Grubb & Ellis Healthcare REIT, Inc.
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GRUBB & ELLIS HEALTHCARE REIT, INC.

SUPPLEMENT NO. 3 DATED FEBRUARY 12, 2008
TO THE PROSPECTUS DATED DECEMBER 14, 2007

This document supplements, and should be read in conjunction with, our prospectus dated December 14, 2007, as supplemented by Supplement No. 1, dated January 4, 2008, and Supplement No. 2, dated January 30, 2008, relating to our offering of 221,052,632 shares of common stock. The purpose of this Supplement No. 3 is to disclose:

- the status of our initial public offering;

- our acquisition of Medical Portfolio 1 in Florida and Kansas; and

- the name change of the managing member of our advisor, Triple Net Properties, LLC, to Grubb & Ellis Realty Investors, LLC.

Status of Our Initial Public Offering

As of January 31, 2008, we had received and accepted subscriptions in our offering for 22,886,033 shares of our common stock, or approximately $228,591,000, excluding shares issued under our distribution reinvestment plan.

Acquisition of Medical Portfolio 1

On February 1, 2008, we, through our subsidiary, G&E Healthcare REIT Medical Portfolio 1, LLC, acquired a ground lease interest in certain real property known as Largo Medical Arts Center, and a fee simple interest in certain real properties known as Doctors Medical Building, West Bay Surgery Center, Brandon Medical Plaza and Central Florida SurgiCenter, located in Florida and Kansas, or collectively Medical Portfolio 1, from unaffiliated third parties for a total purchase price of $36,950,000, plus closing costs.

Financing and Fees

We financed the purchase price with a secured loan of $22,000,000 from Wachovia Bank, National Association, or Wachovia, and $16,000,000 in borrowings under our secured revolving line of credit with LaSalle Bank National Association, or LaSalle, and KeyBank National Association, or Key Bank, as disclosed in our prospectus. An acquisition fee of $1,109,000, or 3.0% of the purchase price, was paid to Grubb & Ellis Healthcare REIT Advisor, LLC, our advisor, and its affiliate.

On February 1, 2008, we, through G&E Healthcare REIT Medical Portfolio 1, LLC, obtained a secured loan, or the Medical Portfolio 1 loan, with Wachovia. The Medical Portfolio 1 loan is evidenced by a Loan Agreement and a Promissory Note in the principal amount of $22,000,000, or the Medical Portfolio 1 note. The Medical Portfolio 1 note is secured by an Open-End Mortgage, Assignment, Security Agreement and Fixture Filing on each of the Medical Portfolio 1 properties and a Repayment Guaranty by which we unconditionally and irrevocably guarantee the obligations as listed in the Repayment Guaranty. The Medical Portfolio 1 loan matures on February 28, 2011. The Medical Portfolio 1 loan provides for monthly principal and interest payments due on the first day of each calendar month, beginning March 1, 2008. At our option, the Medical Portfolio 1 loan bears interest at per annum rates equal to: (a) 30-day LIBOR plus 1.68% per annum; or (b) the Prime Rate, as announced by Wachovia from time to time. If any monthly installment that is due is not received by Wachovia on or before the 15th day of each month, the Medical Portfolio 1 loan provides for a late charge equal to 4.0% of such monthly installment. In the event of a default, the Medical Portfolio 1 loan also provides for a default interest rate of 4.0% per annum plus the greater of the LIBOR Rate or the Prime Rate. The Medical Portfolio 1 loan may be prepaid in whole or in part, without paying a prepayment premium.

We, through G&E Healthcare REIT Medical Portfolio 1, LLC, entered into an interest rate swap agreement, dated February 1, 2008, as amended February 8, 2008, or the ISDA Agreement, with Wachovia, in connection with the Medical Portfolio 1 loan with Wachovia. As a result of the ISDA Agreement, the Medical Portfolio 1 loan bears interest at an effective fixed rate of 5.26% per annum from February 1, 2008 through January 31, 2011; and provides for monthly principal and interest payments due on the first business day of each calendar month commencing on March 3, 2008.

Description of the Property

Medical Portfolio 1 consists of five medical office buildings: Doctors Medical Building, Largo Medical Arts Center, West Bay Surgery Center, Brandon Medical Plaza and Central Florida SurgiCenter. Medical Portfolio 1, located in Florida and Kansas, consists of approximately 163,000 square feet of gross leasable area. The buildings are either situated on the campuses of, or affiliated with, Hospital Corporation of America, or HCA, one of the largest for-profit health systems in the United States. Medical Portfolio 1 has a combined parking ratio of 6.24 spaces per 1,000 square feet and is approximately 94.6% leased.

Built in 1978, Doctors Medical Building, a five-story building consisting of approximately 63,000 square feet of gross leasable area, is located on the main campus of Overland Park Regional Medical Center, or OPRMC, in Overland Park, Kansas. Doctors Medical Building is approximately 96.3% leased, largely by OPRMC, which occupies approximately 40,000 square feet, or 62.7%, of the gross leasable area.

Built in 1986, Largo Medical Arts Center is a four-story medical office building in Largo, Florida. The property is located on the campus of Largo Medical Center, or LMC, and consists of approximately 33,000 square feet of gross leasable area. Largo Medical Arts Center is approximately 96.4% leased, and LMC is the largest tenant, occupying approximately 6,500 square feet, or 20.0%, of the gross leasable area.

Built in 1975 and renovated in 1990, West Bay Surgery Center is a single-story, medical office building consisting of approximately 15,000 square feet of gross leasable area. Located in Largo, Florida, the property is situated on the LMC campus and is 100% leased. Largo Surgery, LLC is the largest tenant, occupying approximately 89.3% of the gross leasable area.

Built in 1997, Brandon Medical Plaza is a single-story medical office building in Brandon, Florida that consists of approximately 42,000 square feet of gross leasable area. The property is located on the campus of Brandon Regional Hospital, or BRH, and is approximately 96.5% leased. The major tenant is BRH, which currently occupies approximately 46.0% of the gross leasable area.

Built in 1995, Central Florida SurgiCenter is a single-story medical office building consisting of approximately 10,000 square feet of gross leasable area in Lakeland, Florida. Central Florida SurgiCenter is 100% leased to Surgicare of Central Florida, Ltd.

Triple Net Properties Realty, Inc., or Realty, serves as the property manager and provides services and receives certain fees and expense reimbursements in connection with the operation and management of Medical Portfolio 1. Realty sub-contracts certain property management services of Medical Portfolio 1 to Grubb & Ellis Management Services, Inc., a subsidiary of our sponsor.

There are approximately 72 comparable properties located in the surrounding markets that might compete with Medical Portfolio 1.

Management currently has no renovation plans for Medical Portfolio 1 and believes that it is suitable for its intended purpose and adequately covered by insurance. For federal income tax purposes, the depreciable basis in Medical Portfolio 1 will be approximately $33.9 million. We calculate depreciation for income tax purposes using the straight line method. We depreciate buildings based upon estimated useful lives of 39 years. For 2007, Medical Portfolio 1 paid real estate taxes of approximately $306,000 at a rate of 3.68%.

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The following table sets forth the lease expirations of Medical Portfolio 1 for the next ten years, including the number of tenants whose leases will expire in the applicable year, the total area in square feet covered by such leases and the percentage of gross annual rent represented by such leases.

Year	No. of Leases Expiring	Total Square Feet of Expiring Leases	Gross Annual Rent of Expiring Leases	% of Gross Annual Rent Represented by Expiring Leases
2008	8	13,000	$ 246,000	7.4%
2009	4	5,000	$ 116,000	3.5%
2010	2	13,000	$ 380,000	11.4%
2011	5	13,000	$ 256,000	7.7%
2012	8	19,000	$ 339,000	10.1%
2013	2	33,000	$ 606,000	18.1%
2014	5	16,000	$ 331,000	9.9%
2015			$	%
2016	2	15,000	$ 370,000	11.1%
2017	5	29,000	$ 695,000	20.8%

The following table shows the average occupancy rate and the average effective annual rental rate per square foot for Medical Portfolio 1 for the last three years:

Year	Average Occupancy Rate	Average Effective Annual Rental Rate per Square Foot
2005	96.7%	$ 22.19
2006	92.3%	$ 22.16
2007	86.7%	$ 23.04

Name Change of Triple Net Properties, LLC to Grubb & Ellis Realty Investors, LLC

On December 7, 2007, NNN Realty Advisors, Inc., which previously served as our sponsor, merged with and into a wholly owned subsidiary of Grubb & Ellis Company, which we now consider to be our sponsor. On February 6, 2008, in connection with the merger, Triple Net Properties, LLC, which is the managing member of our advisor and is an indirect wholly owned subsidiary of our sponsor, changed its name to Grubb & Ellis Realty Investors, LLC.

>131,649 80,283 12,158 468,482

(1) Salary and bonuses are reported in the year in which the compensable service was performed even if we paid the compensation in a subsequent year or if the executive elected to defer a portion of such compensation.

(2) Amounts in 2010 reflect the discretionary bonuses paid to certain Executive Officers in February 2011 for the significant 2010 efforts associated with the acquisition of FreightLink in Australia. Amounts in 2009 reflect the discretionary bonuses paid to certain Executive Officers in February 2010 for the efforts required to achieve the results management delivered.

(3) The amounts in the Stock Awards column reflect aggregate grant date fair value for restricted stock granted by us in 2010, 2009 and 2008 computed in accordance with ASC Topic 718, without taking into account estimated forfeitures. For discussion of the assumptions made in the valuation of these awards, refer to Note 15 to our consolidated financial statements contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010.

(4) The amounts included in the Option Awards column reflect aggregate grant date fair value for stock options granted by us in 2010, 2009 and 2008 computed in accordance with ASC Topic 718, without taking into account estimated forfeitures. For discussion of the assumptions made in the valuation of these options, refer to Note 15 to our consolidated financial statements contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010.

(5) For 2010, the amounts reflect the cash bonuses paid under the Annual Incentive Compensation Program based on targets that were established in early 2010 by the Compensation Committee and paid in February 2011; for 2009, based on targets that were established in early 2009 by the Compensation Committee and paid in February 2010; and for 2008, based on targets that were established in early 2008 by the Compensation Committee and paid in February and March 2009. For a discussion of the Annual Incentive Compensation Program, see Executive Compensation Compensation Discussion and Analysis Annual Incentive Compensation Program Cash Bonuses.

(6) The amounts represent the increase in Mr. Benz s actuarial accumulated pension benefit from December 31, 2009 to December 31, 2010, December 31, 2008 to December 31, 2009 and December 31, 2007 to December 31, 2008, respectively, in the Rail Link Inc. Retirement Plan *(Rail Link Plan).* Pension benefits do not have above market or preferential interest rate returns. For additional information, see 2010 Pension Benefits below.

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(7) The following table details each item of compensation of our Executive Officers for the fiscal years ended December 31, 2010, required to be included in the All Other Compensation column:

Name	Company Contributions to Defined Contribution Plan	Company Contributions to Retirement 401(k) Plan (a)	Auto (b)	Other (c)	Total
John C. Hellmann	$ 64,148	$ 9,800	$ 14,131	$ 3,983	$ 92,062
Timothy J. Gallagher	68,384	9,800	17,197	6,199	101,580
James W. Benz	68,012	9,800	13,000	5,382	96,194
Allison M. Fergus	42,133	9,800	14,605	1,620	68,158
Christopher F. Liucci	31,880	9,800	11,758	1,542	54,980

(a) Amounts reflect the Company s matching contributions to the Company s 401(k) Plan.

(b) Amounts reflect cash payments for all annual automobile expenses, whether personal or business related. Mr. Benz receives a monthly cash car allowance. Amounts for Messrs. Hellmann, Gallagher and Liucci and Ms. Fergus reflect car leases, fuel, insurance and repairs paid on their behalf. In addition, Mr. Hellmann s balance includes $2,300 of personal parking expenses.

(c) The amount for Mr. Hellmann represents the incremental cost for excess group life insurance and an additional term life policy, long-term disability insurance premiums, commuting expenses and personal travel expenses. The amount for Mr. Gallagher represents the incremental cost for excess group life insurance and an additional term life policy, long-term disability insurance premiums and health club dues. The amount for Mr. Benz represents the incremental cost for excess group life insurance, long-term disability insurance premiums and travel expenses. Amounts for Ms. Fergus and Mr. Liucci represent the incremental cost for excess group life insurance and long-term disability insurance premiums.

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2010 GRANTS OF PLAN-BASED AWARDS

The following table provides information relating to estimated future payouts under non-equity incentive plan awards and grants of stock-based awards during the year ended December 31, 2010.

		Estimated Future Payouts Under Non-Equity Incentive Plan Awards						
Name	**Grant Date**	**Threshold ($) (1)**	**Target ($) (1)**	**Maximum ($) (1)**	**All Other Stock Awards: Number of Shares of Stock or Units (#) (2)**	**All Other Option Awards: Number of Securities Underlying Options (#) (3)**	**Exercise or Base Price of Option Awards ($/Sh)**	**Grant Date Fair Value of Stock and Option Awards ($)(4)**
John C. Hellmann		$	$ 648,518	$ 1,297,035				
	2/26/2010				8,242			$ 262,508
	2/26/2010					12,712	$ 31.85	112,501
	5/28/2010				7,294			262,511
	5/28/2010					11,250	35.99	112,500
	8/31/2010				6,764			262,511
	8/31/2010					9,566	38.81	112,496
	11/30/2010				5,527			262,477
	11/30/2010					8,188	47.49	112,503
Timothy J. Gallagher		$	$ 249,075	$ 498,150				
	2/26/2010				3,338			$ 106,315
	2/26/2010					5,148	$ 31.85	45,560
	5/28/2010				2,954			106,314
	5/28/2010					4,556	35.99	45,560
	8/31/2010				2,739			106,301
	8/31/2010					3,874	38.81	45,558
	11/30/2010				2,239			107,002
	11/30/2010					3,317	47.49	45,576
James W. Benz		$	$ 214,020	$ 428,040				
	2/26/2010				2,868			$ 91,346
	2/26/2010					4,424	$ 31.85	39,152
	5/28/2010				2,538			91,343
	5/28/2010					3,915	35.99	39,150
	8/31/2010				2,354			91,359
	8/31/2010					3,329	38.81	39,149
	11/30/2010				1,924			91,371
	11/30/2010					2,849	47.49	39,145
Allison M. Fergus		$	$ 153,750	$ 307,500				
	2/26/2010				1,648			$ 52,489
	2/26/2010					2,542	$ 31.85	22,497
	5/28/2010				1,459			52,509
	5/28/2010					2,250	35.99	22,500
	8/31/2010				1,353			52,510
	8/31/2010					1,913	38.81	22,497
	11/30/2010				1,105			52,476
	11/30/2010					1,638	47.49	22,506
Christopher F. Liucci		$	$ 69,806	$ 139,611				
	2/26/2010				898			$ 28,601
	2/26/2010					1,385	$ 31.85	12,257
	5/28/2010				795			28,612
	5/28/2010					1,226	35.99	12,260
	8/31/2010				737			28,603
	8/31/2010					1,042	38.81	12,254
	11/30/2010				602			28,589

11/30/2010	892	47.49	12,256

(1) The threshold, target and maximum amounts are established under our annual incentive compensation plan. For additional information, see Executive Compensation Compensation Discussion and Analysis.
(2) Consists of restricted stock awards granted in 2010 under our long-term equity incentive compensation plan.
(3) Consists of stock options granted in 2010 under our long-term equity incentive compensation plan.
(4) This column shows the full grant date fair value of restricted stock awards and stock option awards granted in 2010 computed in accordance with ASC Topic 718. The grant date fair value is the amount that the Company will expense in its financial statements over the award s required period of service as required under ASC Topic 718 without taking into account estimated forfeitures.

