Beneficiary.

ARTICLE — 10. RIGHTS AND REMEDIES

10.1 Remedies. Upon the occurrence of any Event of Default, Grantor agrees that Beneficiary may or acting by or through Trustee may, take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

(a) in accordance with the terms of the Indenture, declare the entire unpaid Debt to be immediately due and payable;

(b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;

(c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Grantor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein;

(f) recover judgment on the Indenture either before, during or after any proceedings for the enforcement of this Security Instrument or the Other Security Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Grantor or of any person, firm or other entity liable for the payment of the Debt;

(h) subject to any applicable law, the license granted to Grantor under Section 1.2 shall automatically be revoked and Beneficiary may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Grantor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Grantor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Grantor agrees to surrender possession of the Property and of such books, records and accounts to Beneficiary upon demand, and thereupon Beneficiary may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Beneficiary deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Grantor with respect to the Property, whether in the name of Grantor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Grantor to pay monthly in advance to Beneficiary, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Grantor; (vi) require Grantor to vacate and surrender possession of the Property to Beneficiary or to such receiver and, in default thereof, Grantor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Beneficiary shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Beneficiary, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property or any part thereof, and to take such other measures as Beneficiary or Trustee may deem necessary for the care, protection and preservation of the Personal Property, and (ii) request Grantor at its expense to assemble the Personal Property and make it available to Beneficiary at a convenient place acceptable to Beneficiary. Any notice of sale, disposition or other intended action by Beneficiary or Trustee with respect to the Personal Property sent to Grantor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Grantor;

(j) surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and

proportion as Beneficiary in its discretion shall deem proper, and in connection therewith, Grantor hereby appoints Beneficiary as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Grantor to collect such Insurance Premiums; or

(k) pursue such other remedies as Beneficiary may have under applicable law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

10.2 Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Beneficiary pursuant to the Indenture, this Security Instrument or the Other Security Documents, shall be applied by Beneficiary to the redemption of the Notes and the payment of any other outstanding Debt in accordance with the terms and provisions of the Indenture.

10.3 Right to Cure Defaults. Upon the occurrence of any Event of Default or if Grantor fails to make any payment or to do any act as herein provided, Beneficiary may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder, make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary or Trustee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 10.3, shall constitute a portion of the Debt and shall be due and payable to Beneficiary upon demand. All such costs and expenses incurred by Beneficiary shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents and shall be immediately due and payable upon demand by Beneficiary therefor.

10.4 Actions and Proceedings. Beneficiary or Trustee has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Grantor, which Beneficiary, in its discretion, decides should be brought to protect its interest in the Property.

10.5 Recovery of Sums Required To Be Paid. Beneficiary shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Beneficiary or Trustee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Grantor existing at the time such earlier action was commenced.

10.6 Other Rights, etc.

(a) The failure of Beneficiary or Trustee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Grantor shall not be relieved of Grantor's obligations hereunder by reason of (i) the failure of Beneficiary or Trustee to comply with any request of Grantor to take any action to foreclose this

Security Instrument or otherwise enforce any of the provisions hereof or of the Indenture or the Other Security Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Beneficiary extending the time of payment or otherwise modifying or supplementing the terms of the Indenture, this Security Instrument or the Other Security Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Grantor, and Beneficiary shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Beneficiary's possession.

(c) The rights of Beneficiary or Trustee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Beneficiary shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Beneficiary nor Trustee shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

10.7 Right to Release Any Portion of the Property. Beneficiary may release any portion of the Property for such consideration as Beneficiary may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Beneficiary for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Beneficiary may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

ARTICLE — 11. INDEMNIFICATION

11.1 Mortgage and/or Intangible Tax. Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties (as defined in this Section below) from and against any and all losses imposed upon or incurred by or asserted against any such party and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument. For purposes of this Security Instrument, the term "Indemnified Parties" means Beneficiary, any person or entity in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Debt (including, but not limited to, Holders, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Debt for the benefit of third parties), as well as the respective directors, officers, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing.

ARTICLE — 12. ENVIRONMENTAL MATTERS

12.1 Environmental Covenants. Grantor covenants and agrees that: (a) all uses and operations on or of the Property, whether by Grantor or any other person or entity, shall be in compliance in all material respects with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Substances in, on, under or from the Property; (c) there shall be no Hazardous Substances in, on, or under the Property, except those that are both (i) in compliance with all Environmental Laws and with permits issued pursuant thereto and (ii) fully disclosed to Beneficiary in writing; (d) Grantor shall keep the Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Grantor or any other person or entity (the “Environmental Liens”); (e) Grantor shall, at its sole cost and expense, comply with all reasonable written requests of Beneficiary to (i) reasonably effectuate Remediation of any condition (including but not limited to a Release of a Hazardous Substance) in, on, under or from the Property; (ii) comply in all material respects with any Environmental Law; (iii) comply in all material respects with any directive from any governmental authority; and (iv) take any other reasonable action necessary or appropriate for protection of human health or the environment; (f) Grantor shall not do or allow any tenant or other user of the Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the Property), impairs or may impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property; and (g) Grantor shall promptly notify Beneficiary in writing of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication of which Grantor becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to Hazardous Substances or Remediation thereof, possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Article 12. “Environmental Law” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. “Environmental Law” includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors

Appropriation Act. "Environmental Law" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law: conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property. "Hazardous Substances" include but are not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives. "Release" of any Hazardous Substance includes but is not limited to any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances. "Remediation" includes but is not limited to any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of any Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to in Article 12.

12.2 Beneficiary's Rights. Beneficiary and any other person or entity designated by Beneficiary, including but not limited to any receiver, any representative of a governmental entity, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to, conducting any environmental assessment or audit (the scope of which shall be determined in Beneficiary's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Grantor shall cooperate with and provide access to Beneficiary and any such person or entity designated by Beneficiary.

12.3 Environmental Indemnification. Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses and costs of Remediation (whether or not performed voluntarily), engineers' fees, environmental consultants' fees, and costs of investigation (including but not limited to sampling, testing, and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas) imposed upon or incurred by or asserted against any Indemnified Parties, and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any presence of any Hazardous Substances in, on, above, or under the Property; (b) any past, present or threatened Release of Hazardous Substances in, on, above, under or from the Property; (c) any activity by Grantor, any person or entity affiliated with

Grantor or any tenant or other user of the Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by Grantor, any person or entity affiliated with Grantor or any tenant or other user of the Property in connection with any actual or proposed Remediation of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action; (e) any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including but not limited to any failure by Grantor, any person or entity affiliated with Grantor or any tenant or other user of the Property to comply with any order of any governmental authority in connection with any Environmental Laws; (f) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in this Article 12; (h) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Property, including but not limited to costs to investigate and assess such injury, destruction or loss; (i) any acts of Grantor or other users of the Property in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Substances owned or possessed by such Grantor or other users, at any facility or incineration vessel owned or operated by another person or entity and containing such or similar Hazardous Materials; (j) any acts of Grantor or other users of the Property, in accepting any Hazardous Substances for transport to disposal or treatment facilities, incineration vessels or sites selected by Grantor or such other users, from which there is a Release, or a threatened Release of any Hazardous Substance which causes the incurrence of costs for Remediation; (k) any personal injury, wrongful death, or property damage arising under any statutory or common law or tort law theory, including but not limited to damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Property; and (l) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to Article 12.

