

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

FORM 10-Q

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

For The Quarterly Period Ended September 30, 1999

Commission file number 0-24710

CD RADIO INC.

(Exact name of registrant as specified in its charter)

<TABLE>		
<S>		<C>
	DELAWARE	52-1700207
	(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
</TABLE>		

1221 AVENUE OF THE AMERICAS, 36TH FLOOR
NEW YORK, NEW YORK 10020

(Address of principal executive offices)
(Zip code)

212-584-5100

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year,
if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

<TABLE>		
<S>		<C>
	COMMON STOCK, \$.001 PAR VALUE	26,820,240 SHARES
	(Class)	(Outstanding as of November 8, 1999)
</TABLE>		

CD RADIO INC. AND SUBSIDIARY
(A DEVELOPMENT STAGE ENTERPRISE)

INDEX

Part I - Financial Information

<TABLE>
<CAPTION>

<S> Consolidated Statements of Operations (unaudited) for the three

Page

<C> 1

and nine month periods ended September 30, 1999 and 1998 and for the period May 17, 1990 (date of inception) to September 30, 1999

Consolidated Balance Sheets (unaudited) as of September 30, 1999 and December 31, 1998	2
Consolidated Statements of Cash Flows (unaudited) for the nine month periods ended September 30, 1999 and 1998 and for the period May 17, 1990 (date of inception) to September 30, 1999	3
Notes to Consolidated Financial Statements (unaudited)	4
Management's Discussion and Analysis of Financial Condition and Results of Operations	7
Part II - Other Information	15
Signatures	16

</TABLE>

CD RADIO INC. AND SUBSIDIARY
(A DEVELOPMENT STAGE ENTERPRISE)
CONSOLIDATED STATEMENTS OF OPERATIONS
(UNAUDITED)

<TABLE>
<CAPTION>

Cumulative for the period May 17, 1990 (date of inception) Sept. 30, 1999	For the Three Months Ended Sept. 30		For the Nine Months Ended Sept. 30,		to -- <C> \$
	1999	1998	1999	1998	
<S> Revenue	<C> \$ -	<C> \$ -	<C> \$ -	<C> \$ -	<C> \$
-					
Operating expenses:					
Engineering, design and development (27,947,000)	(7,188,000)	(681,000)	(21,532,000)	(1,455,000)	
General and administrative (47,707,000)	(5,744,000)	(2,384,000)	(17,162,000)	(6,826,000)	
Special charges (27,682,000)	-	-	-	(25,682,000)	
----- Total operating expenses (103,336,000)	(12,932,000)	(3,065,000)	(38,694,000)	(33,963,000)	

Other income (expense):					
Interest and investment income 21,861,000	3,809,000	1,866,000	10,209,000	5,769,000	
Interest expense, net of capitalized interest (24,067,000)	(4,000,000)	(2,045,000)	(7,683,000)	(11,027,000)	
----- (2,206,000)	(191,000)	(179,000)	2,526,000	(5,258,000)	

Income (loss) before income taxes (105,542,000)	(13,123,000)	(3,244,000)	(36,168,000)	(39,221,000)	
Income taxes:					
Federal (1,982,000)	-	-	-	(38,000)	
State	-	-	-	-	

(313,000)				
Net loss (107,837,000)	(13,123,000)	(3,244,000)	(36,168,000)	(39,259,000)
Preferred stock dividend (44,291,000)	(7,721,000)	(4,344,000)	(22,573,000)	(13,563,000)
Preferred stock deemed dividend (70,485,000)	(2,300,000)	-	(6,834,000)	-
Accretion of dividends in connection with the issuance of warrants on preferred stock (6,726,000)	(77,000)	(62,000)	(225,000)	(6,434,000)
Net loss applicable to common stockholders \$(229,339,000)	\$ (23,221,000)	\$ (7,650,000)	\$ (65,800,000)	\$ (59,256,000)
Net loss per share applicable to common stockholders (basic and diluted)	\$ (0.96)	\$ (0.43)	\$ (2.79)	\$ (3.51)
Weighted average common shares outstanding (basic and diluted)	24,095,000	17,686,000	23,575,000	16,859,000

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

</TABLE>

1

CD RADIO INC. AND SUBSIDIARY
(A DEVELOPMENT STAGE ENTERPRISE)
CONSOLIDATED BALANCE SHEETS

	September 30, 1999	December 1998
31,		
	(unaudited)	
	<C>	<C>
Current assets:		
Cash and cash equivalents	\$ 220,520,000	\$
204,753,000		
Marketable securities, at market	172,855,000	
60,870,000		
Restricted investments, at amortized cost	80,832,000	-
Prepaid expense and other	605,000	
166,000		
Total current assets	474,812,000	
265,789,000		
Property and equipment, at cost:		
Satellite construction in process	312,373,000	
188,849,000		

Launch construction in process	162,211,000	
87,492,000		
Broadcast studio equipment	11,791,000	
87,000		
Leasehold improvements	13,857,000	
5,081,000		
Terrestrial repeater network in process	4,702,000	
1,990,000		
Other	8,180,000	
156,000		
-----		-----
	513,114,000	
283,655,000		
Less accumulated depreciation	(546,000)	
(21,000)		
-----		-----
	512,568,000	
283,634,000		
-----		-----
Other assets:		
FCC license	83,368,000	
83,368,000		
Debt issue costs, net	24,227,000	
9,313,000		
Other	2,898,000	
1,776,000		
-----		-----
Total other assets	110,493,000	
94,457,000		
-----		-----
Total assets	\$ 1,097,873,000	\$
643,880,000		
-----		-----
-----		-----

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:		
Accounts payable and accrued expenses	\$ 28,152,000	\$
5,481,000		
Satellite & launch construction payable	-	
8,479,000		
Short-term notes payable	111,520,000	
70,863,000		
-----		-----
Total current liabilities	139,672,000	
84,823,000		
Long-term notes payable and accrued interest	471,515,000	
153,033,000		
Deferred satellite payments and accrued interest	47,298,000	
31,324,000		
Deferred income taxes	2,237,000	
2,237,000		
-----		-----
Total liabilities	660,722,000	
271,417,000		
-----		-----
Commitments and contingencies		
10 1/2% Series C Convertible Preferred Stock, no par value: 2,025,000 shares authorized, 1,465,916 and 1,467,416 shares issued and outstanding at September 30, 1999 and December 31, 1998, respectively (liquidation preferences of \$146,591,600 and \$146,741,600), at net carrying value including accrued dividends	170,362,000	
156,755,000		

9.2% Series A Junior Cumulative Convertible Preferred Stock, \$.001 par value: 4,300,000 shares authorized, 1,350,000 shares issued and outstanding at September 30, 1999 and December 31, 1998 (liquidation preference of \$135,000,000), at net carrying value including

accrued dividends	146,957,000	
137,755,000		
9.2% Series B Junior Cumulative Convertible Preferred Stock, \$.001 par value: 2,100,000 shares authorized, no shares issued or outstanding	-	-
Stockholders' equity:		
Preferred stock, \$.001 par value: 50,000,000 shares authorized	-	-
8,000,000 shares designated as 5% Delayed Convertible Preferred Stock; none issued or outstanding		
Common stock, \$.001 par value: 200,000,000 shares authorized, 26,354,591 and 23,208,949 shares issued and outstanding at September 30, 1999 and December 31, 1998, respectively	26,000	
23,000		
Additional paid-in capital	227,643,000	
149,599,000		
Deficit accumulated during the development stage	(107,837,000)	
(71,669,000)		

Total stockholders' equity	119,832,000	
77,953,000		

Total liabilities and stockholders' equity	\$ 1,097,873,000	\$
643,880,000		

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

</TABLE>

CD RADIO INC. AND SUBSIDIARY
(A DEVELOPMENT STAGE ENTERPRISE)
CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)

<TABLE>
<CAPTION>

Cumulative for		
the period		For the Nine Months Ended Sept. 30,
May 17, 1990		-----
(date of inception)		1999
to Sept. 30, 1999		1998
-----		-----
<S>	<C>	<C>
<C>		
Cash flows from development stage activities:		
Net loss	\$ (36,168,000)	\$ (39,259,000)
\$ (107,837,000)		
Adjustments to reconcile net loss to net cash provided by (used in) development stage activities:		
Depreciation and amortization	527,000	34,000
2,257,000		
Unrealized (gain) loss on marketable securities	126,000	(96,000)
(107,000)		
(Gain) loss on disposal of assets	10,000	-
115,000		
Special charges	-	23,557,000
25,557,000		
Accretion of notes payable charged as interest expense	4,212,000	17,302,000
32,078,000		
Sales (purchases) of marketable securities and restricted investments, net	(191,386,000)	158,203,000
(252,023,000)		
Compensation expense in connection with		

	issuance of common stock and stock options	695,000	41,000	
4,031,000				
	Increase (decrease) in cash and cash equivalents resulting from changes in assets and liabilities:			
	Prepaid expense and other	(439,000)	302,000	
(605,000)				
	Due to related party	-	-	
351,000				
	Other assets	(4,062,000)	(2,069,000)	
(8,088,000)				
	Accounts payable and accrued expenses	14,864,000	2,111,000	
20,416,000				
	Deferred taxes	-	-	
2,237,000				
		-----	-----	
	Net cash provided by (used in) development stage activities	(211,621,000)	160,126,000	
(281,618,000)		-----	-----	
	Cash flows from investing activities:			
	Purchase of FCC license	-	-	
(83,368,000)				
	Payments for satellite construction	(91,463,000)	(63,470,000)	
(240,409,000)				
	Payments for launch services	(68,357,000)	(83,995,000)	
(178,212,000)				
	Other capital expenditures	(31,228,000)	(1,706,000)	
(38,928,000)				
	Acquisition of Sky-Highway Radio Corp.	-	-	
(2,000,000)				
		-----	-----	
	Net cash used in investing activities	(191,048,000)	(149,171,000)	
(542,917,000)		-----	-----	
	Cash flows from financing activities:			
	Proceeds from issuance of notes payable	159,657,000	60,421,000	
230,520,000				
	Proceeds from issuance of common stock, net	67,994,000	-	
251,437,000				
	Proceeds from issuance of preferred stock, net	-	-	
250,068,000				
	Proceeds from exercise of stock options and warrants	785,000	99,000	
5,725,000				
	Proceeds from issuance of promissory notes and units, net	190,000,000	-	
306,535,000				
	Proceeds from issuance of promissory notes to related parties	-	-	
2,965,000				
	Repayment of promissory notes	-	-	
(2,635,000)				
	Loan from officer	-	-	
440,000				
		-----	-----	
	Net cash provided by financing activities	418,436,000	60,520,000	
1,045,055,000		-----	-----	
	Net increase in cash and cash equivalents	15,767,000	71,475,000	
220,520,000				
	Cash and cash equivalents at the beginning of period	204,753,000	900,000	
-		-----	-----	
	Cash and cash equivalents at the end of period	\$ 220,520,000	\$ 72,375,000	\$
220,520,000		-----	-----	

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

</TABLE>

CD RADIO INC. AND SUBSIDIARY
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
SEPTEMBER 30, 1999
(UNAUDITED)

GENERAL

The accompanying consolidated financial statements and the notes thereto do not include all of the information and disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles. In the opinion of management, all adjustments (consisting only of normal, recurring adjustments) considered necessary to fairly state our consolidated financial position and consolidated results of operations have been included. These financial statements should be read in connection with our consolidated financial statements and the notes thereto for the fiscal year ended December 31, 1998 included in our Annual Report on Form 10-K as filed with the Securities and Exchange Commission.

NET LOSS PER SHARE

Net loss per common share is based on the weighted average number of common shares outstanding during such periods. Options and warrants granted by us have not been included in the calculation of net loss per share because such items were antidilutive.

The following is a reconciliation of net loss per common share, before preferred stock dividend requirements, to net loss per share applicable to common stockholders:

<TABLE>
<CAPTION>

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	1999	1998	1999	1998
	<C>	<C>	<C>	<C>
Per common shares (basic and diluted):				
Net loss	\$ (0.54)	\$ (0.18)	\$ (1.53)	\$ (2.33)
Preferred stock dividend requirements	(0.42)	(0.25)	(1.25)	(0.80)
Accretion of dividends in connection with the issuance of warrants on preferred stock	-	-	(0.01)	(0.38)
Net loss applicable to common stockholders	\$ (0.96)	\$ (0.43)	\$ (2.79)	\$ (3.51)

</TABLE>

MARKETABLE SECURITIES

Marketable securities consist of fixed income securities and are stated at market value. Marketable securities are defined as trading securities under the provision of SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities" ("SFAS No. 115"), and unrealized holding gains and losses are reflected in earnings. Unrealized holding gains were \$107,000 and \$232,000 at September 30, 1999 and December 31, 1998, respectively.

RESTRICTED INVESTMENTS

Restricted investments consist of fixed income securities and are stated at amortized cost plus accrued interest income. Restricted investments are defined as held-to-maturity securities under the provision of SFAS No. 115 and unrealized holding gains and losses are not reflected in earnings. Unrealized holding losses were \$276,000 at September 30, 1999. The securities included in restricted investments are restricted to provide for the first six scheduled interest payments on our 14 1/2% Senior Secured Notes due 2009.

PROPERTY AND EQUIPMENT

Property and equipment are recorded at cost and include interest on funds borrowed to finance construction. Capitalized interest was \$56,028,000 and \$16,243,000 at September 30, 1999 and December 31, 1998, respectively.

SHORT-TERM NOTES PAYABLE

We entered into a credit agreement with Bank of America and other lenders in July 1998 under which Bank of America and other lenders agreed to provide us a term loan facility of up to \$115 million. This term loan facility matures on the earlier of February 29, 2000 and ten days prior to the launch of our second satellite. The proceeds of this facility are being used to fund progress payments for the purchase of launch services and to pay interest, fees and other related expenses. The amounts advanced under this facility bear interest at a variable rate that we select.

DEFERRED SATELLITE PAYMENTS

Under an amended and restated contract (the "Loral Satellite Contract") with Space Systems/Loral, Inc. ("Loral"), Loral has agreed to defer certain amounts due under the Loral Satellite Contract. The amounts deferred bear interest at 10% per year and are due in quarterly installments beginning in June 2002. We have the right to prepay any deferred payments together with accrued interest, without penalty.

ENGINEERING, DESIGN AND DEVELOPMENT COSTS

We have entered into an agreement with Lucent Technologies, Inc. ("Lucent") pursuant to which Lucent has agreed to use commercially reasonable efforts to deliver integrated circuits ("chip sets"), which will be used in consumer electronic devices capable of receiving our broadcasts. In addition, we have entered into agreements with Alpine, Panasonic, Recoton and Delphi-Delco to design and develop equipment that will be used to receive our broadcasts, pursuant to which we have agreed to pay certain development costs. We record expenses under these contracts as the work is performed. Total expenses related to these contracts were \$5,831,000 and \$18,279,000 in the three month period and nine month period ended September 30, 1999, respectively.

SPECIAL CHARGES

During the quarter ended June 30, 1998, we decided to enhance our satellite delivery system to include a third in-orbit satellite and to terminate certain launch and orbit related contracts. We recorded special charges totaling approximately \$25,682,000 related primarily to the termination of such contracts.

RECLASSIFICATIONS

Certain amounts in the prior period's financial statements have been reclassified to conform to the current period presentation.

SUBSEQUENT EVENTS

On October 6, 1999, the underwriters of our 8 3/4 % Convertible Subordinated Notes due 2009 and the underwriters of our offering of 3,000,000 shares of common stock, each of which offerings was consummated on September 29, 1999, exercised their respective options to purchase additional 8 3/4% Convertible Subordinated Notes due 2009 in an aggregate principal amount of \$18,750,000 and an additional 450,000 shares of our common stock for \$11,375,000. See "Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources - Sources of Funding" for further information relating to the 8 3/4% Convertible Subordinated Notes due 2009 and common stock offerings.

On October 13, 1999, we sold to Apollo Investment Fund IV, L.P., a Delaware limited partnership ("AIF IV"), and Apollo Overseas Partners IV, L.P., a Cayman Islands limited partnership ("AOP IV" and, together with AIF IV, the "Apollo Investors"), 650,000 shares of our 9.2% Series B Junior Cumulative Convertible Preferred Stock (the "Series B Preferred Stock") for an aggregate purchase price of \$65 million. See "Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources - Sources of Funding" for further information relating to this sale of the Series B Preferred Stock.

CD RADIO INC. AND SUBSIDIARY
(A DEVELOPMENT STAGE ENTERPRISE)

MANAGEMENT'S DISCUSSION AND ANALYSIS OF
FINANCIAL CONDITION AND RESULTS OF OPERATIONS

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

In connection with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 (the "Reform Act"), we are hereby providing cautionary statements identifying important factors that could cause our actual results to differ materially from those projected in forward-looking statements (as such term is defined in the Reform Act) made in this report. Any statements that express, or involve discussions as to, expectations, beliefs, plans, objectives, assumptions or future events or performance (often, but not always, through the use of words or phrases such as "will likely result," "are expected to," "will continue," "is anticipated," "estimated," "intends," "plans," "projection" and "outlook") are not historical facts and may be forward-looking and, accordingly, such statements involve estimates, assumptions and uncertainties that could cause actual results to differ materially from those expressed in the forward-looking statements. Accordingly, any such statements are qualified in their entirety by reference to, and are accompanied by, the factors discussed in our Annual Report on Form 10-K for the year ended December 31, 1998. Among the key factors that have a direct bearing on our future results of operations are the potential risk of delay in implementing our business plan; possible increased costs of construction and launch of necessary satellites; our dependence on Loral, Lucent and consumer electronics manufacturers; the unavailability of receivers and antennas; risk of launch failure; unproven market for our proposed service; unproven applications of existing technology; and our need for additional financing.

OVERVIEW

CD Radio was organized in May 1990 and is in its development stage. Our principal activities to date have included developing our technology, developing our terrestrial repeater network, arranging for the design and development of chip sets and receivers, obtaining regulatory approval for the CD Radio service, commencing the construction of four satellites, constructing our production and broadcast facility, acquiring content for our programming, strategic planning, market research, recruiting our management team and securing financing for capital expenditures and working capital. We require additional capital to complete development and commence operations of CD Radio. We cannot assure you that we will ever commence operations, that we will attain any particular level of revenues or that we will achieve profitability.

Each of the elements of the CD Radio system - satellites, terrestrial repeater network, National Broadcast Studio and CD Radio receivers - is on schedule to permit us to begin operations at the end of the fourth quarter of 2000. Loral plans to launch our satellites on Proton rockets. On each of July 5, 1999 and October 27, 1999, a Proton rocket carrying a Russian payload malfunctioned during flight. As a result of the October 27th failure, Proton rocket launches have been suspended and the Russian government has appointed an investigatory commission. These developments may delay one or more of our anticipated satellite launches, currently scheduled for January, March and May 2000. Even if a launch delay were to occur, however, we do not currently expect any delay in the introduction of our service.

7

Upon commencing operations, we expect our primary source of revenues to be monthly subscription fees. We currently anticipate that our subscription fee will be \$9.95 per month to receive CD Radio broadcasts, with a one time, modest activation fee per subscriber. In addition, we expect to derive revenues from directly selling or bartering advertising on our non-music channels. We do not expect to recognize revenues from operations until the first quarter of 2001, at the earliest. We do not intend to manufacture the receivers necessary to receive CD Radio and thus we will not receive any revenues from their sale. Although we hold patents covering some of the technology which will be used in these receivers, we expect to license our technology to manufacturers at no charge.

We expect that the operating expenses associated with our service will consist primarily of marketing, sales, programming, maintenance of our satellite and broadcasting system and general and administrative costs. Costs to acquire programming are expected to include payments to build and maintain an extensive music library and royalty payments for broadcasting music (calculated based on a percentage of revenues). Marketing, sales, general and administrative costs are expected to consist primarily of advertising costs, salaries of employees, rent and other administrative expenses. As of November 8, 1999, we had 84 employees and 19 part-time consultants. We expect to have approximately 150 employees by

the time we commence operations.

In addition to funding initial operating losses, we require funds for working capital, interest and financing costs on borrowings and capital expenditures in the near term.

8

RESULTS OF OPERATIONS

THREE MONTHS ENDED SEPTEMBER 30, 1999 COMPARED WITH THREE MONTHS ENDED SEPTEMBER 30, 1998

We recorded net losses of \$13,123,000 and \$3,244,000 for the three months ended September 30, 1999 and 1998, respectively. Our total operating expenses were \$12,932,000 and \$3,065,000 for the three months ended September 30, 1999 and 1998, respectively.

Engineering, design and development costs were \$7,188,000 and \$681,000 for the three months ended September 30, 1999 and 1998, respectively. Engineering costs increased in the 1999 quarter primarily due to payments to Lucent in connection with the chip set development effort and payments to consumer electronic manufacturers in connection with receiver development efforts.

General and administrative expenses increased for the three months ended September 30, 1999 to \$5,744,000 from \$2,384,000 for the three months ended September 30, 1998. General and administrative expenses increased due to the occupancy of our new offices and National Broadcast Studio and the growth of our management team and workforce. The major components of general and administrative expenses in the 1999 quarter were salaries and employment related costs (29%), rent and occupancy costs (22%) and legal and regulatory fees (10%), while in the 1998 quarter the major components were salaries and employment related costs (36%), rent and occupancy costs (13%) and legal and regulatory fees (22%). The remaining portion of general and administrative expenses (39% in the 1999 quarter and 29% in the 1998 quarter) consisted of other costs such as insurance, market research, consulting, travel, depreciation and supplies, with no such amount exceeding 10% of the total in the 1999 quarter and the 1998 quarter.

The increase in interest and investment income to \$3,809,000 for the three months ended September 30, 1999, from \$1,866,000 in the three months ended September 30, 1998, was the result of higher average balances of cash, marketable securities and restricted investments during the 1999 quarter. The higher average balances of cash, marketable securities and restricted investments during the quarter were due to the proceeds from the issuance of securities during the second and third quarters of 1999 and the fourth quarter of 1998 exceeding the amount of expenditures for satellite and launch vehicle construction, other capital expenditures and operating expenses.