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Narrative Supplement to the Summary Compensation Table and the Grants of Plan-Based Awards in 2010 Table

Terms of Equity-Based Awards

Vesting Schedule

In February 2009, the Compensation Committee approved certain changes to the Company s policies with respect to equity awards. The Compensation Committee moved the annual equity award from May to February of each year to align the equity award grants with other annual compensation decisions. Option awards and restricted stock awards granted prior to 2009 vest over three years following the date of grant with one-third of the Class A common shares underlying the award becoming exercisable on each of the first, second and third anniversaries of the grant date, subject to acceleration upon a change of control. Awards made after February 2009 will be made in four equal quarterly grants during the year and generally vest over three years following the date of grant on the anniversary of the first quarterly grant for such year, subject to acceleration upon a change of control. Each quarterly grant of stock options has a five-year term.

Forfeiture

Absent death or disability, unvested option awards are generally forfeited at termination of employment following a 90-day post-termination exercise period. In the event of death prior to the complete exercise of a vested option award, the vested portion of the option may be exercised, in whole or in part, within one year after the date of death by the designated beneficiary, but in all cases, prior to the option expiration date. In the event of disability prior to the complete exercise of a vested option award, the vested portion of the option may be exercised in whole or in part prior to the option expiration date. With respect to restricted stock awards, in the event of termination or death, the unvested portion of any restricted stock award is forfeited. In the event of disability, the Compensation Committee has discretion to promulgate rules regarding the treatment of unvested restricted stock awards. The Company has entered into continuity agreements with key employees, including the Executive Officers, which provide for the vesting of otherwise unvested option awards in the circumstances described under Potential Payments Upon Termination, Change Of Control And Certain Other Events.

Covenants

The stock option awards and restricted stock awards for Executive Officers and other key employees include confidentiality and non-compete obligations, which if violated would result in a forfeiture of unexercised options and unvested restricted stock awards and disgorgement of any gains on option awards and restricted stock awards during the previous six months. The option awards and restricted stock awards for Executive Officers are also subject to acceleration of vesting upon a change of control.

Other

Option awards granted under the Omnibus Plan have an exercise price equal to the closing stock price of the underlying shares on the NYSE on the date of grant. With the exception of restricted stock units, prior to the vesting of restricted stock awards, holders of such awards have all other rights of a stockholder with respect to the shares underlying the award, including, but not limited to, the right to receive cash dividends, if any, and the right to vote the common shares underlying the award at any meeting of our stockholders. Holders of restricted stock units do not have any stockholder rights with respect to the common shares underlying the award until such unit vests and the underlying shares are issued. All equity award grants to Executive Officers are approved by the Compensation Committee.

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OUTSTANDING EQUITY AWARDS AT FISCAL YEAR END 2010

The following table provides information regarding outstanding equity awards held by our Executive Officers at December 31, 2010.

			Option Awards			Stock Awards	
Name	Grant Date (1)	Expiration Date	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Options Exercise Price	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (2)
John C. Hellmann	5/30/2006	5/29/2011	50,262		$ 29.41		$
	6/2/2006	6/1/2011	77,872		30.37		
	5/30/2007	5/29/2012	59,770		32.35		
	5/27/2008	5/26/2013	32,056	16,028	39.08	1,965	104,047
	2/27/2009	2/26/2014	10,890	21,779	20.89	2,944	155,885
	5/29/2009	5/28/2014	7,791	15,581	28.92	2,126	112,572
	8/31/2009	8/30/2014	7,193	14,384	31.38	1,960	103,782
	11/30/2009	11/29/2014	7,353	14,706	31.12	1,977	104,682
	2/26/2010	2/25/2015		12,712	31.85	8,242	436,414
	5/28/2010	5/27/2015		11,250	35.99	7,294	386,217
	8/31/2010	8/30/2015		9,566	38.81	6,764	358,154
	11/30/2010	11/29/2015		8,188	47.49	5,527	292,655
			253,187	124,194		38,799	$ 2,054,408
Timothy J. Gallagher	5/30/2006	5/29/2011	28,979		$ 29.41		$
	6/2/2006	6/1/2011	13,252		30.37		
	5/30/2007	5/29/2012	33,494		32.35		
	5/27/2008	5/26/2013	18,629	9,314	39.08	1,142	60,469
	2/27/2009	2/26/2014	5,378	10,754	20.89	1,454	76,989
	5/29/2009	5/28/2014	3,847	7,694	28.92	1,050	55,598
	8/31/2009	8/30/2014	3,552	7,103	31.38	968	51,256
	11/30/2009	11/29/2014	3,631	7,261	31.12	976	51,679
	2/26/2010	2/25/2015		5,148	31.85	3,338	176,747
	5/28/2010	5/27/2015		4,556	35.99	2,954	156,414
	8/31/2010	8/30/2015		3,874	38.81	2,739	145,030
	11/30/2010	11/29/2015		3,317	47.49	2,239	118,555
			110,762	59,021		16,860	$ 892,737
James W. Benz	5/30/2006	5/29/2011	23,105		$ 29.41		$
	6/2/2006	6/1/2011	9,944		30.37		
	5/30/2007	5/29/2012	28,056		32.35		
	5/27/2008	5/26/2013		7,802	39.08	957	50,673
	2/27/2009	2/26/2014	4,621	9,241	20.89	1,249	66,135
	5/29/2009	5/28/2014	3,306	6,611	28.92	902	47,761
	8/31/2009	8/30/2014		6,103	31.38	832	44,054
	11/30/2009	11/29/2014		6,239	31.12	838	44,372
	2/26/2010	2/25/2015		4,424	31.85	2,868	151,861
	5/28/2010	5/27/2015		3,915	35.99	2,538	134,387
	8/31/2010	8/30/2015		3,329	38.81	2,354	124,644
	11/30/2010	11/29/2015		2,849	47.49	1,924	101,876
			69,032	50,513		14,462	$ 765,763
Allison M. Fergus	5/30/2006	5/29/2011	6,000		$ 29.41		$

10/26/2006	10/25/2011	15,000		28.75		
5/30/2007	5/29/2012	17,722		32.35		
5/27/2008	5/26/2013	10,435	5,218	39.08	640	33,888
2/27/2009	2/26/2014	3,111	6,222	20.89	841	44,531
5/29/2009	5/28/2014	2,226	4,451	28.92	608	32,194
8/31/2009	8/30/2014	2,055	4,109	31.38	560	29,652
11/30/2009	11/29/2014	2,101	4,202	31.12	564	29,864
2/26/2010	2/25/2015		2,542	31.85	1,648	87,262
5/28/2010	5/27/2015		2,250	35.99	1,459	77,254
8/31/2010	8/30/2015		1,913	38.81	1,353	71,641
11/30/2010	11/29/2015		1,638	47.49	1,105	58,510
		58,650	32,545		8,778	$ 464,796

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			Option Awards			Stock Awards	
Name	Grant Date (1)	Expiration Date	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Options Exercise Price	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (2)
Christopher F. Liucci	5/30/2007	5/29/2012	12,325		$ 32.35		$
	5/27/2008	5/26/2013	7,847	3,924	39.08	481	25,469
	2/27/2009	2/26/2014	1,447	2,893	20.89	391	20,703
	5/29/2009	5/28/2014	1,035	2,070	28.92	282	14,932
	8/31/2009	8/30/2014	956	1,911	31.38	260	13,767
	11/30/2009	11/29/2014	977	1,954	31.12	262	13,873
	2/26/2010	2/25/2015		1,385	31.85	898	47,549
	5/28/2010	5/27/2015		1,226	35.99	795	42,095
	8/31/2010	8/30/2015		1,042	38.81	737	39,024
	11/30/2010	11/29/2015		892	47.49	602	31,876
			24,587	17,297		4,708	$ 249,288

(1) All option and restricted stock awards were granted under the Omnibus Plan. One-third of each option and restricted stock award granted prior to 2009 vests each year for three years on the anniversary of the date of grant, with the exception of the June 2, 2006 option award, which were fully vested at the time of the grant. Option and restricted stock awards made after February 2009 generally vest over three years following the date of grant on the anniversary of the first quarterly grant for such year. The vesting schedule for the option and restricted stock awards are set forth below. For additional information on the acceleration of vesting, see Narrative Supplement to the Summary Compensation Table and 2010 Grants of Plan-Based Awards Table and Potential Payments upon Termination, Change of Control and Certain Other Events.

5/30/2006	1/3 vests each year for three years on the anniversary of the date of grant.
10/26/2006	1/3 vests each year for three years on the anniversary of the date of grant.
6/2/2006	Fully vested upon grant.
5/30/2007	1/3 vests each year for three years on the anniversary of the date of grant.
5/27/2008	1/3 vests each year for three years on the anniversary of the date of grant.
2/27/2009	1/3 vests each year for three years on the anniversary of the date of grant.
5/29/2009	1/3 vests each year for three years on February 27.
8/31/2009	1/3 vests each year for three years on February 27.
11/30/2009	1/3 vests each year for three years on February 27.
2/26/2010	1/3 vests each year for three years on the anniversary of the date of grant.
5/28/2010	1/3 vests each year for three years on February 26.
8/31/2010	1/3 vests each year for three years on February 26.
11/30/2010	1/3 vests each year for three years on February 26.

(2) The market value of stock awards that have not vested was calculated using the closing stock price on the NYSE on December 31, 2010, of $52.95.

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2010 OPTION EXERCISES AND STOCK VESTED

The following table provides information regarding the amounts received by each Executive Officer upon exercise of options or the vesting of restricted stock during the year ended December 31, 2010.

	Option Awards		Stock Awards	
Name	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise (1)	Number of Shares Acquired on Vesting (#)	Value Realized On Vesting (2)
John C. Hellmann	65,385	$ 1,106,249	8,765	$ 297,387
Timothy J. Gallagher	18,072	305,959	4,652	158,557
James W. Benz	56,705	806,573	3,945	134,352
Allison M. Fergus	1,500	24,605	2,607	88,685
Christopher F. Liucci	10,000	79,908	1,554	53,589

(1) Option award value realized on exercise was calculated by multiplying the number of shares acquired upon exercise by the closing price of our stock on the NYSE on the exercise date and then deducting the aggregate exercise price of the option awards.
(2) Stock award value realized on vesting was calculated by multiplying the number of shares acquired upon vesting by the closing price of our stock on the NYSE on the vesting date.

2010 PENSION BENEFITS

The following table provides information regarding the pension benefits for our Executive Officers.

Name	Plan Name	Number of Years Credited Service	Present Value of Accumulated Benefit	Payments During Last Fiscal Year
John C. Hellmann			$	$
Timothy J. Gallagher				
James W. Benz	Rail Link Retirement Plan(1)	14.89(2)	360,931(3)	
Allison M. Fergus				
Christopher F. Liucci				

(1) The Rail Link Retirement Plan, or Rail Link Plan, is a defined benefit pension plan sponsored by Rail Link, Inc., a wholly owned subsidiary of the Company. The Rail Link Plan covers approximately 68 Rail Link, Inc. eligible employees as of December 31, 2010. The accumulated benefit an employee earns over his or her career with Rail Link, Inc. is payable starting after retirement on a monthly basis for life. The normal retirement age defined in the Rail Link Plan is 62. Mr. Benz is currently eligible for retirement under the Rail Link Plan.
(2) Under the Rail Link Plan, Mr. Benz accumulated 5.25 creditable service years while working for the Company from November 8, 1996 until the Rail Link Plan was frozen on January 31, 2002 and 9.64 years of service as President of Rail Link, Inc. before Rail Link, Inc. was purchased by the Company in November 1996.
(3) All benefit accruals under the Rail Link Plan were frozen as of January 31, 2002. As applicable to Mr. Benz, the Rail Link Plan provides benefits based primarily on a formula that takes into account the executive s earnings for each fiscal year. The formula provides an annual benefit accrual equal to 1.0% of the five-year average earnings of the individual and 0.5% of the Excess Amount of compensation. Excess Amount is defined as the five-year average of earnings in excess of the social security average wage. For a discussion of the assumptions made in quantifying the present value of the accrued benefit, refer to Note 11 to our

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consolidated financial statements contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2007. The executive s annual earnings taken into account under this formula include base salary and up to one-half of any bonus payments. The maximum annual benefit for Mr. Benz is frozen at $28,145 annually ($2,345 monthly) payable after retirement. Upon retirement, Mr. Benz may elect payment in the form of either a single life annuity or a joint and survivor annuity. While these two options would provide different annual benefit amounts to Mr. Benz (and his spouse, in the event he selects the joint and survivor annuity option), the total actuarial value of the two elections is equivalent over the life of the selected annuity.

2010 NONQUALIFIED DEFERRED COMPENSATION (1)

The following table provides information regarding contributions, earnings and balances for our Executive Officers under our nonqualified deferred compensation plan for the year ended December 31, 2010.

Name	Executive Contribution in Last Fiscal Year (2)	Registrant Contributions in Last Fiscal Year (3)	Aggregate Earnings in Last Fiscal Year (4)	Aggregate Withdrawals/ Distributions	Aggregate Balance at Last Fiscal Year End (5)
John C. Hellmann	$	$ 64,148	$ 210,085	$	$ 1,170,000
Timothy J. Gallagher		68,384	70,165		437,918
James W. Benz	34,800	68,012	11,429		151,378
Allison M. Fergus		42,133	14,278		107,015
Christopher F. Liucci		31,880	13,644		87,267

(1) The DCP was implemented in 2004 and allows certain employees, including the Executive Officers, to defer receipt of their salary and/or bonus payments into accounts that mirror gains and/or losses of several different investment funds we have selected. The investment funds offered are similar but not identical to those offered under our 401(k) Plan. The DCP does not offer above market or preferential interest rate returns or permit participants to defer their cash compensation into our common stock. Participant deferrals must be elected annually, with limits of 50% on base salary and 100% on bonus payments with a minimum aggregate deferral of $2,000. Investment choices may be reallocated on a daily basis, but if selections are not made, the amounts deferred will automatically be allocated to the lowest-risk fund. Accounts are adjusted daily based on the performance of each measurement fund that is selected for the participant s account, and the account is 100% vested at the time of deferral. Participant deferral elections are irrevocable and cannot be changed during the plan year. However, there are circumstances, such as an unforeseeable financial emergency, that can be considered for suspending a participant s current deferral election. The benefit distribution date selected may be either: (1) separation of service, or (2) the attainment of whatever age specified, or (3) the earlier of (a) separation of service or (b) the attainment of whatever age specified, or (4) the later of (a) separation of service or (b) the attainment of whatever age specified. If a distribution date is not specified, the benefit distribution date will be separation of service. The form of payment selected for an employee s distribution is either a lump sum or annual installments over any period an employee elects, not to exceed 15 years. No withdrawals or distributions were made in 2010. The DCP also allows for Company contributions and is the instrument used to allow Company and Executive contributions into the Defined Contribution Accounts, as discussed above under Deferred Compensation Plan. Company contributions are included in the Summary Compensation Table.

(2) Mr. Benz s contribution of $34,800 is included in the Summary Compensation Table.

(3) The amounts represent the Company contributions into the Defined Contribution Accounts for Messrs. Hellmann, Gallagher and Liucci and Ms. Fergus. The Company s contributions into their Defined Contribution Account are reflected in the Summary Compensation Table in the All Other Compensation column. These contributions vest proportionately over a five-year period, subject to acceleration of vesting

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in the event of a change of control, death or disability, each as defined under the DCP. For additional information on the DCP Plan see Executive Compensation Compensation Discussion and Analysis Other Compensation Deferred Compensation Plan.