ARTICLE — 13. WAIVERS

13.1 Marshalling and Other Matters. Grantor hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Grantor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Grantor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

13.2 Waiver of Notice. Grantor shall not be entitled to any notices of any nature whatsoever from Beneficiary or Trustee except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Beneficiary or Trustee

to Grantor and except with respect to matters for which Beneficiary or Trustee is required by applicable law to give notice, and Grantor hereby expressly waives the right to receive any notice from Beneficiary or Trustee with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Beneficiary or Trustee to Grantor.

13.3 WAIVER OF TRIAL BY JURY. GRANTOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE DEBT EVIDENCED BY THE INDENTURE, THIS SECURITY INSTRUMENT, THE INDENTURE, OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF BENEFICIARY, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

ARTICLE — 14. NOTICES

14.1 Notices. All notices or other written communications hereunder shall be given in the manner set forth in the Indenture.

ARTICLE — 15. APPLICABLE LAW

15.1 CHOICE OF LAW. THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OF THIS SECURITY INSTRUMENT, AND THE DETERMINATION OF DEFICIENCY JUDGMENTS, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY.

15.2 Usury Laws. This Security Instrument and the Indenture are subject to the express condition that at no time shall Grantor be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Indenture to either civil or criminal liability as a result of being in excess of the maximum interest rate which Grantor is permitted by applicable law to contract or agree to pay. If by the terms of this Security Instrument or the Indenture, Grantor is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the Security Instrument and the Indenture shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Indenture. All sums paid or agreed to be paid to Beneficiary for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Indenture until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

15.3 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

ARTICLE — 16. DEFINITIONS

16.1 General Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word “Grantor” shall mean “each Grantor and any subsequent owner or owners of the Property or any part thereof or any interest therein,” the word “Beneficiary” shall mean “Beneficiary and any subsequent trustee under the Indenture,” the word “Trustee” shall mean “Trustee and any substitute trustee of the estates, properties, powers, trusts and rights conferred upon Trustee pursuant to this Security Instrument,” the word “Indenture” shall mean “the Indenture and any other evidence of indebtedness secured by this Security Instrument,” the word “person” shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, the word “Property” shall include any portion of the Property and any interest therein, and the phrases “attorneys’ fees” and “counsel fees” shall include any and all attorneys’, paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Beneficiary in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

ARTICLE — 17. MISCELLANEOUS PROVISIONS

17.1 No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Grantor or Beneficiary, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

17.2 Liability. If Grantor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Grantor and Beneficiary and their respective successors and assigns forever.

17.3 Inapplicable Provisions. If any term, covenant or condition of the Indenture or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Indenture and this Security Instrument shall be construed without such provision.

17.4 Headings, etc. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

17.5 Duplicate Originals; Counterparts. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

17.6 Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

17.7 Subrogation. If any or all of the proceeds of the Indenture have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Beneficiary shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Beneficiary and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Grantor’s obligations hereunder, under the Indenture and the Other Security Documents and the performance and discharge of the Other Obligations.

ARTICLE — 18. LOCAL LAW PROVISIONS

The Indenture, this Security Instrument and the Other Security Documents evidence a business transaction and not a transaction for personal, family, household or agricultural purposes.

Notwithstanding anything contained elsewhere in this Security Instrument to the contrary, the maximum aggregate amount of principal to be secured hereunder at any one time is $14,000,000.

ARTICLE — 19. DEED OF TRUST PROVISIONS

19.1 Concerning the Trustee. Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by law, or to perform any act which would involve Trustee in any expense or liability or to institute or defend any suit in respect hereof, unless properly indemnified to Trustee’s reasonable satisfaction. Trustee, by acceptance of this Security Instrument, covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct, and hereby waives any statutory fee and agrees to accept reasonable compensation, in lieu thereof, for any services rendered by Trustee in accordance with the terms hereof. Trustee may resign at any time upon giving notice to Grantor and to Beneficiary. Beneficiary may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or in its sole discretion for any reason whatsoever Beneficiary may, without notice and without specifying any reason therefor and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Security Instrument is recorded and all powers, rights, duties and authority of Trustee, as aforesaid, shall

thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Beneficiary. The procedure provided for in this paragraph for substitution of Trustee shall be in addition to and not in exclusion of any other provisions for substitution, by law or otherwise.

19.2 Trustee's Fees. Grantor shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Security Instrument.

19.3 Certain Rights. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Indenture, this Security Instrument or the Other Security Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his/her agents or attorneys, (iii) to select and employ, in and about the execution of his/her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable area, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

19.4 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

19.5 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute trustee to more fully and certainly vest in and confirm to the Trustee or substitute trustee such estates rights, powers, and duties, then, upon request by the Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

19.6 Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in the Trustee's place.

IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by Grantor the day and year first above written.

XM INVESTMENT LLC, a Delaware limited liability company

BY: /s/ Patrick L. Donnelly
Name: Patrick L. Donnelly
Title: Secretary

EXHIBIT A

(Description of Land)

All that certain lot or parcel of land together with all improvements thereon located and being in the City of Washington in the District of Columbia and being more particularly described as follows:

Part of a tract of land known as "Youngsborough" and for assessment and taxation purposes is known as Lot 805 in Square 3518 as recorded in the Office of the Surveyor of the District of Columbia in A&T 1568 being more particularly described as follows:

Beginning at a cross-cut set on the northerly right-of-way line of Florida Avenue (80 feet wide), North East; said point also being the southwest corner of Lot 806; thence running with said right-of-way of Florida Avenue, North 61° 20' 00" West, 119.65 feet to a cross-cut set; thence running with the westerly line of Lot 805, North 12° 38' 00" East, 220.00 feet to a point (inaccessible); thence running with the southerly line of Lot 807, South 77° 22' 00" East, 115.00 feet to a point (inaccessible, wall on line); thence running with said Lot 806, South 12° 38' 00" West, 253.05 feet to the point of beginning; containing 27,200 square feet or 0.6244 an acre, more or less.

Together with the covenants and easements set forth in Covenant with the District of Columbia, municipal corporation, dated November 3, 1958 and recorded December 2, 1958 as Instrument No. 37758 in Liber 11154 at Folio 343, and in Easement Agreement recorded August 13, 1982 as Instrument No. 20519, among the Land Records of the District of Columbia.

Being the same property conveyed to XM Investment LLC by deed from Jemal's Nanny L.L.C., a District of Columbia limited liability company, dated August 31, 2005 and recorded September 1, 2005 as Instrument No. 2005123422.

EXHIBIT 4.6

EXECUTION COPY

EXHIBIT B TO
NOTE PURCHASE AGREEMENT

February 13, 2009

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT, dated February 13, 2009 (the "Agreement"), is entered into by and among XM Satellite Radio Holdings Inc., a Delaware corporation ("the "Company"), Sirius XM Radio Inc., a Delaware corporation ("Sirius"), the guarantors signatory hereto (the "Guarantors") and the Purchasers signatory hereto (the "Purchasers").