Interest expense, net of capitalized interest, was \$4,000,000 for the three months ended September 30, 1999 and was \$2,045,000 in the three months ended September 30, 1998. This increase in net interest expense was due to interest expense increasing by an amount (\$13,070,000) greater than the corresponding increase in capitalized interest (\$11,115,000).

NINE MONTHS ENDED SEPTEMBER 30, 1999 COMPARED WITH NINE MONTHS ENDED SEPTEMBER 30, 1998

We recorded net losses of \$36,168,000 and \$39,259,000 for the nine months ended September 30, 1999 and 1998, respectively. Our total operating expenses were \$38,694,000 and \$33,963,000 for the nine months ended September 30, 1999 and 1998, respectively. Excluding the special charges totaling \$25,682,000 recorded in the 1998 second quarter, we recorded a net loss of \$13,577,000 and operating expenses of \$8,281,000 for the nine months ended September 30, 1998.

Engineering, design and development costs were \$21,532,000 and \$1,455,000 for the nine months ended September 30, 1999 and 1998, respectively. Engineering costs increased in the 1999 period primarily due to payments to Lucent in connection with the chip set development effort and payments to consumer electronic manufacturers in connection with receiver development efforts.

9

General and administrative expenses increased for the nine months ended September 30, 1999 to \$17,162,000 from \$6,826,000 for the nine months ended September 30, 1998. General and administrative expenses increased due to the occupancy of our new offices and National Broadcast Studio and the growth of our management team and workforce. The major components of general and administrative expenses in the 1999 period were salaries and employment related costs (30%), rent and occupancy costs (24%) and legal and regulatory fees (13%), while in the 1998 period the major components were salaries and employment related costs (30%), rent and occupancy costs (15%) and legal and regulatory fees (17%). The remaining portion of general and administrative expenses (33% in the 1999 period and 38% in the 1998 period) consisted of other costs such as insurance, market research, consulting, travel, depreciation and supplies, with no such amount exceeding 10% of the total in the 1999 period and only consulting (14%) exceeding 10% of the total in the 1998 period.

The increase of interest income to \$10,209,000 for the nine months ended September 30, 1999, from \$5,769,000 in the nine months ended September 30, 1998, was the result of higher average balances of cash, marketable securities and restricted investments during the 1999 period. The higher average balances of cash, marketable securities and restricted investments during the period were due to the proceeds from the issuance of securities during the second and third quarters of 1999 and the fourth quarter of 1998 exceeding the amount of expenditures for satellite and launch vehicle construction, other capital expenditures and operating expenses.

Interest expense, net of capitalized interest, decreased to \$7,683,000 for the nine months ended September 30, 1999, from \$11,027,000 in the 1998 period. This decrease in net interest expense was due to capitalized interest increasing by an amount (\$31,478,000) greater than the corresponding increase in interest expense (\$28,134,000).

LIQUIDITY AND CAPITAL RESOURCES

At September 30, 1999, we had a total of cash, cash equivalents, marketable securities and restricted investments of \$474,207,000 and working capital of \$335,140,000 compared with cash, cash equivalents and marketable securities of approximately \$265,623,000 and working capital of \$180,966,000 at December 31, 1998. The increases in the respective balances are due to the proceeds from the issuance of units consisting of our 14 1/2% Senior Secured Notes due 2009 and related warrants during the second quarter of 1999, the proceeds from the issuance of our 8 3/4% Convertible Subordinated Notes due 2009 during the third quarter of 1999 and the proceeds from our issuance of common stock during the third quarter of 1999 (see - Sources of Funding) exceeding capital expenditures and operating expenses for the first nine months of 1999. As part of the issuance of the 15% Senior Secured Notes due 2007 in the 1999 second quarter, we were required to place approximately \$79 million of government securities in a restricted account to be used only to pay the interest on these notes during their first three years.

10

FUNDING REQUIREMENTS

We require near-term funding to continue building our CD Radio system. We believe we can fund our planned operations and the construction of our satellite system into the second quarter of 2000 from our existing working capital at September 30, 1999 and from the proceeds of the sale of our Series B Preferred Stock to the Apollo Investors and sale of our 8 3/4% Convertible Subordinated Notes due 2009 and common stock in connection with the exercise of the underwriters over-allotment options in October 1999. We estimate that we will require a total of approximately \$1,170 million to develop and commence operations by the end of the fourth quarter of 2000. We have raised and identified sources of approximately \$1,216 million (which includes \$115 million of debt financing that must be repaid by the earlier of February 29, 2000 and ten days prior to the launch of our second satellite), leaving expected excess cash of approximately \$46 million to fund our operations after the fourth quarter of 2000. However, if Bank of America is unable to arrange a new credit facility for us, we will need to raise \$115 million to refinance the existing credit facility in the first quarter of 2000 and an additional \$60 million to fund our operations through the end of the fourth quarter of 2000. In addition, we anticipate cash requirements of approximately \$150 million to fund our operating costs during the first full year of operations. We expect to finance the remainder of our funding requirements through the future issuance of debt or equity securities, or a combination of debt and equity securities.

To build and launch the satellites necessary for the operations of CD Radio we entered into the Loral Satellite Contract. The Loral Satellite Contract provides for Loral to construct, launch and deliver three satellites in-orbit and checked-out, to construct for us a fourth satellite for use as a ground

spare and to become our launch service provider. We are committed to make aggregate payments of approximately \$736 million under the Loral Satellite Contract, which includes \$15 million of long-lead time parts for a fifth satellite and \$3 million for integration analysis of the viability of using the Sea Launch platform as an alternative launch vehicle for our satellites. As of September 30, 1999, \$377 million of this obligation had been satisfied. Under the Loral Satellite Contract, with the exception of a payment made to Loral in March 1993, payments are made in installments that commenced in April 1997 and will end in December 2003. Approximately half of these payments are contingent upon Loral meeting specified milestones in the construction of our satellites.

We also will require funds for working capital, interest on borrowings, acquisition of programming, financing costs and operating expenses until some time after the commencement of operations of CD Radio. We expect our interest expense will increase significantly when compared to our 1998 interest expense; however, our 15% Senior Secured Discount Notes due 2007 will not require cash payments of interest until June 2003. In addition, a portion of the net proceeds of the issuance of our 14 1/2% Senior Secured Notes due 2009 was used to purchase a portfolio of U.S. government securities in an amount sufficient to pay the first six payments of interest on these notes. We currently expect to fund interest payments on our 8 3/4% Convertible Subordinated Notes due 2009 beginning in March 2000 through proceeds from the issuance of equity. We cannot assure you that any such issuances will be accomplished on terms advantageous to us, or at all.

We cannot assure that we will be able to obtain additional financing on favorable terms, or at all, or that we will be able to do so in a timely fashion. The indentures governing our 15% Senior Secured Discount Notes due 2007, our 14 1/2% Senior Secured Notes due 2009 and our bank credit facility contain, and documents governing any indebtedness incurred in the future are expected to contain, provisions limiting our ability to incur additional indebtedness. If additional financing were not available on a timely basis, we would be required to delay satellite and/or launch vehicle construction to conserve cash and to fund continued operations, which would cause delays in the commencement of operations and increase costs.

11

The amount and timing of our actual cash requirements will depend upon numerous factors, including costs associated with the construction and deployment of our satellite system and terrestrial repeater network, costs associated with the design and development of chip sets and receivers, the rate of growth of our business after commencing service, costs of financing and the possibility of unanticipated costs. We will require additional funds if there are delays, cost overruns, unanticipated expenses, launch failures, launch services or satellite system change orders, or any shortfalls in estimated levels of operating cash flow.

SOURCES OF FUNDING

To date, we have funded our capital needs through the issuance of debt and equity securities and borrowings under our bank credit facility. As of September 30, 1999, we had identified or received a total of \$582 million in net equity capital, which includes the net proceeds from the sale of our Series B Preferred Stock to the Apollo Investors and the sale of 450,000 shares of common stock to the underwriters in connection with the exercise of their over-allotment option, both in October 1999. In 1997 we received a total of \$192 million as a result of the issuance of 5,400,000 shares of 5% Delayed Convertible Preferred Stock, resulting in net proceeds of \$121 million, and the issuance of 4,955,488 shares of common stock, resulting in net proceeds of \$71 million. In November 1997, we exchanged 1,846,799 shares of our newly issued 10 1/2% Series C Cumulative Convertible Preferred Stock (the "Series C Preferred Stock") for all of the outstanding shares of 5% Delayed Convertible Preferred Stock. On November 2, 1998, we sold 5,000,000 shares of common stock to Prime 66 Partners, L.P., resulting in net proceeds of \$98 million and on December 23, 1998, we sold 1,350,000 shares of the 9.2% Series A Junior Cumulative Convertible Preferred Stock (the "Series A Preferred Stock") to the Apollo Investors resulting in net proceeds of \$129 million. In September 1999, we issued 3,000,000 shares of our common stock in an underwritten public offering resulting in net proceeds of \$68 million. In October 1999, we issued 450,000 shares of our common stock to the underwriters of our September 1999 common stock offering in connection with the exercise of their over-allotment option, resulting in net proceeds of \$10 million, and issued 650,000 shares of our Series B Junior Preferred Stock to the Apollo Investors for net proceeds of \$63 million.

Shares of our Series A Preferred Stock and our Series B Preferred Stock (collectively, the "Junior Preferred Stock") are convertible into shares of common stock at a price of \$30 per share. The Junior Preferred Stock is callable by us beginning November 15, 2001 if the current market price, as defined in the

Certificate of Designation of the Junior Preferred Stock, of our common stock exceeds \$60 per share for a period of 20 consecutive trading days, and in all events will be callable beginning November 15, 2003 at a price 100% and must be redeemed by us on November 15, 2011. Dividends on the Junior Preferred Stock are payable-in-kind or cash annually, at our option. Holders of the Junior Preferred Stock have the right to vote, on an as-converted basis, on matters in which the holders of our common stock have the right to vote.

In September 1999, we issued \$125,000,000 aggregate principal amount of our 8 3/4% Convertible Subordinated Notes due 2009 in an underwritten public offering resulting in net proceeds of \$119 million. In October 1999, we issued an additional \$18,750,000 aggregate principal amount of our 8 3/4% Convertible Subordinated Notes due 2009 to satisfy the underwriters' over-allotment option, resulting in net proceeds of \$18 million. Interest on our 8 3/4% Convertible Subordinated Notes due 2009 is payable semi-annually in cash beginning March 2000. In May 1999, we received net proceeds of approximately \$190 million from the issuance of 200,000 units, each consisting of \$1,000 aggregate principal amount of 14 1/2% Senior Secured Notes due 2009 and three warrants, each to purchase 3.65 shares of our common stock. Interest on the 14 1/2% Senior Secured Notes due 2009 is payable semi-annually in cash beginning November 15, 1999. We invested approximately \$79.3 million of the net proceeds of the 14 1/2% Senior Secured Notes due 2009 in a portfolio of U.S. government securities, which we pledged as security for the payment in full of interest on the 14 1/2% Senior Secured Notes due 2009 through May 15, 2002. As required by the terms of the warrants, we adjusted the number of shares for which each warrant may be exercised to 3.792 shares and the exercise price per share to \$27.53 per share in connection with our issuance of 3,000,000 shares of common stock and \$125,000,000 principal amount of 8 3/4% Convertible Subordinated Notes due 2009 on September 29, 1999.

12

In November 1997, we received net proceeds of \$116 million from the issuance of 12,910 units, each consisting of \$20,000 aggregate principal amount at maturity of our 15% Senior Secured Discount Notes due 2007 and a warrant to purchase additional 15% Senior Secured Discount Notes due 2007 with an aggregate principal amount at maturity of \$3,000. All these warrants were exercised in 1997. The aggregate value at maturity of the 15% Senior Secured Discount Notes due 2007 is \$297 million. The 15% Senior Secured Discount Notes due 2007 mature on November 15, 2007 and the first cash interest payment is due in June 2003. The indentures governing the 15% Senior Secured Discount Notes due 2007 and the 14 1/2% Senior Secured Notes due 2009 contain some limitations on our ability to incur additional indebtedness. The 15% Senior Secured Discount Notes due 2007 and the 14 1/2% Senior Secured Notes due 2009 are secured by a pledge of the stock of Satellite CD Radio Inc., our subsidiary that holds our FCC license.

On July 28, 1998, we entered into a credit agreement (the "Tranche A Facility") with a group of financial institutions (the "Lenders"), including Bank of America as agent and a lender, under which the Lenders agreed to provide us a term loan facility in an aggregate principal amount of up to \$115 million (the "Tranche A Loans"). The proceeds of the Tranche A Loans are being used to fund a portion of the progress payments required to be made by us under the Loral Satellite Contract for the purchase of launch services and to pay interest, fees and other expenses related to the Tranche A Facility. The Tranche A Loans are due on the earlier of February 29, 2000 and ten days prior to the launch of our second satellite. As of September 30, 1999, we had borrowed approximately \$112 million under the Tranche A Facility, substantially all of which was used to make progress payments under the Loral Satellite Contract.

In connection with the Tranche A Facility, Loral agreed with Bank of America that at maturity of the Tranche A Loans (including maturity as a result of an acceleration), upon the occurrence of our bankruptcy or upon the occurrence of an event of default by Loral under its agreement with Bank of America, Loral will repurchase from the Lenders the Tranche A Loans at a price equal to the principal amount of the Tranche A Loans plus accrued and unpaid interest. In exchange for providing this credit support, we pay Loral a fee equal to 1.25% per annum of the outstanding amount of the Tranche A Loans from time to time.

We have also entered into an agreement with Bank of America under which Bank of America has agreed to attempt to arrange a syndicate of lenders to provide a term loan facility for us in the aggregate principal amount of \$225 million. It is anticipated that a portion of the proceeds of these loans would be used to repay the amounts outstanding under the Tranche A Facility and for other general corporate purposes. Bank of America has not committed to provide this term loan facility. The availability of these loans when required to repay the amounts outstanding at maturity under the Tranche A Facility will be influenced by a variety of factors, some of which, including the market for syndicated bank loans generally, are outside of our control. The closing of this term loan facility is expected to be conditioned on the satisfaction of

significant conditions and there is no assurance that these loans will be arranged or that the proposed terms of these loans will be acceptable to us. If we are unable to close this facility, we will seek to repay the Tranche A Loans from the proceeds of the sale of debt securities, equity securities or a combination of debt and equity securities.

Loral has agreed to defer a total of \$50 million of the payments under the Loral Satellite Contract originally scheduled for payment in 1999. These deferred amounts bear interest at 10% per annum and all interest on these deferred amounts will accrue until December 2001, at which time interest will be payable quarterly in cash. The principal amounts of the deferred payments under the Loral Satellite Contract are required to be paid in six installments between June 2002 and December 2003. As collateral security for these deferred payments, we have agreed to grant Loral a security interest in our terrestrial repeater network. If there is a satellite or launch failure, we will be required to pay Loral the deferred amount for the affected satellite no later than 120 days after the date of the failure. If we elect to put one of our first three satellites into ground storage, rather than having it shipped to the launch site, the deferred amount for that satellite will become due within 60 days of this election.

13

OTHER MATTERS - THE YEAR 2000 ISSUE

The Year 2000 Issue will test the capability of business processes to function correctly. We have undertaken an effort to identify and mitigate The Year 2000 Issue in our information systems, product, suppliers and facilities. Our approach to The Year 2000 Issue can be separated into four phases: (1) define/measure-identify and inventory possible sources of Year 2000 Issues; (2) analyze-determine the nature and extent of Year 2000 Issues and develop project plans to address those issues; (3) improve-execute project plans and perform a majority of the testing; and (4) control-complete testing, continue monitoring readiness and complete necessary contingency plans. The first three phases of the program have been completed for a substantial majority of our mission-critical activities. Management plans to have nearly all significant information systems and facilities through the control phase of the program by the end of November 1999.

We have also communicated with our significant vendors and suppliers to determine the extent to which we are vulnerable to the failure of these parties to remedy Year 2000 Issues. These parties have indicated that they have implemented Year 2000 remediation projects. However, we can give no assurance that failure to address The Year 2000 Issues by third parties on whom our systems and business processes rely would not have a material adverse effect on our operations or financial condition.

Our total Year 2000 Issue remediation expenditures are expected to be approximately \$100,000. As of September 30, 1999 we have completed approximately 70% of our Year 2000 remediation project. Substantially all of the remainder is expected to be completed by the end of November 1999. The activities involved in The Year 2000 effort necessarily involve estimates and projections of activities and resources that will be required in the future. These estimates and projections could change as work progresses.

14

PART II

OTHER INFORMATION

ITEM 2. CHANGES IN SECURITIES AND USE OF PROCEEDS

(d) On September 29, 1999, we issued (i) \$125,000,000 aggregate principal amount of our 8 3/4% Convertible Subordinated Notes due 2009 and (ii) 3,000,000 shares of our common stock in offerings (the "Offerings") made pursuant to a Registration Statement on Form S-3 (File No. 333-86003) under the Securities Act of 1933, as amended. On October 6, 1999, we issued an additional (i) \$18,750,000 aggregate principal amount of our 8 3/4% Convertible Subordinated Notes due 2009 and (ii) 450,000 shares of our common stock, in each case to the underwriters of the Offerings in connection with their exercise of the respective over-allotment options granted to them.

In connection with the sales of our 8 3/4% Convertible Subordinated Notes due 2009 and common stock described above, we paid an aggregate of \$14.1

million in underwriting discounts, selling concessions and fees to investment banking firms. The proceeds from the sale of our 8 3/4% Convertible Subordinated Notes due 2009 and common stock will be used to finance the construction and launch of our satellites and for general corporate purposes.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits:

See Exhibit Index attached hereto.

(b) Reports on Form 8-K:

On September 27, 1999, we filed a Current Report on Form 8-K to report that, in accordance with Section 305(b) of the Trust Indenture Act of 1939 and the rules under this act, we filed a Statement of Eligibility and Qualification on Form T-1 of U.S. Trust Company of Texas, N.A. to act as trustee with respect to our 8 3/4% Convertible Subordinated Notes due 2009.

On October 1, 1999, we filed a Current Report on Form 8-K to report (i) that we had amended the Rights Agreement, dated October 22, 1997, between us and Continental Stock Transfer & Trust Company, as rights agent, to permit Ford Motor Company to purchase up to 808,081 shares of our common stock from the underwriters of our public offering of such shares on September 29, 1999, and to permit Everest Capital Management Ltd. ("Everest") and any investment partnership or similar investment fund managed or advised by Everest to purchase up to \$50,000,000 aggregate principal amount of our 8 3/4% Convertible Subordinated Notes due 2009 from the underwriters of our public offering of our 8 3/4% Convertible Subordinated Notes due 2009 and (ii) that in connection with our issuance of our 8 3/4% Convertible Subordinated Notes due 2009 we entered into (a) an Indenture, dated as of September 29, 1999 (the "Indenture"), between us and the U.S. Trust Company of Texas, N.A. and (b) a First Supplemental Indenture, dated September 29, 1999, to the Indenture, between us and U.S. Trust Company of Texas, N.A.

15

SIGNATURES

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

CD RADIO INC.

By: /s/ Edward Weber, Jr.

Edward Weber, Jr.
Controller
(Principal Accounting Officer)

November 15, 1999

16

EXHIBIT INDEX

<TABLE> <CAPTION> EXHIBIT -----	DESCRIPTION -----
<S> 3.1	<C> Certificate of Amendment, dated June 16, 1997, to the CD Radio Inc. (the "Company") Certificate of Incorporation and the Company's Amended and Restated Certificate of Incorporation,

dated January 31, 1994 (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 1999).

- 3.2 Amended and Restated By-Laws (incorporated by reference to Exhibit 3.2 to the Company's Registration Statement on Form S-1 (File No. 33-74782) (the "S-1 Registration Statement")).
- 3.3 Certificate of Designations of 5% Delayed Convertible Preferred Stock (incorporated by reference to Exhibit 10.24 to the Company's Form 10-K/A for the year ended December 31, 1996 (the "1996 Form 10-K")).
- 3.4 Form of Certificate of Designations of Series B Preferred Stock (incorporated by reference to Exhibit A to Exhibit 1 to the Company's Registration Statement on Form 8-A, filed with the Commission on October 30, 1997 (the "Form 8-A")).
- 3.5.1 Form of Certificate of Designations, Preferences and Relative, Participating, Optional and Other Special Rights of 10 1/2% Series C Convertible Preferred Stock (the "Series C Certificate of Designations") (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-4 (File No. 333-34761)).
- 3.5.2 Certificate of Correction to Series C Certificate of Designations (incorporated by reference to Exhibit 3.5.2 to the Company's Annual Report on Form 10-K for the year ended December 31, 1997 (the "1997 Form 10-K")).
- 3.5.3 Certificate of Increase of 10 1/2% Series C Convertible Preferred Stock (incorporated by reference to Exhibit 3.5.3 to the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 1998).
- 3.6 Certificate of Designations, Preferences and Relative, Participating, Optional and Other Special Rights of the Company's 9.2% Series A Junior Cumulative Convertible Preferred Stock (filed herewith).
- 3.7 Certificate of Designations, Preferences and Relative, Participating, Optional and Other Special Rights of the Company's 9.2% Series B Junior Cumulative Convertible Preferred Stock (filed herewith).