(4) Earnings on the Company contributions made on behalf of Messrs. Hellmann, Gallagher and Liucci and Ms. Fergus vest over a five-year period, or earlier upon a change of control. Earnings on Mr. Benz s account are fully vested. While the contribution amounts for Messrs. Hellmann, Benz, Gallagher and Liucci and Ms. Fergus are reported in the Summary Compensation Table, the earnings for all five Executive Officers are not, because all earnings in the Defined Contribution Accounts are not considered above market or preferential. Earnings are calculated based on the performance of some or all of the following funds: Capital Research American Fund Growth, Pacific Life Cash Management, Oppenheimer Emerging Markets, BlackRock Equity Index, FMR Co Inc Fid. VIP Contrafund, Pacific Life High Yield Bond, PIMCO Inflation Managed, Janus Aspen Series Enterprise Portfolio, Janus Aspen Series Overseas Portfolio Service Shares, Iridian Asset Management Business Opportunity Value, Brandes International Equity, PIMCO Managed Bond, Morgan Stanley Real Estate, NFJ Small-Cap Value and Van Eck Worldwide Hard Assets, based on the executive s investment allocation. In 2010, the Executive Officers selected the Capital Research American Fund Growth, Pacific Life Cash Management, Oppenheimer Emerging Markets, BlackRock Equity Index, FMR Co Inc Fid., VIP Contrafund, Pacific Life High Yield Bond, PIMCO Inflation Managed, Janus Aspen Series Enterprise Portfolio, Janus Aspen Series Overseas Portfolio Service Shares, Iridian Asset Management Business Opportunity Value, PIMCO Managed Bond, Morgan Stanley Real Estate and NFJ Small-Cap Value which funds yielded 11.03%, (0.05%), 27.02%, 14.81%, 16.93%, 14.52%, 8.78%, 25.52%, 25.02%, 9.72%, 27.00%, 30.54% and 25.34%, respectively for fiscal year 2010.

(5) Amounts represent the balance of the Executive Officer s individual account as of December 31, 2010. As of December 31, 2010, the vested portion of Mr. Hellmann s aggregate balance was \$988,355, a portion of which represents Mr. Hellmann s personal contributions, which are immediately vested. As of December 31, 2010, the vested portion of Mr. Gallagher, Mr. Benz, Ms. Fergus and Mr. Liucci s accounts were \$210,501, \$151,378, \$33,162 and \$27,576, respectively. Of contributions made by Mr. Hellmann or by the Company on his behalf, \$868,612 was previously reported in a Summary Compensation Table. Of contributions made by the Company on Mr. Gallagher s behalf, \$273,536 was previously reported in a Summary Compensation Table. Of contributions made by Mr. Benz, \$36,613 was previously reported in a Summary Compensation Table. Of contributions made by Ms. Fergus, \$42,133 was previously reported in a Summary Compensation Table. Of contributions made by Mr. Liucci, \$31,880 was previously reported in a Summary Compensation Table.

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POTENTIAL PAYMENTS UPON TERMINATION, CHANGE OF CONTROL AND CERTAIN OTHER EVENTS

Payments upon Change of Control

The continuity agreements with each of our Executive Officers provide that upon termination of their employment without cause or resignation for good reason within three years following a change of control, (1) Mr. Hellmann, Mr. Gallagher, Mr. Benz and Ms. Fergus will receive a cash severance amount equal to three times the sum of their current salary plus target annual incentive compensation for that year plus their accrued but unpaid base salary and annual incentive compensation, and (2) Mr. Liucci will receive a cash severance amount equal to one times the sum of his current salary plus target annual incentive compensation for that year plus his accrued but unpaid base salary and annual incentive compensation.

A change of control is deemed to occur if: a person or outside group becomes a beneficial owner (defined as 35% ownership) and their ownership is greater than that of our founder and executive officers; a merger, sale of 51% or greater of the Company s assets, liquidation or dissolution of the Company occurs; or our incumbent Board ceases to be a majority in any successor of the Company during a twelve-month period.

In the event of a change of control, the acceleration provisions of the DCP and award agreements under the Omnibus Plan provide for payments exclusive of our continuity agreements. In the event of a change of control under our DCP, participants are entitled to acceleration of unvested account balances, subject to the limitations of Section 280G of the IRC. In addition, pursuant to the award agreements for options and restricted stock awards to Executive Officers, the unvested portions of all such awards immediately vest and become exercisable upon a change of control.

In addition, upon termination without cause or resignation for good reason within three years following a change of control, all unvested stock options and restricted stock holdings immediately become vested, and any unvested balance under the DCP plan is accelerated to the extent such acceleration does not take place earlier under the applicable plan documents. Resignation for good reason by an executive occurs if: the executive s duties, titles or responsibilities decrease after a change of control; the executive s base salary, annual incentive target, or annual equity target is decreased after a change of control; the executive s work location changes to a different location more than 35 miles from his or her prior work location after a change of control; or the successor company fails to assume and perform the provisions under the continuity agreements.

The Company will conditionally pay the 20% excise tax for excess parachute payments and will gross up the resulting income tax due for Mr. Hellmann, Mr. Gallagher and Mr. Benz if their resulting change of control payment is more than 10% above the safe harbor limit of three times the base amount under Section 280G of the IRC. The base amount is defined as the average W-2 earnings of the executive in the last five years. A change of control payment that is up to 10% above the safe harbor limit will not result in payment of the excise tax and tax gross up, but instead will result in a reduction of the payment to the safe harbor limit less one dollar. Ms. Fergus and Mr. Liucci are not provided conditional payments of resulting excise tax for excess parachute payments and related income tax but are entitled to receive the greater of the after-tax change of control payment, including their payment of the 20% excise tax for excess parachute payments, or the after tax safe harbor limit less one dollar. This election is referred to as the Best After-Tax Provision in the table below.

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The payments set forth below assume that the applicable triggering event occurred on December 31, 2010 and include amounts received by each Executive Officer in the event of a change of control and in the event of a change of control followed by termination.

Name/Event	Cash Severance Payment (1)	Acceleration of Unvested DCP Amounts	Acceleration of Unvested Options (2)	Acceleration of Unvested Restricted Stock (3)	Gross Payment Before Applying Tax Gross-Up Provisions	Adjustment for Best After-Tax Provision (4)	Adjustment for Payment of Excise Tax and Tax Gross Up (5)	Total
John C. Hellmann								
Change of Control (6)	$	$ 172,282	$ 2,565,241	$ 2,054,408	$	$	$	$ 4,791,931
Change of Control Followed by Termination (7)	4,921,000	172,282	2,565,241	2,054,408	9,712,931		3,906,638	13,619,569
Timothy J. Gallagher								
Change of Control (6)		227,418	1,229,347	892,737				2,349,502
Change of Control Followed by Termination (7)	2,430,000	227,418	1,229,347	892,737	4,779,502		2,068,890	6,848,392
James W. Benz								
Change of Control (6)			1,053,553	765,763				1,819,316
Change of Control Followed by Termination (7)	2,088,000		1,053,553	765,763	3,907,316		1,573,733	5,481,049
Allison M. Fergus								
Change of Control (6)		73,853	686,959	464,796				1,225,608
Change of Control Followed by Termination (7)	1,575,000	73,853	686,959	464,796	2,800,608			2,800,608
Christopher F. Liucci								
Change of Control (6)		59,692	350,415	249,288				659,395
Change of Control Followed by Termination (7)	364,838	59,692	350,415	249,288	1,024,233			1,024,233

(1) The cash severance payment is calculated by adding the 2010 accrued but unpaid annual incentive to either three times the sum of current annual salary plus target annual incentive or one times the sum of current annual salary plus target annual incentive, depending on the individual Executive Officer s continuity agreement outlined above.

(2) The value of the accelerated vesting of stock options is calculated by multiplying the number of unvested stock options by the difference between the closing stock price on the NYSE on December 31, 2010 of $52.95 and the exercise price of the stock option.

(3) The value of the accelerated vesting of restricted stock is calculated by multiplying the number of unvested restricted stock shares by the closing stock price on the NYSE on December 31, 2010 of $52.95.

(4) Ms. Fergus and Mr. Liucci s after-tax change of control payment, including the 20% payment of the excise tax, would be greater than the after-tax payment of the safe harbor limit and are not reduced. A personal tax rate of 40% was used in calculating the after-tax amounts.

(5) Mr. Hellmann, Mr. Gallagher, and Mr. Benz s gross payments would be more than 10% above the Section 280G safe harbor limit. Therefore, the Company would additionally pay the 20% excise tax and income taxes related to the excise tax. An estimated tax gross-up rate of 60% was used in the calculation.

(6) Represents payments under the provisions of the DCP and award agreements under the Omnibus Plan, which provide for payments upon a change of control exclusive of our continuity agreements. In the event of a change of control under our DCP Plan, participants are entitled to acceleration of unvested account balances, subject to the Section 280G safe harbor provisions. In addition, pursuant to the award agreements for options and restricted stock awards to Executive Officers, the unvested portions of all such awards immediately vest and become exercisable upon a change of control.

(7) Represents payments under the continuity agreements in the event of a change of control followed by termination without cause or resignation for good reason by the executive within three years of the change of control.

Payments in the Event of Retirement, Death, or Disability

Messrs. Hellmann, Gallagher and Liucci and Ms. Fergus are entitled to receive accelerated vesting of their DCP accounts in the event of death or disability, pursuant to the DCP Plan provisions. We have provided the DCP benefit to these Executive Officers in consideration of their role in the organization and as an incentive for their continued service. Assuming a December 31, 2010 death or disability, Messrs. Hellmann, Gallagher and Liucci and Ms. Fergus would be entitled to the acceleration of unvested DCP account balances, subject to the Section 280G safe harbor provisions, of $172,282, $173,456, $59,692 and $73,853, respectively. Mr. Benz account balance is fully vested. In

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the event of retirement at December 31, 2010, none of the participating Executive Officers are entitled to acceleration of unvested DCP balances. For additional information, see Nonqualified Deferred Compensation for 2010 above.

Mr. Benz is a participant in the Rail Link Plan, which was frozen on January 31, 2002. Based upon his average compensation and years of service accrued prior to the plan being frozen, the annual amount payable upon retirement at age 62 under the plan is $28,145. In accordance with the plan provisions, assuming retirement, death or disability at December 31, 2010, Mr. Benz is entitled to receive unreduced annual payments of 28,145, as Mr. Benz attained age 62 in 2010. For additional information, see 2010 Pension Benefits above.

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SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table and related footnotes set forth as of April 1, 2011 (except to the extent indicated in the footnotes to the table below) certain information concerning beneficial ownership of our stock held by (1) each stockholder known to us to own beneficially more than 5% of any class of our voting stock, (2) each of our directors and each director nominee, (3) each of our named executive officers, and (4) all of our directors and executive officers as a group. We have calculated beneficial ownership in accordance with the rules of the SEC. Unless otherwise indicated below in the footnotes to the table, each stockholder named in the table has sole voting and investment power with respect to all shares shown as beneficially owned by that stockholder, and the designated address of each individual listed in the table is as follows: Genesee & Wyoming Inc., 66 Field Point Road, Greenwich, Connecticut 06830. We have omitted percentages of less than 1.0% from the table. Unless otherwise indicated, all options to purchase shares of Class A Common Stock, restricted shares and DSUs were issued pursuant to the Omnibus Plan. Class A Common Stock that can be acquired upon conversion of Class B Common Stock are not included in the Class A Common Stock numbers set forth in the table below.

Name and Address of Beneficial Owner	Class A Common Stock Beneficially Owned No. of Shares	Class A % of Class	Class B Common Stock Beneficially Owned No. of Shares	Class B % of Class	% of Vote (1)
Directors and Nominees					
Mortimer B. Fuller III (2)	66,833	*	1,587,642	67.38%	25.22%
John C. Hellmann (3)	563,017	1.41%	1,872	*	*
Robert M. Melzer (4)	97,541	*			*
Philip J. Ringo (5)	98,937	*			*
Peter O. Scannell (6)	44,022	*			*
Mark A. Scudder (7)	41,515	*			*
David C. Hurley (8)	21,135	*			*
Øivind Lorentzen (9)	25,591	*			*
Michael Norkus (10)	7,189	*			*
Other Named Executives					
Timothy J. Gallagher (11)	187,061	*			*
James W. Benz (12)	114,504	*			*
Allison M. Fergus (13)	88,570	*			*
Christopher F. Liucci (14)	43,988	*			*
Significant Shareholders					
Louis S. Fuller (15)	261,700	*	608,791	25.84%	10.05%
Baron Capital Group, Inc. (16) 767 Fifth Avenue New York, New York 10153	3,818,615	9.64%			6.04%
Wellington Management Company, LLP (17) 280 Congress Street Boston, Massachusetts 02210	2,240,890	5.66%			3.55%
T. Rowe Price Associates, Inc. (18) 100 E. Pratt Street Baltimore, Maryland 21202	2,757,558	6.96%			4.37%
BlackRock, Inc. (19) 40 East 52nd Street New York, New York 10022	2,016,974	5.09%			3.19%
All Directors and Executive Officers as a Group (13 persons) (20)	1,399,903	3.46%	1,589,514	67.46%	27.02%

* Represents less than 1%.

(1) Reflects the voting power of the outstanding share holdings shown on the table as a result of the fact that Class A Common Stock is entitled to one vote per share and Class B Common Stock is entitled to ten votes per share.

(2) The amounts shown include: (1) 6,874 shares of Class A Common Stock owned by Mr. Fuller individually; (2) 4,804 shares of Class A Common Stock represented by restricted stock; (3) 47,594 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days; (4) 1,605 shares of Class A Common Stock that may be received for DSUs; (5) 5,956 shares of Class A Common Stock held by Mr. Fuller s wife, as to which shares Mr. Fuller disclaims beneficial ownership; (6) 1,179,094 shares of Class B Common Stock owned by Mr. Fuller individually; (7) a total of 402,800 shares of Class B Common Stock held by two grantor annuity trusts, both of which Mr. Fuller is the trustee and principal beneficiary; and (8) 5,748 shares of Class B Common Stock held by Mr. Fuller s wife, as to which shares Mr. Fuller disclaims beneficial ownership.

(3) The amounts shown include: (1) 215,894 shares of Class A Common Stock and 1,872 shares of Class B Common Stock owned by Mr. Hellmann individually; (2) 30,777 shares of Class A Common Stock represented by restricted stock; and (3) 316,346 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days. The number of shares in the table includes 215,894 shares of Class A Common Stock held in a brokerage account pledged as collateral for a personal credit facility.

(4) The amount shown includes: (1) 41,273 shares of Class A Common Stock owned by Mr. Melzer individually; (2) 11,250 shares of Class A Common Stock held by a self-directed IRA; (3) 41,561 shares of Class A Common Stock that may be received for DSUs; and (4) 3,457 shares of Class A Common Stock represented by restricted stock.

(5) The amount shown includes: (1) 42,439 shares of Class A Common Stock owned by Mr. Ringo individually; (2) 54,602 shares of Class A Common Stock that may be received for DSUs; and (3) 1,896 shares of Class A Common Stock represented by restricted stock.

(6) The amount shown includes: (1) 12,623 shares of Class A Common Stock owned jointly by Mr. Scannell and his wife; (2) 10,125 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days; (3) 18,169 shares of Class A Common Stock that may be received for DSUs; and (4) 3,105 shares of Class A Common Stock represented by restricted stock.

(7) The amount shown includes: (1) 27,989 shares of Class A Common Stock owned by Mr. Scudder individually; (2) 10,125 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days; (3) 1,505 shares of Class A Common Stock that may be received for DSUs; and (4) 1,896 shares of Class A Common Stock represented by restricted stock.

(8) The amount shown includes: (1) 8,123 shares of Class A Common Stock owned by Mr. Hurley individually; (2) 9,907 shares of Class A Common Stock that may be received for DSUs; and (3) 3,105 shares of Class A Common Stock represented by restricted stock.

(9) The amount shown includes: (1) 13,899 shares of Class A Common Stock owned by Mr. Lorentzen individually; (2) 9,796 shares of Class A Common Stock that may be received for DSUs; and (3) 1,896 shares of Class A Common Stock represented by restricted stock.

(10) The amount shown includes: (1) 3,054 shares of Class A Common Stock owned by Mr. Norkus individually; (2) 2,239 shares of Class A Common Stock that may be received for DSUs; and (3) 1,896 shares of Class A Common Stock represented by restricted stock.

(11) The amount shown includes: (1) 32,575 shares of Class A Common Stock owned by Mr. Gallagher individually; (2) 12,372 shares of Class A Common Stock represented by restricted stock; and (3) 142,114 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days.

(12) The amount shown includes: (1) 10,077 shares of Class A Common Stock owned by Mr. Benz individually; (2) 31,100 shares of Class A Common Stock owned by Mr. Benz jointly with his wife; (3) 10,607 shares of Class A Common Stock represented by restricted stock; and (4) 62,720 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days.