The Company, Sirius, the Guarantors and the Purchasers are parties to the Purchase Agreement dated February 13, 2009 (the "Purchase Agreement"), which provides for the sale by the Company to the Purchasers of $172,485,000 aggregate principal amount of the Company's 10% Senior Secured Notes due 2011 (the "Securities") which will be guaranteed on an senior basis by each of the Guarantors. As an inducement to the Purchasers to enter into the Purchase Agreement, the Company, Sirius and the Guarantors have agreed to provide to the Purchasers and their direct and indirect transferees the registration rights set forth in this Agreement. The execution and delivery of this Agreement is a condition to the closing under the Purchase Agreement.

In consideration of the foregoing, the parties hereto agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Agreement" shall have the meaning set forth in the preamble.

"Business Day" shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

"Company" shall have the meaning set forth in the preamble and shall also include any successor entity.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

"Exchange Dates" shall have the meaning set forth in Section 2(b)(ii) hereof.

"Exchange Offer" shall mean the exchange offer by the Company and the Guarantors of Exchange Securities for Registrable Securities pursuant to Section 2(b) hereof.

"Exchange Offer Registration" shall mean a registration under the Securities Act effected pursuant to Section 2(b) hereof.

"Exchange Offer Registration Statement" shall mean an exchange offer registration statement on Form S-4 (or, if applicable, on another appropriate form) and all amendments and supplements to such registration statement, in each case including the Prospectus contained therein or deemed a part thereof, all exhibits thereto and any document incorporated by reference therein.

"Exchange Securities" shall mean senior notes issued by the Company and guaranteed by the Guarantors under the Indenture containing terms identical to the Securities (except that the Exchange Securities will not be subject to restrictions on transfer or to any increase in annual interest rate for failure to comply with this Agreement) and to be offered to Holders of Securities in exchange for Securities pursuant to the Exchange Offer.

"FINRA" shall mean the Financial Industry Regulatory Authority.

"Free Writing Prospectus" shall mean a free writing prospectus, as defined in Rule 405 under the Securities Act.

"Guarantors" shall have the meaning set forth in the preamble and shall also include any Guarantor's successors.

"Holder" shall mean each Purchaser, for so long as it owns any Registrable Securities, and each of the Purchasers' successors, assigns and direct and indirect transferees who becomes an owner of Registrable Securities under the Indenture; provided that for purposes of Sections 4 and 5 of this Agreement, the term "Holders" shall include Participating Broker-Dealers.

"Indemnified Person" shall have the meaning set forth in Section 5(c) hereof.

"Indemnifying Person" shall have the meaning set forth in Section 5(c) hereof.

"Indenture" shall mean the indenture relating to the Securities, dated as of February 13, 2009, among the Company, Sirius, the Guarantors and The Bank of New York Mellon, as trustee, and as the same may be amended from time to time in accordance with the terms thereof.

"Issuer Free Writing Prospectus" shall mean an issuer free writing prospectus, as defined in Rule 433 under the Securities Act.

"Majority of the Holders" shall mean Holders of a majority in principal amount of the Registrable Securities covered by the Registration Statement.

"Permitted Free Writing Prospectus" shall have the meaning set forth in Section 6(j) hereof.

"Person" shall mean an individual, partnership, limited liability company, corporation, trust or unincorporated organization, or a government or agency or political subdivision thereof.

"Prospectus" shall mean the prospectus included in, or, pursuant to the rules and regulations of the Securities Act, deemed a part of, a Registration Statement, including any preliminary prospectus, and any such prospectus as amended or supplemented by any prospectus supplement, including a prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by a Shelf Registration Statement, and by all other amendments and supplements to such prospectus, and in each case including any document incorporated by reference therein.

"Purchase Agreement" shall have the meaning set forth in the preamble.

"Purchasers" shall have the meaning set forth in the preamble.

"Registrable Securities" shall mean the Securities; provided that such Securities shall cease to be Registrable Securities (i) when such Securities cease to be outstanding, (ii) when a Registration Statement

with respect to such Securities has become effective under the Securities Act and such Securities have been exchanged or disposed of pursuant to such Registration Statement, (iii) when such Securities have been sold, or are eligible to be sold immediately without volume, manner of sale, filing or other restrictions, in either case pursuant to Rule 144 (or any similar provision then in force, but not Rule 144A) under the Securities Act or (iv) when such Securities are otherwise freely transferable with restriction.

"Registration Expenses" shall mean any and all expenses incident to performance of or compliance by the Company, Sirius and the Guarantors with this Agreement, including without limitation: (i) all SEC, stock exchange or FINRA registration and filing fees, (ii) all fees and expenses incurred in connection with compliance with state securities or blue sky laws (including reasonable fees and disbursements of counsel for any Underwriters or Holders in connection with blue sky qualification of any Exchange Securities or Registrable Securities (not to exceed $7,500)), (iii) all expenses of any Persons in preparing or assisting in preparing, word processing, printing (if requested by a majority of Holders or any Underwriter) and distributing any Registration Statement, any Prospectus and any amendments or supplements thereto, any underwriting agreements, securities sales agreements or other similar agreements and any other documents relating to the performance of and compliance with this Agreement, (iv) all rating agency fees, (v) all fees and disbursements relating to the qualification of the Indenture under applicable securities laws, (vi) the reasonable fees and disbursements of the Trustee and its counsel, (vii) the reasonable fees and disbursements of counsel for the Company, Sirius and the Guarantors, (viii) the reasonable fees and disbursements of one special counsel for all of the Holders and (ix) the fees and disbursements of the independent public accountants of the Company and the Guarantors, including the expenses of any special audits or "comfort" letters required by or incident to the performance of and compliance with this Agreement, but excluding fees and expenses of counsel to the Underwriters (other than fees and expenses set forth in clause (ii) above) or the Holders and underwriting discounts and commissions, brokerage commissions and transfer taxes, if any, relating to the sale or disposition of Registrable Securities by a Holder.

"Registration Statement" shall mean any registration statement of the Company and the Guarantors that covers any of the Exchange Securities or Registrable Securities pursuant to the provisions of this Agreement and all amendments and supplements to any such registration statement, including post-effective amendments, in each case including the Prospectus contained therein or deemed a part thereof, all exhibits thereto and any document incorporated by reference therein.

"SEC" shall mean the United States Securities and Exchange Commission.

"Securities" shall have the meaning set forth in the preamble.

"Securities Act" shall mean the Securities Act of 1933, as amended from time to time.

"Shelf Effectiveness Period" shall have the meaning set forth in Section 2(a) hereof.

"Shelf Registration" shall mean a registration effected pursuant to Section 2(a) hereof.

"Shelf Registration Statement" shall mean a "shelf" registration statement of the Company and the Guarantors filed under the Securities Act providing for the registration on a continuous or delayed basis of the Registrable Securities pursuant to Rule 415 under the Securities Act, or any similar rule that may be adopted by the SEC, and all amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein or deemed a part thereof, all exhibits thereto and any document incorporated by reference therein.

"Sirius" shall have the meaning set forth in the preamble and shall also include any successor entity.

"Subsidiary Guarantees" shall mean the guarantees of the Securities and Exchange Securities by the Guarantors under the Indenture.

"Suspension Period" shall have the meaning set forth in Section 3(a)(ix) hereof.

"Staff" shall mean the staff of the SEC.

"Trust Indenture Act" shall mean the Trust Indenture Act of 1939, as amended from time to time.

"Trustee" shall mean the trustee with respect to the Securities under the Indenture.