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EXHIBIT
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- 4.1 Form of Certificate for Shares of Common Stock (incorporated by reference to Exhibit 4.3 to the S-1 Registration Statement).
- 4.2 Form of Certificate for Shares of 10 1/2% Series C Convertible Preferred Stock (incorporated by reference to Exhibit 4.4 to the Company's Registration Statement on Form S-4 (File No. 333-34761)).
- 4.3.1 Rights Agreement, dated as of October 22, 1997, between the Company and Continental Stock Transfer & Trust Company, as rights agent (incorporated by reference to Exhibit 1 to the Form 8-A).
- 4.3.2 Form of Right Certificate (incorporated by reference to Exhibit B to Exhibit 1 to the Form 8-A).
- 4.3.3 Amendment to Rights Agreement, dated as of October 22, 1997, between the Company and Continental Stock Transfer & Trust Company, as rights agent, dated as of October 13, 1998 (incorporated by reference to Exhibit 99.2 to the Company's Current Report on Form 8-K dated October 13, 1998).

- 4.3.4 Amendment to Rights Agreement, dated as of October 22, 1997, between the Company and Continental Stock Transfer & Trust Company, as rights agent, dated as of November 13, 1998 (incorporated by reference to Exhibit 99.7 to the Company's Current Report on Form 8-K dated November 17, 1998).
- 4.3.5 Amended and Restated Amendment to Rights Agreement, dated as of October 22, 1997, between the Company and Continental Stock Transfer & Trust Company, as rights agent, dated as of December 22, 1998 (incorporated by reference to Exhibit 6 to the Amendment No. 1 to the Form 8-A filed with the Commission on January 6, 1999).
- 4.3.6 Amendment to the Rights Agreement, dated as of October 22, 1997, between the Company and Continental Stock Transfer & Trust Company, as rights agent, dated as of June 11, 1999 (incorporated by reference to Exhibit 4.1.8 to the Company's Registration Statement on Form S-4 (File No. 333-82303) filed on July 2, 1999 (the "1999 Units Registration Statement")).
- 4.3.7 Amendment to the Rights Agreement, dated as of October, 22, 1997, between the Company and Continental Stock Transfer & Trust Company, as rights agent, dated as of September 29, 1999 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Commission on October 13, 1999).
- 4.4 Indenture, dated as of November 26, 1997, between the Company and IBJ Schroder Bank & Trust Company, as Trustee (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-3 (File No. 333-34769) (the "1997 Units Registration Statement")).
- 4.5 Form of Note (incorporated by reference to Exhibit 4.2 to the 1997 Units Registration Statement).

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| 4.6.1 | Warrant Agreement, dated as of November 26, 1997, between the Company and IBJ Schroder Bank & Trust Company, as warrant agent (incorporated by reference to Exhibit 4.3 to the 1997 Units Registration Statement). |
| 4.6.2 | Form of Warrant (incorporated by reference to Exhibit 4.4 to the 1997 Units Registration Statement). |
| 4.7 | Form of Preferred Stock Warrant Agreement, dated as of April 9, 1997, between the Company and each warrant holder thereof (incorporated by reference to Exhibit 4.12 to the 1997 Form 10-K). |
| 4.8 | Form of Common Stock Purchase Warrant granted by the Company to Everest Capital Master Fund, L.P. and to The Ravich Revocable Trust of 1989 (incorporated by reference to Exhibit 4.11 to the 1997 Form 10-K). |
| 4.9.1 | Form of Certificate for shares of 9.2% Series A Junior Cumulative Convertible Preferred Stock (incorporated by reference to Exhibit 4.10.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 1998 (the "1998 Form 10-K")). |
| 4.9.2 | Form of Certificate for shares of 9.2% Series B Junior Cumulative Convertible Preferred Stock (incorporated by reference to Exhibit 4.10.2 to the 1998 Form 10-K). |
| 4.10 | Notes Registration Rights Agreement, dated as of May 13, 1999, among the Company and Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Lehman Brothers Inc., Bear, Stearns & Co. Inc., NationsBanc Montgomery Securities LLC and U.S. Bancorp Libra (incorporated by reference to Exhibit 4.4.1 to the 1999 Units Registration Statement). |

- 4.11 Indenture between the Company and United States Trust Company of New York, as trustee, dated as of May 15, 1999, relating to the Company's 14 1/2% Senior Secured Notes due 2009 (incorporated by reference to Exhibit 4.4.2 to the 1999 Units Registration Statement).
- 4.12 Form of Certificate for 8 3/4% Convertible Subordinated Notes due 2009 (incorporated by reference to Article VII to Exhibit 4.01 to the Company's Current Report on Form 8-K filed with the Commission on October 11, 1999)
- 4.13 Indenture between the Company and United States Trust Company of Texas, N.A., dated as of September 29, 1999, with respect to the Company's 8 3/4% Convertible Subordinated Notes due 2009 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Commission on October 13, 1999).
- 4.14 First Supplemental Indenture, dated as of September 29, 1999, between the Company and United States Trust Company of Texas, N.A., with respect to the Company's 8 3/4% Convertible Subordinated Notes due 2009 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Commission on October 11, 1999).

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| 4.15 | Form of 14 1/2% Senior Secured Notes due 2009 (incorporated by reference to Exhibit 4.4.2 to the 1999 Units Registration Statement). |
| 4.16 | Warrant Agreement, dated as of May 15, 1999, between the Company and United States Trust Company of New York, as warrant agent (incorporated by reference to Exhibit 4.4.4 to the 1999 Units Registration Statement). |
| 4.17 | Amended and Restated Pledge Agreement, dated as of May 15, 1999, among the Company, as pledgor, IBJ Whitehall Bank & Trust Company, as trustee, United States Trust Company of New York, as trustee, and IBJ Whitehall Bank & Trust Company, as collateral agent (incorporated by reference to Exhibit 4.4.5 to the 1999 Units Registration Statement). |
| 4.18 | Collateral Pledge and Security Agreement, dated as of May 15, 1999, between the Company, as pledgor, and United States Trust Company of New York, as trustee (incorporated by reference to Exhibit 4.4.6 to the 1999 Units Registration Statement). |
| 4.19 | Intercreditor Agreement, dated May 15, 1999, by and between IBJ Whitehall Bank & Trust Company, as trustee, and United States Trust Company of New York, as trustee (incorporated by reference to Exhibit 4.4.7 to the 1999 Units Registration Statement). |
| 4.20 | Common Stock Purchase Warrant granted by the Company to Ford Motor Company, dated June 11, 1999 (incorporated by reference to Exhibit 4.4.2 to the 1999 Units Registration Statement). |
| 9.1 | Voting Trust Agreement, dated as of August 26, 1997, by and among Darlene Friedland, as Grantor, David Margolese, as Trustee, and the Company (incorporated by reference to Exhibit (c) to the Company's Issuer Tender Offer Statement on Form 13E-4, filed with the Commission on October 16, 1997). |
| 10.1 | Lease Agreement, dated as of March 31, 1998, between Rock-McGraw, Inc. and the Company (incorporated by reference to Exhibit 10.1.2 to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 1998). |
| 10.2.1 | Engagement Letter Agreement, dated November 18, 1992, between the Company and Batchelder & Partners, Inc. (incorporated by reference to Exhibit 10.4 to the S-1 Registration Statement). |

- 10.2.2 Engagement Termination Letter Agreement, dated December 4, 1997, between the Company and Batchelder & Partners, Inc. (incorporated by reference to Exhibit 10.2.2 to the 1997 Form 10-K).
- *10.3.1 Proprietary Information and Non-Competition Agreement, dated February 9, 1993, for Robert D. Briskman (incorporated by reference to Exhibit 10.8.1 to the S-1 Registration Statement).
- *10.3.2 Amendment No. 1 to Proprietary Information and Non-Competition Agreement between the Company and Robert D. Briskman (incorporated by reference to Exhibit 10.8.2 to the S-1 Registration Statement).

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| 10.4.1 | Amended and Restated Contract, dated as of June 30, 1998, between the Company and Space Systems/Loral, Inc. (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q/A for the period ended June 30, 1998). |
| 10.5.1 | Assignment of Technology Agreement, dated April 15, 1993, between Robert D. Briskman and the Company (incorporated by reference to Exhibit 10.10 to the S-1 Registration Statement). |
| *10.5.2 | Stock Option Agreement, dated as of October 15, 1997, between the Company and Robert D. Briskman (incorporated by reference to Exhibit 10.6.2 to the 1997 Form 10-K). |
| *10.5.3 | Amended and Restated Option Agreement between the Company and Robert D. Briskman (incorporated by reference to Exhibit 10.13 to the S-1 Registration Statement). |
| *10.6 | Employment Agreement, dated as of January 1, 1999, between the Company and David Margolese (incorporated by reference to Exhibit 10.6 to the 1998 Form 10-K). |
| *10.7.1 | Employment and Non-Competition Agreement between the Company and Robert D. Briskman (incorporated by reference to Exhibit 10.19.1 to the S-1 Registration Statement). |
| *10.7.2 | First Amendment to Employment Agreement between the Company and Robert D. Briskman (incorporated by reference to Exhibit 10.19.2 to the S-1 Registration Statement). |
| *10.7.3 | Second Amendment to Employment Agreement between the Company and Robert D. Briskman (incorporated by reference to Exhibit 10.12.3 to the 1996 Form 10-K). |
| *10.8 | Employment and Non-Competition Agreement, dated as of April 16, 1997, between the Company and Joseph S. Capobianco (incorporated by reference to Exhibit 10.17 to the Company's Quarterly Report on Form 10-Q/A for the period ended March 31, 1997). |
| *10.9.1 | Employment and Non-Competition Agreement, dated as of April 28, 1997, between the Company and Keno V. Thomas (incorporated by reference to Exhibit 10.18 to the Company's Quarterly Report on Form 10-Q/A for the period ended March 31, 1997). |
| *10.9.2 | Separation Agreement, dated as of July 6, 1998, between the Company and Keno V. Thomas (incorporated by reference to Exhibit 10.11.2 to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 1998). |

21

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*10.10 Employment and Non-Competition Agreement, dated as of May 18, 1998, between the Company and Patrick L. Donnelly (incorporated by reference to Exhibit 10.12 to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 1998).

10.11 Registration Agreement, dated January 2, 1994, between the Company and M.A. Rothblatt and B.A. Rothblatt (incorporated by reference to Exhibit 10.20 to the S-1 Registration Statement).

*10.12 1994 Stock Option Plan (incorporated by reference to Exhibit 10.21 to the S-1 Registration Statement).

*10.13 Amended and Restated 1994 Directors' Nonqualified Stock Option Plan (incorporated by reference to Exhibit 10.22 to the Annual Report on Form 10-K for the year ended December 31, 1995).

10.14.1 Option Agreement, dated as of October 21, 1992, between the Company and Batchelder & Partners, Inc. (incorporated by reference to Exhibit 10.24 to the S-1 Registration Statement).

10.14.2 Form of Option Agreement, dated as of December 29, 1997, between the Company and each Optionee (incorporated by reference to Exhibit 10.16.2 to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 1998).

10.15 Settlement Agreement, dated as of April 1, 1994, among the Company, M.A. Rothblatt, B.A. Rothblatt and Marcor, Inc. (incorporated by reference to Exhibit 10.27 to the S-1 Registration Statement).

10.16.1 Preferred Stock Investment Agreement dated October 23, 1996 between the Company and certain investors (incorporated by reference to Exhibit 10.24 to the 1996 Form 10-K).

10.16.2 First Amendment to Preferred Stock Investment Agreement dated March 7, 1997 between the Company and certain investors (incorporated by reference to Exhibit 10.24.1 to the 1996 Form 10-K).

10.16.3 Second Amendment to Preferred Stock Investment Agreement dated March 14, 1997 between the Company and certain investors (incorporated by reference to Exhibit 10.24.2 to the 1996 Form 10-K).

10.17 Stock Purchase Agreement, dated as of August 5, 1997, between the Company, David Margolese and Loral Space & Communications Ltd. (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K filed on August 19, 1997).

10.18 Letter, dated May 29, 1998, terminating Launch Services Agreement dated July 22, 1997 between the Company and Arianespace S.A.; Arianespace Customer Loan Agreements dated July 22, 1997 for Launches #1 and #2 between the Company and Arianespace Finance S.A.; and the Multiparty Agreements dated July 22, 1997 for Launches #1 and #2 among the Company, Arianespace S.A. and

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Arianespace Finance S.A. (incorporated by reference to Exhibit

10.21 to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 1998).

- 10.19 Credit Agreement, dated as of June 30, 1998 (the "Credit Agreement"), among the Company, the financial institutions from time to time parties thereto and Bank of America National Trust and Savings Association, as Administrative Agent (incorporated by reference to Exhibit 10.22 to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 1998).
- 10.20 First Amendment, dated as of May 4, 1999, to the Credit Agreement (incorporated by reference to Exhibit 10.21 to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 1999).
- 10.21 Pledge Agreement, dated as of June 30, 1998, made by the Company in favor of Bank of America National Trust and Savings Association, as Administrative Agent (incorporated by reference to Exhibit 10.23 to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 1998).
- 10.22 Summary Term Sheet/Commitment, dated June 15, 1997, among the Company and Everest Capital International, Ltd., Everest Capital Fund, L.P. and The Ravich Revocable Trust of 1989 (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K filed on July 8, 1997).
- 10.23.1 Engagement Letter Agreement, dated June 14, 1997, between the Company and Libra Investments, Inc. (incorporated by reference to Exhibit 10.26.1 to the 1997 Form 10-K).
- 10.23.2 Engagement Letter Agreement, dated August 6, 1997, between the Company and Libra Investments, Inc. (incorporated by reference to Exhibit 10.26.2 to the 1997 Form 10-K).
- 10.24 Radio License Agreement, dated January 21, 1998 between the Company and Bloomberg Communications Inc. (incorporated by reference to Exhibit 10.28 to the Company's Quarterly Report on Form 10-Q for the period ended March 31, 1998).
- 10.25 Amended and Restated Agreement, dated as of February 1, 1999, between Lucent Technologies Inc. and the Company (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K filed with the Commission on February 4, 1999).
- *10.26 CD Radio Inc. 401(k) Savings Plan (incorporated by reference to Exhibit 4.4 to the Company's Registration Statement on Form S-8 (File No. 333-65473)).
- 10.27 Stock Purchase Agreement, dated as of October 8, 1998, between the Company and Prime 66 Partners, L.P. (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K dated October 8, 1998).
- 10.28.1 Stock Purchase Agreement, dated as of November 13, 1998 (the "Apollo Stock Purchase Agreement"), by and among the Company, Apollo Investment Fund IV, L.P. and Apollo Overseas Partners IV, L.P. (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K dated November 17, 1998).

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- 10.28.2 Amendment No. 1, dated as of December 23, 1998, to the Apollo Stock Purchase Agreement (filed herewith).
- 10.29 Voting Agreement, dated as of November 13, 1998, by and among Apollo Investment Fund IV, L.P., Apollo Overseas Partners IV, L.P. and David Margolese (incorporated by reference to Exhibit 99.5 to the Company's Current Report on Form 8-K dated November 17, 1998).
- 10.30 Tag-Along Agreement, dated as of November 13, 1998, by and among Apollo Investment Fund IV, L.P., Apollo Overseas Partners IV, L.P., the Company and David Margolese (incorporated by reference

to Exhibit 99.6 to the Company's Current Report on Form 8-K dated November 17, 1998).

- 10.31* CD Radio 1999 Long-Term Stock Incentive Plan (incorporated by reference to Appendix I of the Company's definitive Schedule 14A filed with the Commission on May 26, 1999).
 - 10.32 Agreement, dated as of June 11, 1999, between the Company and Ford Motor Company (incorporated by reference to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 1999).
 - 27.1 Financial Data Schedule (filed herewith).
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- * This document has been identified as a management contract or compensatory plan or arrangement.
- 'D' Portions of these exhibits have been omitted pursuant to Applications for Confidential treatment filed by the Company with the Securities and Exchange Commission.

STATEMENT OF DIFFERENCES

The dagger symbol shall be expressed as.....'D'

CD RADIO INC.

CERTIFICATE OF DESIGNATIONS, PREFERENCES AND
RELATIVE, PARTICIPATING, OPTIONAL AND OTHER SPECIAL RIGHTS OF
9.2% SERIES B JUNIOR CUMULATIVE CONVERTIBLE PREFERRED STOCK

PURSUANT TO SECTION 151(g) OF THE
GENERAL CORPORATION LAW OF THE STATE OF DELAWARE

CD Radio Inc. (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware, does hereby certify that pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of the Corporation (the "Board of Directors"), in a duly convened meeting thereof on November 11, 1998, adopted the following resolution, which resolution remains in full force and effect as of the date hereof:

WHEREAS, the Board of Directors is authorized, within the limitations and restrictions stated in the Certificate of Incorporation of the Corporation, to fix by resolution or resolutions the designation of each series of Preferred Stock of the Corporation (the "Preferred Stock") and the powers, preferences and relative, participating, optional or other special rights and the qualifications, limitations or restrictions thereof, including, without limiting the generality of the foregoing, such provisions as may be desired concerning voting, redemption, dividends, dissolution or distribution of assets, conversion or exchange, and such other subjects or matters as may be fixed by resolutions of the Board of Directors under the General Corporation Law of the State of Delaware; and

WHEREAS, it is the desire of the Board of Directors of the Corporation, pursuant to its authority as aforesaid, to authorize and fix the terms of a series of Preferred Stock and the number of shares constituting such series;

NOW, THEREFORE, BE IT RESOLVED, that there is hereby authorized such series of Preferred Stock on the terms and with the provisions herein set forth:

1. Number of Shares; Designation. A total of 2,100,000 shares of Preferred Stock of the Corporation are hereby designated as 9.2% Series B Junior Cumulative Convertible Preferred Stock (the "Series B Preferred Stock").

2

2. Rank. The Series B Preferred Stock shall, with respect to payment of dividends, redemption payments and rights upon liquidation, dissolution or winding up of the affairs of the Corporation, (x) rank senior and prior to the Common Stock, par value \$.001 per share, of the Corporation (the "Common Stock") and any other class or series of capital stock of the Corporation that by its terms ranks junior to the Series B Preferred Stock as to payment of dividends, redemption payments and rights upon liquidation, dissolution or winding up of the affairs of the Corporation, (y) rank on a parity with the Corporation's 9.2% Series A Junior Cumulative Convertible Preferred Stock (the "Series A Preferred Stock") and all Parity Dividend Stock (as defined in Section 3(a)) and all Parity Liquidation Stock (as defined in Section 5(b)), and (z) rank junior to the Corporation's 10 1/2% Series C Convertible Preferred Stock ("Series C Preferred Stock") and all Senior Dividend Stock (as defined in Section 3(c)), all Senior Liquidation Stock (as defined in Section 5(b)) and to any class or series of capital stock of the Corporation (other than the Common Stock), whether currently issued or issued in the future, that does not by its terms expressly provide that it ranks on a parity with or junior to the Series B Preferred Stock as to dividends and rights upon liquidation, dissolution or winding-up of the Corporation (which shall include, for purposes of the foregoing, any entity with which the Corporation may be merged or consolidated or to which all or substantially all the assets of the Corporation may be transferred or which transfers all or substantially all of its assets to the Corporation).

3. Dividends. (a) (1) The holders of the issued and outstanding shares of the Series B Preferred Stock shall be entitled to receive, as and when declared by the Board of Directors, out of funds legally available therefor in the case of dividends paid in cash, cumulative dividends at the annual rate per share of 9.2% of the sum of (x) the Liquidation Preference (defined in Section 5

hereof) and (y) all unpaid dividends, if any, whether or not declared, from the date of issuance of the shares of Series B Preferred Stock (the "Closing Date") to the applicable dividend payment date. Dividends on shares of Series B Preferred Stock shall be payable annually initially on November 15, 1999 and each November 15 thereafter (each, a "Dividend Payment Date"), except that if any Dividend Payment Date is not a business day then the Dividend Payment Date shall be on the first immediately succeeding business day (as used herein, the term "business day" shall mean any day except a Saturday, Sunday or day on which banking institutions are legally authorized to close in The City of New York).

(2) If any Dividend payable on any Dividend Payment Date is not declared or paid on such Dividend Payment Date, as provided in Section 3(a)(1), in full in cash or in additional shares of Series B Preferred Stock, then the amount of such unpaid dividend ("Default Dividends") shall be accumulated. Any Default Dividends shall, from the Dividend Payment Date on which such dividends accrued, accrue dividends until paid, compounded annually, at a rate equal to 15% per annum. Default Dividends shall be payable in shares of Series B Preferred Stock, but not in cash.

3

(3) Dividends on the Series B Preferred Stock may be paid, in the sole discretion of the Board of Directors, either in (i) cash, (ii) shares of Series B Preferred Stock or (iii) any combination of cash or shares of Series B Preferred Stock, and the issuance of the requisite number of such shares of Series B Preferred Stock (such number determined as provided in the next sentence) pursuant to (ii) or (iii) shall constitute full payment of any such dividend. Series B Preferred Stock issued to pay dividends shall be valued at their Liquidation Preference. All dividend payments paid with respect to shares of Series B Preferred Stock shall be paid pro rata to the holders entitled thereto. All shares of Series B Preferred Stock issued as a dividend with respect to shares of Series B Preferred Stock shall thereupon be duly authorized, validly issued, fully paid and non-assessable. In no event shall an election by the Board of Directors to pay dividends, in full or in part, in cash or in shares of Series B Preferred Stock in lieu of payment, in full or in part, in cash preclude the Board of Directors from electing any such alternative in respect of all or any portion of any subsequent dividend. The Corporation shall not issue fractional shares of Series B Preferred Stock upon payment of any dividends in shares of Series B Preferred Stock and any amount of fractional shares of Series B Preferred Stock otherwise issuable upon the payment of any dividend in shares of Series B Preferred Stock shall be paid in cash.