(13) The amount shown includes: (1) 6,056 shares of Class A Common Stock owned by Ms. Fergus individually; (2) 76,141 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days; and (3) 6,373 shares of Class A Common Stock represented by restricted stock.

(14) The amount shown includes: (1) 6,046 shares of Class A Common Stock owned by Mr. Liucci individually; (2) 34,441 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days; and (3) 3,501 shares of Class A Common Stock represented by restricted stock.

(15) The amounts shown include: (1) 508,933 shares of Class B Common Stock owned by Mr. Louis Fuller individually; (2) 1,700 shares of Class A Common Stock owned by Mr. Louis Fuller individually; (3) 99,858 shares of Class B Common Stock owned by Mr. Louis Fuller s wife, as to which shares he disclaims beneficial ownership; and (4) 260,000 shares of Class A Common Stock owned by Mr. Louis Fuller s wife, as to which shares he disclaims beneficial ownership.

(16) The amount and percentage shown and the information contained in this footnote are based on a Schedule 13G/A filed by Baron Capital Group, Inc. (*BCG*) on February 14, 2011. BCG has shared voting power with respect to 3,457,365 shares of Class A Common Stock and shared dispositive power with respect to 3,818,615 shares of Class A Common Stock. According to their joint Schedule 13G, BAMCO, Inc. (*BAMCO*) has shared voting power with respect to 3,223,650 shares of Class A Common Stock and shared dispositive power with respect to 3,573,650 shares of Class A Common Stock; Baron Capital Management, Inc. (*BCM*) has shared voting power

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with respect to 233,715 shares of Class A Common Stock and shared dispositive power with respect to 244,965 shares of Class A Common Stock; Baron Growth Fund has shared voting and shared dispositive power with respect to 2,000,000 shares of Class A Common Stock; and Ronald Baron has shared voting power with respect to 3,457,365 shares of Class A Common Stock and shared dispositive power with respect to 3,818,615 shares of Class A Common Stock.

(17) The amount and percentage shown and the information contained in this footnote are based on a Schedule 13G/A filed by Wellington Management Company, LLP *(Wellington)* on February 14, 2011. Wellington, in its capacity as investment advisor, may be deemed to beneficially own 2,240,890 shares of Class A Common Stock. Wellington has shared voting power with respect to 1,405,597 of such shares and shared dispositive power with respect to 2,240,890 of such shares.

(18) The amount and percentage shown, and the information contained in this footnote are based on a Schedule 13G/A filed by T. Rowe Price Associates, Inc. *(Price Associates)* on February 10, 2011. According to its joint Schedule 13G, T. Rowe Price Small-Cap Value Fund, Inc. *(Price SC Value Fund)* owns 1,940,000 shares of Class A Common Stock and, according to the Schedule 13G filed by Price Associates, Price SC Value Fund has ceased to be the beneficial owner of more than five percent. Price Associates has sole voting power with respect to 794,440 of such shares and has sole dispositive power with respect to 2,757,558 shares of Class A Common Stock. Price SC Value Fund has sole voting power with respect to 1,940,000 of such shares.

(19) The amount and percentage shown and the information contained in this footnote are based on a Schedule 13G filed by BlackRock, Inc. *(BlackRock)* on February 4, 2011. BlackRock has sole voting power and sole dispositive power with respect to 2,016,974 shares of Class A Common Stock.

(20) See footnotes 2 through 14 to this table. The amounts shown include: (1) 475,228 shares of Class A Common Stock owned individually, jointly with a spouse, by a spouse individually or in a self directed IRA; (2) 699,606 shares of Class A Common Stock that may be purchased pursuant to options exercisable within 60 days; (3) 1,589,514 shares of Class B Common Stock owned individually or by a spouse individually, including 402,800 shares of Class B Common Stock which are held by grantor annuity trusts; (4) 85,685 shares of Class A Common Stock represented by restricted stock; and (5) 139,384 shares of Class A Common Stock that may be received for DSUs.

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PROPOSAL TWO:

ADOPTION OF OUR SECOND AMENDED AND RESTATED

2004 OMNIBUS INCENTIVE PLAN

Background

Upon the recommendation of the Compensation Committee, the Board has adopted an amendment (the *Plan Amendment)* to the Company s Omnibus Plan (1) to increase the number of shares of Class A Common Stock with respect to which Awards (as defined in the Omnibus Plan) may be granted under the Omnibus Plan by 2,500,000 shares, from 3,687,500 shares to 6,187,500 shares, (2) to increase the maximum cash bonus award that could be paid during any calendar year from $2,000,000 to $5,000,000, (3) to re-set the term of the Omnibus Plan to expire with respect to the ability to grant new awards on March 22, 2021, (4) to delete the sub-limit with respect to the ability to grant stock awards other than stock options and stock appreciation rights, and (5) to make certain other technical changes to the Omnibus Plan, in each case, subject to approval by our stockholders at the annual meeting. In addition, stockholder approval of this proposal is deemed to constitute approval of (i) the Performance Criteria upon which performance-based Awards that are intended to be deductible by the Company under Section 162(m) of the IRC may be based under the Omnibus Plan, (ii) the annual per Participant limit of 1,012,500 shares of Class A Common Stock for stock-based Awards and $5,000,000 for cash based Awards, and (iii) the class of Participants eligible to receive Awards under the Omnibus Plan. In order for Awards granted under the Omnibus Plan to continue to be treated as qualified performance-based compensation under Section 162(m) of the IRC, every five years we will seek stockholder approval of each of the items listed in the prior sentence.

As of April 1, 2011 there are 943,848 shares of Class A Common Stock with respect to which Awards may be granted under the Omnibus Plan. If the Plan Amendment is approved by our stockholders, there will be 3,443,848 shares of Class A Common Stock with respect to which Awards may be granted under our Second Amended and Restated 2004 Omnibus Incentive Plan. The last reported sale price of our Class A Common Stock as reported by the NYSE on April 1, 2011 was $57.94.

Our Board of Directors unanimously recommends that stockholders vote FOR the adoption of our Second Amended and Restated 2004 Omnibus Incentive Plan in order to permit the Company to continue to compensate employees, directors and consultants in part with stock-based awards rather than cash.

When originally adopted and approved in April 2004, the Omnibus Plan was intended to replace our 1996 Stock Option Plan (*1996 Option Plan*), our Stock Option Plan for Outside Directors (*Directors Plan*) and our Deferred Stock Plan for Non-Employee Directors (*Deferred Stock Plan*). The Omnibus Plan was amended by the Board on March 30, 2007, and became effective on May 30, 2007, the date of approval by our stockholders at the 2007 Annual Meeting of the Stockholders (the *Amended and Restated Omnibus Plan*). The Amended and Restated Omnibus Plan was amended and restated in 2007 to increase the number of shares of Class A Common Stock with respect to which Awards may be granted. A summary of the Amended and Restated Omnibus Plan, as proposed to be further amended appears below. This summary is qualified in its entirety by reference to the text of the Second Amended and Restated 2004 Omnibus Incentive Plan, included as Annex I, which is marked to reflect the changes to the Omnibus Plan. You are urged to read the actual text of the Second Amended and Restated 2004 Omnibus Incentive Plan in its entirety. Unless otherwise defined in this summary, capitalized terms used in this summary have the meanings given such terms in the Amended and Restated Omnibus Plan.

Description of the Omnibus Plan

Administration

The Omnibus Plan is administered by the Compensation Committee of the Board, or such other committee as may be designated by the Board (the *Committee*), which consists of at least two individuals who are intended to qualify both as non-employee directors within the meaning of Rule 16b-3 under the Exchange Act, and as outside directors within the meaning of the definition of such term as contained in Section 1.162-27(e)(3) of the Treasury Regulations, or any successor definition adopted under Section 162(m) of the IRC. The Committee may allocate all or any portion of its responsibilities and powers under the Omnibus Plan to any one or more of its members, the Company s CEO or other senior members of management as the Committee deems appropriate; however, only the Committee, or another committee consisting of two or more individuals who qualify both as non-employee directors and as outside directors, may select and grant Awards to Participants who are subject to Section 16 of the Exchange Act or Awards that are intended to qualify as performance-based compensation under Section 162(m) of the IRC (see Limitation on Income Tax Deduction below).

The Committee has broad authority in its administration of the Omnibus Plan, including, but not limited to, the authority to interpret the Omnibus Plan; to establish rules and regulations for the operation and administration of the Omnibus Plan; to select the persons to receive Awards; to determine the type, number, terms, conditions, limitations and restrictions of Awards, including, without limitation, terms regarding vesting, exercisability and the effect of certain events, such as a change of control in the Company or the Participant s death, disability, retirement or termination as a result of breach of agreement; to create additional forms of Awards consistent with the terms of the Omnibus Plan; and to take all other action it deems necessary or advisable to administer the Omnibus Plan.

To facilitate the granting of Awards to Participants who are employed or retained outside of the United States, the Committee is authorized to modify and amend the terms and conditions of an Award to accommodate differences in local law, policy or custom.

Shares Available and Maximum Awards

If the Plan Amendment is approved, a total of 3,443,848 shares of Class A Common Stock will be available for grant of Awards under the Omnibus Plan. In addition, any shares of Class A Common Stock related to Awards under the Omnibus Plan (i) that terminate by expiration, forfeiture, cancellation or otherwise without the issuance of such shares, (ii) are settled in cash in lieu of shares of Class A Common Stock, (iii) are exchanged for Awards not involving shares of Class A Common Stock, or (iv) are net settlement shares retained by the Company to cover the exercise price and taxes (if applicable), will become available again under the Omnibus Plan (see Background). The number of shares of Class A Common Stock available under the Omnibus Plan shall be adjusted to reflect the occurrence of certain events described under Adjustments Upon Certain Events below. The shares of Class A Common Stock available for issuance under the Omnibus Plan may be authorized and unissued shares or treasury shares, including shares purchased in open market or private transactions.

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The maximum Award granted or payable to any one Participant under the Omnibus Plan for a calendar year will be 1,012,500 shares of Class A Common Stock, subject to the Committee s authority to adjust Awards upon certain events described under Adjustments Upon Certain Events below, or in the event the Award is paid in cash, $5,000,000.

The Committee has the exclusive power and authority, consistent with the provisions of the Omnibus Plan, to establish the terms and conditions of any Award and to waive any such terms or conditions as described under Administration above. Because the benefits conveyed under the Omnibus Plan will be at the discretion of the Committee, it is not possible to determine in advance what benefits Participants will receive under the Omnibus Plan.

Eligible Participants

Participants in the Omnibus Plan will be selected by the Committee from the employees, directors and consultants of the Company and its Subsidiaries. Participants may be selected and Awards may be made at any time during the ten-year period following the March 22, 2011 Board approval of the Omnibus Plan. As of April 1, 2011, approximately 102 Employees (consisting of five Executive Officers and 97 other officers and other employees) and eight non-management directors were eligible to participate in the Omnibus Plan. The number of active engagements with consultants varies from time to time and the Committee has not historically made grants to these individuals under the Omnibus Plan. As of April 1, 2011, there were no eligible consultants.

The selection of those persons within a particular class who will receive Awards is entirely within the discretion of the Committee. The Committee has not yet determined how many persons are likely to participate in the Omnibus Plan over time. The Committee intends, however, to grant most of the Omnibus Plan s Awards to those persons who are in a position to have a significant direct impact on the growth, profitability and success of the Company, which would include a portion of the Participants in the Omnibus Plan.

Types of Awards

The Omnibus Plan authorizes the grant of Stock Options, Stock Appreciation Rights, Stock Awards, Restricted Stock Unit Awards, Performance Units, Performance Awards and any other form of Award established by the Committee that is consistent with the Omnibus Plan s purpose, or any combination of the foregoing. All Awards granted under the Omnibus Plan are evidenced by an Award Notice that specifies the type of Award granted, the number of shares of Class A Common Stock underlying the Award, if applicable, and all terms governing that Award.

Stock Options. The Committee may grant Awards in the form of stock options to purchase shares of Class A Common Stock, which stock options may be non-qualified or incentive stock options for federal income tax purposes. Stock options granted under the Omnibus Plan will vest and become exercisable at such times and upon such terms and conditions as may be determined by the Committee. Any stock option granted in the form of an incentive stock option must satisfy the requirements of Section 422 of the IRC. The exercise price per share of Class A Common Stock for any stock option will not be less than 100% of the fair market value of a share of Class A Common Stock on the day that the stock option is granted. For the purposes of the Omnibus Plan, the fair market value means the closing price of the Common Stock on the New York Stock Exchange on the day the stock option is granted. In addition, the term of the stock option may not exceed ten years. The exercise price of any

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stock option granted pursuant to the Omnibus Plan may not be subsequently reduced by amendment, or cancellation and substitution, of such stock option or any other action of the Committee without stockholder approval, subject to the Committee s authority to adjust Awards upon certain events described under Adjustments Upon Certain Events below. The type (incentive or non-qualified), vesting, exercise price and other terms of each stock option will be set forth in the Award Notice for such stock option.

A stock option may be exercised by paying the exercise price in cash or its equivalent, and/or, to the extent permitted by the Committee and applicable law, in shares of Class A Common Stock, a combination of cash and shares of Class A Common Stock or through the delivery of irrevocable instruments to a broker to sell the shares obtained upon the exercise of the stock option and to deliver to the Company an amount equal to the exercise price.

Stock Appreciation Rights. The Committee may grant Awards in the form of stock appreciation rights, either in tandem with a stock option (*Tandem SARs*) or independent of a stock option (*Freestanding SARs*). The exercise price of a stock appreciation right will be an amount determined by the Committee, but in no event will such amount be less than 100% of the fair market value of a share of Class A Common Stock on the date that the stock appreciation right is granted or, in the case of a Tandem SAR, the exercise price of the related stock option.

A Tandem SAR may be granted either at the time of grant of the related stock option or at any time thereafter during the term of the related stock option. A Tandem SAR will be exercisable to the extent its related stock option is exercisable. Each Tandem SAR will entitle the holder of such stock appreciation right to surrender the related stock option and to receive an amount equal to (i) the excess of (A) the fair market value on the exercise date of one share of Class A Common Stock over (B) the stock option price per share of Class A Common Stock, times (ii) the number of shares of Class A Common Stock covered by the stock option which is surrendered. Upon the exercise of a stock option as to some or all of the shares of Class A Common Stock covered by such stock option, the related Tandem SAR will automatically be canceled to the extent of the number of shares of Class A Common Stock covered by the exercise of the stock option.

Each Freestanding SAR will entitle the holder of such stock appreciation right upon exercise to an amount equal to (i) the excess of (A) the fair market value on the exercise date of one share of Class A Common Stock over (B) the exercise price, times (ii) the number of shares of Class A Common Stock covered by the Freestanding SAR and as to which the stock appreciation right is exercised.

The type (Tandem SAR or Freestanding SAR), exercise price, vesting and other terms of each stock appreciation right will be set forth in the Award Notice for such stock appreciation rights.

Payment of stock appreciation rights may be made in shares of Class A Common Stock or in cash, or partly in shares of Class A Common Stock and partly in cash, as determined by the Committee.

Other Stock Awards and Restricted Stock Unit Awards. The Committee may grant Awards in the form of Stock Awards (for either unrestricted or restricted shares of Class A Common Stock), Restricted Stock Unit Awards and other Awards that are valued in whole or in part by reference to, or are otherwise based on the fair market value of, Class A Common Stock. Such other stock-based Awards will be in such form, and dependent on such conditions, as the Committee determines, including, without limitation, the right to receive, or vest with respect to, one or more shares of Class A

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Common Stock (or the equivalent cash value of such shares of Class A Common Stock) upon the completion of a specified period of service, the occurrence of an event and/or the attainment of performance objectives. In addition, the Committee may choose, at the time of grant of a stock-based Award, or any time thereafter up to the time of the payment of such Award, to include as part of such Award an entitlement to receive dividends or dividend equivalents on the shares of Class A Common Stock underlying such Award, subject to such terms, conditions, restrictions and/or limitations, if any, as the Committee may establish. The restrictions, conditions and other terms of each stock-based Award will be set forth in the Award Notice for such Award.