"Underwriter" shall have the meaning set forth in Section 3(e) hereof.

"Underwritten Offering" shall mean an offering in which Registrable Securities are sold to an Underwriter for reoffering to the public.

"Underwriter Registration Statement" shall have the meaning set forth in Section 3(a)(xvi) hereof.

2. Registration Under the Securities Act. (a) (i) Except as set forth in Section 2(b) below, the Company, Sirius and the Guarantors agree to use reasonable best efforts (1) to cause to be filed under the Securities Act as promptly as practicable, but no later than March 17, 2009, a Shelf Registration Statement providing for the sale on a continuous or delayed basis of all of the Registrable Securities by the Holders thereof and (2) to cause such Shelf Registration Statement to become effective as soon as practicable after filing.

Subject to Section 3(a)(ix) hereof, the Company, Sirius and the Guarantors agree to use reasonable best efforts to keep the Shelf Registration Statement continuously effective until the earlier of (a) the first anniversary of the last issuance of the Securities or (b) when all such Securities are eligible to be sold immediately without volume, manner of sale, filing or other restrictions by non-affiliates of the Company pursuant to Rule 144 (or any similar rule then in force, but not Rule 144A) under the Securities Act with respect to the Registrable Securities or (c) when all the Registrable Securities covered by the Shelf Registration Statement have been sold pursuant to the Shelf Registration Statement (the "Shelf Effectiveness Period").

(ii) The Company, Sirius and the Guarantors further agree to supplement or amend the Shelf Registration Statement and the related Prospectus if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement or by the Securities Act or by any other rules and regulations thereunder or, subject to Section 3(a)(xiv), if reasonably requested by a Holder of Registrable Securities with respect to information and to use reasonable best efforts to cause any such amendment to become effective, if required, and such Shelf Registration Statement and Prospectus to become usable as soon as thereafter practicable.

(iii) The Company, Sirius and the Guarantors agree to furnish to the Holders of Registrable Securities copies of any such supplement or amendment promptly after its being used or filed with the SEC.

(b) In lieu of filing or causing to become effective a Shelf Registration Statement pursuant to Section 2(a), to the extent not prohibited by any applicable law or applicable interpretations of the Staff,

the Company, Sirius and the Guarantors may elect to use reasonable best efforts and, so long as no Holder holds Registrable Securities that are ineligible to be exchanged in an Exchange Offer, to (i) cause to be filed an Exchange Offer Registration Statement covering an offer to the Holders to exchange all the Registrable Securities for Exchange Securities, (ii) commence the Exchange Offer promptly after the Exchange Offer Registration Statement is declared effective by the SEC and (iii) complete the Exchange Offer not later than 60 days after the Exchange Offer Registration Statement is declared effective by the SEC.

The Company, Sirius and the Guarantors shall commence any such Exchange Offer by mailing the related Prospectus, appropriate letters of transmittal and other accompanying documents to each Holder stating, in addition to such other disclosures as are required by applicable law, substantially the following:

(i) that the Exchange Offer is being made pursuant to this Agreement and that all Registrable Securities validly tendered and not properly withdrawn will be accepted for exchange;

(ii) the dates of acceptance for exchange (which shall be a period of at least 20 Business Days from the date such notice is mailed) (the "Exchange Dates");

(iii) that any Registrable Security not tendered will remain outstanding and continue to accrue interest but will not retain any rights under this Agreement, except as otherwise specified herein;

(iv) that any Holder electing to have a Registrable Security exchanged pursuant to the Exchange Offer will be required to (A) surrender such Registrable Security, together with the appropriate letters of transmittal, to the institution and at the address (located in the Borough of Manhattan, The City of New York) and in the manner specified in the notice, or (B) effect such exchange otherwise in compliance with the applicable procedures of the depositary for such Registrable Security, in each case prior to the close of business on the last Exchange Date; and

(v) that any Holder will be entitled to withdraw its election, not later than the close of business on the last Exchange Date, by (A) sending to the institution and at the address (located in the Borough of Manhattan, The City of New York) specified in the notice, a telegram, telex, facsimile transmission or letter setting forth the name of such Holder, the principal amount of Registrable Securities delivered for exchange and a statement that such Holder is withdrawing its election to have such Securities exchanged or (B) effecting such withdrawal in compliance with the applicable procedures of the depositary for the Registrable Securities.

As a condition to participating in any such Exchange Offer, a Holder will be required to represent to the Company and the Guarantors that (i) any Exchange Securities to be received by it will be acquired in the ordinary course of its business, (ii) at the time of the commencement of the Exchange Offer, it has no arrangement or understanding with any Person to participate in the distribution (within the meaning of the Securities Act) of the Exchange Securities in violation of the provisions of the Securities Act, (iii) it is not an "affiliate" (within the meaning of Rule 405 under the Securities Act) of the Company or any Guarantor and (iv) if such Holder is a broker-dealer that will receive Exchange Securities for its own account in exchange for Registrable Securities that were acquired as a result of market-making or other trading activities, then such Holder will deliver a Prospectus (or, to the extent permitted by law, make available a Prospectus to purchasers) in connection with any resale of such Exchange Securities.

In connection with any such Exchange Offer, as soon as practicable after the last Exchange Date, the Company, Sirius and the Guarantors shall:

(i) accept for exchange Registrable Securities or portions thereof validly tendered and not properly withdrawn pursuant to the Exchange Offer; and

(ii) deliver, or cause to be delivered, to the Trustee for cancellation all Registrable Securities or portions thereof so accepted for exchange by the Company and issue, and cause the Trustee to promptly authenticate and deliver to each Holder, Exchange Securities equal in principal amount to the principal amount of the Registrable Securities tendered by such Holder.

The Company, Sirius and the Guarantors shall use reasonable best efforts to complete the Exchange Offer as provided above and shall comply with the applicable requirements of the Securities Act, the Exchange Act and other applicable laws and regulations in connection with the Exchange Offer. The Exchange Offer shall not be subject to any conditions, other than that the Exchange Offer does not violate any applicable law or applicable interpretations of the Staff.

(c) The Company, Sirius and the Guarantors shall pay all Registration Expenses in connection with any registration pursuant to Section 2(a) or Section 2(b) hereof. Each Holder shall pay all underwriting discounts and commissions, brokerage commissions, transfer taxes, if any, and fees and disbursements of counsel and other advisors of such Holder relating to the sale or disposition of such Holder's Registrable Securities pursuant to the Shelf Registration Statement.

(d) An Exchange Offer Registration Statement pursuant to Section 2(b) hereof will not be deemed to have become effective unless it has been declared effective by the SEC. A Shelf Registration Statement pursuant to Section 2(a) hereof will not be deemed to have become effective unless it has been declared effective by the SEC.

(e) Without limiting the remedies available to the Purchasers and the Holders, the Company, Sirius and the Guarantors acknowledge that any failure by the Company or the Guarantors to comply with their obligations under Section 2(a) and Section 2(b) hereof may result in material irreparable injury to the Purchasers or the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such failure, the Purchasers or any Holder may obtain such relief as may be required to specifically enforce the Company's and the Guarantors' obligations under Section 2(a) and Section 2(b) hereof.