(4) Dividends to be paid on a Dividend Payment Date shall be paid to the holders of record of shares of the Series B Preferred Stock as they appear on the stock register of the Corporation at the close of business on such record dates (each, a "Dividend Payment Record Date"), which shall be not more than 40 days nor fewer than 10 days preceding each Dividend Payment Date thereof, as shall be fixed by the Board of Directors of the Corporation. Default Dividends shall be declared and paid at any time as of which funds legally available therefor are available to the Corporation, without reference to any regular Dividend Payment Date, to the holders of record on such date, not exceeding 40 days nor fewer than 10 days preceding the date on which dividends in arrears will be paid, as may be fixed by the Board of Directors of the Corporation. Holders of shares of the Series B Preferred Stock shall be entitled to receive dividends in preference to and in priority over dividends upon the Common Stock and any other series or class of the Corporation's capital stock that ranks junior as to dividends to the Series B Preferred Stock ("Junior Dividend Stock") and shall be on a parity as to dividends with the Series A Preferred Stock and any series or class of the Corporation's capital stock that does not rank senior or junior as to dividends with the Series B Preferred Stock (together with the Series A Preferred Stock, "Parity Dividend Stock"). The holders of shares of the Series B Preferred Stock shall not be entitled to any dividends in excess of full cumulative dividends (including Default Dividends), as herein provided.

(b) No dividends, other than dividends payable solely in Common Stock, Junior Dividend Stock, or warrants or other rights to acquire such Common Stock or Junior Dividend Stock, shall be paid or declared and set apart for payment on, and no purchase, redemption or other acquisition shall be made by the Corporation or entity directly or

4

indirectly controlled by the Corporation of, any Common Stock or Junior Dividend Stock unless and until (i) all accrued and unpaid dividends on the Series B

Preferred Stock shall have been paid and (ii) proper provision shall have been made such that holders of shares of Series B Preferred Stock are offered the opportunity to elect (each, a "Payout Election"), in lieu of the Conversion Price adjustment referred to in Section 6(f) (ii), Section 6(f) (iii) or Section 6(f) (iv), as the case may be, to participate in such dividend, purchase, redemption or other acquisition pro rata with the holders of Common Stock or Junior Dividend Stock, as the case may be, as if each share of Series B Preferred Stock had been converted as of the record date for such dividend or immediately prior to such purchase, redemption or other acquisition, as the case may be, at the Conversion Price then in effect (without any requirement that any such shares of Series B Preferred Stock actually be so converted). Each Payout Election shall be made upon the affirmative vote or consent of holders of a majority of the total number of shares of Series B Preferred Stock then outstanding and shall be effective as to and binding upon all such shares. So long as a sufficient amount of cash, assets, evidences of indebtedness or securities are set aside for payment to the holders of Series B Preferred Stock as of the payment date for such dividend or the date for such purchase, redemption or acquisition, payment need not be made to the holders of Series B Preferred Stock on such date but may be made at any time up to the tenth Business Day following such date.

(c) If at any time the Corporation issues any class or series of capital stock ranking senior and prior to the Series B Preferred Stock with respect to the payment of dividends ("Senior Dividend Stock") and fails to pay or declare and set apart for payment accrued and unpaid dividends on such Senior Dividend Stock, in whole or in part, then (except to the extent allowed by the terms of the Senior Dividend Stock) no dividend paid in cash shall be paid or declared and set apart for payment on the Series B Preferred Stock unless and until all accrued and unpaid dividends with respect to the Senior Dividend Stock shall have been paid or declared and set apart for payment, without interest. Except as provided in Section 3(d) below, no dividends paid in cash shall be paid or declared and set apart for payment on any Parity Dividend Stock for any period unless the Corporation has paid or declared and set apart for payment, or contemporaneously pays or declares and sets apart for payment, on the Series B Preferred Stock all accrued and unpaid dividends for all dividend payment periods terminating on or prior to the date of payment of such dividends. Except as provided in Section 3(d) below, no dividends paid in cash shall be paid or declared and set apart for payment on the Series B Preferred Stock for any period unless the Corporation has paid or declared and set apart for payment, or contemporaneously pays or declares and sets apart for such payment, on any Parity Dividend Stock all accrued and unpaid dividends for all dividend payment periods terminating on or prior to the date of payment of such dividends.

5

(d) If at any time the Corporation has failed to pay accrued dividends on any shares of Series B Preferred Stock on any Dividend Payment Date or any Parity Dividend Stock on a stated payment date, as the case may be, the Corporation shall not:

(i) purchase any shares of the Series B Preferred Stock or Parity Dividend Stock (except for a consideration payable in Common Stock or Junior Dividend Stock) or redeem fewer than all of the shares of the Series B Preferred Stock and Parity Dividend Stock then outstanding except for (x) the repurchase or redemption of shares of the Series B Preferred Stock made pro rata among the holders of the shares of the Series B Preferred Stock then outstanding and (y) the repurchase or redemption made pro rata with respect to all shares of the Series B Preferred Stock and Parity Dividend Stock then outstanding so that the amounts repurchased or redeemed shall in all cases bear to each other the same ratio that, at the time of the repurchase or redemption, the required redemption payments on the shares of the Series B Preferred Stock and the other Parity Dividend Stock then outstanding, respectively, bear to each other, or

(ii) permit any corporation or other entity directly or indirectly controlled by the Corporation to purchase any Common Stock, Junior Dividend Stock, shares of the Series B Preferred Stock or Parity Dividend Stock, except to the same extent that the Corporation could purchase such shares.

Unless and until all dividends unpaid in respect of prior dividend payment periods on shares of the Series B Preferred Stock and any Parity Dividend Stock at the time outstanding have been paid in full or a sum sufficient for such payment is declared and set apart, as provided in the paragraph (c), all dividends accrued by the Corporation upon shares of the Series B Preferred Stock or Parity Dividend Stock shall be declared pro rata with respect to all shares of the Series B Preferred Stock and Parity Dividend

Stock then outstanding, so that the amounts of any dividends declared on shares of the Series B Preferred Stock and on the Parity Dividend Stock shall in all cases bear to each other the same ratio that, at the time of the declaration, all unpaid dividends in respect of prior dividend payment periods on shares of the Series B Preferred Stock and the other Parity Dividend Stock, respectively, bear to each other.

4. Redemption. (a)(1) Optional Redemption. Except as provided in subsection (a)(2) of this Section 4 or in Section 9, shares of the Series B Preferred Stock shall not be redeemable prior to November 15, 2003. From and after November 15, 2003, subject to the restrictions in Section 3 above, the Corporation may redeem shares of Series B Preferred Stock, in whole or in part, at the option of the Corporation, to the extent it has funds legally

6

available therefor at a redemption price of 100% of the Liquidation Preference thereof plus accrued and unpaid dividends, if any, whether or not declared, to the date of redemption.

(2) Special Redemption From and after November 15, 2001 and prior to November 15, 2003, the Corporation, at its option, may redeem shares of Series B Preferred Stock, in whole or in part, in the sole discretion of the Board of Directors, to the extent it has funds legally available therefor, at the redemption price of 100% of the Liquidation Preference thereof, plus an amount equal to the dividends unpaid thereon, if any, whether or not declared, to the redemption date, if the Current Market Price of the Common Stock on the date of the notice of redemption (described below) equals or exceeds \$60.00 per share. As used herein, the "Current Market Price" for a given date shall mean the average Closing Price of the Common Stock as reported in The Wall Street Journal or, at the election of the Corporation, other reputable financial news source, for the 20 consecutive trading days immediately preceding such date. The \$60.00 per share benchmark shall be subject to adjustment upon the occurrence of certain events in the same manner as the Conversion Price (defined herein) shall be subject to adjustment as set forth in Section 6(f) hereof. For purposes of this paragraph, the Current Market Price shall be deemed to be less than \$60 per share at any time during which the Common Stock is not listed, quoted or admitted to trading on either the New York Stock Exchange, Inc. (the "NYSE"), the American Stock Exchange ("AMEX") or The Nasdaq Stock Market, Inc.'s National Market ("Nasdaq"). As used herein, the "Closing Price" of any security on any day means the last reported sale price regular way on such day or, in the case no such sale takes place on such day, the average of the reported closing bid and asked prices regular way of the Common Stock, in each case on the NYSE or, if not listed or admitted to trading on such exchange, as quoted on AMEX or Nasdaq.

(3) Mandatory Redemption. On November 15, 2011, the Corporation shall redeem all outstanding shares of Series A Preferred Stock, to the extent it has funds legally available therefor, at the redemption price of 100% of the Liquidation Preference thereof, plus an amount equal to the dividends unpaid thereon, if any, whether or not declared, to the redemption date.

(4) Payment of Redemption Price. (a) The amount of the redemption price on any shares of Series B Preferred Stock redeemed, on any redemption set forth herein, that is allocable to the Liquidation Preference thereon shall be paid in cash (to the extent funds are legally available therefor) and any unpaid dividends to be paid on the shares of Series B Preferred Stock redeemed on such redemption date may be paid in cash (to the extent funds are legally available therefor) or shares of Series B Preferred Stock, or any combination thereof, in the sole discretion of the Board of Directors as provided in Section 3(a)(3) hereof.

7

(b) Not less than 15 days nor more than 45 days (such date as fixed by the Board of Directors of the Corporation is referred to herein as the "Redemption Record Date") prior to the date fixed for any redemption of shares of the Series B Preferred Stock pursuant to this Section 4, a notice specifying the time and place of the redemption and the number of shares to be redeemed shall be given by first class mail, postage prepaid, to the holders of record on the Redemption Record Date of the shares of the Series B Preferred Stock to be redeemed at their respective addresses as the same shall appear on the books of the Corporation, calling upon each holder of record to surrender to the Corporation on the redemption date at the place designated in the notice such

holder's certificate or certificates representing the number of shares specified in the notice of redemption. Neither failure to mail such notice, nor any defect therein or in the mailing thereof, to any particular holder shall affect the sufficiency of the notice or the validity of the proceedings for redemption with respect to the other holders. Any notice mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the holder receives the notice. On or after the redemption date, each holder of shares of Series B Preferred Stock to be redeemed shall present and surrender such holder's certificate or certificates for such shares to the Corporation at the place designated in the redemption notice and thereupon the redemption price of the shares, and any unpaid dividends thereon to the redemption date, shall be paid to or on the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled. In case fewer than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) If a notice of redemption has been given pursuant to this Section 4 and if, on or before the redemption date, the funds (or shares of Series B Preferred Stock if any dividends are to be paid in shares of Series B Preferred Stock), necessary for such redemption (including all dividends on the shares of Series B Preferred Stock to be redeemed that will accrue to the redemption date) shall have been set aside by the Corporation, separate and apart from its other funds (or reserved and authorized for issuance if any dividends are to be paid in shares of Series B Preferred Stock), in trust for the pro rata benefit of the holders of the shares of Series B Preferred Stock so called for redemption, then, notwithstanding that any certificates for such shares of Series B Preferred Stock have not been surrendered for cancellation, on the redemption date dividends shall cease to accrue on the shares of the Series B Preferred Stock to be redeemed, and at the close of business on the date on which such funds have been segregated and set aside by the Corporation as provided in this Section 4(c), the holders of such shares shall cease to be stockholders with respect to those shares, shall have no interest in or claims against the Corporation by virtue thereof and shall have no voting or other rights with respect thereto, except the conversion rights provided in subsection (d) of this Section 4 and Section 6 below and the right to receive the moneys payable (or shares of Series B Preferred Stock issued if any dividends are to be paid in shares of Series B Preferred Stock) upon such redemption, without interest thereon, upon surrender (and endorsement, if required by the Corporation) of their

8

certificates, and the shares of Series B Preferred Stock evidenced thereby shall no longer be outstanding. Subject to applicable escheat laws, any moneys so set aside (or shares of Series B Preferred Stock authorized and reserved if any dividends are to be paid in shares of Series B Preferred Stock) by the Corporation and unclaimed at the end of two years from the redemption date shall revert to the general funds of the Corporation (or be released from the reservation thereof in the case of shares of Series B Preferred Stock), after which reversion the holders of such shares so called for redemption shall look only to the general funds of the Corporation for the payment of the redemption price, without interest. Any interest accrued on funds so deposited shall belong to the Corporation and be paid thereto from time to time.

(d) If a notice of redemption has been given pursuant to this Section 4 and any holder of shares of Series B Preferred Stock shall, prior to the close of business on the business day immediately preceding the redemption date, give written notice to the Corporation pursuant to Section 6 below of the conversion of any or all of the shares to be redeemed held by the holder (accompanied by a certificate or certificates for such shares, duly endorsed or assigned to the Corporation, and any necessary transfer tax payment, as required by Section 6 below), then such redemption shall not become effective as to such shares to be converted and such conversion shall become effective as provided in Section 6 below, whereupon any funds deposited by the Corporation for the redemption of such shares shall (subject to any right of the holder of such shares to receive the dividend payable thereon as provided in Section 6 below) immediately upon such conversion be returned to the Corporation or, if then held in trust by the Corporation, shall automatically and without further corporate action or notice be discharged from the trust.

(e) In every case of redemption of fewer than all of the outstanding shares of the Series B Preferred Stock pursuant to this Section 4, the shares to be redeemed shall be selected pro rata, provided that only whole shares shall be selected for redemption.

5. Liquidation. (a) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, the holders of the Series B Preferred Stock shall be entitled to receive \$100.00 per share (the "Liquidation Preference"), plus an amount equal to the accrued and

unpaid dividends thereon, if any, whether or not declared, to the payment date.

(b) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, the holders of shares of Series B Preferred Stock (i) shall not be entitled to receive the Liquidation Preference of the shares held by them until payment in full or provision has been made for the payment of all claims of creditors of the Corporation and the liquidation preference of any class or series of capital stock ranking senior to the Series B Preferred Stock with respect to redemption rights and rights upon liquidation, dissolution or winding up of the affairs of the Corporation ("Senior Liquidation Stock" and together with the Senior Dividend Stock, the "Senior Stock"), plus accrued and unpaid

9

dividends thereon, if any, whether or not declared, to the payment date, shall have been paid in full and (ii) shall be entitled to receive the Liquidation Preference of such shares held by them, plus accrued and unpaid dividends thereon, if any, whether or not declared, to the payment date, in preference to and in priority over any distributions upon the Common Stock and any other series or class of the Corporation's capital stock that ranks junior to the Series B Preferred Stock as to redemption rights and rights upon liquidation, dissolution or winding up of the affairs of the Corporation ("Junior Liquidation Stock" and together with the Junior Dividend Stock, the "Junior Stock"). Upon payment in full of the Liquidation Preference to which the holders of shares of the Series B Preferred Stock are entitled, the holders of shares of the Series B Preferred Stock shall not be entitled to any further participation in any distribution of assets by the Corporation. Subject to clause (i) above, if the assets of the Corporation are not sufficient to pay in full the Liquidation Preference payable to the holders of shares of the Series B Preferred Stock and the liquidation preference payable to the holders of any series or class of the Corporation's capital stock, outstanding on the date hereof or hereafter issued, that ranks on a parity with the Series B Preferred Stock as to redemption rights and rights upon liquidation, dissolution or winding up of the affairs of the Corporation ("Parity Liquidation Stock" and together with the Parity Dividend Stock, the "Parity Stock"), the holders of all such shares shall share ratably in proportion to the full respective preferential amounts payable on such shares in any distribution.

(c) For the purposes of this Section 5, neither the sale of all or substantially all of the assets of the Corporation nor the consolidation or merger of the Corporation with or into any other entity shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, unless such sale, consolidation or merger shall be in connection with a plan of liquidation, dissolution or winding up of the Corporation.

6. Optional Conversion. (a) Holders of shares of Series B Preferred Stock may, at any time, convert shares of Series B Preferred Stock, unless previously redeemed, into a number of shares of Common Stock calculated by dividing the Liquidation Preference (without unpaid dividends) by \$30.00, subject to adjustment as described below in Section 6(f) (the "Conversion Price"). If more than one share of Series B Preferred Stock shall be surrendered for conversion at one time by the same record holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series B Preferred Stock so surrendered. In the case of shares of Series B Preferred Stock called for redemption, conversion rights shall expire at the close of business on the business day immediately preceding the redemption date. The holders of shares of Series B Preferred Stock that convert such shares into shares of Common Stock shall be entitled to receive any unpaid dividends thereon, if any, whether or not declared, and such dividends shall be payable in cash or shares of Common Stock, or any combination thereof, in the sole discretion of the Board of Directors.

10

(b) Any holder of shares of Series B Preferred Stock electing to convert the shares or any portion thereof in accordance with Section 6(a) above shall give written notice to the Corporation (which notice may be given by facsimile transmission) that such holder elects to convert the same and shall state therein the number of shares of Series B Preferred Stock to be converted and the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. Promptly thereafter, the holder shall surrender the certificate or certificates of shares of Series B Preferred Stock to be converted, duly endorsed, at the office of the Corporation or any transfer agent for such shares, or at such other place designated by the

Corporation, provided that the Corporation shall at all times maintain an office or agency in The City of New York for such purposes. The Corporation shall, immediately upon receipt of such notice, issue and deliver to or upon the order of such holder, against delivery of the certificates representing the shares of Series B Preferred Stock that have been converted, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled (in the number(s) and denomination(s) designated by such holder), and the Corporation shall deliver to such holder a certificate or certificates for the number of shares of Series B Preferred Stock that such holder has not elected to convert. The conversion right with respect to any shares of Series B Preferred Stock shall be deemed to have been exercised at the date upon which the certificates therefor (and the payment required by Section 6(d), if applicable), shall have been so delivered, and the person or persons entitled to receive the Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Stock upon that date.

(c) No fractional shares of Common Stock shall be issued upon conversion of shares of Series B Preferred Stock. Instead of any fractional share of Common Stock otherwise issuable upon conversion of any shares of Series B Preferred Stock, the Corporation shall pay a cash adjustment in respect of such fraction in an amount equal to the same fraction of the Closing Price of the Common Stock at the close of business on the day of conversion. In the absence of a Closing Price, the Board of Directors shall in good faith determine the current market price on such basis as it reasonably considers appropriate and such current market price shall be used to calculate the cash adjustment; provided that in no case shall the Closing Price be less than the Conversion Price then in effect.

(d) If a holder converts shares of Series B Preferred Stock, the Corporation shall pay any documentary, stamp or similar issue or transfer tax due on the issue of Common Stock upon the conversion or due upon the issuance of a new certificate or certificates for any shares of Series B Preferred Stock not converted. The holder, however, shall pay any such tax that is due because any such shares of the Common Stock or of the Series B Preferred Stock are issued in a name other than the name of the holder.

(e) The Corporation shall reserve out of its authorized but unissued Common Stock held in treasury enough shares of Common Stock to permit the conversion of

11

all of the then-outstanding shares of Series B Preferred Stock. For the purposes of this Section 6(e), the full number of shares of Common Stock then issuable upon the conversion of all then-outstanding shares of Series B Preferred Stock shall be computed as if at the time of computation all outstanding shares of Series B Preferred Stock were held by a single holder. The Corporation shall from time to time, in accordance with the laws of the State of Delaware and its certificate of incorporation, increase the authorized amount of its Common Stock if at any time the authorized amount of its Common Stock remaining unissued shall not be sufficient to permit the conversion of all shares of Series B Preferred Stock at the time outstanding. All shares of Common Stock issued upon conversion of the shares of Series B Preferred Stock shall be validly issued, fully paid and nonassessable.

(f) The Conversion Price shall be subject to adjustment as follows:

(i) In case the Corporation shall (A) pay a dividend on any class of its capital stock in shares of its Common Stock, (B) subdivide its outstanding shares of Common Stock into a greater number of shares or (C) combine its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior thereto shall be adjusted (as provided below) so that the holders of any shares of Series B Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock which such holder would have owned or have been entitled to receive immediately following such action had such shares of Series B Preferred Stock been converted immediately prior to such time. The Conversion Price as adjusted shall be determined by multiplying the Conversion Price at which the shares of Series B Preferred Stock were theretofore convertible by a fraction of which the denominator shall be the number of shares of Common Stock outstanding immediately following such action and of which the numerator shall be the number of shares of Common Stock outstanding immediately prior thereto. Such adjustment shall be made whenever any event listed above shall occur and shall become effective retroactively immediately after the record date in

the case of a dividend and immediately after the effective date in the case of a subdivision or combination.

(ii) In case the Corporation shall issue rights or warrants to any Person (including holders of its Common Stock) entitling such Person or Persons to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price per share of Common Stock at the record date therefor, or in case the Corporation shall issue to any Person (including holders of its Common Stock) other securities convertible into or exchangeable for Common Stock for a consideration per share of Common Stock deliverable upon conversion or exchange thereof less than the Current

12

Market Price at the record date therefore, then the Conversion Price in effect immediately prior thereto shall be adjusted as provided below so that the Conversion Price therefor shall be equal to the price determined by multiplying (A) the Conversion Price at which shares of Series B Preferred Stock were theretofore convertible by (B) a fraction of which (x) the denominator shall be the sum of (1) the number of shares of Common Stock outstanding on the date of issuance of the convertible or exchangeable securities, rights or warrants and (2) the number of additional shares of Common Stock offered for subscription or purchase, or issuable upon such conversion or exchange, and (y) the numerator shall be the sum of (1) the number of shares of Common Stock outstanding on the date of issuance of such convertible or exchangeable securities, rights or warrants and (2) the number of additional shares of Common Stock which the aggregate offering price of the number of shares of Common Stock so offered would purchase at the Current Market Price per share of Common Stock. Such adjustment shall be made whenever such convertible or exchangeable securities, rights or warrants are issued, and shall become effective immediately after the record date for the determination of stockholders entitled to receive such securities. However, upon the expiration of any right or warrant to purchase Common Stock, the issuance of which resulted in an adjustment in the Conversion Price pursuant to this Section 6(f) (ii), if any such right or warrant shall expire and shall not have been exercised, the Conversion Price shall be recomputed immediately upon such expiration and effective immediately upon such expiration shall be increased to the price it would have been (but reflecting any other adjustments to the Conversion Price made pursuant to the provisions of this Section 6(f) after the issuance of such rights or warrants) had the adjustment of the Conversion Price made upon the issuance of such rights or warrants been made on the basis of offering for subscription or purchase only that number of shares of Common Stock actually purchased upon the exercise of such rights or warrants. No further adjustment shall be made upon exercise of any right, warrant, convertible security or exchangeable security if any adjustment shall have been made upon issuance of such security. The foregoing notwithstanding, no adjustment shall be made pursuant to this subparagraph (ii) with respect to any particular dividend or other event with respect to which a Payout Election is made.