Performance Units. The Committee may grant Awards in the form of performance units, which are units valued by reference to designated criteria established by the Committee other than Class A Common Stock. Performance units will be in such form, and dependent on such conditions, as the Committee determines, including, without limitation, the right to receive a designated payment upon the completion of a specified period of service, the occurrence of an event and/or the attainment of performance objectives. The form, applicable conditions and other terms of each performance unit will be set forth in the Award Notice for such performance unit.

Performance Awards. Performance Awards are Awards structured to qualify as deductible performance-based compensation for purposes of Section 162(m) of the IRC as described under Limitation on Income Tax Deduction below. The Committee may grant Awards in the form of Performance Awards to Employees who are covered employees within the meaning of Section 162(m) of the IRC and to other Participants in order to qualify such Awards as performance-based compensation for purposes of Section 162(m) of the IRC. Under Section 162(m) of the IRC, covered employees generally means the chief executive officer and the next three highest-paid executive officers other than the Chief Financial Officer. Performance Awards may take the form of Stock Awards, Restricted Stock Unit Awards or performance units that are conditioned upon the satisfaction of enumerated Performance Criteria during a stated Performance Period, which Awards, in addition to satisfying the requirements otherwise applicable to that type of Award generally, also satisfy the requirements of Performance Awards under the Omnibus Plan.

Performance Awards must be based upon one or more of the following Performance Criteria: (a) economic value added models, (b) operating ratio, (c) cost reduction (or limits on cost increases), (d) debt to capitalization, (e) debt to equity, (f) earnings, (g) earnings before interest and taxes, (h) earnings before interest, taxes, depreciation and amortization, (i) earnings before interest, taxes, depreciation, amortization and operating leases, (j) earnings per share, (k) net income, (l) operating income, (m) increase in total revenue, (n) net sales, (o) return on assets, (p) return on capital employed, (q) return on equity, (r) return on stockholders equity or total stockholders return, (s) gross margin or operating margin, (t) net profit, (u) operating profits, (v) profits before tax, (w) ratio of operating earnings to capital spending, (x) free cash flow, (y) return on assets, (z) equity or stockholders equity, (aa) Class A Common Stock price per share, (ab) the number of reported injuries, derailments or other accidents, as defined and required by the Federal Railroad Administration (or such successor entity thereto) in absolute numbers or in the ratio thereof to miles of track, employees, hours worked or other similar measurements, (ac) attainment of strategic or operational initiatives, (ad) book value, or (ae) any combination of the foregoing criteria, which, in each case, may be applied on an absolute basis and/or be relative to one or more peer group companies or indices, or any combination thereof.

For each Performance Period, the Committee will, in its sole discretion, designate within the initial period allowed under Section 162(m) of the IRC which persons will be eligible for Performance

Awards for such period, the length of the Performance Period, the types of Performance Awards to be issued, the Performance Criteria that are to be used to establish Performance Goals, the kind or level of Performance Goals and other relevant matters.

After the close of each Performance Period, the Committee will determine whether the Performance Goals for the cycle have been achieved. In determining the actual Award to be paid to a Participant, the Committee has the authority to reduce or eliminate any Performance Award earned by the Participant, based upon any objective or subjective criteria it deems appropriate.

The Award Notice for each performance award will set forth or make reference to the Performance Period, Performance Criteria, Performance Goals, Performance Formula, performance pool and other terms applicable to such Performance Award.

Payment Terms

Awards may be paid in cash, shares of Class A Common Stock, a combination of cash and shares of Class A Common Stock, or in any other permissible form, as the Committee determines. Payment of Awards may include such terms, conditions, restrictions and/or limitations, if any, as the Committee deems appropriate, including, in the case of Awards paid in shares of Class A Common Stock, restrictions on transfer of such shares and provisions regarding the forfeiture of such shares under certain circumstances.

At the discretion of the Committee, a Participant may defer payment of any Award, salary or bonus compensation, compensation for serving on the Company s Board, dividend or dividend equivalent, or any portion thereof. If permitted by the Committee, a deferral must be made in accordance with any administrative guidelines established by the Committee for such purpose. Such deferred items may be credited with interest (at a rate determined by the Committee) or invested by the Company and, with respect to those deferred awards denominated in the form of Class A Common Stock, credited with dividends or dividend equivalents. All deferrals must be in compliance with Section 409A of the IRC.

The Company will be entitled to deduct from any payment to a Participant under the Omnibus Plan the amount of all applicable income and employment taxes required by law to be withheld with respect to such payment or may require the Participant to pay to the Company such tax prior to and as a condition of the making of such payment. Subject to certain limitations, the Committee may allow a Participant to pay the amount of taxes required by law to be withheld from an Award by withholding any shares of Class A Common Stock to be paid under such Award or by permitting the Participant to deliver to the Company shares of Class A Common Stock having a fair market value equal to the amount of such taxes.

Adjustments Upon Certain Events

In the event that there is a stock dividend or split, reorganization, recapitalization, merger, consolidation, spin-off, combination, or transaction or exchange of Class A Common Stock or other corporate exchange, or any distribution to stockholders of Class A Common Stock or other property or securities or any extraordinary cash dividends (other than regular cash dividends) or any transaction similar to the foregoing or other transaction that results in a change to the Company s capital structure, the Omnibus Plan provides that the Committee shall make substitutions and/or adjustments to the

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maximum number of shares available for issuance under the Plan, the maximum Award payable, the number of shares to be issued pursuant outstanding Awards, the option prices, exercise prices or purchase prices of outstanding Awards and/or any other affected terms of an Award or the Plan as the Committee deems equitable or appropriate.

Termination and Amendment of Omnibus Plan

The Committee may suspend or terminate the Omnibus Plan at any time for any reason with or without prior notice. In addition, the Committee may amend the Omnibus Plan, provided that it may not, without stockholder approval, adopt any amendment if stockholder approval is required, necessary or deemed advisable with respect to tax, securities, or other applicable laws or regulations, including, but not limited to, the listing requirements of the stock exchange on which the Company s securities are listed. No amendment of the Omnibus Plan may materially and adversely affect the rights of a Participant under any outstanding Award.

Securities Act Registration

Shares of Class A Common Stock issuable under the Omnibus Plan will be registered with the SEC on Form S-8 as soon as practicable, subject to the stockholders approval of the Plan Amendment.

New Plan Benefits

The Committee established and approved the total dollar value of annual long-term equity awards for 2011 on February 28, 2011 for our Executive Officers and other key employees. In accordance with the Company s stock-based award policies, these awards are delivered through four quarterly grants on February 28, May 31, August 31 and November 30, 2011. The quarterly grants of these awards on February 28, 2011 were not subject to shareholder approval of the Plan Amendment. The remaining three quarterly grants, however, may, depending on the fair market value of our Class A Common Stock on each distinct day (which will determine the numbers of stock options and shares of restricted stock to be granted), be subject to such approval. Accordingly, the amounts set forth in the table below represents 75% of the total dollar value of the annual long-term equity awards for 2011 (that is, the remaining three quarterly grants) for (1) each of our named executive officers, (2) our Executive Officers, as a group, (3) our non-management directors, as a group, and (4) all of our employees who are not Executive Officers, as a group. The numbers of equity awards will depend on our share price on each future date and, accordingly, are not presently determinable. The Committee has not yet granted any equity awards for 2011 to the Non-Executive Director Group (our non-management directors), and our equity award process is not formula driven.

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Name and Position	Dollar Value
John C. Hellmann President and Chief Executive Officer	$ 1,575,018
Timothy J. Gallagher Chief Financial Officer	467,027
James W. Benz Chief Operating Officer	401,292
Allison M. Fergus General Counsel and Secretary	230,619
Christopher F. Liucci Chief Accounting Officer and Global Controller	125,656
Executive Officer Group (1)	2,799,612
Non-Executive Director Group	480,000
Non-Executive Officer Employee Group	2,970,039

(1) The Executive Officer Group includes the total for the five named executive officers above.

Stock-Based Awards Previously Granted

The following table sets forth the stock-based awards granted since the inception of the Omnibus Plan in 2004.

STOCK-BASED AWARDS PREVIOUSLY GRANTED UNDER THE OMNIBUS PLAN

Name and Position	Option Award Grants # of Shares Covered	Stock Award Grants # of Shares Covered	Deferred Stock Units # of Shares Covered
John C. Hellmann President and Chief Executive Officer	514,469	92,157	
Timothy J. Gallagher Chief Financial Officer	217,042	37,573	
James W. Benz Chief Operating Officer	197,719	33,897	
Allison M. Fergus General Counsel and Secretary	95,335	14,123	
Christopher F. Liucci Chief Accounting Officer and Global Controller	53,322	9,091	
Executive Officer Group (1)	1,077,887	186,841	
Non-Executive Director Group	487,314	169,515	117,041
Non-Executive Officer Employee Group	1,978,675	221,310	

(1) The Executive Officer Group includes the total for the five named executive officers above.

The Omnibus Plan allows for the issuance of up to 3,687,500 Class A common shares for awards, which include stock options, restricted stock, and restricted stock units and any other form of award established by the Compensation Committee, in each case consistent with the Omnibus Plan s purpose. Any shares of Common Stock available for issuance under the predecessor plans (Amended and

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Restated 1996 Stock Option Plan, Stock Option Plan for Directors and Deferred Stock Plan for Non-Employee Directors) as of May 12, 2004, plus any shares which expire, are terminated or cancelled, are deemed available for issuance or reissuance under the Omnibus Plan. The Omnibus Plan had a total of 4,786,304 shares authorized for issuance, including 1,098,804 shares under predecessor plans and 3,687,500 shares pursuant to the most recent Omnibus Plan amendment. At April 1, 2011, there remained 943,848 shares of Class A Common Stock available for future issuance under the Omnibus Plan.

The Non-Executive Director Group includes legacy option award grants to Mortimer B. Fuller III in his previous capacity as CEO of the Company. There were no other option awards granted to Directors under the Omnibus Plan.

Tax Status of Omnibus Plan Awards

The following discussion of the federal income tax status of Awards under the Omnibus Plan, as proposed, is based on present federal tax laws and regulations and does not purport to be a complete description of the federal income tax laws. Participants may also be subject to certain state and local taxes, which are not described below.

Non-Qualified Stock Options. No income will be realized by a Participant at the time a non-qualified stock option is granted, and no deduction will be available to the Company at such time. When the non-qualified stock option is exercised, the Participant generally will realize taxable ordinary income in an amount equal to the excess of the fair market value of the shares of Class A Common Stock acquired from the exercise of such stock option over the exercise price, and the Company will receive a corresponding deduction at such time. If a non-qualified stock option is exercised by delivering shares of Class A Common Stock to the Company, the use of such shares of Class A Common Stock will not be considered a taxable disposition of such shares. Instead, (a) the number of shares of Class A Common Stock received from the exercise equal to the number of shares delivered will have the same basis and same holding period as the shares so delivered, (b) the Participant will realize taxable ordinary income in an amount equal to the fair market value of the additional shares of Class A Common Stock received from the exercise of such stock option, (c) the Participant will have a tax basis in the additional shares equal to their fair market value and the holding period of the additional shares will begin on the date that they are actually acquired, and (d) the Company will receive a deduction at such time in the same amount as the taxable income realized by the Participant. In either case, the Company s deduction will be subject to the limitations of Section 162(m) of the IRC, if applicable (see Limitation on Income Tax Deduction). The gain, if any, realized upon the subsequent disposition by the Participant of the shares of Class A Common Stock will constitute short- or long-term capital gain, depending on the Participant s holding period.

Incentive Stock Options. No income will be realized by a Participant either at the time an incentive stock option is granted or upon the exercise thereof by the Participant (provided there is no sale), and no deduction will be available to the Company at such times. However, the difference between the exercise price and strike price on the date of exercise will be an item of tax preference that may give rise to alternative minimum tax liability at the time of exercise. If the Participant holds the shares of Class A Common Stock underlying the stock option for the greater of two years after the date the stock option was granted or one year after the acquisition of such shares of Class A Common Stock (the *required holding period*), then upon the disposition of such shares of Class A Common Stock, the Participant will realize a long-term capital gain or loss equal to the difference between the

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aggregate exercise price previously paid for the shares disposed and the proceeds received from such disposition; the Company will not be entitled to any deduction. If the shares of Class A Common Stock are disposed of in a sale, exchange or other disqualifying disposition during the required holding period, then the Participant will realize ordinary taxable compensation at the time of such disposition equal to the difference between the exercise price previously paid for the shares and the lesser of the fair market value of the stock on the date of option exercise or the amount realized on the subsequent disposition of the shares, and the Company will be entitled to a corresponding deduction at such time, subject to the limitations of Section 162(m) of the IRC, if applicable (see Limitation on Income Tax Deduction). Any remaining portion of taxable gain will constitute short- or long-term capital gain, depending on the Participant s holding period.

Stock Appreciation Rights. No income will be realized by a Participant at the time a stock appreciation right is awarded, and no deduction will be available to the Company at such time. A Participant will realize ordinary income upon the exercise of the stock appreciation right in an amount equal to the fair market value of the shares of Class A Common Stock received by the Participant from such exercise, and the Company will be entitled to a corresponding deduction at such time, subject to the limitations of Section 162(m) of the IRC, if applicable (see Limitation on Income Tax Deduction).

Unrestricted Stock-Based Award. Upon the grant of an unrestricted stock-based Award, a Participant will realize taxable income equal to the fair market value at such time of the shares of Class A Common Stock received by the Participant under such Award (less the purchase price therefor, if any), and the Company will be entitled to a corresponding tax deduction at that time, subject to the limitations of Section 162(m) of the IRC, if applicable (see Limitation on Income Tax Deduction).

Restricted Stock-Based Award. Upon the grant of a restricted stock-based Award, no income will be realized by a Participant (unless a Participant timely makes an election to accelerate the recognition of the income to the date of grant), and the Company will not be allowed a deduction at that time; when the Award vests and is no longer subject to a substantial risk of forfeiture for income tax purposes, the Participant will realize taxable ordinary income in an amount equal to the fair market value at such time of the shares of Class A Common Stock received by the Participant under such Award (less the purchase price therefor, if any), and the Company will be entitled to a corresponding deduction at such time. If a Participant does make a timely election to accelerate the recognition of income (a *Section 83(b) election*), then the Participant will recognize taxable ordinary income in an amount equal to the fair market value at the time of grant of the shares of Class A Common Stock to be received by the Participant under such Award (less the purchase price therefor, if any), and the Company will be entitled to a corresponding deduction at such time. Participants will only be eligible to make a Section 83(b) election on restricted stock-based awards that constitute an award of property within the meaning of Section 83 of the IRC (e.g., shares of restricted stock) as of the grant date. In each case, the Company s deduction will be subject to the limitations of Section 162(m) of the IRC, if applicable (see Limitation on Income Tax Deduction).

Performance Units and Performance Awards. A Participant receiving a performance unit or Performance Award will not recognize income, and the Company will not be allowed a tax deduction, at the time such Award is granted. When a Participant receives payment of a performance unit or Performance Award, the amount of the fair market value of any shares of Class A Common Stock received will be ordinary income to the Participant, and the Company will be entitled to a corresponding tax deduction at that time, subject to the limitations of Section 162(m) of the IRC, if applicable (see Limitation on Income Tax Deduction).