3. Registration Procedures.

(a) In connection with their obligations pursuant to Section 2(a) and Section 2(b) hereof, the Company, Sirius and the Guarantors shall as expeditiously as possible:

(i) use reasonable best efforts to prepare and file with the SEC a Registration Statement on the appropriate form under the Securities Act, which form (x) shall be selected by the Company and the Guarantors, (y) shall, in the case of a Shelf Registration, be available for the sale of the Registrable Securities by the Holders thereof and (z) shall comply as to form in all material respects with the requirements of the applicable form and include all financial statements required by the SEC to be filed therewith; and use reasonable best efforts to cause such Registration Statement to become effective and remain effective for the applicable period in accordance with Section 2 hereof;

(ii) use reasonable best efforts to prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary to keep such Registration Statement effective for the applicable period in accordance with Section 2 hereof and cause each Prospectus to be supplemented by any required prospectus supplement and, as so supplemented, to be filed pursuant to Rule 424 under the Securities Act; and keep each Prospectus current during the period described in Section 4(3) of and Rule 174 under the Securities Act that is applicable to transactions by brokers or dealers with respect to the Registrable Securities or Exchange Securities;

(iii) in the case of a Shelf Registration, use reasonable best efforts to furnish to each Holder of Registrable Securities, to counsel for the Purchasers, to counsel for such Holders and to each Underwriter of an Underwritten Offering of Registrable Securities, if any, without charge, as many copies of each Prospectus or preliminary prospectus, and any amendment or supplement thereto, as such Holder, counsel or Underwriters may reasonably request in order to facilitate the sale or other disposition of the Registrable Securities thereunder; and the Company, Sirius and the Guarantors consent to the use of such Prospectus, preliminary prospectus and any amendment or supplement thereto in accordance with applicable law by each of the Holders of Registrable Securities and any such Underwriters in connection with the offering and sale of the Registrable Securities covered by and in the manner described in such Prospectus, preliminary prospectus or any amendment or supplement thereto in accordance with applicable law;

(iv) use reasonable best efforts to register or qualify the Registrable Securities under all applicable state securities or “blue sky” laws of such jurisdictions as any Holder of Registrable Securities covered by a Registration Statement shall reasonably request in writing by the time the applicable Registration Statement becomes effective; cooperate with such Holders in connection with any filings required to be made with FINRA; and do any and all other acts and things that may be reasonably necessary or advisable to enable each Holder to complete the disposition in each such jurisdiction of the Registrable Securities owned by such Holder; provided that neither the Company nor any Guarantor shall be required to (1) qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify, (2) file any general consent to service of process in any such jurisdiction or (3) subject itself to taxation in any such jurisdiction if it is not so subject;

(v) notify counsel for the Purchasers and, in the case of a Shelf Registration, notify each Holder of Registrable Securities and counsel for such Holders promptly and, if requested by any such Holder or counsel, confirm such advice in writing (1) when a Registration Statement has become effective, when any post-effective amendment thereto has been filed and becomes effective and when any amendment or supplement to the Prospectus has been filed, (2) of any request by the SEC or any state securities authority for amendments and supplements to a Registration Statement or Prospectus or for additional information after the Registration Statement has become effective, (3) of the issuance by the SEC or any state securities authority of any stop order suspending the effectiveness of a Registration Statement or the initiation of any proceedings for that purpose, including the receipt by the Company of any notice of objection of the SEC to the use of a Shelf Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act, (4) if, between the applicable effective date of a Shelf Registration Statement and the closing of any sale of Registrable Securities covered thereby, the representations and warranties of the Company or any Guarantor contained in any underwriting agreement, securities sales agreement or other similar agreement, if any, relating to an offering of such

Registrable Securities cease to be true and correct in all material respects or if the Company or any Guarantor receives any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation of any proceeding for such purpose, (5) of the happening of any event during the period a Registration Statement is effective that makes any statement made in such Registration Statement or the related Prospectus untrue in any material respect or that requires the making of any changes in such Registration Statement or Prospectus in order to make the statements therein not misleading and (6) of any determination by the Company or any Guarantor that a post-effective amendment to a Registration Statement or any amendment or supplement to the Prospectus would be appropriate;

(vi) use reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement or, in the case of a Shelf Registration, the resolution of any objection of the SEC pursuant to Rule 401(g)(2), including by filing an amendment to such Shelf Registration Statement on the proper form, at the earliest possible moment and provide immediate notice to each Holder of the withdrawal of any such order or such resolution;

(vii) in the case of a Shelf Registration, furnish to each Holder of Registrable Securities, without charge, at least one conformed copy of each Registration Statement and any post-effective amendment thereto (without any documents incorporated therein by reference or exhibits thereto, unless requested);

(viii) in the case of a Shelf Registration, cooperate with the Holders of Registrable Securities to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends and enable such Registrable Securities to be issued in such denominations and registered in such names (consistent with the provisions of the Indenture) as such Holders may reasonably request at least one Business Day prior to the closing of any sale of Registrable Securities;

(ix) in the case of a Shelf Registration, upon the occurrence of any event contemplated by Section 3(a)(v)(5) hereof, use reasonable best efforts to prepare and file with the SEC a supplement or post-effective amendment to such Shelf Registration Statement or any related Prospectus or Issuer Free Writing Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered (or, to the extent permitted by law, made available) to purchasers of the Registrable Securities, such Prospectus or Issuer Free Writing Prospectus will cease to have the identified deficiencies and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and the Company, Sirius and the Guarantors shall notify the Holders of Registrable Securities to suspend use of the Prospectus or Issuer Free Writing Prospectus as promptly as practicable after the occurrence of such an event, and such Holders hereby agree to suspend use of the Prospectus or Issuer Free Writing Prospectus until the Company, Sirius and the Guarantors have amended or supplemented the Prospectus or Issuer Free Writing Prospectus to correct such misstatement or omission; the Company, Sirius and the Guarantors may suspend the availability of the Shelf Registration Statement and the use of the Prospectus or Issuer Free Writing Prospectus by written notice to the Holders for a period not to exceed an aggregate of 15 days in any 90-day period (each such period, a "Suspension Period") if an event occurs and is continuing as a result of which the Shelf Registration Statement, the Prospectus or Issuer Free Writing Prospectus, any amendment or supplement thereto, or any document incorporated by reference therein

would, in the Company's judgment, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that Suspension Periods shall not exceed an aggregate of 60 days in any 360-day period; the Company shall not specify in the written notice to the Holders the nature of the event giving rise to the Suspension Period;

(x) a reasonable time prior to the filing of any Registration Statement or any amendment to a Registration Statement or any Prospectus, Issuer Free Writing Prospectus or amendment or supplement thereto relating to the Registrable Securities, provide copies of such document to the Purchasers and their counsel (and, in the case of a Shelf Registration Statement, to the Holders of Registrable Securities and their counsel) and make such of the representatives of the Company, Sirius and the Guarantors as shall be reasonably requested by the Purchasers or their counsel (and, in the case of a Shelf Registration Statement, the Holders of Registrable Securities or their counsel) available for discussion of such document; and the Company, Sirius and the Guarantors shall not, at any time after initial filing of a Registration Statement, use or file any amendment of or supplement to a Registration Statement or any Prospectus, Issuer Free Writing Prospectus or amendment or supplement thereto relating to the Registrable Securities, of which the Purchasers and their counsel (and, in the case of a Shelf Registration Statement, the Holders of Registrable Securities and their counsel) shall not have previously been advised and furnished a copy or to which the Purchasers or their counsel (and, in the case of a Shelf Registration Statement, the Holders of Registrable Securities or their counsel) shall reasonably object within two Business Days after the receipt thereof;