(iii) In case the Corporation shall pay a dividend to all holders of its Common Stock (including any dividend paid in connection with a consolidation or merger in which the Corporation is the continuing corporation) of any shares of capital stock of the Corporation or its subsidiaries (other than Common Stock) or evidences of its indebtedness or assets or cash (excluding dividends or distributions in connection with the liquidation, dissolution or

13

winding up of the Corporation) or rights or warrants to subscribe for or purchase any of its securities or those of its subsidiaries or securities convertible or exchangeable for Common Stock (excluding those securities referred to in

Section 6(f) (ii) above), then in each such case the Conversion Price in effect immediately prior thereto shall be adjusted as provided below so that the Conversion Price thereafter shall be equal to the price determined by multiplying (A) the Conversion Price in effect on the record date mentioned below by (B) a fraction, the numerator of which shall be the Current Market Price per share of Common Stock on the record date mentioned below less the then fair market value (as determined by the Board of Directors, whose good faith determination shall be conclusive) as of such record date of the cash, assets, evidences of indebtedness or securities so paid with respect to one share of Common Stock, and the denominator of which shall be the Current Market Price per share of Common Stock on such record date; provided, however, that in the event the then fair market value (as so determined) so paid with respect to one share of Common Stock is equal to or greater than the Current Market Price per share of Common Stock on the record date mentioned above, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of shares of the Series B Preferred Stock shall have the right to receive the amount and kind of assets, evidences of indebtedness, or securities such holder would have received had such holder converted each such share of Series B Preferred Stock immediately prior to the record date for such dividend. Such adjustment shall be made whenever any such payment is made, and shall become effective retroactively immediately after the record date for the determination of stockholders entitled to receive the payment. The foregoing notwithstanding, no adjustment shall be made pursuant to this subparagraph (iii) with respect to any particular dividend or other event with respect to which a Payout Election is made.

(iv) In case the Corporation shall purchase, redeem or otherwise acquire any shares of Common Stock at a price per share greater than the Current Market Price per share of Common Stock on the date of such event, or in case the Corporation shall purchase, redeem or otherwise acquire other securities convertible into or exchangeable for Common Stock (other than the Series C Preferred Stock) for a consideration per share of Common Stock into which such security is convertible or exchangeable greater than the per share Current Market Price on the date of such event, then the Conversion Price in effect immediately prior thereto shall be adjusted as provided below so that the Conversion Price therefor shall be equal to the price determined by multiplying (A) the Conversion Price at which shares of Series A Preferred Stock were theretofore convertible by (B) a fraction of which (x) the denominator shall be the Current Market Price per share on the date of such event, and (y) the

14

numerator shall be the Current Market Price per share on the date of such event less the difference between (1) the consideration paid by the Corporation per share of Common Stock (or, in the case of securities convertible into or exchangeable for Common Stock, the consideration per share of Common Stock into which such security is convertible or exchangeable) purchased, redeemed or acquired in such event and (2) the Current Market Price per share on the date of such event. Such adjustment shall be made whenever such Common Stock is issued or sold, and shall become effective immediately after the issuance or sale of such securities. The foregoing notwithstanding, no adjustment shall be made pursuant to this subparagraph (iv) with respect to any particular purchase, redemption or acquisition with respect to which a Payout Election is made.

(v) In case the Corporation shall issue or sell any shares of Common Stock at a price per share more than 15% below (or, in the case of any issuance or sale to an affiliate (as defined in the rules of the Securities and Exchange Commission promulgated under the Securities Exchange Act of 1934, as amended) of the Corporation, any amount below) the Current Market Price per share of Common Stock on the date the Corporation commits or agrees to such sale or issuance, then the Conversion Price in effect immediately prior thereto shall be adjusted as provided below so that the Conversion Price therefor shall be equal to the price determined by multiplying (A) the Conversion Price at which shares of Series A Preferred

Stock were theretofore convertible by (B) a fraction of which (x) the denominator shall be the sum of (1) the number of shares of Common Stock outstanding on the date of issuance or sale of such shares of Common Stock and (2) the number of additional shares of Common Stock offered for sale or subject to issuance, and (y) the numerator shall be the sum of (1) the number of shares of Common Stock outstanding on the date of issuance or sale of such shares of Common Stock and (2) the number of additional shares of Common Stock which the aggregate offering price of the number of shares of Common Stock so offered or issued would purchase at the Current Market Price per share of Common Stock. Such adjustment shall be made whenever such Common Stock is issued or sold, and shall become effective immediately after the issuance or sale of such securities; provided, however, that the provisions of this subparagraph shall not apply to (1) shares of Common Stock issued upon conversion of shares of Series A Preferred Stock or Series B Preferred Stock, or (2) shares of Common Stock issued upon conversion, exercise or exchange of any security with respect to which an adjustment to the Conversion Price was made in accordance with clause (ii) above at the time of issuance of such security, or (3) shares of Common Stock issued in a bona fide public offering to or through a nationally recognized investment banking firm in which affiliates (as

15

defined in the rules of the Securities and Exchange Commission promulgated under the Securities Exchange Act of 1934, as amended) of the Corporation purchase less than 25% of the shares in such offering.

(vi) No adjustment in the Conversion Price shall be required unless the adjustment would require an increase or decrease of at least 1% in the Conversion Price then in effect; provided, however, that any adjustments that by reason of this Section 6(f)(vi) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 6(f) shall be made to the nearest cent.

(vii) In the event that, at any time as a result of an adjustment made pursuant to Section 6(f)(i) through 6(f)(vi) above, the holder of any share of Series B Preferred Stock thereafter surrendered for conversion shall become entitled to receive any shares of the Corporation other than shares of the Common Stock, thereafter the number of such other shares so receivable upon conversion of any share of Series B Preferred Stock shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Common Stock contained in Section 6(f)(i) through 6(f)(vi) above, and the other provisions of this Section 6 with respect to the Common Stock shall apply on like terms to any such other shares.

(viii) Whenever the Conversion Price is adjusted, as herein provided, the Corporation shall promptly file with the transfer agent for the Series B Preferred Stock, or, if there is no transfer agent, the Corporation shall promptly send to each holder of record by first class mail, postage pre-paid, a certificate of an officer of the Corporation setting forth the Conversion Price after the adjustment and setting forth a brief statement of the facts requiring such adjustment and a computation thereof. The certificate shall be conclusive evidence of the correctness of the adjustment. The Corporation shall promptly cause a notice of the adjusted Conversion Price to be mailed to each registered holder of shares of Series B Preferred Stock.

(ix) In case of any reclassification of the Common Stock, any consolidation of the Corporation with, or merger of the Corporation into, any other entity, any merger of another entity into the Corporation (other than a merger that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Corporation), any sale or transfer of all or substantially all of the assets of the Corporation or any compulsory share exchange pursuant to which share exchange the Common Stock is converted into other securities, cash or other property, then

lawful provision shall be made as part of the terms of such transaction whereby the holder of each share of Series B Preferred Stock then outstanding shall have the right thereafter, during the period such share of Series B Preferred Stock shall be convertible, to convert such share only into the kind and amount of securities, cash and other property receivable upon the reclassification, consolidation, merger, sale, transfer or share exchange by a holder of the number of shares of Common Stock of the Corporation into which a share of Series B Preferred Stock would have been convertible immediately prior to the reclassification, consolidation, merger, sale, transfer or share exchange. The Corporation, the person formed by the consolidation or resulting from the merger or which acquires such assets or which acquires the Corporation's shares, as the case may be, shall make provisions in its certificate or articles of incorporation or other constituent document to establish such rights and such rights shall be clearly provided for in the definitive transaction documents relating to such transaction. The certificate or articles of incorporation or other constituent document shall provide for adjustments, which, for events subsequent to the effective date of the certificate or articles of incorporation or other constituent document, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 6. The provisions of this Section 6(f)(ix) shall similarly apply to successive reclassifications, consolidations, mergers, sales, transfers or share exchanges.

(g) The Corporation from time to time may reduce the Conversion Price by any amount for any period of time if the period is at least 20 days and if the reduction is irrevocable during the period. Whenever the Conversion Price is so reduced, the Corporation shall mail to holders of record of the Series B Preferred Stock a notice of the reduction at least 15 days before the date the reduced Conversion Price takes effect, stating the reduced Conversion Price and the period it will be in effect. A voluntary reduction of the Conversion Price does not change or adjust the Conversion Price otherwise in effect for purposes of paragraph 6(f) above.

7. Status of Shares. All shares of the Series B Preferred Stock that are at any time redeemed pursuant to Section 4 above or converted or exchanged pursuant to Section 6 above and all shares of the Series B Preferred Stock that are otherwise reacquired by the Corporation and subsequently canceled by the Board of Directors of the Corporation shall have the status of authorized but unissued shares of Preferred Stock, without designation as to series, subject to reissuance by the Board of Directors of the Corporation as shares of any one or more other series.

8. Voting Rights. Except as set forth below or otherwise required by law, holders of shares of the Series B Preferred Stock shall have no voting rights.

(a) So long as any shares of the Series B Preferred Stock are outstanding, each share of Series B Preferred Stock shall entitle the holder thereof to notice of and to vote, in person or by proxy, at any special or annual meeting of stockholders, on all matters entitled to be voted on by holders of Common Stock and any other series or class of Voting Stock voting together as a single class with all other shares entitled to vote thereon. With respect to any such vote, each share of Series B Preferred Stock shall entitle the holder thereof to cast that number of votes per share as is equal to the number of votes that such holder would be entitled to cast had such holder converted its shares of Series B Preferred Stock into shares of Common Stock as of the record date for determining the stockholders of the Corporation eligible to vote on any such matters.

(b) So long as any shares of the Series B Preferred Stock are outstanding, in addition to any vote or consent of stockholders required by law or by the Corporation's Certificate of Incorporation, the affirmative vote or consent of the holders of at least a majority of the shares of Series B Preferred Stock at any time issued and outstanding, acting as a single class,

given in person or by proxy at any meeting called for such purpose, shall be necessary for effecting or validating

(i) any reclassification of the Series B Preferred Stock or any amendment, alteration or repeal (including as a result of a merger or consolidation involving the Corporation or otherwise by operation of law) of any of the provisions of the Certificate of Incorporation or By-laws of the Corporation which adversely affects the voting powers, rights or preferences of the holders of the shares of Series B Preferred Stock; provided that the consent of the holders of at least a majority of the shares of Series B Preferred Stock and Series A Preferred Stock at the time issued and outstanding, acting as a single class, given in person or by proxy by vote at any meeting called for such purpose, shall be necessary for effecting or validating any reclassification or any amendment, alteration or repeal of any of the provisions of the Corporation's Certificate of Incorporation or By-laws of the Corporation which affects adversely the voting powers, rights or preferences of the holders of the shares of Series B Preferred Stock and Series A Preferred Stock; and provided, further, that any amendment of the provisions of the Corporation's Certificate of Incorporation so as to authorize or create, or to increase the authorized amount of, the Junior Stock shall not be deemed to affect adversely the voting powers, rights or preferences of the holders of shares of Series B Preferred Stock or Series A Preferred Stock;

(ii) the authorization or creation of, or the increase in the authorized amount of, or the issuance of any shares of any class or series of Senior Stock or any security convertible into shares of any class or series of Senior Stock;

(iii) the authorization or creation of, or the increase in the authorized amount of, or the issuance of any shares of any class or series of Parity Stock or any

18

security convertible into shares of any class or series of Parity Stock such that the aggregate liquidation preference of all outstanding shares of Parity Stock (other than (x) shares of Series B Preferred Stock or Series A Preferred Stock issued pursuant to the Stock Purchase Agreement, dated as of November 13, 1998, by and among Apollo Investment Fund IV, L.P., Apollo Overseas Partners IV, L.P. and the Corporation (the "Stock Purchase Agreement") and (y) any shares of Series B Preferred Stock or Series A Preferred Stock issued as a dividend in respect of shares referred to in clause (x) or in respect of shares referred to in this clause (y)) would exceed the sum of (1) \$135,000,000 and (2) the aggregate liquidation preference of the shares of Series B Preferred Stock issued at the Option Closing (as such term is defined in the Stock Purchase Agreement), if any;

(iv) the merger or consolidation of the Corporation with or into any other entity, unless the resulting corporation will thereafter have no class or series of shares and no other securities either authorized or outstanding ranking prior to, or on a parity with, shares of Series B Preferred Stock in the payment of dividends or the distribution of its assets on liquidation, dissolution or winding up; provided, however, that no such vote or consent of the holders of Series B Preferred Stock shall be required if prior to the time when such merger or consolidation is to take effect, and regardless of whether such merger or consolidation would constitute a Change of Control (as defined in Section 9), a Change of Control Offer (as defined in Section 9) is made for all shares of Series B Preferred Stock at the time outstanding in accordance with Section 9; and

(v) the application of any funds, property or assets of the Corporation or any of its subsidiaries to the purchase, redemption, sinking fund or other retirement of any shares of any class of Junior Stock, or the declaration, payment or making of any dividend or distribution (in cash, property or obligations) on any shares of any class of Junior Stock, other than a dividend or dividends payable solely in Common Stock or Junior Stock, unless the holders of Series B Preferred Stock

shall have been offered the opportunity to make a Payout Election with respect to such event.

In connection with any right to vote pursuant to Section 8(b), each holder of shares of Series B Preferred Stock shall have one vote for each share held. The above notwithstanding, and subject to Section 8(a), no consent of holders of Series B Preferred Stock or Series A Preferred Stock shall be required for the creation of any indebtedness of any kind of the Corporation.

(c) The term "Voting Stock" means any class or classes of capital stock, or securities convertible into or exchangeable for any class of capital stock, of the Corporation pursuant to which the holders thereof have the general power under ordinary circumstances

19

to vote with respect to the election of at least a majority of the Board of Directors of the Corporation, irrespective of whether or not, at the time, stock of any other class or classes shall have, or might have, voting power by reason of the happening of any contingency.

9. Change of Control. (a) In the event of a Change of Control (the date of such event being the "Change of Control Date"), the Corporation shall notify the holders of the Series B Preferred Stock in writing of such event promptly upon the Corporation becoming aware that a Change of Control is expected to occur or has occurred and shall, pursuant to Section 9(b), make an offer to purchase (the "Change of Control Offer") all of the then outstanding shares of Series B Preferred Stock at a purchase price of 101% of the Liquidation Preference thereof, payable in cash, plus any unpaid dividends thereon, if any, whether or not declared, to the date such shares are purchased, payable in cash.

(b) Subject to the provisions of Section 9(e), within 30 days following the Change of Control Date, the Corporation shall send, by first class mail, postage prepaid, a notice to each holder of Series B Preferred Stock at such holder's address as it appears on the stock books of the Corporation, which notice shall govern the terms of the Change of Control Offer. The notice to the holders shall contain all instructions and materials necessary to enable such holders to tender their shares of Series B Preferred Stock pursuant to the Change of Control Offer. Such notice shall state:

(i) that a Change of Control has occurred, that the Change of Control Offer is being made pursuant to this Section 9 and that all shares of Series B Preferred Stock validly tendered and not withdrawn will be accepted for payment;

(ii) the purchase price (plus the amount of unpaid dividends, if any) and the purchase date (the "Change of Control Payment Date") which shall be a date no earlier than 30 days nor later than 60 days from the date such notice is mailed, other than as may be required by law (the "Initial Date") or, if any of the Corporation's 15% Senior Secured Discount Notes due 2007 ("Senior Secured Notes") or Senior Obligations remain outstanding, the later of the Initial Date and a date that is not more than 30 days following the date the Corporation sends notice pursuant to Section 9(e) that it has satisfied all of the Senior Obligations;

(iii) that any shares of Series B Preferred Stock not tendered will remain outstanding on the same terms and will continue to accrue dividends;

(iv) that, unless the Corporation defaults in making payment therefor, any share of Series B Preferred Stock tendered and accepted for payment pursuant to the Change of Control Offer shall cease to accrue dividends after the Change of Control Payment Date;

20

(v) that holders electing to have any shares of Series B Preferred Stock purchased pursuant to a Change of Control Offer will be required to surrender the certificate or certificates representing such shares, properly endorsed for

transfer together with such customary documents as the Corporation and the transfer agent may reasonably require, in the manner and at the place specified in the notice prior to the close of business on the business day prior to the Change of Control Payment Date;

(vi) that holders shall be entitled to withdraw their election if the Corporation receives, not later than five business days prior to the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the holder, the number of shares of Series B Preferred Stock the holder delivered for purchase and a statement that such holder is withdrawing his election to have such shares of Series B Preferred Stock purchased;

(vii) that holders whose shares of Series B Preferred Stock are purchased only in part will be issued a new certificate representing the unpurchased shares of Series B Preferred Stock; and

(viii) the circumstances and relevant facts regarding such Change of Control.

(c) The Corporation shall comply with any securities laws and regulations, to the extent such laws and regulations are applicable to the repurchase of the Series B Preferred Stock in connection with a Change of Control Offer.

(d) On the Change of Control Payment Date, the Corporation shall (x) accept for payment the shares of Series B Preferred Stock validly tendered pursuant to the Change of Control Offer, (y) pay to the holders of shares so accepted the purchase price therefor (plus the amount of unpaid dividends, if any) and (z) cancel and retire each surrendered certificate (subject to issuing a new certificate representing the unpurchased shares of Series B Preferred Stock). Unless the Corporation defaults in the payment for the shares of Series B Preferred Stock tendered pursuant to the Change of Control Offer, dividends shall cease to accrue with respect to the shares of Series B Preferred Stock tendered and all rights of holders of such tendered shares shall terminate, except for the right to receive payment therefor, on the Change of Control Payment Date.

(e) If the purchase of Series B Preferred Stock under this Section 9 would violate or constitute a default under (i) the Senior Secured Notes or the indenture relating thereto (the "Indenture"), or (ii) the indenture or indentures or other agreement or agreements under which there may be issued or outstanding from time to time other indebtedness of the Company ("Other Agreements") in an aggregate principal amount not

exceeding \$450 million (less the amount, if any, of indebtedness issued to replace, refinance or refund the Senior Secured Notes) because the Corporation has not satisfied all of its obligations under such Other Agreements arising from the Change of Control (collectively, "Senior Obligations"), then, notwithstanding anything to the contrary contained above, prior to complying with the foregoing provisions, the Corporation shall use its best efforts to satisfy the Senior Obligations as promptly as possible or to obtain the requisite consents under the Indenture and the Other Agreements necessary to permit the repurchase of the Series B Preferred Stock required by this Section 9. Until the requirements of the immediately preceding sentence are satisfied, the Corporation shall not be obligated to make any Change of Control Offer. Within 15 days following the date the Corporation has satisfied all of the Senior Obligations or obtained such requisite consents or waivers, the Corporation shall send, by first class mail, postage prepaid, a notice to each holder of Series B Preferred Stock at such holder's address as it appears on the stock books of the Corporation that the Corporation has satisfied all of the Senior Obligations or obtained such requisite consents or waivers, and such notice shall state the date the Senior Obligations were satisfied or waived and the Change of Control Payment Date.

(f) For the purposes of this Section 9, "Change of Control" 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 Securities Exchange Act of 1934 (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 securities 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 40% of the total outstanding Voting Stock of the Corporation; (ii) the Corporation

consolidates with or merges with or into another person or conveys, transfers, leases or otherwise disposes of all or substantially all of its assets to any person, or any person consolidates with or merges with or into the Corporation, in any such event, pursuant to a transaction in which the outstanding voting stock of the Corporation is converted into or exchanged for cash, securities or other property, other than, at all times when the Senior Secured Notes are outstanding, those transactions that are not deemed a "Change of Control" under the terms of the Indenture; (iii) during any consecutive two-year period, individuals who at the beginning of such period constituted the Board of Directors of the Corporation (together with any new directors whose election to such Board of Directors, or whose nomination for election by the stockholders of the Corporation, was approved by a vote of 66 2/3% of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of the Corporation then in office; or (iv) the Corporation is liquidated or dissolved or a special resolution is passed by the stockholders of the Corporation approving the plan of liquidation or dissolution, other than, at all times when the Senior Secured Notes are outstanding, those transactions that are not deemed a "Change of Control" under the terms of the Indenture; provided, however, that no transaction or event shall be deemed to be a "Change of Control" for purposes of this Section 9 if (1) all of the

22

outstanding shares of Common Stock are to be converted pursuant thereto solely into the right to receive, for each share of Common Stock so converted, cash and/or shares of Qualifying Acquiror Common Stock (as defined below) (valued at its Current Market Price) together having a value in excess of \$30.30, (2) the Corporation shall have declared and paid all dividends on the Series B Preferred Stock and Series A Preferred Stock, whether or not theretofore declared or undeclared, to the date of the Change of Control and the holders thereof shall have been given reasonable opportunity to convert, prior to such Change of Control, any shares of Series B Preferred Stock or Series A Preferred Stock so issued as a dividend, and (3) immediately following such event the number of shares of Qualifying Acquiror Common Stock into which shares of Series B Preferred Stock and Series A Preferred Stock shall have been converted (together with, if shares of Series B Preferred Stock and/or Series A Preferred Stock are to remain outstanding, any shares of Qualifying Acquiror Common Stock into which all outstanding Shares of Series B Preferred Stock and Series A Preferred Stock would be convertible) would represent both (A) less than 5% of the total number of shares of Qualifying Acquiror Common Stock outstanding immediately after such event and (B) less than one third of the number of shares of Qualifying Acquiror Common Stock that would be Publicly Traded immediately after such event. For purposes of this Section 9, the term "Qualifying Acquiror Common Stock" means the common stock of any corporation if listed on or admitted to trading on the NYSE, AMEX or Nasdaq, and the term "Publicly Traded" means shares of such Qualifying Acquiror Common Stock that are both (1) held by persons who are neither officers, directors or Affiliates of such corporation nor the "beneficial owner" (as such term is defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended) of 5% or more of the total number of shares then issued and outstanding, and (2) not "restricted securities" (as such term is defined in Rule 144 of the Securities Act of 1933, as amended).