Effect of Deferral on Taxation of Awards. If the Committee permits a Participant to defer the receipt of payment of an Award and such Participant makes an effective election to defer the payment of the Award in accordance with the administrative guidelines established by the Committee, the Participant will not realize taxable income until the date the Participant becomes entitled to receive such payment pursuant to the terms of the deferral election, and the Company will not be entitled to a deduction until such time, assuming the deferral arrangement complies with Section 409A of the IRC. Any interest or dividends paid on, or capital gains resulting from, the investment by the Company of the amount deferred during the deferral period will be taxable to the Company in the year recognized. At the time the Participant becomes entitled to receive the deferred payment, the Participant will recognize taxable income in an amount equal to the actual payment to be received, including any interest or earnings credited on the amount deferred during the deferral period, and the Company will be entitled to a corresponding deduction for such amount at that time, subject to the limitations of Section 162(m) of the IRC, if applicable. Section 409A of the IRC generally establishes rules that must be followed with respect to covered deferred compensation arrangements in order to avoid the imposition of an additional 20% penalty tax (plus interest) on the employee or other service provider who is entitled to receive the deferred compensation.

Limitation on Income Tax Deduction

Pursuant to Section 162(m) of the IRC, the Company may not deduct compensation paid to a covered employee in any year in excess of $1 million. However, qualifying performance-based compensation is not subject to such limitation if certain requirements are met. One requirement is stockholder approval of, (i) the Performance Criteria upon which performance-based Awards may be based, (ii) the annual per-participant limits on grants of performance-based Awards and stock options and stock appreciation rights and (iii) the class of employees eligible to receive awards. The Board has submitted the Omnibus Plan for approval by the stockholders in order to permit the grant of certain Awards thereunder, such as stock options, stock appreciation rights, Stock Awards and certain performance units, that will constitute performance-based compensation, which will be excluded from the calculation of annual compensation of Covered Employees for purposes of Section 162(m) of the IRC and will be fully deductible by the Company, assuming all other requirements are met to permit deductibility. The Committee may grant Awards under the Omnibus Plan that do not qualify as performance-based compensation under Section 162(m) of the IRC. The payment of any such non-qualifying Awards to a Covered Employee could be non-deductible by the Company, in whole or in part, under Section 162(m) of the IRC, depending on such Covered Employee s total compensation in the applicable year or other considerations.

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The following table provides certain important information concerning our existing equity compensation plans as of December 31, 2010:

Plan Category	Number of Securities to be Issued upon Exercise of Outstanding Options and Warrants/Rights (1)	Weighted Average Exercise Price of Outstanding Options and Warrants/Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column)
Equity Compensation Plans Approved by Security Holders	1,801,467	$ 31.77	1,028,932
Equity Compensation Plans not Approved by Security Holders			
Total	1,801,467	$ 31.77	1,028,932

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PROPOSAL THREE:

APPROVAL OF THE AMENDMENT AND RESTATEMENT OF OUR RESTATED CERTIFICATE OF INCORPORATION TO INCREASE AUTHORIZED SHARES OF COMMON STOCK FROM 105,000,000 TO 210,000,000 SHARES AND TO EFFECT OTHER TECHNICAL CHANGES

On March 22, 2011 the Board adopted a resolution to amend and restate the Company s Restated Certificate of Incorporation *(Certificate of Incorporation)* to increase the authorized capital stock of the Company and to effect other technical changes. The Board unanimously agreed that it is advisable and in the best interests of the Company for the Certificate of Incorporation to be amended (a) to increase the number of authorized shares (1) of Class A Common Stock, par value of $0.01 per share, of the Company from ninety million (90,000,000) to one hundred and eighty million (180,000,000) and (2) of Class B Common Stock, par value of $0.01 per share, of the Company from fifteen million (15,000,000) to thirty million (30,000,000), and (b) to effect other technical changes, including the elimination of references to the 4.0% Senior Redeemable Convertible Preferred Stock, Series A, par value $0.01 per share (the Series A Preferred Stock), as set forth in the proposed Restated Certificate of Incorporation attached to this Proxy Statement as Annex II (the *Restated Certificate of Incorporation*). There are currently no shares of Series A Preferred Stock outstanding, and no such shares will be issued. Following the effectiveness of the filing of the Restated Certificate of Incorporation with the Secretary of State of the State of Delaware, the total number of shares of capital stock that we will have the authority to issue will be two hundred thirteen million (213,000,000), which will be divided into one hundred eighty million (180,000,000) shares of Class A Common Stock, thirty million (30,000,000) shares of Class B Common Stock, and three million (3,000,000) shares of Preferred Stock, par value $0.01 per share (the *Preferred Stock*).

As of April 1, 2011, we had 39,611,522 shares of Class A Common Stock issued, outstanding and entitled to vote and 12,454,770 Class A Common Stock shares in the form of treasury shares, and 2,356,130 shares of Class B Common Stock issued, outstanding and entitled to vote. At the present time, approximately 37,933,708 shares of Class A Common Stock and 12,643,870 shares of Class B Common Stock remain that could be authorized for future issuance. No increase in the 3,000,000 authorized shares of the Preferred Stock currently authorized under the Certificate of Incorporation is being proposed at this time, and all 3,000,000 shares of the Preferred Stock will remain authorized under the Restated Certificate of Incorporation.

The number of Class A Common Stock and Class B Common Stock available for issuance is currently less than the Board considers advisable for capital or strategic transactions, and therefore, the Board believes that failure to approve this proposal could restrict our ability to manage our capital needs, to the detriment of our stockholders best interests. The Board believes additional authorized shares will allow the Company to act quickly when and as the need arises to issue additional shares in the future without the delays necessitated by having to obtain a stockholder vote (except as otherwise required by law or by the rules of any securities exchange on which the shares of common stock are listed) and to take advantage of changing market and financial conditions in a timely manner.

For instance, the increase in the number of Class A Common Stock will allow the Company to retain flexibility to sell additional shares of our Class A Common Stock to raise capital, to effect stock splits or stock dividends, to provide employee stock incentive compensation or implement other stock ownership plans and to consummate acquisitions and to engage in other types of capital or strategic transactions. The increase of the shares of our Class B Common Stock is to ensure, consistent with the requirements of our Certificate of Incorporation, that the shares of Class B Common Stock are

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increased proportionally to the shares of Class A Common Stock being proposed. Other than pursuant to our Omnibus Plan and our employee stock purchase plan, we have no current expectation, agreement or arrangement for the issuance of any shares of common stock in connection with any such transaction or contractual commitment at this time.

If this proposal is approved and the Restated Certificate of Incorporation is adopted, the Board generally may issue such additional authorized shares of our Class A Common Stock without further stockholder approval in return for such consideration in money, property, or other things of value as the Board, in its discretion, shall determine in accordance with applicable law. In some instances, stockholder approval for the issuance of additional shares may be required by law or by the requirements of the NYSE, on which our Class A Common Stock is now listed, or the obtaining of such approvals may be otherwise necessary or desirable. In particular, the NYSE requires stockholder approval for acquisition transactions where the issuance could increase the number of shares outstanding by 20% or more and for an increase in shares reserved for issuance under equity compensation plans for our employees, in each case subject to certain exceptions. In such cases, further stockholder authorization will be solicited.

The Board has not proposed the increase in the amount of authorized shares with the intention of discouraging tender offers or takeover attempts of the Company. However, the availability of additional authorized shares for issuance could render more difficult or discourage a merger, tender offer, proxy contest or other attempt to obtain control of the Company.

If this proposal is approved and the Restated Certificate of Incorporation is adopted, the increase in our authorized Class A and Class B Common Stock will not, by itself, have any effect on the rights of holders of presently issued and outstanding shares of our common stock. However, the actual issuance of additional shares of our Class A and Class B Common Stock in the future may have a dilutive effect on earnings per share and on the equity and voting rights of the present holders of our common stock.

In order to effect the increase in the number of authorized shares of common stock from one hundred and five million (105,000,000) to two hundred and ten million (210,000,000), the Restated Certificate of Incorporation, which includes the proposed amendments to Article 4 of the Certificate of Incorporation, must be adopted by the requisite vote of our stockholders. The Board unanimously recommends that stockholders vote FOR approval of the proposal to adopt the Restated Certificate of Incorporation.

This Proposal Three will be approved, and the Restated Certificate of Incorporation will be adopted, upon the affirmative vote of a majority of the voting power of our outstanding shares of Class A Common Stock and Class B Common Stock, voting as a single class, and by a majority of our outstanding Class A Common Stock and Class B Common Stock, each voting as a separate class. **If a proxy is duly submitted, but no voting instructions are given, the shares represented by that proxy will be voted FOR this Proposal Three.** If a stockholder abstains from voting or directs the stockholder s proxy to abstain from voting, the shares will be considered present at the Meeting for purposes of Proposal Three, but, because they are not affirmative votes for the proposal, they will have the same effect as votes against the proposal.

The Board of Directors unanimously recommends that stockholders vote FOR the approval of this Proposal Three to adopt the Restated Certificate of Incorporation.

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PROPOSAL FOUR:

NON-BINDING, ADVISORY VOTE ON EXECUTIVE COMPENSATION

In accordance with the requirements of Section 14A of the Exchange Act (which was added by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the *Dodd-Frank Act*)) and the related rules of the SEC, we are including in these proxy materials a separate resolution subject to stockholder vote to approve, in a non-binding, advisory vote, the compensation paid to our named executive officers as disclosed under pages 28 to 51. While the results of the vote are non-binding and advisory in nature, the Board intends to carefully consider the results of this vote.

The language of the resolution is as follows:

RESOLVED, that the compensation paid to the company s named executive officers, as disclosed in this proxy statement pursuant to the rules of the SEC, including the Compensation Discussion and Analysis, compensation tables and any related narrative discussion is hereby APPROVED.

The executive compensation program for our Executive Officers is based on the Company s Compensation Philosophy, which seeks to reward safe operations that deliver both profitable annual results and long-term increases in stockholder value as reflected in the Company s stock price. Based on historic compensation studies, we believe the establishment of total target compensation at the market median (based on our Compensation Study) for each of our Executive Officers is reasonable and that the structure of our executive compensation program, which more heavily weights executive compensation to reward the creation of long-term stockholder value rather than short-term financial performance, is appropriate.

Stockholders are urged to read the *Compensation Discussion and Analysis* section of this proxy statement, which discusses in detail how our compensation policies and procedures implement our compensation philosophy. In determining how to vote, stockholders should consider that:

- The Company has not entered into agreements with executive officers that provide for severance payments related to voluntary termination; involuntary, not for cause termination unrelated to a change of control; or termination for cause.

- Our equity plans prohibit repricing and backdating and contain confidentiality and non-compete obligations that protect the Company and stockholders.

- We minimize risk-taking incentives in our executive compensation program by putting caps and carryforwards (including negative amounts) on the amounts that can be paid under our GVA methodology.

- A significant portion of each Executive Officer s compensation is based on performance as measured against pre-determined goals under the GVA methodology such as our after-tax operating profit (less a capital charge) and safety results (derived from ratios of the number of reportable injuries to man hours worked, as defined by the Federal Railroad Administration).

In 2010:

- Nearly 77% of our CEO s compensation was tied to Company and individual performance.

- There was a strong relationship between Executive Officer compensation and stock price performance because a significant portion of an Executive Officer s compensation was in the

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form of equity. For example, in 2010, the CEO s target cash compensation (base salary and annual incentive compensation) and equity (stock options and restricted stock) were allocated as follows: 45% cash and 55% equity long-term incentive compensation.

We met or exceeded all of our GVA financial and safety targets, which was reflected in the 62% increase in our stock price over the same period. For these reasons, our Executive Officers received higher than target payments under our GVA methodology reflective of this strong performance.

We believe that the information provided in this Proxy Statement demonstrates that our executive compensation program is designed appropriately to attract and retain talented executives and to align our executives interests with our stockholders interests.

The Board of Directors unanimously recommends a vote FOR approval of the compensation paid to our named executive officers.

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PROPOSAL FIVE:

NON-BINDING, ADVISORY VOTE ON THE FREQUENCY OF FUTURE ADVISORY VOTES ON EXECUTIVE COMPENSATION

In accordance with the requirements of Section 14A of the Exchange Act (which was added by the Dodd-Frank Act) and the related rules of the SEC, we are submitting for stockholder consideration a separate resolution to determine, in a non-binding, advisory vote, whether a stockholder vote to approve the compensation paid to our named executive officers (that is, a vote similar to the non-binding, advisory vote in Proposal Four on page 69) should occur every one, two or three years. While the results of the vote are non-binding and advisory in nature, the Board intends to carefully consider the results of this vote.

In considering their vote, stockholders may wish to review with care the information presented in connection with the preceding proposal, the information on the Company s compensation policies and decisions regarding the Executive Officers presented in *Compensation Discussion and Analysis* on pages 28 to 39, as well as the discussion regarding the role of the Compensation Committee on pages 28 and 30.

We believe a three-year frequency is most consistent with our approach to executive compensation. Our reasons include:

- The Compensation Committee, as evidenced by the Company s Compensation Philosophy, rewards Executive Officers for delivering long-term increases in stockholder value through regular long-term equity incentive compensation, which compensation generally vests over a three-year period; and

- We do not make significant changes to the structure of our compensation programs frequently, although we tailor the performance objectives for each Executive Officer each year to focus on the areas deemed critical to the Company s current and future success and long-term stockholder value.

The Board of Directors recommends that stockholders vote for THREE YEARS with respect to how frequently an advisory stockholder vote to approve the compensation of our named executive officers should occur.

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PROPOSAL SIX:

APPROVAL OF THE SELECTION OF INDEPENDENT AUDITORS

PwC served as our independent registered public accounting firm for our fiscal year ended December 31, 2010. In addition to the audit of the 2010 financial statements, the Audit Committee engaged PwC to perform certain other services for which it was paid fees. PwC has served as our independent registered public accounting firm since 2002. Our Audit Committee has selected PwC as our independent registered public accounting firm for fiscal year 2011, subject to ratification by our stockholders at the annual meeting.

We are asking our stockholders to ratify the selection of PwC as our independent registered public accounting firm for fiscal year 2011. Although ratification is not required by our by-laws or otherwise, the Board is submitting the selection of PwC to our stockholders for ratification because we value our stockholders views on our independent registered public accounting firm and as a matter of good corporate practice. In the event that our stockholders fail to ratify the selection, it will be considered as guidance to the Audit Committee to consider the selection of a different firm. Even if the selection is ratified, the Audit Committee in its discretion may select a different independent registered public accounting firm, at any time during the year if it determines that such a change would be in the best interests of the Company and our stockholders.

One or more representatives of PwC is planning to be present at the annual meeting and will be available to respond to appropriate questions. In addition, the representatives will have an opportunity to make a statement if they so desire.

The Board of Directors unanimously recommends that stockholders vote FOR the ratification of PwC as the Company s independent registered public accounting firm for its fiscal year 2011.

Principal Accountant Fees and Services

Aggregate fees for professional services rendered to us by PwC for the years ended December 31, 2009 and 2010 were:

	2009	2010 (a)
Audit Fees	$ 1,486,300	$ 1,551,000
Audit-Related Fees		73,000
Tax Fees	60,000	10,000
All Other Fees	4,600	24,972
Total	$ 1,550,900	$ 1,658,972

(a) The amounts included in the table above do not include $1,269,000 reimbursed by the Company to FreightLink Pty Ltd pursuant to the Purchase Sale Agreement for work done by PwC for FreightLink in connection with the preparation of FreightLink s audited United States GAAP financial statements.

Audit fees for the years ended December 31, 2009 and 2010 were for professional services rendered by PwC for the audits of the consolidated financial statements of the Company, including the audit of internal control over financial reporting, statutory audits and assistance with review of documents filed with the SEC.

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Audit Related fees for the year ended December 31**,** 2010 were for assurance and related services by PwC related to due diligence for mergers and acquisitions, accounting consultations in connection with acquisitions and consultations concerning financial accounting and reporting standards.

Tax fees for the years ended December 31, 2009 and 2010 were for services by PwC related to tax compliance, tax planning and tax advice.

All other fees for the years ended December 31, 2009 and 2010 were for services by PwC related to financial statement presentation software.

Our Audit Committee has not adopted pre-approval policies and procedures for audit and permitted non-audit services. The engagement of PwC for non-audit accounting and tax services is limited to circumstances where these services are considered integral to the audit services that PwC provides or where there is another compelling rationale for using PwC. All audit, audit-related and permitted non-audit services for which PwC was engaged were pre-approved by the Audit Committee in compliance with applicable SEC requirements.