(xi) obtain a CUSIP number for all Exchange Securities or Registrable Securities, as the case may be, not later than the initial effective date of a Registration Statement;

(xii) cause the Indenture to be qualified under the Trust Indenture Act in connection with the registration of the Exchange Securities or Registrable Securities, as the case may be; cooperate with the Trustee and the Holders to effect such changes to the Indenture as may be required for the Indenture to be so qualified in accordance with the terms of the Trust Indenture Act; and execute, and use reasonable best efforts to cause the Trustee to execute, all documents as may be required to effect such changes and all other forms and documents required to be filed with the SEC to enable the Indenture to be so qualified in a timely manner;

(xiii) in the case of a Shelf Registration, use reasonable best efforts to cause all Registrable Securities to be listed on any securities exchange or any automated quotation system on which similar securities issued or guaranteed by the Company or any Guarantor are then listed if requested by the majority of Holders, to the extent such Registrable Securities satisfy applicable listing requirements;

(xiv) if reasonably requested by any Holder of Registrable Securities covered by a Shelf Registration Statement, promptly include in a Prospectus supplement or post-effective amendment such information with respect to such Holder as such Holder reasonably requests to be included therein and make all required filings of such Prospectus supplement or such post-effective amendment as soon as reasonably practicable after the Company has received notification of the matters to be so included in such filing; provided that (1) the Company, Sirius and the Guarantors shall not be required to file any supplement or amendment naming a Holder as a selling securityholder earlier than 10 business days after

it receives all required information from such Holder and (2) the Company, Sirius and the Guarantors shall not be obligated to file any supplement or amendment for the purpose of naming a Holder as a selling securityholder more than once in any calendar month period;

(xv) in the case of a Shelf Registration, take the following actions in order to expedite or facilitate the disposition of such Registrable Securities: (1) providing direct contact between senior management and advisors and prospective purchasers, (2) responding to inquiries of, and providing answers to, prospective purchasers, (3) providing assistance in completion of the prospective purchasers' due diligence review, (4) hosting or participating in one or more meetings with prospective purchasers, including participating in a road show for the XM Satellite Notes, and (5) such other similar actions reasonably requested by a Majority of the Holders; and

(xvi) if any Holder is deemed to be an "underwriter," as defined in Section 2(a)(11) of the Securities Act, in connection with any registration of the Registrable Securities pursuant to this Agreement, and any amendment or supplement thereof (any such registration statement or amendment or supplement an "Underwriter Registration Statement"), then the Company, Sirius and the Guarantors will cooperate with such Holder in allowing such Holder to conduct customary "underwriter's due diligence" with respect to the Company, Sirius and the Guarantors and satisfy its obligations in respect thereof. The Company, Sirius and the Guarantors will also permit legal counsel to such Holder to review and comment upon any the Underwriter Registration Statement at least two business days prior to its filing with the SEC and all amendments and supplements to the Underwriter Registration Statement within a reasonable number of days prior to their filing with the SEC and not file the Underwriter Registration Statement or amendment or supplement thereto in a form to which such Holder's legal counsel reasonably objects.

(b) In the case of a Shelf Registration Statement, the Company may require each Holder of Registrable Securities to furnish to the Company such information regarding such Holder and the proposed disposition by such Holder of such Registrable Securities as the Company, Sirius and the Guarantors may from time to time reasonably request in writing.

(c) In the case of a Shelf Registration Statement, each Holder of Registrable Securities covered in such Shelf Registration Statement agrees that, upon receipt of any notice from the Company, Sirius and the Guarantors of the happening of any event of the kind described in Section 3(a)(v)(3) or 3(a)(v)(5) hereof, such Holder will forthwith discontinue disposition of Registrable Securities pursuant to the Shelf Registration Statement until such Holder's receipt of the copies of the supplemented or amended Prospectus or Issuer Free Writing Prospectus contemplated by Section 3(a)(ix) hereof and, if so directed by the Company and the Guarantors, such Holder will deliver to the Company and the Guarantors all copies in its possession, other than permanent file copies then in such Holder's possession, of the Prospectus and any Issuer Free Writing Prospectuses covering such Registrable Securities that are current at the time of receipt of such notice.

(d) The Holders of Registrable Securities covered by a Shelf Registration Statement who desire to do so may sell such Registrable Securities in an Underwritten Offering. In any such Underwritten Offering, the investment bank or investment banks and manager or managers (each, an "Underwriter") that will administer the offering will be selected by a Majority of the Holders included in such offering and must be reasonably acceptable to the Company.

4. Additional Interest.

(a) The Company, Sirius and the Guarantors agree that the Holders will suffer damages if the Company, Sirius and the Guarantors fail to fulfill their obligations under Section 2 or Section 3 hereof and that it would not be feasible to ascertain the extent of such damages with precision. Accordingly, the Company, Sirius and the Guarantors agree that if:

(i) the Shelf Registration Statement is required to be filed but is not declared effective within 180 days after March 17, 2009 (the "Registration Deadline"), or is declared effective by such date but thereafter ceases to be effective or usable (unless the Shelf Registration Statement ceases to be effective or usable as specifically permitted by the Section 3(a)(ix) hereof),

(ii) the Exchange Offer is not consummated on or prior to the Registration Deadline,

(each such event referred to in clauses (i) and (ii) a "Registration Default"), additional interest in the form of additional cash interest ("Additional Interest") will accrue on the affected Registrable Securities. The rate of Additional Interest will be 0.25% per annum, from and including the date on which any such Registration Default shall occur to, but excluding, the earlier of (1) the date on which all Registration Defaults have been cured, (2) the date on which such Registrable Securities ceases to be Registrable Securities or otherwise become freely transferable by Holders other than affiliates of the Issuers without further registration under the Securities Act.

(b) So long as Registrable Securities remain outstanding, the Company shall notify the Trustee within five business days after each and every date on which an event occurs in respect of which Additional Interest is required to be paid. Any amounts of Additional Interest due pursuant to clauses (a)(i) or (a)(ii) of this Section 4 will be payable in cash semi-annually on each June 1st and December 1st (each a "Additional Interest Payment Date"), commencing with the first such date occurring after any such Additional Interest commences to accrue, to Holders to whom regular interest is payable on such Additional Interest Payment Date with respect to Registrable Securities. The amount of Additional Interest for each Registrable Security will be determined by multiplying the applicable rate of Additional Interest by the aggregate principal amount of such Registrable Security outstanding on the Additional Interest Payment Date following such Registration Default in the case of the first such payment of Additional Interest with respect to a Registration Default (and thereafter at the next succeeding Additional Interest Payment Date until the cure of such Registration Default), and multiplying the product of the foregoing by a fraction, the numerator of which is the number of days such Additional Interest rate was applicable during such period (determined on the basis of a 360-day year comprised of twelve 30-day months and, in the case of a partial month, the actual number of days elapsed), and the denominator of which is 360.