(g) The Corporation shall not engage in any transaction of the type referred to in clause (ii) of paragraph (f) above (other than one which is not a "Change of Control" by virtue of application of the proviso to paragraph (f) above) unless (i) if the Corporation shall be the surviving or continuing entity of such transaction, the Corporation shall, after consummation thereof, have sufficient funds to perform its obligations under this Section 9, and (ii) if the Corporation shall not be the surviving or continuing entity of such transaction, proper and adequate provision shall be made, in the definitive documentation providing for such transaction or otherwise, to ensure that the surviving or continuing corporation of such transaction shall expressly assume the Corporation's obligations under this Section 9 and shall have sufficient funds to perform its obligations under this Section 9.

10. Sinking Fund Redemption. The shares of the Series B Preferred Stock are not subject to sinking fund requirements.

11. Exchange. (a) Shares of Series B Preferred Stock shall be exchangeable for Convertible Debt, in whole or in part, out of surplus of the Corporation legally available for such exchange, at any time and from time to time at the option of the Corporation. All accrued and unpaid dividends on the shares of Series B Preferred Stock, including Default

Dividends and dividends accrued from the last preceding Dividend Payment Date through the date fixed for such exchange, shall be declared and paid prior to or on the same date as the date of any exchange pursuant to this Section 11. The Corporation shall cause the Convertible Debt to be issued on and dated the date which coincides with the date of exchange of the Series B Preferred Stock.

(b) Any notice of any exchange of the Series B Preferred Stock given by the Corporation shall be mailed to each holder of shares of Series B Preferred Stock to be exchanged at such Holder's address as it appears on the books of the Corporation. Such notice shall set forth the procedures for exchanging certificates representing Series B Preferred Stock for Convertible Debt with a principal amount equal to 100% of the aggregate Liquidation Preference of the shares of Series B Preferred Stock being exchanged. The Corporation shall as promptly as practicable thereafter mail to each such holder a notice setting forth the procedures for exchanging certificates representing Series B Preferred Stock for Convertible Debt. Upon such exchange, the rights of the holders of Series B Preferred Stock to be exchanged as stockholders of the Corporation shall cease, and the person or persons entitled to receive the Convertible Debt issuable upon such exchange shall be treated for all purposes as the registered holder or holders of such Convertible Debt.

(c) The shares of Series B Preferred Stock which have been exchanged shall no longer be deemed to be outstanding and shall be retired and all rights with respect to such shares, including, without limitation, the rights, if any, to receive dividends (and interest thereon) and to receive notices and to vote or consent (except for the right of the holders to receive accrued and unpaid dividends, if any, and Convertible Debt and Common Stock, as provided herein, in exchange therefor) shall forthwith cease.

(d) Upon any exchange of shares of Series B Preferred Stock into Convertible Debt, as provided herein, in accordance with this Section 11, the Corporation will pay any documentary, stamp or similar issue or transfer taxes which may be due with respect to the transfer and exchange of such exchanged shares, if any; provided, however, that if the Convertible Debt into which the shares of Series B Preferred Stock is exchangeable pursuant to this Section 11 is to be issued in the name of any person other than the holder of the shares of Series B Preferred Stock to be so exchanged, the amount of any transfer taxes (whether imposed on the Corporation, the holder or such other person) payable on account of the transfer to such person will be payable by the holder.

(e) Unless otherwise agreed by the Corporation and each holder of shares of Series A Preferred Stock, any shares exchanged at the Corporation's election shall be called for exchange on a pro rata basis from all holders of Series B Preferred Stock. Any exchange for which shares are called for exchange on a pro rata basis (whether or not some of such shares so called are subsequently converted pursuant to Section 11) shall comply with this Section 11. Any fractional share of Series B Preferred Stock which would otherwise be issuable as a result of any exchange of less than all shares held shall be included in the shares exchanged.

(f) The Convertible Debt shall have a maturity date 13 years following the Closing Date; a principal amount as described in Section 11(a) thereof (and a proportionate principal amount for any fractional share exchanged); and shall provide for payment of interest at the rate of 9.2% per annum, payable annually in cash; shall be convertible and redeemable on terms substantially the same as those of the Series B Preferred Stock; in each case, on the terms and conditions set forth in the Convertible Debt Indenture and shall otherwise be on the terms set forth in the Convertible Debt Indenture.

(g) Definitions. (i) "Convertible Debt" means the 9.2% Convertible Debentures of the Corporation issued pursuant to the Convertible Debt Indenture, as amended, modified, supplemented, restructured, replaced, extended or refinanced from time to time in accordance with the terms hereof and thereof.

(ii) "Convertible Debt Indenture" means the indenture pursuant to which the Convertible Debt is to be issued, in the form attached as Exhibit D to that certain Stock Purchase Agreement, dated as of November 13, 1998, among the Corporation and the Purchasers prior to the Closing (as defined therein), or, if no such form is agreed upon as of the Closing, in form and substance acceptable to holders of a majority of Series B Preferred Stock immediately prior to the

effectiveness of such indenture.

25

IN WITNESS WHEREOF, CD Radio Inc. has caused this Certificate to be duly executed on its behalf by its undersigned duly authorized officer this 22nd day of December, 1998.

CD RADIO INC.

By: /s/ Patrick L. Donnelly

Name: Patrick L. Donnelly
Title: Secretary

CD RADIO INC.

CERTIFICATE OF DESIGNATIONS, PREFERENCES AND
RELATIVE, PARTICIPATING, OPTIONAL AND OTHER SPECIAL RIGHTS OF
9.2% SERIES B JUNIOR CUMULATIVE CONVERTIBLE PREFERRED STOCK

PURSUANT TO SECTION 151(g) OF THE
GENERAL CORPORATION LAW OF THE STATE OF DELAWARE

CD Radio Inc. (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware, does hereby certify that pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of the Corporation (the "Board of Directors"), in a duly convened meeting thereof on November 11, 1998, adopted the following resolution, which resolution remains in full force and effect as of the date hereof:

WHEREAS, the Board of Directors is authorized, within the limitations and restrictions stated in the Certificate of Incorporation of the Corporation, to fix by resolution or resolutions the designation of each series of Preferred Stock of the Corporation (the "Preferred Stock") and the powers, preferences and relative, participating, optional or other special rights and the qualifications, limitations or restrictions thereof, including, without limiting the generality of the foregoing, such provisions as may be desired concerning voting, redemption, dividends, dissolution or distribution of assets, conversion or exchange, and such other subjects or matters as may be fixed by resolutions of the Board of Directors under the General Corporation Law of the State of Delaware; and

WHEREAS, it is the desire of the Board of Directors of the Corporation, pursuant to its authority as aforesaid, to authorize and fix the terms of a series of Preferred Stock and the number of shares constituting such series;

NOW, THEREFORE, BE IT RESOLVED, that there is hereby authorized such series of Preferred Stock on the terms and with the provisions herein set forth:

1. Number of Shares; Designation. A total of 2,100,000 shares of Preferred Stock of the Corporation are hereby designated as 9.2% Series B Junior Cumulative Convertible Preferred Stock (the "Series B Preferred Stock").

2

2. Rank. The Series B Preferred Stock shall, with respect to payment of dividends, redemption payments and rights upon liquidation, dissolution or winding up of the affairs of the Corporation, (x) rank senior and prior to the Common Stock, par value \$.001 per share, of the Corporation (the "Common Stock") and any other class or series of capital stock of the Corporation that by its terms ranks junior to the Series B Preferred Stock as to payment of dividends, redemption payments and rights upon liquidation, dissolution or winding up of the affairs of the Corporation, (y) rank on a parity with the Corporation's 9.2% Series A Junior Cumulative Convertible Preferred Stock (the "Series A Preferred Stock") and all Parity Dividend Stock (as defined in Section 3(a)) and all Parity Liquidation Stock (as defined in Section 5(b)), and (z) rank junior to the Corporation's 10 1/2% Series C Convertible Preferred Stock ("Series C Preferred Stock") and all Senior Dividend Stock (as defined in Section 3(c)), all Senior Liquidation Stock (as defined in Section 5(b)) and to any class or series of capital stock of the Corporation (other than the Common Stock), whether currently issued or issued in the future, that does not by its terms expressly provide that it ranks on a parity with or junior to the Series B Preferred Stock as to dividends and rights upon liquidation, dissolution or winding-up of the Corporation (which shall include, for purposes of the foregoing, any entity with which the Corporation may be merged or consolidated or to which all or substantially all the assets of the Corporation may be transferred or which transfers all or substantially all of its assets to the Corporation).

3. Dividends. (a) (1) The holders of the issued and outstanding shares of the Series B Preferred Stock shall be entitled to receive, as and when declared by the Board of Directors, out of funds legally available therefor in the case of dividends paid in cash, cumulative dividends at the annual rate per share of 9.2% of the sum of (x) the Liquidation Preference (defined in Section 5

hereof) and (y) all unpaid dividends, if any, whether or not declared, from the date of issuance of the shares of Series B Preferred Stock (the "Closing Date") to the applicable dividend payment date. Dividends on shares of Series B Preferred Stock shall be payable annually initially on November 15, 1999 and each November 15 thereafter (each, a "Dividend Payment Date"), except that if any Dividend Payment Date is not a business day then the Dividend Payment Date shall be on the first immediately succeeding business day (as used herein, the term "business day" shall mean any day except a Saturday, Sunday or day on which banking institutions are legally authorized to close in The City of New York).

(2) If any Dividend payable on any Dividend Payment Date is not declared or paid on such Dividend Payment Date, as provided in Section 3(a)(1), in full in cash or in additional shares of Series B Preferred Stock, then the amount of such unpaid dividend ("Default Dividends") shall be accumulated. Any Default Dividends shall, from the Dividend Payment Date on which such dividends accrued, accrue dividends until paid, compounded annually, at a rate equal to 15% per annum. Default Dividends shall be payable in shares of Series B Preferred Stock, but not in cash.

3

(3) Dividends on the Series B Preferred Stock may be paid, in the sole discretion of the Board of Directors, either in (i) cash, (ii) shares of Series B Preferred Stock or (iii) any combination of cash or shares of Series B Preferred Stock, and the issuance of the requisite number of such shares of Series B Preferred Stock (such number determined as provided in the next sentence) pursuant to (ii) or (iii) shall constitute full payment of any such dividend. Series B Preferred Stock issued to pay dividends shall be valued at their Liquidation Preference. All dividend payments paid with respect to shares of Series B Preferred Stock shall be paid pro rata to the holders entitled thereto. All shares of Series B Preferred Stock issued as a dividend with respect to shares of Series B Preferred Stock shall thereupon be duly authorized, validly issued, fully paid and non-assessable. In no event shall an election by the Board of Directors to pay dividends, in full or in part, in cash or in shares of Series B Preferred Stock in lieu of payment, in full or in part, in cash preclude the Board of Directors from electing any such alternative in respect of all or any portion of any subsequent dividend. The Corporation shall not issue fractional shares of Series B Preferred Stock upon payment of any dividends in shares of Series B Preferred Stock and any amount of fractional shares of Series B Preferred Stock otherwise issuable upon the payment of any dividend in shares of Series B Preferred Stock shall be paid in cash.

(4) Dividends to be paid on a Dividend Payment Date shall be paid to the holders of record of shares of the Series B Preferred Stock as they appear on the stock register of the Corporation at the close of business on such record dates (each, a "Dividend Payment Record Date"), which shall be not more than 40 days nor fewer than 10 days preceding each Dividend Payment Date thereof, as shall be fixed by the Board of Directors of the Corporation. Default Dividends shall be declared and paid at any time as of which funds legally available therefor are available to the Corporation, without reference to any regular Dividend Payment Date, to the holders of record on such date, not exceeding 40 days nor fewer than 10 days preceding the date on which dividends in arrears will be paid, as may be fixed by the Board of Directors of the Corporation. Holders of shares of the Series B Preferred Stock shall be entitled to receive dividends in preference to and in priority over dividends upon the Common Stock and any other series or class of the Corporation's capital stock that ranks junior as to dividends to the Series B Preferred Stock ("Junior Dividend Stock") and shall be on a parity as to dividends with the Series A Preferred Stock and any series or class of the Corporation's capital stock that does not rank senior or junior as to dividends with the Series B Preferred Stock (together with the Series A Preferred Stock, "Parity Dividend Stock"). The holders of shares of the Series B Preferred Stock shall not be entitled to any dividends in excess of full cumulative dividends (including Default Dividends), as herein provided.

(b) No dividends, other than dividends payable solely in Common Stock, Junior Dividend Stock, or warrants or other rights to acquire such Common Stock or Junior Dividend Stock, shall be paid or declared and set apart for payment on, and no purchase, redemption or other acquisition shall be made by the Corporation or entity directly or

4

indirectly controlled by the Corporation of, any Common Stock or Junior Dividend Stock unless and until (i) all accrued and unpaid dividends on the Series B

Preferred Stock shall have been paid and (ii) proper provision shall have been made such that holders of shares of Series B Preferred Stock are offered the opportunity to elect (each, a "Payout Election"), in lieu of the Conversion Price adjustment referred to in Section 6(f) (ii), Section 6(f) (iii) or Section 6(f) (iv), as the case may be, to participate in such dividend, purchase, redemption or other acquisition pro rata with the holders of Common Stock or Junior Dividend Stock, as the case may be, as if each share of Series B Preferred Stock had been converted as of the record date for such dividend or immediately prior to such purchase, redemption or other acquisition, as the case may be, at the Conversion Price then in effect (without any requirement that any such shares of Series B Preferred Stock actually be so converted). Each Payout Election shall be made upon the affirmative vote or consent of holders of a majority of the total number of shares of Series B Preferred Stock then outstanding and shall be effective as to and binding upon all such shares. So long as a sufficient amount of cash, assets, evidences of indebtedness or securities are set aside for payment to the holders of Series B Preferred Stock as of the payment date for such dividend or the date for such purchase, redemption or acquisition, payment need not be made to the holders of Series B Preferred Stock on such date but may be made at any time up to the tenth Business Day following such date.

(c) If at any time the Corporation issues any class or series of capital stock ranking senior and prior to the Series B Preferred Stock with respect to the payment of dividends ("Senior Dividend Stock") and fails to pay or declare and set apart for payment accrued and unpaid dividends on such Senior Dividend Stock, in whole or in part, then (except to the extent allowed by the terms of the Senior Dividend Stock) no dividend paid in cash shall be paid or declared and set apart for payment on the Series B Preferred Stock unless and until all accrued and unpaid dividends with respect to the Senior Dividend Stock shall have been paid or declared and set apart for payment, without interest. Except as provided in Section 3(d) below, no dividends paid in cash shall be paid or declared and set apart for payment on any Parity Dividend Stock for any period unless the Corporation has paid or declared and set apart for payment, or contemporaneously pays or declares and sets apart for payment, on the Series B Preferred Stock all accrued and unpaid dividends for all dividend payment periods terminating on or prior to the date of payment of such dividends. Except as provided in Section 3(d) below, no dividends paid in cash shall be paid or declared and set apart for payment on the Series B Preferred Stock for any period unless the Corporation has paid or declared and set apart for payment, or contemporaneously pays or declares and sets apart for such payment, on any Parity Dividend Stock all accrued and unpaid dividends for all dividend payment periods terminating on or prior to the date of payment of such dividends.

5

(d) If at any time the Corporation has failed to pay accrued dividends on any shares of Series B Preferred Stock on any Dividend Payment Date or any Parity Dividend Stock on a stated payment date, as the case may be, the Corporation shall not:

(i) purchase any shares of the Series B Preferred Stock or Parity Dividend Stock (except for a consideration payable in Common Stock or Junior Dividend Stock) or redeem fewer than all of the shares of the Series B Preferred Stock and Parity Dividend Stock then outstanding except for (x) the repurchase or redemption of shares of the Series B Preferred Stock made pro rata among the holders of the shares of the Series B Preferred Stock then outstanding and (y) the repurchase or redemption made pro rata with respect to all shares of the Series B Preferred Stock and Parity Dividend Stock then outstanding so that the amounts repurchased or redeemed shall in all cases bear to each other the same ratio that, at the time of the repurchase or redemption, the required redemption payments on the shares of the Series B Preferred Stock and the other Parity Dividend Stock then outstanding, respectively, bear to each other, or

(ii) permit any corporation or other entity directly or indirectly controlled by the Corporation to purchase any Common Stock, Junior Dividend Stock, shares of the Series B Preferred Stock or Parity Dividend Stock, except to the same extent that the Corporation could purchase such shares.

Unless and until all dividends unpaid in respect of prior dividend payment periods on shares of the Series B Preferred Stock and any Parity Dividend Stock at the time outstanding have been paid in full or a sum sufficient for such payment is declared and set apart, as provided in the paragraph (c), all dividends accrued by the Corporation upon shares of the Series B Preferred Stock or Parity Dividend Stock shall be declared pro rata with respect to all shares of the Series B Preferred Stock and Parity Dividend

Stock then outstanding, so that the amounts of any dividends declared on shares of the Series B Preferred Stock and on the Parity Dividend Stock shall in all cases bear to each other the same ratio that, at the time of the declaration, all unpaid dividends in respect of prior dividend payment periods on shares of the Series B Preferred Stock and the other Parity Dividend Stock, respectively, bear to each other.

4. Redemption. (a)(1) Optional Redemption. Except as provided in subsection (a)(2) of this Section 4 or in Section 9, shares of the Series B Preferred Stock shall not be redeemable prior to November 15, 2003. From and after November 15, 2003, subject to the restrictions in Section 3 above, the Corporation may redeem shares of Series B Preferred Stock, in whole or in part, at the option of the Corporation, to the extent it has funds legally

6

available therefor at a redemption price of 100% of the Liquidation Preference thereof plus accrued and unpaid dividends, if any, whether or not declared, to the date of redemption.

(2) Special Redemption From and after November 15, 2001 and prior to November 15, 2003, the Corporation, at its option, may redeem shares of Series B Preferred Stock, in whole or in part, in the sole discretion of the Board of Directors, to the extent it has funds legally available therefor, at the redemption price of 100% of the Liquidation Preference thereof, plus an amount equal to the dividends unpaid thereon, if any, whether or not declared, to the redemption date, if the Current Market Price of the Common Stock on the date of the notice of redemption (described below) equals or exceeds \$60.00 per share. As used herein, the "Current Market Price" for a given date shall mean the average Closing Price of the Common Stock as reported in The Wall Street Journal or, at the election of the Corporation, other reputable financial news source, for the 20 consecutive trading days immediately preceding such date. The \$60.00 per share benchmark shall be subject to adjustment upon the occurrence of certain events in the same manner as the Conversion Price (defined herein) shall be subject to adjustment as set forth in Section 6(f) hereof. For purposes of this paragraph, the Current Market Price shall be deemed to be less than \$60 per share at any time during which the Common Stock is not listed, quoted or admitted to trading on either the New York Stock Exchange, Inc. (the "NYSE"), the American Stock Exchange ("AMEX") or The Nasdaq Stock Market, Inc.'s National Market ("Nasdaq"). As used herein, the "Closing Price" of any security on any day means the last reported sale price regular way on such day or, in the case no such sale takes place on such day, the average of the reported closing bid and asked prices regular way of the Common Stock, in each case on the NYSE or, if not listed or admitted to trading on such exchange, as quoted on AMEX or Nasdaq.

(3) Mandatory Redemption. On November 15, 2011, the Corporation shall redeem all outstanding shares of Series A Preferred Stock, to the extent it has funds legally available therefor, at the redemption price of 100% of the Liquidation Preference thereof, plus an amount equal to the dividends unpaid thereon, if any, whether or not declared, to the redemption date.

(4) Payment of Redemption Price. (a) The amount of the redemption price on any shares of Series B Preferred Stock redeemed, on any redemption set forth herein, that is allocable to the Liquidation Preference thereon shall be paid in cash (to the extent funds are legally available therefor) and any unpaid dividends to be paid on the shares of Series B Preferred Stock redeemed on such redemption date may be paid in cash (to the extent funds are legally available therefor) or shares of Series B Preferred Stock, or any combination thereof, in the sole discretion of the Board of Directors as provided in Section 3(a)(3) hereof.