STOCKHOLDER PROPOSALS FOR 2012 ANNUAL MEETING

Under the SEC s rules and regulations, in order for any stockholder proposal to be included in our proxy statement to be issued in connection with our 2012 annual meeting, that proposal must be received by our Secretary at our principal executive offices located at 66 Field Point Road, Greenwich, Connecticut 06830, no later than December 22, 2011. If that proposal is in compliance with all of the requirements of Rule 14a-8 under the Exchange Act, it will be included in the proxy statement and set forth on the proxy card issued for that annual meeting. Pursuant to our by-laws, stockholders may wish to submit proposals at the 2012 annual meeting rather than include such proposals in our proxy materials, but in order for such proposals to be deemed timely, such proposals must be in writing and be received by our Secretary by no earlier than February 16, 2012, and no later than March 17, 2012. Failure to deliver a proposal in accordance with this procedure may result in it not being timely received.

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REPORT OF THE AUDIT COMMITTEE*

The duties and responsibilities of the Audit Committee are set forth in our Audit Committee Charter which can be found on our website at *www.gwrr.com/governance*. The Audit Committee has:

selected PwC as our independent registered public accounting firm to audit our consolidated financial statements as of and for the year ended December 31, 2010 and the effectiveness of the Company s internal control over financial reporting as of December 31, 2010, based on the criteria established in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission *(COSO).*

reviewed and discussed our audited financial statements for 2010 with management and with PwC, our independent registered public accounting firm;

discussed with PwC, our independent registered public accounting firm, the matters required to be discussed by the Statement on Auditing Standards (SAS) No. 61, as amended (AICPA, *Professional Standards Vol. 1. AU Section 380*), as adopted by the Public Company Accounting Oversight Board in Rule 3200T, including the quality of the Company s accounting principles, the reasonableness of management s significant judgments and the clarity of disclosures in the financial statements; and

received and reviewed the written disclosures and the letter from PwC required by applicable requirements of the Public Company Accounting Oversight Board regarding PwC s communications with the Audit Committee concerning independence, and have discussed with PwC its independence from the Company and management.

In performing all of these functions, the Audit Committee acts in an oversight capacity. The Audit Committee reviews the Company s quarterly and annual reports on Form 10-Q and Form 10-K prior to filing with the SEC. In its oversight role, the Audit Committee relies on the work and assurances of:

the Company s management, which has the primary responsibility for establishing and maintaining adequate internal control over financial reporting and for preparing the financial statements and other reports; and

PwC, which is engaged to audit and report on the consolidated financial statements of the Company and the effectiveness of the Company s internal control over financial reporting.

In reliance on these reviews and discussions and the report of the independent registered public accounting firm, the Audit Committee recommended to the Board, and the Board approved, that the audited financial statements be included in the Company s Annual Report on Form 10-K for the year ended December 31, 2010 for filing with the SEC.

Audit Committee:

Robert M. Melzer, Chairman

Øivind Lorentzen III

Michael Norkus

Philip J. Ringo

Mark A. Scudder

* The information in this report is not soliciting material, is not deemed filed with the SEC and is not to be incorporated by reference in any of our filings under the Securities Act of 1933, as amended, or the Exchange Act whether made before or after the date hereof and irrespective of any general incorporation language in any such filings.

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OTHER MATTERS

Our Board does not know of any other matters that are to be presented for action at the annual meeting. Should any other matter come before the annual meeting, however, the persons named in the enclosed proxy will have discretionary authority to vote all proxies with respect to such matter in accordance with their judgment.

NOTICE OF INTERNET AVAILABILITY OF PROXY MATERIALS

Important Notice Regarding the Availability of Proxy Materials for the Stockholders Meeting to Be Held on May 26, 2011.

The Proxy Statement and Annual Report to Stockholders are available at *www.gwrr.com/proxy*.

Directions to the Hyatt Regency Greenwich are set forth below:

From Points North or South via I-95:

Take the Old Greenwich Exit #5. Make a right at the end of the ramp onto East Putnam Avenue/Route 1. Follow the avenue to the third traffic light and make a right into the Hotel entrance.

From New York City:

Follow F.D.R. Drive North to the Triborough Bridge. Go over the Triborough Bridge and follow the signs to the Bruckner Expressway/New England. Follow the signs to the I-95 North/New England. Take the Old Greenwich Exit #5. Make a right at the end of the ramp onto East Putnam Avenue/Route 1. Follow the avenue to the third traffic light and make a right into the Hotel entrance.

From New Jersey via Garden State Parkway:

Follow the Garden State Parkway North to I-87 South toward Connecticut. Go over the Tappan Zee Bridge. Take the Exit for 287 East. Follow signs to I-95 North into Connecticut. Take the Old Greenwich Exit #5. Make a right at the end of the ramp onto East Putnam Avenue/Route 1. Follow the avenue to the third traffic light and make a right into the Hotel Entrance.

From the Merritt Parkway Heading North/South:

Follow Merritt Parkway to the North Street Exit #31. Go South on North Street toward the Greenwich Business District. Follow North Street to the end, which is about four miles, and then take a left onto Maple Avenue. Take the next left onto East Putnam Avenue. Follow East Putnam Avenue for approximately three miles. After passing the I-95 thruway entrance signs, the Hyatt will be at the third traffic light. Turn right into the Hotel entrance.

BY ORDER OF THE BOARD OF DIRECTORS

Allison M. Fergus

Secretary

Dated: April 15, 2011

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ANNEX I

GENESEE & WYOMING INC.

SECOND AMENDED AND RESTATED

2004 OMNIBUS INCENTIVE PLAN

~~Original Plan Effective May 12, 2004~~

~~Amended and Restated Plan~~ Effective May , ~~2007~~2011

ARTICLE 1

PURPOSE AND TERM OF PLAN

Section 1.1 *Purpose*. The purpose of the Plan is to provide motivation to selected Employees, Directors and Consultants to put forth their efforts toward the continued growth, profitability, and success of the Company by providing incentives to such Employees, Directors and Consultants through the ownership and performance of Common Stock.

Section 1.2 *Term*. The Plan was initially approved by the Board on April 2, 2004, and became effective on May 12, 2004, the date of the approval by G&W s stockholders at the 2004 Annual Meeting of the Stockholders. The Plan was amended by the Board on March 30~~, 200~~72007, and became effective on May 30, 2007, the date of approval by the Company s stockholders at the 2007 Annual Meeting of the Stockholders. The Plan was further amended by the Board on March 22, 2011 to increase the maximum number of shares of Common Stock available for grant of Awards under the Plan by ~~2,000,000,~~2,500,000, from ~~1,687,500 shares to~~ 3,687,500 shares to 6,187,500 shares. This amendment will become effective upon the date of the approval by G&W s stockholders at th~~e 200~~72011 Annual Meeting of the Stockholders. If stockholder approval of the amendment is not obtained at the ~~2007~~2011 Annual Meeting of the Stockholders, the Plan as ~~initially~~last approved in May ~~2004~~2007 will remain in full force and effect~~.~~, as supplemented May 28, 2008.

Section 1.3 *Successor Plan*. This Plan shall serve as the successor to the Genesee & Wyoming Inc. 1996 Stock Option Plan, the Genesee & Wyoming Inc. Stock Option Plan for Outside Directors and the Genesee & Wyoming Deferred Stock Plan for Non-Employee Directors (the Predecessor Plans), and no further awards shall be made under the Predecessor Plans from and after the effective date of this Plan. All outstanding awards under the Predecessor Plans immediately prior to the effective date of this Plan are hereby incorporated into this Plan and shall accordingly be treated as outstanding awards under this Plan; provided, however, each such award shall continue to be governed solely by the terms and conditions of the instrument evidencing such award and interpreted under the terms of the respective Predecessor Plan, and, except as otherwise expressly provided herein, no provision of this Plan shall affect or otherwise modify the rights or obligations of holders of such incorporated awards with respect to their acquisition of shares of Common Stock, or otherwise modify the rights or the obligations of the holders of such awards. Any shares of Common Stock reserved for issuance under the Predecessor Plans in excess of the number of shares as to which awards have been awarded thereunder, plus any such shares as to which awards granted under the Predecessor Plans may lapse, expire, terminate or be cancelled, shall be deemed available for issuance or reissuance under Section 6.1 of the Plan.

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ARTICLE 2

DEFINITIONS

In any necessary construction of a provision of this Plan, the masculine gender may include the feminine, and the singular may include the plural, and vice versa.

Section 2.1 *Award* means any form of stock option, stock appreciation right, Stock Award, Restricted Stock Unit, performance unit, Performance Award, or other incentive award granted under the Plan, whether singly, in combination, or in tandem, to a Participant by the Committee pursuant to such terms, conditions, restrictions and/or limitations, if any, as the Committee may establish by the Award Notice or otherwise.

Section 2.2 *Award Notice* means the document establishing the terms, conditions, restrictions, and/or limitations of an Award in addition to those established by this Plan and by the Committee s exercise of its administrative powers. The Committee will establish the form of the document in the exercise of its sole and absolute discretion.

Section 2.3 *Board* means the Board of Directors of G&W.

Section 2.4 *CEO* means the Chief Executive Officer of G&W.

Section 2.5 *Code* means the Internal Revenue Code of 1986, as amended from time to time, including the regulations thereunder and any successor provisions and the regulations thereto.

Section 2.6 *Committee* means the Compensation Committee of the Board, or such other Board committee as may be designated by the Board to administer the Plan; provided that the Committee shall consist of two or more Directors, all of whom are both a Non-Employee Director within the meaning of Rule 16b-3 under the Exchange Act and an outside director within the meaning of the definition of such term as contained in Proposed Treasury Regulation Section 1.162-27(e)(3), or any successor definition adopted under Section 162(m) of the Code.

Section 2.7 *Common Stock* means the Class A Common Stock, par value $.01 per share, of G&W.

Section 2.8 *Company* means G&W and its Subsidiaries.

Section 2.9 *Consultants* means the consultants, advisors and independent contractors retained by the Company.

Section 2.10 *Covered Employee* means an Employee who is a covered employee within the meaning of Section 162(m) of the Code.

Section 2.11 *Director* means a non-Employee member of the Board.

Section 2.12 *Effective Date* means the date an Award is determined to be effective by the Committee upon its grant of such Award, which date shall be set forth in the applicable Award Notice.

Section 2.13 *Employee* means any person employed by the Company on a full or part-time basis.

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Section 2.14 *Exchange Act* means the Securities Exchange Act of 1934, as amended from time to time, including the rules thereunder and any successor provisions and the rules thereto.

Section 2.15 *Fair Market Value* means the closing price of the Common Stock on the principal national securities exchange on which the Common Stock is then listed or admitted to trading, and the closing price shall be the last reported sale price regular way on such date (or, if no sale takes place on such date, the last reported sale price regular way on the next preceding date on which such sale took place), as reported by such exchange. If the Common Stock is not then so listed or admitted to trading on a national securities exchange, then Fair Market Value shall be the closing price (the last reported sale price regular way) of the Common Stock in the over-the-counter market as reported by the National Association of Securities Dealers Automated Quotation System (NASDAQ), if the closing price of the Common Stock is then reported by NASDAQ. If the Common Stock closing price is not then reported by NASDAQ, then Fair Market Value shall be the mean between the representative closing bid and closing asked prices of the Common Stock in the over-the-counter market as reported by NASDAQ. If the Common Stock bid and asked prices are not then reported by NASDAQ, then Fair Market Value shall be the quote furnished by any member of the National Association of Securities Dealers, Inc. selected from time to time by G&W for that purpose. If no member of the National Association of Securities Dealers, Inc. then furnishes quotes with respect to the Common Stock, then Fair Market Value shall be the value determined by the Committee in good faith.

Section 2.16 *G&W* means Genesee & Wyoming Inc.

Section 2.17 *Negative Discretion* means the discretion authorized by the Plan to be applied by the Committee in determining the size of a Performance Award for a Performance Period if, in the Committee s sole judgment, such application is appropriate. Negative Discretion may only be used by the Committee to eliminate or reduce the size of a Performance Award. In no event shall any discretionary authority granted to the Committee by the Plan, including, but not limited to Negative Discretion, be used to: (a) grant Performance Awards for a Performance Period if the Performance Goals for such Performance Period have not been attained under the applicable Performance Formula; or (b) increase a Performance Award above the maximum amount payable under Section 6.3 of the Plan.

Section 2.18 *Participant* means either an Employee, Director or Consultant to whom an Award has been granted under the Plan.

Section 2.19 *Performance Awards* means the Stock Awards and performance units granted pursuant to Article 7. Performance Awards are intended to qualify as performance-based compensation under Section 162(m) of the Code.

Section 2.20 *Performance Criteria* means the one or more criteria that the Committee shall select for purposes of establishing the Performance Goal(s) for a Performance Period. The Performance Criteria that will be used to establish such Performance Goal(s) shall be limited to the following: (a) economic value added models; (b) operating ratio, (c) cost reduction (or limits on cost increases), (d) debt to capitalization, (e) debt to equity, (f) earnings, (g) earnings before interest and taxes, (h) earnings before interest, taxes, depreciation and amortization, (i) earnings before interest, taxes, depreciation, amortization and operating leases, (j) earnings per share, (k) net income, (l) operating income, (m) increase in total revenue, (n) net sales, (o) return on assets, (p) return on capital employed, (q) return on equity, (r) return on stockholders equity or total stockholders return, (s) gross margin or

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operating margin, (t) net profit, (u) operating profits, (v) profits before tax, (w) ratio of operating earnings to capital spending, (x) free cash flow, (y) return on assets, (z) equity or stockholders equity, (aa) Common Stock price per share, (ab) the number of reported injuries, derailments or other accidents, as defined and required by the Federal Railroad Administration (or such successor entity thereto) in absolute numbers or in the ratio thereof to miles of track, employees, hours worked or other similar measurements, (ac) attainment of strategic or operational initiatives, (ad) book value; or (~~ad~~ae) any combination of the foregoing, which, in each case, may be applied on an absolute basis and/or be relative to one or more peer group companies or indices, or any combination thereof.

Section 2.21 *Performance Formula* means, for a Performance Period, the one or more objective formulas (expressed as a percentage or otherwise) applied against the relevant Performance Goal(s) to determine, with regards to the Award of a particular Participant, whether all, some portion but less than all, or none of the Award has been earned for the Performance Period.

Section 2.22 *Performance Goals* means, for a Performance Period, the one or more goals established by the Committee for the Performance Period based upon the Performance Criteria. Any Performance Goal shall be established in a manner such that a third party having knowledge of the relevant performance results could calculate the amount to be paid to the Participant. For any Performance Period, the Committee is authorized at any time during the initial time period permitted by Section 162(m) of the Code, ~~or at any time thereafter,~~ in its sole and absolute discretion, to ~~adjust or modify~~provide for the adjustment or modification of the calculation of a Performance Goal for such Performance Period in order to prevent the dilution or enlargement of the rights of Participants (a) in the event of, or in anticipation of, any unusual or extraordinary corporate item, transaction, event or development; (b) in recognition of, or in anticipation of, any other unusual or nonrecurring events affecting the Company, or the financial statements of the Company, or in response to, or in anticipation of, changes in applicable laws, regulations, accounting principles, or business conditions; and (c) in view of the Committee s assessment of the business strategy of the Company, performance of comparable organizations, economic and business conditions, and any other circumstances deemed relevant.

Section 2.23 *Performance Period* means the one or more periods of time, which may be of varying and overlapping durations, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant s right to and the payment of a Performance Award.

Section 2.24 *Plan* means this Second Amended and Restated 2004 Omnibus Incentive Plan, as amended from time to time.

Section 2.25 *Restricted Stock Unit Award* means an Award granted pursuant to Article 11 in the form of a right to receive shares of Common Stock on a future date.

Section 2.26 *Stock Award* means an award granted pursuant to Article 10 in the form of shares of Common Stock, restricted shares of Common Stock, and/or units of Common Stock.