5. Indemnification and Contribution.

(a) The Company, Sirius and each Guarantor, jointly and severally, agree to indemnify and hold harmless each Purchaser and each Holder, their respective affiliates, directors and officers and each Person, if any, who controls any Purchaser or Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of, or are based upon, (1) any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or any omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein not misleading, or (2) any untrue statement or alleged untrue statement of a material fact contained in any Prospectus or any Issuer Free Writing Prospectus, or any omission or alleged omission to state therein 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 each case except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to any Holder or provided by any Holder expressly for use therein (including, for the avoidance of doubt, any Free Writing Prospectus prepared by or on behalf of such Holder).

(b) Each Holder agrees, severally and not jointly, to indemnify and hold harmless the Company, Sirius, the Guarantors, the Purchasers and the other selling Holders, the directors of the Company and the Guarantors, each officer of the Company, Sirius and the Guarantors who signed the Registration Statement and each Person, if any, who controls the Company, the Guarantors, any Purchaser and any other selling Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the indemnity set forth in paragraph (a) above, but in each case to the extent, but only to the extent, that any losses, claims, damages or liabilities that arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to such Holder furnished to the Company in writing by such Holder expressly for use in any Registration Statement, any Prospectus or any Issuer Free Writing Prospectus (provided that, for the avoidance of doubt, such information shall be deemed to include any Free Writing Prospectus prepared by or on behalf of such Holder); provided, however, that in no event shall the liability of any Holder for indemnification under this Section 5(b) exceed the amount equal to the net proceeds received by such Holder from the sale of Registrable Securities pursuant to the Registration Statement.

(c) If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Person in respect of which indemnification may be sought pursuant to either paragraph (a) or (b) above, such Person (the "Indemnified Person") shall promptly notify the Person against whom such indemnification may be sought (the "Indemnifying Person") in writing; provided that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have under this Section 5 except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided, further, that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have to an Indemnified Person otherwise than under this Section 5. If any such proceeding shall be brought or asserted against an Indemnified Person and it shall have notified the Indemnifying Person thereof, the Indemnifying Person shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others entitled to indemnification pursuant to this Section 5 that the Indemnifying Person may designate in such proceeding and shall pay the fees and expenses of such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding, as incurred. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary; (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person; (iii) the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood and agreed that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be reimbursed as they are incurred. Any such separate firm, (x) for any Holder, its directors and officers and any control Person of such Holder shall be designated in writing by a Majority of the Holders

to be represented and (y) in all other cases shall be designated in writing by the Company. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its prior written consent, but if settled with such consent or if there is a final non-appealable judgment for the plaintiff, the Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an Indemnified Person shall have requested that an Indemnifying Person reimburse the Indemnified Person for reasonable fees and expenses of counsel as contemplated by this paragraph, the Indemnifying Person shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 60 days after receipt by the Indemnifying Person of such request and (ii) the Indemnifying Person shall not have reimbursed the Indemnified Person for such amounts as are not in dispute in accordance with such request prior to the date of such settlement, provided, however, that the Indemnifying Person shall not be liable for any settlement effected without its consent pursuant to this sentence if such Indemnifying Person is contesting, in good faith, the request for reimbursement. No Indemnifying Person shall, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnification could have been sought hereunder by such Indemnified Person, unless such settlement (A) includes an unconditional release of such Indemnified Person, in form and substance reasonably satisfactory to such Indemnified Person, from all liability on claims that are the subject matter of such proceeding and (B) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

(d) If the indemnification provided for in paragraphs (a) and (b) above is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each Indemnifying Person under such paragraph, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, Sirius and the Guarantors from the offering of the Securities and the Exchange Securities, on the one hand, and by the Holders from receiving Securities or Exchange Securities registered under the Securities Act, on the other hand, or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Company, Sirius and the Guarantors on the one hand and the Holders on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company, Sirius and the Guarantors, on the one hand, and each Holder, on the other hand, shall be deemed to be in the same proportion as (i) the aggregate principal amount of all of the Registrable Securities are to (ii) the principal amount of the total net proceeds received by such Holder in connection with the sale of the Registrable Securities. The relative fault of the Company, Sirius and the Guarantors on the one hand and the Holders on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company, Sirius and the Guarantors or by the applicable Holders, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) The Company, Sirius, the Guarantors and the Holders agree that it would not be just and equitable if contribution pursuant to this Section 5 were determined by pro rata allocation (even if the Holders were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (d) above. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in paragraph (d) above shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Person in connection with any such action or claim. Notwithstanding the provisions of this Section 5, in no event shall a Holder be required to contribute any

amount in excess of the amount by which the total price at which the Securities or Exchange Securities sold by such Holder exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The Holders' obligations to contribute pursuant to this Section 5 are several and not joint.

(f) The remedies provided for in this Section 5 are not exclusive and shall not limit any rights or remedies that may otherwise be available to any Indemnified Person at law or in equity.

(g) The indemnity and contribution provisions contained in this Section 5 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of the Purchasers or any Holder or any Person controlling any Purchaser or any Holder, or by or on behalf of the Company, Sirius or the Guarantors or the officers or directors of or any Person controlling the Company or the Guarantors, (iii) acceptance of any of the Exchange Securities and (iv) any sale of Registrable Securities pursuant to a Shelf Registration Statement.

6. General.

(a) No Inconsistent Agreements. The Company, Sirius and the Guarantors represent, warrant and agree that (i) the rights granted to the Holders hereunder do not in any way conflict with and are not inconsistent with the rights granted to the holders of any other outstanding securities issued or guaranteed by the Company or any Guarantor under any other agreement and (ii) neither the Company nor any Guarantor has entered into, or on or after the date of this Agreement will enter into, any agreement that is inconsistent with the rights granted to the Holders of Registrable Securities in this Agreement or otherwise conflicts with the provisions hereof.

(b) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given unless the Company, Sirius and the Guarantors have obtained the written consent of a Majority of the Holders affected by such amendment, modification, supplement, waiver or consent; provided that no amendment, modification, supplement, waiver or consent to any departure from the provisions of Section 5 hereof shall be effective as against any Holder of Registrable Securities unless consented to in writing by such Holder. Any amendments, modifications, supplements, waivers or consents pursuant to this Section 6(b) shall be by a writing executed by each of the parties hereto.

(c) Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, registered first-class mail, telex, or any courier guaranteeing overnight delivery (i) if to a Holder, at the most current address given by such Holder to the Company by means of a notice given in accordance with the provisions of this Section 6(c), which address initially is, with respect to the Purchasers, the addresses set forth in the Credit Agreement; (ii) if to the Company, Sirius and the Guarantors, initially at Company's address set forth in the Purchase Agreement and thereafter at such other address, notice of which is given in accordance with the provisions of this Section 6(c); and (iii) to such other persons at their respective addresses as provided in the Purchase Agreement and thereafter at such other address, notice of which is given in accordance with the provisions of this Section 6(c). All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt is acknowledged, if transmitted by facsimile; and on the next Business Day if timely delivered to an air courier guaranteeing overnight delivery. Copies of all such notices, demands or other

communications shall be concurrently delivered by the Person giving the same to the Trustee, at the address specified in the Indenture

(d) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors, assigns and transferees of each of the parties, including, without limitation and without the need for an express assignment, subsequent Holders; provided that nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms of the Purchase Agreement or the Indenture. If any transferee of any Holder shall acquire Registrable Securities in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to all the terms of this Agreement, and by taking and holding such Registrable Securities such Person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement and such Person shall be entitled to receive the benefits hereof. The Purchasers (in their capacity as Purchasers) shall have no liability or obligation to the Company or the Guarantors with respect to any failure by a Holder to comply with, or any breach by any Holder of, any of the obligations of such Holder under this Agreement.