7

(b) Not less than 15 days nor more than 45 days (such date as fixed by the Board of Directors of the Corporation is referred to herein as the "Redemption Record Date") prior to the date fixed for any redemption of shares of the Series B Preferred Stock pursuant to this Section 4, a notice specifying the time and place of the redemption and the number of shares to be redeemed shall be given by first class mail, postage prepaid, to the holders of record on the Redemption Record Date of the shares of the Series B Preferred Stock to be redeemed at their respective addresses as the same shall appear on the books of the Corporation, calling upon each holder of record to surrender to the Corporation on the redemption date at the place designated in the notice such

holder's certificate or certificates representing the number of shares specified in the notice of redemption. Neither failure to mail such notice, nor any defect therein or in the mailing thereof, to any particular holder shall affect the sufficiency of the notice or the validity of the proceedings for redemption with respect to the other holders. Any notice mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the holder receives the notice. On or after the redemption date, each holder of shares of Series B Preferred Stock to be redeemed shall present and surrender such holder's certificate or certificates for such shares to the Corporation at the place designated in the redemption notice and thereupon the redemption price of the shares, and any unpaid dividends thereon to the redemption date, shall be paid to or on the order of the person whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be canceled. In case fewer than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) If a notice of redemption has been given pursuant to this Section 4 and if, on or before the redemption date, the funds (or shares of Series B Preferred Stock if any dividends are to be paid in shares of Series B Preferred Stock), necessary for such redemption (including all dividends on the shares of Series B Preferred Stock to be redeemed that will accrue to the redemption date) shall have been set aside by the Corporation, separate and apart from its other funds (or reserved and authorized for issuance if any dividends are to be paid in shares of Series B Preferred Stock), in trust for the pro rata benefit of the holders of the shares of Series B Preferred Stock so called for redemption, then, notwithstanding that any certificates for such shares of Series B Preferred Stock have not been surrendered for cancellation, on the redemption date dividends shall cease to accrue on the shares of the Series B Preferred Stock to be redeemed, and at the close of business on the date on which such funds have been segregated and set aside by the Corporation as provided in this Section 4(c), the holders of such shares shall cease to be stockholders with respect to those shares, shall have no interest in or claims against the Corporation by virtue thereof and shall have no voting or other rights with respect thereto, except the conversion rights provided in subsection (d) of this Section 4 and Section 6 below and the right to receive the moneys payable (or shares of Series B Preferred Stock issued if any dividends are to be paid in shares of Series B Preferred Stock) upon such redemption, without interest thereon, upon surrender (and endorsement, if required by the Corporation) of their

8

certificates, and the shares of Series B Preferred Stock evidenced thereby shall no longer be outstanding. Subject to applicable escheat laws, any moneys so set aside (or shares of Series B Preferred Stock authorized and reserved if any dividends are to be paid in shares of Series B Preferred Stock) by the Corporation and unclaimed at the end of two years from the redemption date shall revert to the general funds of the Corporation (or be released from the reservation thereof in the case of shares of Series B Preferred Stock), after which reversion the holders of such shares so called for redemption shall look only to the general funds of the Corporation for the payment of the redemption price, without interest. Any interest accrued on funds so deposited shall belong to the Corporation and be paid thereto from time to time.

(d) If a notice of redemption has been given pursuant to this Section 4 and any holder of shares of Series B Preferred Stock shall, prior to the close of business on the business day immediately preceding the redemption date, give written notice to the Corporation pursuant to Section 6 below of the conversion of any or all of the shares to be redeemed held by the holder (accompanied by a certificate or certificates for such shares, duly endorsed or assigned to the Corporation, and any necessary transfer tax payment, as required by Section 6 below), then such redemption shall not become effective as to such shares to be converted and such conversion shall become effective as provided in Section 6 below, whereupon any funds deposited by the Corporation for the redemption of such shares shall (subject to any right of the holder of such shares to receive the dividend payable thereon as provided in Section 6 below) immediately upon such conversion be returned to the Corporation or, if then held in trust by the Corporation, shall automatically and without further corporate action or notice be discharged from the trust.

(e) In every case of redemption of fewer than all of the outstanding shares of the Series B Preferred Stock pursuant to this Section 4, the shares to be redeemed shall be selected pro rata, provided that only whole shares shall be selected for redemption.

5. Liquidation. (a) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, the holders of the Series B Preferred Stock shall be entitled to receive \$100.00 per share (the "Liquidation Preference"), plus an amount equal to the accrued and

unpaid dividends thereon, if any, whether or not declared, to the payment date.

(b) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, the holders of shares of Series B Preferred Stock (i) shall not be entitled to receive the Liquidation Preference of the shares held by them until payment in full or provision has been made for the payment of all claims of creditors of the Corporation and the liquidation preference of any class or series of capital stock ranking senior to the Series B Preferred Stock with respect to redemption rights and rights upon liquidation, dissolution or winding up of the affairs of the Corporation ("Senior Liquidation Stock" and together with the Senior Dividend Stock, the "Senior Stock"), plus accrued and unpaid

9

dividends thereon, if any, whether or not declared, to the payment date, shall have been paid in full and (ii) shall be entitled to receive the Liquidation Preference of such shares held by them, plus accrued and unpaid dividends thereon, if any, whether or not declared, to the payment date, in preference to and in priority over any distributions upon the Common Stock and any other series or class of the Corporation's capital stock that ranks junior to the Series B Preferred Stock as to redemption rights and rights upon liquidation, dissolution or winding up of the affairs of the Corporation ("Junior Liquidation Stock" and together with the Junior Dividend Stock, the "Junior Stock"). Upon payment in full of the Liquidation Preference to which the holders of shares of the Series B Preferred Stock are entitled, the holders of shares of the Series B Preferred Stock shall not be entitled to any further participation in any distribution of assets by the Corporation. Subject to clause (i) above, if the assets of the Corporation are not sufficient to pay in full the Liquidation Preference payable to the holders of shares of the Series B Preferred Stock and the liquidation preference payable to the holders of any series or class of the Corporation's capital stock, outstanding on the date hereof or hereafter issued, that ranks on a parity with the Series B Preferred Stock as to redemption rights and rights upon liquidation, dissolution or winding up of the affairs of the Corporation ("Parity Liquidation Stock" and together with the Parity Dividend Stock, the "Parity Stock"), the holders of all such shares shall share ratably in proportion to the full respective preferential amounts payable on such shares in any distribution.

(c) For the purposes of this Section 5, neither the sale of all or substantially all of the assets of the Corporation nor the consolidation or merger of the Corporation with or into any other entity shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, unless such sale, consolidation or merger shall be in connection with a plan of liquidation, dissolution or winding up of the Corporation.

6. Optional Conversion. (a) Holders of shares of Series B Preferred Stock may, at any time, convert shares of Series B Preferred Stock, unless previously redeemed, into a number of shares of Common Stock calculated by dividing the Liquidation Preference (without unpaid dividends) by \$30.00, subject to adjustment as described below in Section 6(f) (the "Conversion Price"). If more than one share of Series B Preferred Stock shall be surrendered for conversion at one time by the same record holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series B Preferred Stock so surrendered. In the case of shares of Series B Preferred Stock called for redemption, conversion rights shall expire at the close of business on the business day immediately preceding the redemption date. The holders of shares of Series B Preferred Stock that convert such shares into shares of Common Stock shall be entitled to receive any unpaid dividends thereon, if any, whether or not declared, and such dividends shall be payable in cash or shares of Common Stock, or any combination thereof, in the sole discretion of the Board of Directors.

10

(b) Any holder of shares of Series B Preferred Stock electing to convert the shares or any portion thereof in accordance with Section 6(a) above shall give written notice to the Corporation (which notice may be given by facsimile transmission) that such holder elects to convert the same and shall state therein the number of shares of Series B Preferred Stock to be converted and the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. Promptly thereafter, the holder shall surrender the certificate or certificates of shares of Series B Preferred Stock to be converted, duly endorsed, at the office of the Corporation or any transfer agent for such shares, or at such other place designated by the

Corporation, provided that the Corporation shall at all times maintain an office or agency in The City of New York for such purposes. The Corporation shall, immediately upon receipt of such notice, issue and deliver to or upon the order of such holder, against delivery of the certificates representing the shares of Series B Preferred Stock that have been converted, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled (in the number(s) and denomination(s) designated by such holder), and the Corporation shall deliver to such holder a certificate or certificates for the number of shares of Series B Preferred Stock that such holder has not elected to convert. The conversion right with respect to any shares of Series B Preferred Stock shall be deemed to have been exercised at the date upon which the certificates therefor (and the payment required by Section 6(d), if applicable), shall have been so delivered, and the person or persons entitled to receive the Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Stock upon that date.

(c) No fractional shares of Common Stock shall be issued upon conversion of shares of Series B Preferred Stock. Instead of any fractional share of Common Stock otherwise issuable upon conversion of any shares of Series B Preferred Stock, the Corporation shall pay a cash adjustment in respect of such fraction in an amount equal to the same fraction of the Closing Price of the Common Stock at the close of business on the day of conversion. In the absence of a Closing Price, the Board of Directors shall in good faith determine the current market price on such basis as it reasonably considers appropriate and such current market price shall be used to calculate the cash adjustment; provided that in no case shall the Closing Price be less than the Conversion Price then in effect.

(d) If a holder converts shares of Series B Preferred Stock, the Corporation shall pay any documentary, stamp or similar issue or transfer tax due on the issue of Common Stock upon the conversion or due upon the issuance of a new certificate or certificates for any shares of Series B Preferred Stock not converted. The holder, however, shall pay any such tax that is due because any such shares of the Common Stock or of the Series B Preferred Stock are issued in a name other than the name of the holder.

(e) The Corporation shall reserve out of its authorized but unissued Common Stock held in treasury enough shares of Common Stock to permit the conversion of

11

all of the then-outstanding shares of Series B Preferred Stock. For the purposes of this Section 6(e), the full number of shares of Common Stock then issuable upon the conversion of all then-outstanding shares of Series B Preferred Stock shall be computed as if at the time of computation all outstanding shares of Series B Preferred Stock were held by a single holder. The Corporation shall from time to time, in accordance with the laws of the State of Delaware and its certificate of incorporation, increase the authorized amount of its Common Stock if at any time the authorized amount of its Common Stock remaining unissued shall not be sufficient to permit the conversion of all shares of Series B Preferred Stock at the time outstanding. All shares of Common Stock issued upon conversion of the shares of Series B Preferred Stock shall be validly issued, fully paid and nonassessable.

(f) The Conversion Price shall be subject to adjustment as follows:

(i) In case the Corporation shall (A) pay a dividend on any class of its capital stock in shares of its Common Stock, (B) subdivide its outstanding shares of Common Stock into a greater number of shares or (C) combine its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior thereto shall be adjusted (as provided below) so that the holders of any shares of Series B Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock which such holder would have owned or have been entitled to receive immediately following such action had such shares of Series B Preferred Stock been converted immediately prior to such time. The Conversion Price as adjusted shall be determined by multiplying the Conversion Price at which the shares of Series B Preferred Stock were theretofore convertible by a fraction of which the denominator shall be the number of shares of Common Stock outstanding immediately following such action and of which the numerator shall be the number of shares of Common Stock outstanding immediately prior thereto. Such adjustment shall be made whenever any event listed above shall occur and shall become effective retroactively immediately after the record date in

the case of a dividend and immediately after the effective date in the case of a subdivision or combination.

(ii) In case the Corporation shall issue rights or warrants to any Person (including holders of its Common Stock) entitling such Person or Persons to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price per share of Common Stock at the record date therefor, or in case the Corporation shall issue to any Person (including holders of its Common Stock) other securities convertible into or exchangeable for Common Stock for a consideration per share of Common Stock deliverable upon conversion or exchange thereof less than the Current

12

Market Price at the record date therefore, then the Conversion Price in effect immediately prior thereto shall be adjusted as provided below so that the Conversion Price therefor shall be equal to the price determined by multiplying (A) the Conversion Price at which shares of Series B Preferred Stock were theretofore convertible by (B) a fraction of which (x) the denominator shall be the sum of (1) the number of shares of Common Stock outstanding on the date of issuance of the convertible or exchangeable securities, rights or warrants and (2) the number of additional shares of Common Stock offered for subscription or purchase, or issuable upon such conversion or exchange, and (y) the numerator shall be the sum of (1) the number of shares of Common Stock outstanding on the date of issuance of such convertible or exchangeable securities, rights or warrants and (2) the number of additional shares of Common Stock which the aggregate offering price of the number of shares of Common Stock so offered would purchase at the Current Market Price per share of Common Stock. Such adjustment shall be made whenever such convertible or exchangeable securities, rights or warrants are issued, and shall become effective immediately after the record date for the determination of stockholders entitled to receive such securities. However, upon the expiration of any right or warrant to purchase Common Stock, the issuance of which resulted in an adjustment in the Conversion Price pursuant to this Section 6(f) (ii), if any such right or warrant shall expire and shall not have been exercised, the Conversion Price shall be recomputed immediately upon such expiration and effective immediately upon such expiration shall be increased to the price it would have been (but reflecting any other adjustments to the Conversion Price made pursuant to the provisions of this Section 6(f) after the issuance of such rights or warrants) had the adjustment of the Conversion Price made upon the issuance of such rights or warrants been made on the basis of offering for subscription or purchase only that number of shares of Common Stock actually purchased upon the exercise of such rights or warrants. No further adjustment shall be made upon exercise of any right, warrant, convertible security or exchangeable security if any adjustment shall have been made upon issuance of such security. The foregoing notwithstanding, no adjustment shall be made pursuant to this subparagraph (ii) with respect to any particular dividend or other event with respect to which a Payout Election is made.

(iii) In case the Corporation shall pay a dividend to all holders of its Common Stock (including any dividend paid in connection with a consolidation or merger in which the Corporation is the continuing corporation) of any shares of capital stock of the Corporation or its subsidiaries (other than Common Stock) or evidences of its indebtedness or assets or cash (excluding dividends or distributions in connection with the liquidation, dissolution or

13

winding up of the Corporation) or rights or warrants to subscribe for or purchase any of its securities or those of its subsidiaries or securities convertible or exchangeable for Common Stock (excluding those securities referred to in

Section 6(f) (ii) above), then in each such case the Conversion Price in effect immediately prior thereto shall be adjusted as provided below so that the Conversion Price thereafter shall be equal to the price determined by multiplying (A) the Conversion Price in effect on the record date mentioned below by (B) a fraction, the numerator of which shall be the Current Market Price per share of Common Stock on the record date mentioned below less the then fair market value (as determined by the Board of Directors, whose good faith determination shall be conclusive) as of such record date of the cash, assets, evidences of indebtedness or securities so paid with respect to one share of Common Stock, and the denominator of which shall be the Current Market Price per share of Common Stock on such record date; provided, however, that in the event the then fair market value (as so determined) so paid with respect to one share of Common Stock is equal to or greater than the Current Market Price per share of Common Stock on the record date mentioned above, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of shares of the Series B Preferred Stock shall have the right to receive the amount and kind of assets, evidences of indebtedness, or securities such holder would have received had such holder converted each such share of Series B Preferred Stock immediately prior to the record date for such dividend. Such adjustment shall be made whenever any such payment is made, and shall become effective retroactively immediately after the record date for the determination of stockholders entitled to receive the payment. The foregoing notwithstanding, no adjustment shall be made pursuant to this subparagraph (iii) with respect to any particular dividend or other event with respect to which a Payout Election is made.

(iv) In case the Corporation shall purchase, redeem or otherwise acquire any shares of Common Stock at a price per share greater than the Current Market Price per share of Common Stock on the date of such event, or in case the Corporation shall purchase, redeem or otherwise acquire other securities convertible into or exchangeable for Common Stock (other than the Series C Preferred Stock) for a consideration per share of Common Stock into which such security is convertible or exchangeable greater than the per share Current Market Price on the date of such event, then the Conversion Price in effect immediately prior thereto shall be adjusted as provided below so that the Conversion Price therefor shall be equal to the price determined by multiplying (A) the Conversion Price at which shares of Series A Preferred Stock were theretofore convertible by (B) a fraction of which (x) the denominator shall be the Current Market Price per share on the date of such event, and (y) the

14

numerator shall be the Current Market Price per share on the date of such event less the difference between (1) the consideration paid by the Corporation per share of Common Stock (or, in the case of securities convertible into or exchangeable for Common Stock, the consideration per share of Common Stock into which such security is convertible or exchangeable) purchased, redeemed or acquired in such event and (2) the Current Market Price per share on the date of such event. Such adjustment shall be made whenever such Common Stock is issued or sold, and shall become effective immediately after the issuance or sale of such securities. The foregoing notwithstanding, no adjustment shall be made pursuant to this subparagraph (iv) with respect to any particular purchase, redemption or acquisition with respect to which a Payout Election is made.

(v) In case the Corporation shall issue or sell any shares of Common Stock at a price per share more than 15% below (or, in the case of any issuance or sale to an affiliate (as defined in the rules of the Securities and Exchange Commission promulgated under the Securities Exchange Act of 1934, as amended) of the Corporation, any amount below) the Current Market Price per share of Common Stock on the date the Corporation commits or agrees to such sale or issuance, then the Conversion Price in effect immediately prior thereto shall be adjusted as provided below so that the Conversion Price therefor shall be equal to the price determined by multiplying (A) the Conversion Price at which shares of Series A Preferred

Stock were theretofore convertible by (B) a fraction of which (x) the denominator shall be the sum of (1) the number of shares of Common Stock outstanding on the date of issuance or sale of such shares of Common Stock and (2) the number of additional shares of Common Stock offered for sale or subject to issuance, and (y) the numerator shall be the sum of (1) the number of shares of Common Stock outstanding on the date of issuance or sale of such shares of Common Stock and (2) the number of additional shares of Common Stock which the aggregate offering price of the number of shares of Common Stock so offered or issued would purchase at the Current Market Price per share of Common Stock. Such adjustment shall be made whenever such Common Stock is issued or sold, and shall become effective immediately after the issuance or sale of such securities; provided, however, that the provisions of this subparagraph shall not apply to (1) shares of Common Stock issued upon conversion of shares of Series A Preferred Stock or Series B Preferred Stock, or (2) shares of Common Stock issued upon conversion, exercise or exchange of any security with respect to which an adjustment to the Conversion Price was made in accordance with clause (ii) above at the time of issuance of such security, or (3) shares of Common Stock issued in a bona fide public offering to or through a nationally recognized investment banking firm in which affiliates (as

15

defined in the rules of the Securities and Exchange Commission promulgated under the Securities Exchange Act of 1934, as amended) of the Corporation purchase less than 25% of the shares in such offering.

(vi) No adjustment in the Conversion Price shall be required unless the adjustment would require an increase or decrease of at least 1% in the Conversion Price then in effect; provided, however, that any adjustments that by reason of this Section 6(f)(vi) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 6(f) shall be made to the nearest cent.

(vii) In the event that, at any time as a result of an adjustment made pursuant to Section 6(f)(i) through 6(f)(vi) above, the holder of any share of Series B Preferred Stock thereafter surrendered for conversion shall become entitled to receive any shares of the Corporation other than shares of the Common Stock, thereafter the number of such other shares so receivable upon conversion of any share of Series B Preferred Stock shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Common Stock contained in Section 6(f)(i) through 6(f)(vi) above, and the other provisions of this Section 6 with respect to the Common Stock shall apply on like terms to any such other shares.

(viii) Whenever the Conversion Price is adjusted, as herein provided, the Corporation shall promptly file with the transfer agent for the Series B Preferred Stock, or, if there is no transfer agent, the Corporation shall promptly send to each holder of record by first class mail, postage pre-paid, a certificate of an officer of the Corporation setting forth the Conversion Price after the adjustment and setting forth a brief statement of the facts requiring such adjustment and a computation thereof. The certificate shall be conclusive evidence of the correctness of the adjustment. The Corporation shall promptly cause a notice of the adjusted Conversion Price to be mailed to each registered holder of shares of Series B Preferred Stock.

(ix) In case of any reclassification of the Common Stock, any consolidation of the Corporation with, or merger of the Corporation into, any other entity, any merger of another entity into the Corporation (other than a merger that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Corporation), any sale or transfer of all or substantially all of the assets of the Corporation or any compulsory share exchange pursuant to which share exchange the Common Stock is converted into other securities, cash or other property, then

lawful provision shall be made as part of the terms of such transaction whereby the holder of each share of Series B Preferred Stock then outstanding shall have the right thereafter, during the period such share of Series B Preferred Stock shall be convertible, to convert such share only into the kind and amount of securities, cash and other property receivable upon the reclassification, consolidation, merger, sale, transfer or share exchange by a holder of the number of shares of Common Stock of the Corporation into which a share of Series B Preferred Stock would have been convertible immediately prior to the reclassification, consolidation, merger, sale, transfer or share exchange. The Corporation, the person formed by the consolidation or resulting from the merger or which acquires such assets or which acquires the Corporation's shares, as the case may be, shall make provisions in its certificate or articles of incorporation or other constituent document to establish such rights and such rights shall be clearly provided for in the definitive transaction documents relating to such transaction. The certificate or articles of incorporation or other constituent document shall provide for adjustments, which, for events subsequent to the effective date of the certificate or articles of incorporation or other constituent document, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 6. The provisions of this Section 6(f)(ix) shall similarly apply to successive reclassifications, consolidations, mergers, sales, transfers or share exchanges.

(g) The Corporation from time to time may reduce the Conversion Price by any amount for any period of time if the period is at least 20 days and if the reduction is irrevocable during the period. Whenever the Conversion Price is so reduced, the Corporation shall mail to holders of record of the Series B Preferred Stock a notice of the reduction at least 15 days before the date the reduced Conversion Price takes effect, stating the reduced Conversion Price and the period it will be in effect. A voluntary reduction of the Conversion Price does not change or adjust the Conversion Price otherwise in effect for purposes of paragraph 6(f) above.

7. Status of Shares. All shares of the Series B Preferred Stock that are at any time redeemed pursuant to Section 4 above or converted or exchanged pursuant to Section 6 above and all shares of the Series B Preferred Stock that are otherwise reacquired by the Corporation and subsequently canceled by the Board of Directors of the Corporation shall have the status of authorized but unissued shares of Preferred Stock, without designation as to series, subject to reissuance by the Board of Directors of the Corporation as shares of any one or more other series.

8. Voting Rights. Except as set forth below or otherwise required by law, holders of shares of the Series B Preferred Stock shall have no voting rights.

(a) So long as any shares of the Series B Preferred Stock are outstanding, each share of Series B Preferred Stock shall entitle the holder thereof to notice of and to vote, in person or by proxy, at any special or annual meeting of stockholders, on all matters entitled to be voted on by holders of Common Stock and any other series or class of Voting Stock voting together as a single class with all other shares entitled to vote thereon. With respect to any such vote, each share of Series B Preferred Stock shall entitle the holder thereof to cast that number of votes per share as is equal to the number of votes that such holder would be entitled to cast had such holder converted its shares of Series B Preferred Stock into shares of Common Stock as of the record date for determining the stockholders of the Corporation eligible to vote on any such matters.