(e) Third-Party Beneficiaries. Each Holder shall be a third-party beneficiary to the agreements made hereunder between the Company, Sirius and the Guarantors, on the one hand, and the Purchasers, on the other hand, and shall have the right to enforce such agreements directly to the extent it deems such enforcement necessary or advisable to protect its rights or the rights of other Holders hereunder.

(f) Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(g) Headings. The headings in this Agreement are for convenience of reference only, are not a part of this Agreement and shall not limit or otherwise affect the meaning hereof.

(h) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(i) Entire Agreement; Severability. This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes all oral statements and prior writings with respect thereto. If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable or against public policy, the remainder of the terms, provisions, covenants and restrictions contained herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated. The Company, Sirius, the Guarantors and the Purchasers shall endeavor in good faith negotiations to replace the invalid, void or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, void or unenforceable provisions.

(j) Free Writing Prospectuses. Each Holder represents that it has not prepared or had prepared on its behalf or used or referred to, and agrees that it will not prepare or have prepared on its behalf or use or refer to, any Free Writing Prospectus, and has not distributed and will not distribute any written materials in connection with the offer or sale of the Registrable Securities without the prior express written consent of the Company. Any such Free Writing Prospectus consented to by the Company is hereinafter referred to as a "Permitted Free Writing Prospectus." The Company represents and agrees that they have treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus, including in respect of timely filing with the SEC, legends and record-keeping.

SIRIUS XM RADIO ANNOUNCES EXCHANGE OF $172.5 MILLION OF EXISTING CONVERTIBLE SENIOR NOTES DUE 2009 FOR NEW SENIOR SECURED NOTES DUE 2011

NEW YORK — February 13, 2009 — SIRIUS XM Radio (NASDAQ: SIRI) announced today that XM Satellite Radio Holdings Inc., its wholly-owned subsidiary, had exchanged approximately $172.5 million aggregate principal amount of its outstanding 10% Convertible Senior Notes due December 2009 for a like principal amount of its newly issued Senior Secured Notes due 2011. An aggregate of $400 million in principal amount of the 10% Convertible Senior Notes due December 2009 was outstanding prior to this transaction.

The new Senior Secured Notes will mature on June 1, 2011. The notes will bear interest at the following rates: initially at 10% per annum paid in cash; from December 1, 2009 to December 1, 2010, at 10% per annum paid in cash and 2% per annum paid in kind; and from December 1, 2010 to maturity, at 10% per annum paid in cash and 4% per annum paid in kind. After the exchange, approximately $227.5 million aggregate principal of XM Holdings' 10% Convertible Senior Notes due 2009 will remain outstanding. The Company received no proceeds from the exchange.

The purchasers of the new Senior Secured Notes will be paid an aggregate structuring fee of $9.45 million, $5.07 million of which was paid in cash and $4.38 million of which was paid in the in the form of shares of the Company's common stock based on the closing sales price of the Company's common stock on February 12, 2009, which was $0.074 per share.

The exchange of 10% Convertible Senior Notes due 2009 for new Senior Secured Notes is part of a larger restructuring effort. The Company is in discussions with others with respect to transactions that could refinance some of its and its subsidiaries' indebtedness. These transactions may not be successfully consummated. If these transactions are not consummated, it may be forced to file for bankruptcy protection as early as February 17, 2009.

The new Senior Secured Notes and the shares of the Company's common stock were issued today in private placement transactions exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), pursuant to Section 4(2) thereof and have not been registered under the Securities Act or any state securities laws. Unless so registered, neither the new Senior Secured Notes nor the shares of the Company's common stock may be offered or sold in the United States absent an applicable exemption from registration requirements under the Securities Act and any applicable state securities laws. This news release does not constitute an offer to sell, or the solicitation of an offer to buy the notes or the shares of the Company's common stock.

Additional details regarding the transaction will be available on the Current Report on Form 8-K the Company expects to file with the Securities and Exchange Commission today.

About SIRIUS XM Radio

SIRIUS XM Radio is America's satellite radio company delivering commercial-free music channels, premier sports, news, talk, entertainment, traffic and weather, to more than 18.9 million subscribers.

SIRIUS XM Radio has content relationships with an array of personalities and artists, including Howard Stern, Martha Stewart, Oprah Winfrey, Jimmy Buffett, Jamie Foxx, Barbara Walters, Opie & Anthony, Bubba the Love Sponge®, The Grateful Dead, Willie Nelson, Bob Dylan, Tom Petty, and Bob Edwards. SIRIUS XM Radio is the leader in sports programming as the Official Satellite Radio Partner of the NFL, Major League Baseball®, NASCAR®, NBA, NHL®, and PGA TOUR®, and broadcasts major college sports.

SIRIUS XM Radio has arrangements with every major automaker. SIRIUS XM Radio products are available at shop.sirius.com and shop.xmradio.com, and at retail locations nationwide, including Best Buy, RadioShack, Target, Sam's Club, and Wal-Mart.

SIRIUS XM Radio also offers SIRIUS Backseat TV, the first ever live in-vehicle rear seat entertainment featuring Nickelodeon, Disney Channel and Cartoon Network; XM NavTraffic® service for GPS navigation systems delivers real-time traffic information, including accidents and road construction, for more than 80 North American markets.

This communication contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements include, but are not limited to, statements about the benefits of the business combination transaction involving SIRIUS and XM, including potential synergies and cost savings and the timing thereof, future financial and operating results, the combined company's plans, objectives, expectations and intentions with respect to future operations, products and services; and other statements identified by words such as "anticipate," "believe," "plan," "estimate," "expect," "intend," "will," "should," "may," or words of similar meaning. Such forward-looking statements are based upon the current beliefs and expectations of SIRIUS' and XM's management and are inherently subject to significant business, economic and competitive uncertainties and contingencies, many of which are difficult to predict and generally beyond the control of SIRIUS and XM. Actual results may differ materially from the results anticipated in these forward-looking statements.

The following factors, among others, could cause actual results to differ materially from the anticipated results or other expectations expressed in the forward-looking statement: general business and economic conditions; the performance of financial markets and interest rates; the failure to realize synergies and cost-savings from the merger or delay in realization thereof; the businesses of SIRIUS and XM may not be combined successfully, or such combination may take longer, be more difficult, time-consuming or costly to accomplish than expected. Additional factors that could cause SIRIUS' and XM's results to differ materially from those described in the forward-looking statements can be found in SIRIUS' and XM's Annual Reports on Form 10-K for the year ended December 31, 2007 and their respective Quarterly Reports on Form 10-Q for the quarter ended September 30, 2008, which are filed with the Securities and Exchange Commission (the "SEC") and available at the SEC's Internet site (http://www.sec.gov). The information set forth herein speaks only as of the date hereof, and SIRIUS and XM disclaim any intention or obligation to update any forward looking statements as a result of developments occurring after the date of this communication.

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