(b) So long as any shares of the Series B Preferred Stock are outstanding, in addition to any vote or consent of stockholders required by law or by the Corporation's Certificate of Incorporation, the affirmative vote or consent of the holders of at least a majority of the shares of Series B Preferred Stock at any time issued and outstanding, acting as a single class,

given in person or by proxy at any meeting called for such purpose, shall be necessary for effecting or validating

(i) any reclassification of the Series B Preferred Stock or any amendment, alteration or repeal (including as a result of a merger or consolidation involving the Corporation or otherwise by operation of law) of any of the provisions of the Certificate of Incorporation or By-laws of the Corporation which adversely affects the voting powers, rights or preferences of the holders of the shares of Series B Preferred Stock; provided that the consent of the holders of at least a majority of the shares of Series B Preferred Stock and Series A Preferred Stock at the time issued and outstanding, acting as a single class, given in person or by proxy by vote at any meeting called for such purpose, shall be necessary for effecting or validating any reclassification or any amendment, alteration or repeal of any of the provisions of the Corporation's Certificate of Incorporation or By-laws of the Corporation which affects adversely the voting powers, rights or preferences of the holders of the shares of Series B Preferred Stock and Series A Preferred Stock; and provided, further, that any amendment of the provisions of the Corporation's Certificate of Incorporation so as to authorize or create, or to increase the authorized amount of, the Junior Stock shall not be deemed to affect adversely the voting powers, rights or preferences of the holders of shares of Series B Preferred Stock or Series A Preferred Stock;

(ii) the authorization or creation of, or the increase in the authorized amount of, or the issuance of any shares of any class or series of Senior Stock or any security convertible into shares of any class or series of Senior Stock;

(iii) the authorization or creation of, or the increase in the authorized amount of, or the issuance of any shares of any class or series of Parity Stock or any

18

security convertible into shares of any class or series of Parity Stock such that the aggregate liquidation preference of all outstanding shares of Parity Stock (other than (x) shares of Series B Preferred Stock or Series A Preferred Stock issued pursuant to the Stock Purchase Agreement, dated as of November 13, 1998, by and among Apollo Investment Fund IV, L.P., Apollo Overseas Partners IV, L.P. and the Corporation (the "Stock Purchase Agreement") and (y) any shares of Series B Preferred Stock or Series A Preferred Stock issued as a dividend in respect of shares referred to in clause (x) or in respect of shares referred to in this clause (y)) would exceed the sum of (1) \$135,000,000 and (2) the aggregate liquidation preference of the shares of Series B Preferred Stock issued at the Option Closing (as such term is defined in the Stock Purchase Agreement), if any;

(iv) the merger or consolidation of the Corporation with or into any other entity, unless the resulting corporation will thereafter have no class or series of shares and no other securities either authorized or outstanding ranking prior to, or on a parity with, shares of Series B Preferred Stock in the payment of dividends or the distribution of its assets on liquidation, dissolution or winding up; provided, however, that no such vote or consent of the holders of Series B Preferred Stock shall be required if prior to the time when such merger or consolidation is to take effect, and regardless of whether such merger or consolidation would constitute a Change of Control (as defined in Section 9), a Change of Control Offer (as defined in Section 9) is made for all shares of Series B Preferred Stock at the time outstanding in accordance with Section 9; and

(v) the application of any funds, property or assets of the Corporation or any of its subsidiaries to the purchase, redemption, sinking fund or other retirement of any shares of any class of Junior Stock, or the declaration, payment or making of any dividend or distribution (in cash, property or obligations) on any shares of any class of Junior Stock, other than a dividend or dividends payable solely in Common Stock or Junior Stock, unless the holders of Series B Preferred Stock

shall have been offered the opportunity to make a Payout Election with respect to such event.

In connection with any right to vote pursuant to Section 8(b), each holder of shares of Series B Preferred Stock shall have one vote for each share held. The above notwithstanding, and subject to Section 8(a), no consent of holders of Series B Preferred Stock or Series A Preferred Stock shall be required for the creation of any indebtedness of any kind of the Corporation.

(c) The term "Voting Stock" means any class or classes of capital stock, or securities convertible into or exchangeable for any class of capital stock, of the Corporation pursuant to which the holders thereof have the general power under ordinary circumstances

19

to vote with respect to the election of at least a majority of the Board of Directors of the Corporation, irrespective of whether or not, at the time, stock of any other class or classes shall have, or might have, voting power by reason of the happening of any contingency.

9. Change of Control. (a) In the event of a Change of Control (the date of such event being the "Change of Control Date"), the Corporation shall notify the holders of the Series B Preferred Stock in writing of such event promptly upon the Corporation becoming aware that a Change of Control is expected to occur or has occurred and shall, pursuant to Section 9(b), make an offer to purchase (the "Change of Control Offer") all of the then outstanding shares of Series B Preferred Stock at a purchase price of 101% of the Liquidation Preference thereof, payable in cash, plus any unpaid dividends thereon, if any, whether or not declared, to the date such shares are purchased, payable in cash.

(b) Subject to the provisions of Section 9(e), within 30 days following the Change of Control Date, the Corporation shall send, by first class mail, postage prepaid, a notice to each holder of Series B Preferred Stock at such holder's address as it appears on the stock books of the Corporation, which notice shall govern the terms of the Change of Control Offer. The notice to the holders shall contain all instructions and materials necessary to enable such holders to tender their shares of Series B Preferred Stock pursuant to the Change of Control Offer. Such notice shall state:

(i) that a Change of Control has occurred, that the Change of Control Offer is being made pursuant to this Section 9 and that all shares of Series B Preferred Stock validly tendered and not withdrawn will be accepted for payment;

(ii) the purchase price (plus the amount of unpaid dividends, if any) and the purchase date (the "Change of Control Payment Date") which shall be a date no earlier than 30 days nor later than 60 days from the date such notice is mailed, other than as may be required by law (the "Initial Date") or, if any of the Corporation's 15% Senior Secured Discount Notes due 2007 ("Senior Secured Notes") or Senior Obligations remain outstanding, the later of the Initial Date and a date that is not more than 30 days following the date the Corporation sends notice pursuant to Section 9(e) that it has satisfied all of the Senior Obligations;

(iii) that any shares of Series B Preferred Stock not tendered will remain outstanding on the same terms and will continue to accrue dividends;

(iv) that, unless the Corporation defaults in making payment therefor, any share of Series B Preferred Stock tendered and accepted for payment pursuant to the Change of Control Offer shall cease to accrue dividends after the Change of Control Payment Date;

20

(v) that holders electing to have any shares of Series B Preferred Stock purchased pursuant to a Change of Control Offer will be required to surrender the certificate or certificates representing such shares, properly endorsed for

transfer together with such customary documents as the Corporation and the transfer agent may reasonably require, in the manner and at the place specified in the notice prior to the close of business on the business day prior to the Change of Control Payment Date;

(vi) that holders shall be entitled to withdraw their election if the Corporation receives, not later than five business days prior to the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the holder, the number of shares of Series B Preferred Stock the holder delivered for purchase and a statement that such holder is withdrawing his election to have such shares of Series B Preferred Stock purchased;

(vii) that holders whose shares of Series B Preferred Stock are purchased only in part will be issued a new certificate representing the unpurchased shares of Series B Preferred Stock; and

(viii) the circumstances and relevant facts regarding such Change of Control.

(c) The Corporation shall comply with any securities laws and regulations, to the extent such laws and regulations are applicable to the repurchase of the Series B Preferred Stock in connection with a Change of Control Offer.

(d) On the Change of Control Payment Date, the Corporation shall (x) accept for payment the shares of Series B Preferred Stock validly tendered pursuant to the Change of Control Offer, (y) pay to the holders of shares so accepted the purchase price therefor (plus the amount of unpaid dividends, if any) and (z) cancel and retire each surrendered certificate (subject to issuing a new certificate representing the unpurchased shares of Series B Preferred Stock). Unless the Corporation defaults in the payment for the shares of Series B Preferred Stock tendered pursuant to the Change of Control Offer, dividends shall cease to accrue with respect to the shares of Series B Preferred Stock tendered and all rights of holders of such tendered shares shall terminate, except for the right to receive payment therefor, on the Change of Control Payment Date.

(e) If the purchase of Series B Preferred Stock under this Section 9 would violate or constitute a default under (i) the Senior Secured Notes or the indenture relating thereto (the "Indenture"), or (ii) the indenture or indentures or other agreement or agreements under which there may be issued or outstanding from time to time other indebtedness of the Company ("Other Agreements") in an aggregate principal amount not

exceeding \$450 million (less the amount, if any, of indebtedness issued to replace, refinance or refund the Senior Secured Notes) because the Corporation has not satisfied all of its obligations under such Other Agreements arising from the Change of Control (collectively, "Senior Obligations"), then, notwithstanding anything to the contrary contained above, prior to complying with the foregoing provisions, the Corporation shall use its best efforts to satisfy the Senior Obligations as promptly as possible or to obtain the requisite consents under the Indenture and the Other Agreements necessary to permit the repurchase of the Series B Preferred Stock required by this Section 9. Until the requirements of the immediately preceding sentence are satisfied, the Corporation shall not be obligated to make any Change of Control Offer. Within 15 days following the date the Corporation has satisfied all of the Senior Obligations or obtained such requisite consents or waivers, the Corporation shall send, by first class mail, postage prepaid, a notice to each holder of Series B Preferred Stock at such holder's address as it appears on the stock books of the Corporation that the Corporation has satisfied all of the Senior Obligations or obtained such requisite consents or waivers, and such notice shall state the date the Senior Obligations were satisfied or waived and the Change of Control Payment Date.

(f) For the purposes of this Section 9, "Change of Control" 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 Securities Exchange Act of 1934 (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 securities 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 40% of the total outstanding Voting Stock of the Corporation; (ii) the Corporation

consolidates with or merges with or into another person or conveys, transfers, leases or otherwise disposes of all or substantially all of its assets to any person, or any person consolidates with or merges with or into the Corporation, in any such event, pursuant to a transaction in which the outstanding voting stock of the Corporation is converted into or exchanged for cash, securities or other property, other than, at all times when the Senior Secured Notes are outstanding, those transactions that are not deemed a "Change of Control" under the terms of the Indenture; (iii) during any consecutive two-year period, individuals who at the beginning of such period constituted the Board of Directors of the Corporation (together with any new directors whose election to such Board of Directors, or whose nomination for election by the stockholders of the Corporation, was approved by a vote of 66 2/3% of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of the Corporation then in office; or (iv) the Corporation is liquidated or dissolved or a special resolution is passed by the stockholders of the Corporation approving the plan of liquidation or dissolution, other than, at all times when the Senior Secured Notes are outstanding, those transactions that are not deemed a "Change of Control" under the terms of the Indenture; provided, however, that no transaction or event shall be deemed to be a "Change of Control" for purposes of this Section 9 if (1) all of the

22

outstanding shares of Common Stock are to be converted pursuant thereto solely into the right to receive, for each share of Common Stock so converted, cash and/or shares of Qualifying Acquiror Common Stock (as defined below) (valued at its Current Market Price) together having a value in excess of \$30.30, (2) the Corporation shall have declared and paid all dividends on the Series B Preferred Stock and Series A Preferred Stock, whether or not theretofore declared or undeclared, to the date of the Change of Control and the holders thereof shall have been given reasonable opportunity to convert, prior to such Change of Control, any shares of Series B Preferred Stock or Series A Preferred Stock so issued as a dividend, and (3) immediately following such event the number of shares of Qualifying Acquiror Common Stock into which shares of Series B Preferred Stock and Series A Preferred Stock shall have been converted (together with, if shares of Series B Preferred Stock and/or Series A Preferred Stock are to remain outstanding, any shares of Qualifying Acquiror Common Stock into which all outstanding Shares of Series B Preferred Stock and Series A Preferred Stock would be convertible) would represent both (A) less than 5% of the total number of shares of Qualifying Acquiror Common Stock outstanding immediately after such event and (B) less than one third of the number of shares of Qualifying Acquiror Common Stock that would be Publicly Traded immediately after such event. For purposes of this Section 9, the term "Qualifying Acquiror Common Stock" means the common stock of any corporation if listed on or admitted to trading on the NYSE, AMEX or Nasdaq, and the term "Publicly Traded" means shares of such Qualifying Acquiror Common Stock that are both (1) held by persons who are neither officers, directors or Affiliates of such corporation nor the "beneficial owner" (as such term is defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended) of 5% or more of the total number of shares then issued and outstanding, and (2) not "restricted securities" (as such term is defined in Rule 144 of the Securities Act of 1933, as amended).

(g) The Corporation shall not engage in any transaction of the type referred to in clause (ii) of paragraph (f) above (other than one which is not a "Change of Control" by virtue of application of the proviso to paragraph (f) above) unless (i) if the Corporation shall be the surviving or continuing entity of such transaction, the Corporation shall, after consummation thereof, have sufficient funds to perform its obligations under this Section 9, and (ii) if the Corporation shall not be the surviving or continuing entity of such transaction, proper and adequate provision shall be made, in the definitive documentation providing for such transaction or otherwise, to ensure that the surviving or continuing corporation of such transaction shall expressly assume the Corporation's obligations under this Section 9 and shall have sufficient funds to perform its obligations under this Section 9.

10. Sinking Fund Redemption. The shares of the Series B Preferred Stock are not subject to sinking fund requirements.

11. Exchange. (a) Shares of Series B Preferred Stock shall be exchangeable for Convertible Debt, in whole or in part, out of surplus of the Corporation legally available for such exchange, at any time and from time to time at the option of the Corporation. All accrued and unpaid dividends on the shares of Series B Preferred Stock, including Default

Dividends and dividends accrued from the last preceding Dividend Payment Date through the date fixed for such exchange, shall be declared and paid prior to or on the same date as the date of any exchange pursuant to this Section 11. The Corporation shall cause the Convertible Debt to be issued on and dated the date which coincides with the date of exchange of the Series B Preferred Stock.

(b) Any notice of any exchange of the Series B Preferred Stock given by the Corporation shall be mailed to each holder of shares of Series B Preferred Stock to be exchanged at such Holder's address as it appears on the books of the Corporation. Such notice shall set forth the procedures for exchanging certificates representing Series B Preferred Stock for Convertible Debt with a principal amount equal to 100% of the aggregate Liquidation Preference of the shares of Series B Preferred Stock being exchanged. The Corporation shall as promptly as practicable thereafter mail to each such holder a notice setting forth the procedures for exchanging certificates representing Series B Preferred Stock for Convertible Debt. Upon such exchange, the rights of the holders of Series B Preferred Stock to be exchanged as stockholders of the Corporation shall cease, and the person or persons entitled to receive the Convertible Debt issuable upon such exchange shall be treated for all purposes as the registered holder or holders of such Convertible Debt.

(c) The shares of Series B Preferred Stock which have been exchanged shall no longer be deemed to be outstanding and shall be retired and all rights with respect to such shares, including, without limitation, the rights, if any, to receive dividends (and interest thereon) and to receive notices and to vote or consent (except for the right of the holders to receive accrued and unpaid dividends, if any, and Convertible Debt and Common Stock, as provided herein, in exchange therefor) shall forthwith cease.

(d) Upon any exchange of shares of Series B Preferred Stock into Convertible Debt, as provided herein, in accordance with this Section 11, the Corporation will pay any documentary, stamp or similar issue or transfer taxes which may be due with respect to the transfer and exchange of such exchanged shares, if any; provided, however, that if the Convertible Debt into which the shares of Series B Preferred Stock is exchangeable pursuant to this Section 11 is to be issued in the name of any person other than the holder of the shares of Series B Preferred Stock to be so exchanged, the amount of any transfer taxes (whether imposed on the Corporation, the holder or such other person) payable on account of the transfer to such person will be payable by the holder.

(e) Unless otherwise agreed by the Corporation and each holder of shares of Series A Preferred Stock, any shares exchanged at the Corporation's election shall be called for exchange on a pro rata basis from all holders of Series B Preferred Stock. Any exchange for which shares are called for exchange on a pro rata basis (whether or not some of such shares so called are subsequently converted pursuant to Section 11) shall comply with this Section 11. Any fractional share of Series B Preferred Stock which would otherwise be issuable as a result of any exchange of less than all shares held shall be included in the shares exchanged.

(f) The Convertible Debt shall have a maturity date 13 years following the Closing Date; a principal amount as described in Section 11(a) thereof (and a proportionate principal amount for any fractional share exchanged); and shall provide for payment of interest at the rate of 9.2% per annum, payable annually in cash; shall be convertible and redeemable on terms substantially the same as those of the Series B Preferred Stock; in each case, on the terms and conditions set forth in the Convertible Debt Indenture and shall otherwise be on the terms set forth in the Convertible Debt Indenture.

(g) Definitions. (i) "Convertible Debt" means the 9.2% Convertible Debentures of the Corporation issued pursuant to the Convertible Debt Indenture, as amended, modified, supplemented, restructured, replaced, extended or refinanced from time to time in accordance with the terms hereof and thereof.

(ii) "Convertible Debt Indenture" means the indenture pursuant to which the Convertible Debt is to be issued, in the form attached as Exhibit D to that certain Stock Purchase Agreement, dated as of November 13, 1998, among the Corporation and the Purchasers prior to the Closing (as defined therein), or, if no such form is agreed upon as of the Closing, in form and substance acceptable to holders of a majority of Series B Preferred Stock immediately prior to the

effectiveness of such indenture.

25

IN WITNESS WHEREOF, CD Radio Inc. has caused this Certificate to be duly executed on its behalf by its undersigned duly authorized officer this 22nd day of December, 1998.

CD RADIO INC.

By: /s/ Patrick L. Donnelly

Name: Patrick L. Donnelly
Title: Secretary

AMENDMENT NO. 1 TO STOCK PURCHASE AGREEMENT

THIS AMENDMENT NO. 1 to the Stock Purchase Agreement (the "Stock Purchase Agreement"), dated as of November 13, 1998, by and among CD Radio Inc. (the "Company"), Apollo Investment Fund IV, L.P. ("AIF IV") and Apollo Overseas Partners IV, L.P. ("AOP IV" and, together with AIF IV, and including their successors and permitted assigns, the "Purchasers") is made by and among the Company and the Purchasers as of this 23rd day of December, 1998 (this "Amendment"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Stock Purchase Agreement.

In consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Amendments. The Stock Purchase Agreement is hereby modified and amended as set forth below:

(a) Section 6(f)(iv) of Exhibit A to the Stock Purchase Agreement is amended to read in its entirety as follows:

"(iv) In case the Corporation shall purchase, redeem or otherwise acquire any shares of Common Stock at a price per share greater than the Current Market Price per share of Common Stock on the date of such event, or in case the Corporation shall purchase, redeem or otherwise acquire other securities convertible into or exchangeable for Common Stock (other than the Series C Preferred Stock) for a consideration per share of Common Stock into which such security is convertible or exchangeable greater than the per share Current Market

2

Price on the date of such event, then the Conversion Price in effect immediately prior thereto shall be adjusted as provided below so that the Conversion Price therefor shall be equal to the price determined by multiplying (A) the Conversion Price at which shares of Series A Preferred Stock were theretofore convertible by (B) a fraction of which (x) the denominator shall be the Current Market Price per share on the date of such event, and (y) the numerator shall be the Current Market Price per share on the date of such event less the difference between (1) the consideration paid by the Corporation per share of Common Stock (or, in the case of securities convertible into or exchangeable for Common Stock, the consideration per share of Common Stock into which such security is convertible or exchangeable) purchased, redeemed or acquired in such event and (2) the Current Market Price per share on the date of such event. Such adjustment shall be made whenever such Common Stock is issued or sold, and shall become effective immediately after the issuance or sale of such securities. The foregoing notwithstanding, no adjustment shall be made pursuant to this subparagraph (iv) with respect to any particular purchase, redemption or acquisition with respect to which a Payout Election is made."

(b) Section 6(f)(iv) of Exhibit B to the Stock Purchase Agreement is amended to read in its entirety as follows:

"(iv) In case the Corporation shall purchase, redeem or otherwise acquire any shares of Common Stock at a price per share greater than the Current Market Price per share of Common Stock on the date of such event, or in case the Corporation shall purchase, redeem or otherwise acquire other securities convertible into or exchangeable for Common Stock (other than the Series C Preferred Stock) for a consideration per share of Common Stock into which such

3

security is convertible or exchangeable greater than the per share Current Market Price on the date of such event, then the Conversion Price in effect immediately prior thereto shall be adjusted as provided below so that the Conversion Price therefor shall be equal to the price determined by multiplying (A) the Conversion Price at which shares of Series B Preferred Stock were theretofore convertible by (B) a fraction of which (x) the denominator shall be the Current Market Price per share on the date of such event, and (y) the numerator shall be the Current Market Price per share on the date of such event

less the difference between (1) the consideration paid by the Corporation per share of Common Stock (or, in the case of securities convertible into or exchangeable for Common Stock, the consideration per share of Common Stock into which such security is convertible or exchangeable) purchased, redeemed or acquired in such event and (2) the Current Market Price per share on the date of such event. Such adjustment shall be made whenever such Common Stock is issued or sold, and shall become effective immediately after the issuance or sale of such securities. The foregoing notwithstanding, no adjustment shall be made pursuant to this subparagraph (iv) with respect to any particular purchase, redemption or acquisition with respect to which a Payout Election is made."

2. No Other Amendments. Except as provided above, the Stock Purchase Agreement shall remain in full force and effect, and the execution of this Amendment is not a waiver by the Company or the Purchasers of any of the terms or provisions of the Stock Purchase Agreement.

3. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

4

EXECUTED as of the date set forth above.

CD RADIO INC.

By:/s/ Patrick L. Donnelly

Patrick L. Donnelly
Executive Vice President and
General Counsel

APOLLO INVESTMENT FUND IV, L.P.

By: Apollo Advisors, IV, L.P., its
general partner

By: Apollo Capital Management
IV, Inc., its general partner

By:/s/ Andrew Africk

Andrew Africk
Vice President

APOLLO OVERSEAS PARTNERS IV, L.P.

By: Apollo Advisors, IV, L.P., its
general partner

By: Apollo Capital Management
IV, Inc., its general partner

By:/s/ Andrew Africk

Andrew Africk
Vice President

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