Section 2.27 *Subsidiary* means a corporation or other business entity in which G&W directly or indirectly has an ownership interest of 20 percent or more, except that with respect to incentive stock options, Subsidiary shall mean subsidiary corporation as defined in Section 424(f) of the Code.

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ARTICLE 3

ELIGIBILITY

Section 3.1 *In General*. Subject to Section 3.2 and Article 4, all Employees, Directors and Consultants are eligible to participate in the Plan. The Committee may select, from time to time, Participants from those Employees, Directors and Consultants.

Section 3.2 *Incentive Stock Options*. Only Employees shall be eligible to receive incentive stock options (within the meaning of Section 422 of the Code).

ARTICLE 4

PLAN ADMINISTRATION

Section 4.1 *Responsibility*. The Committee shall have total and exclusive responsibility to control, operate, manage and administer the Plan in accordance with its terms.

Section 4.2 *Authority of the Committee*. The Committee shall have all the authority that may be necessary or helpful to enable it to discharge its responsibilities with respect to the Plan. Without limiting the generality of the preceding sentence, the Committee shall have the exclusive right to:

(a) determine eligibility for participation in the Plan;

(b) select the Participants and determine the type of Awards to be made to Participants, the number of shares subject to Awards and the terms, conditions, restrictions and limitations of the Awards, including, but not by way of limitation, restrictions on the transferability of Awards and conditions with respect to continued employment, performance criteria, confidentiality and non-competition;

(c) interpret the Plan;

(d) construe any ambiguous provision, correct any default, supply any omission, and reconcile any inconsistency of the Plan;

(e) issue administrative guidelines as an aid to administer the Plan and make changes in such guidelines as it from time to time deems proper;

(f) make regulations for carrying out the Plan and make changes in such regulations as it from time to time deems proper;

(g) to the extent permitted under the Plan, grant waivers of Plan terms, conditions, restrictions, and limitations;

(h) promulgate rules and regulations regarding treatment of Awards of a Participant under the Plan in the event of such Participant s death, Disability, Retirement, termination from the Company or breach of agreement by the Participant, or in the event of a change of control of G&W;

(i) accelerate the vesting, exercise, or payment of an Award or the Performance Period of an Award when such action or actions would be in the best interest of the Company;

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(j) establish such other types of Awards, besides those specifically enumerated in Article 5 hereof, which the Committee determines are consistent with the Plan s purpose;

(k) subject to Section 4.3, grant Awards in replacement of Awards previously granted under this Plan or any other executive compensation plan of the Company;

(l) establish and administer the Performance Goals and certify whether, and to what extent, they have been attained;

(m) determine the terms and provisions of any agreements entered into hereunder;

(n) take any and all other action it deems necessary or advisable for the proper operation or administration of the Plan; and

(o) make all other determinations it deems necessary or advisable for the administration of the Plan, including factual determinations.

The decisions of the Committee and its actions with respect to the Plan shall be final, binding and conclusive upon all persons having or claiming to have any right or interest in or under the Plan.

Section 4.3 *Option Repricing*. Except for adjustments pursuant to Section 6.2, the Committee shall not reprice any stock options and/or stock appreciation rights unless such action is approved by the G&W s stockholders. For purposes of the Plan, the term reprice shall mean the reduction, directly or indirectly, in the per-share exercise price of an outstanding stock option(s) and/or stock appreciation right(s) issued under the Plan by amendment, cancellation or substitution.

Section 4.4 *Section 162(m) of the Code*. With regards to Awards issued to Covered Employees that are intended to qualify as performance-based compensation for purposes of Section 162(m) of the Code, the Plan shall, for all purposes, be interpreted and construed with respect to such Awards in the manner that would result in such interpretation or construction satisfying the exemptions available under Section 162(m) of the Code.

Section 4.5 *Action by the Committee*. Except as otherwise provided by Section 4.6, the Committee may act only by a majority of its members. Any determination of the Committee may be made, without a meeting, by a writing or writings signed by all of the members of the Committee.

Section 4.6 *Allocation and Delegation of Authority*. The Committee may allocate all or any portion of its responsibilities and powers under the Plan to any one or more of its members, the CEO or other senior members of management as the Committee deems appropriate and may delegate all or any part of its responsibilities and powers to any such person or persons, provided that any such allocation or delegation be in writing; provided, however, that only the Committee, or other committee consisting of two or more Directors, all of whom are both a Non-Employee Director within the meaning of Rule 16b-3 under the Exchange Act and an outside director within the meaning of the definition of such term as contained in Proposed Treasury Regulation Section 1.162-27(e)(3), or any successor definition adopted under Section 162(m) of the Code, may select and grant Awards to Participants who are subject to Section 16 of the Exchange Act or are Covered Employees. The Committee may revoke any such allocation or delegation at any time for any reason with or without prior notice.

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ARTICLE 5

FORM OF AWARDS

Section 5.1 *In General*. Awards may, at the Committee s sole discretion, be paid in the form of Performance Awards pursuant to Article 7, stock options pursuant to Article 8, stock appreciation rights pursuant to Article 9, Stock Awards pursuant to Article 10, Restricted Stock Unit Awards pursuant to Article 11, performance units pursuant to Article 12, any form established by the Committee pursuant to Section 4.2(j), or a combination thereof. Each Award shall be subject to the terms, conditions, restrictions and limitations of the Plan and the Award Notice for such Award. Awards under a particular Article of the Plan need not be uniform and Awards under two or more Articles may be combined into a single Award Notice. Any combination of Awards may be granted at one time and on more than one occasion to the same Participant.

Section 5.2 *Foreign Jurisdictions*.

(a) *Special Terms*. In order to facilitate the making of any Award to Participants who are employed or retained by the Company outside the United States as Employees, Directors ~~orConsultants~~or Consultants (or who are foreign nationals temporarily within the United States) and who are not (and who are not expected to be) covered employees within the meaning of Section 162(m) of the Code, the Committee may provide for such modifications and additional terms and conditions (Special Terms) in Awards as the Committee may consider necessary or appropriate to accommodate differences in local law, policy or custom or to facilitate administration of the Plan. The Special Terms may provide that the grant of an Award is subject to (1) applicable governmental or regulatory approval or other compliance with local legal requirements and/or (2) the execution by the Participant of a written instrument in the form specified by the Committee, and that in the event such conditions are not satisfied, the grant shall be void. The Special Terms may also provide that an Award shall become exercisable or redeemable, as the case may be, if an Employee s employment or Director or Consultant s relationship with the Company ends as a result of workforce reduction, realignment or similar measure and the Committee may designate a person or persons to make such determination for a location. The Committee may adopt or approve sub-plans, appendices or supplements to, or amendments, restatements, or alternative versions of, the Plan as it may consider necessary or appropriate for purposes of implementing any Special Terms, without thereby affecting the terms of the Plan as in effect for any other purpose; provided, however, no such sub-plans, appendices or supplements to, or amendments, restatements, or alternative versions of, the Plan shall: (a) increase the limitations contained in Section 6.3; (b) increase the number of available shares under Section 6.1; or (c) cause the Plan to cease to satisfy any conditions of Rule 16b-3 under the Exchange Act.

(b) *Currency Effects*. Unless otherwise specifically determined by the Committee, all Awards and payments pursuant to such Awards shall be determined in U.S. currency. The Committee shall determine, in its discretion, whether and to the extent any payments made pursuant to an Award shall be made in local currency, as opposed to U.S. dollars. In the event payments are made in local currency, the Committee may determine, in its discretion and without liability to any Participant, the method and rate of converting the payment into local currency.

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ARTICLE 6

SHARES SUBJECT TO PLAN

Section 6.1 *Available Shares*. The maximum number of shares of Common Stock which shall be available for grant of Awards under the Plan (including incentive stock options) during its term shall not exceed ~~3,687,500~~6,187,500 (plus any shares of Common Stock which are or become available under Section 1.3, which shares shall also be available for grant of Awards under the Plan)~~; provided, however, that no more than 843,750 shares of such maximum number of shares of Common Stock may be used for Awards other than stock options or stock appreciation rights~~. Such amount shall be subject to adjustment as provided in Section 6.2. Any shares of Common Stock related to Awards which terminate by expiration, forfeiture, cancellation or otherwise without the issuance of such shares, are settled in cash in lieu of Common Stock, or are exchanged with the Committee s permission for Awards not involving Common Stock, shall be available again for grant under the Plan. Moreover, if the exercise price of any Award granted under the Plan or the tax withholding requirements with respect to any Award granted under the Plan are satisfied by tendering shares of Common Stock to G&W (by either actual delivery or by attestation), only the number of shares of Common Stock issued net of the shares of Common Stock tendered will be deemed delivered for purposes of determining the maximum number of shares of Common Stock available for delivery under the Plan. The shares of Common Stock available for issuance under the Plan may be authorized and unissued shares or treasury shares, including shares purchased in open market or private transactions. For the purpose of computing the total number of shares of Common Stock granted under the Plan, where one or more types of Awards, both of which are payable in shares of Common Stock, are granted in tandem with each other, such that the exercise of one type of Award with respect to a number of shares cancels an equal number of shares of the other, the number of shares granted under both Awards shall be deemed to be equivalent to the number of shares under one of the Awards.

Section 6.2 *Adjustment Upon Certain Events*. In the event that there is, with respect to G&W, a stock dividend or split, reorganization, recapitalization, merger, consolidation, spin-off, combination, combination or transaction or exchange of Common Stock or other corporate exchange, or any distribution to stockholders of Common Stock or other property or securities or any extraordinary cash dividends (other than regular cash dividends) or any transaction similar to the foregoing or other transaction that results in a change to G&W s capital structure, then the Committee shall make substitutions and/or adjustments to the maximum number of shares available for issuance under the Plan, the maximum Award payable under Section 6.3, the number of shares to be issued pursuant outstanding Awards, the option prices, exercise prices or purchase prices of outstanding Awards and/or any other affected terms of an Award or the Plan as the Committee, in its sole discretion and without liability to any person, deems equitable or appropriate. Unless the Committee determines otherwise, in no event shall the Award of any Participant that is intended to qualify as performance-based compensation for purposes of Section 162(m) of the Code be adjusted pursuant to this Section 6.2 to the extent such adjustment would cause such Award to fail to qualify as performance-based compensation under Section 162(m) of the Code.

Section 6.3 *Maximum Award Payable*. Subject to Section 6.2, and notwithstanding any provision contained in the Plan to the contrary, the maximum Award payable (or granted, if applicable) to any one Participant under the Plan for a calendar year is 1,012,500 shares of Common Stock or, in the event the Award is paid in cash, $~~2,000,000.~~5,000,000.

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ARTICLE 7

PERFORMANCE AWARDS

Section 7.1 *Purpose*. For purposes of Performance Awards issued to Employees, Directors and Consultants which are intended to qualify as performance-based compensation for purposes of Section 162(m) of the Code, the provisions of this Article 7 shall apply in addition to and, where necessary, in lieu of the provisions of Article 10, Article 11 and Article 12. The purpose of this Article is to provide the Committee the ability to qualify the Stock Awards authorized under Article 10, the Restricted Stock Unit Awards authorized under Article 11 and the performance units under Article 12 as performance-based compensation under Section 162(m) of the Code. The provisions of this Article 7 shall control over any contrary provision contained in Article 10, Article 11 or Article 12.

Section 7.2 *Eligibility*. For each Performance Period, the Committee will, in its sole discretion, designate within the initial period allowed under Section 162(m) of the Code, which Employees, Directors and Consultants will be Participants for such period. However, designation of an Employee, Director or Consultant as a Participant for a Performance Period shall not in any manner entitle the Participant to receive an Award for the period. The determination as to whether or not such Participant becomes entitled to an Award for such Performance Period shall be decided solely in accordance with the provisions of this Article 7. Moreover, designation of an Employee, Director or Consultant as a Participant for a particular Performance Period shall not require designation of such Employee, Director or Consultant as a Participant in any subsequent Performance Period and designation of one Employee, Director or Consultant as a Participant shall not require designation of any other Employee, Director or Consultant as a Participant in such period or in any other period.

Section 7.3 *Discretion of Committee with Respect to Performance Awards*. The Committee shall have the authority to determine which Covered Employees or other Employees, Directors or Consultants shall be Participants of a Performance Award. With regards to a particular Performance Period, the Committee shall have full discretion to select the length of such Performance Period, the type(s) of Performance Awards to be issued, the Performance Criteria that will be used to establish the Performance Goal(s), the kind(s) and/or level(s) of the Performance Goal(s), whether the Performance Goal(s) is(are) to apply to the Company or any one or more subunits thereof and the Performance Formula. For each Performance Period, with regards to the Performance Awards to be issued for such period, the Committee will, within the initial period allowed under Section 162(m) of the Code, exercise its discretion with respect to each of the matters enumerated in the immediately preceding sentence of this Section 7.3 and record the same in writing.

Section 7.4 *Payment of Performance Awards*.

(a) *Condition to Receipt of Performance Award*. Unless otherwise provided in the relevant Award Notice, a Participant must be employed by the Company on the last day of a Performance Period to be eligible for a Performance Award for such Performance Period.

(b) *Limitation*. A Participant shall be eligible to receive a Performance Award for a Performance Period only to the extent that: (1) the Performance Goals for such period are achieved; and (2) and the Performance Formula as applied against such Performance Goals determines that all or some portion of such Participant s Performance Award has been earned for the Performance Period.

(c) *Certification*. Following the completion of a Performance Period, the Committee shall meet to review and certify in writing whether, and to what extent, the Performance Goals for the Performance

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Period have been achieved and, if so, to also calculate and certify in writing the amount of the Performance Awards earned for the period based upon the Performance Formula. The Committee shall then determine the actual size of each Participant s Performance Award for the Performance Period and, in so doing, shall apply Negative Discretion, if and when it deems appropriate.

(d) *Negative Discretion*. In determining the actual size of an individual Performance Award for a Performance Period, the Committee may reduce or eliminate the amount of the Performance Award earned under the Performance Formula for the Performance Period through the use of Negative Discretion, if in its sole judgment, such reduction or elimination is appropriate.

(e) *Timing of Award Payments*. The Awards granted for a Performance Period shall be paid to Participants as soon as administratively practicable following completion of the certifications required by Section 7.4(c).

ARTICLE 8

STOCK OPTIONS

Section 8.1 *In General*. Awards may be granted in the form of stock options. These stock options may be incentive stock options within the meaning of Section 422 of the Code or non-qualified stock options (i.e., stock options which are not incentive stock options), or a combination of both. All Awards under the Plan issued to Covered Employees in the form of non-qualified stock options shall qualify as performance-based compensation under Section 162(m) of the Code.

Section 8.2 *Terms and Conditions of Stock Options*. An option shall be exercisable in accordance with such terms and conditions and at such times and during such periods as may be determined by the Committee. The price at which Common Stock may be purchased upon exercise of a stock option shall be not less than 100 percent of the Fair Market Value of the Common Stock, as determined by the Committee, on the Effective Date of the option s grant. In addition, the term of a stock option may not exceed ten years.

Section 8.3 *Restrictions Relating to Incentive Stock Options*. Stock options issued in the form of incentive stock options shall, in addition to being subject to the terms and conditions of Section 8.2, comply with Section 422 of the Code. Accordingly, the aggregate Fair Market Value (determined at the time the option was granted) of the Common Stock with respect to which incentive stock options are exercisable for the first time by a Participant during any calendar year (under this Plan or any other plan of the Company) shall not exceed $100,000 (or such other limit as may be required by Section 422 of the Code).

Section 8.4 *Exercise*. Upon exercise, the option price of a stock option may be paid in cash, or, to the extent permitted by the Committee, ~~by~~through net settlement in shares or through tendering, by either actual delivery of shares or by attestation, shares of Common Stock, a combination of the foregoing, or such other consideration as the Committee may deem appropriate. The Committee shall establish appropriate methods for accepting Common Stock, whether restricted or unrestricted, and may impose such conditions as it deems appropriate on the use of such Common Stock to exercise a stock option. Stock options awarded under the Plan may also be exercised by way of a broker-assisted stock option exercise program, if any, provided such program is available at the time of the option s exercise. Notwithstanding the foregoing or the provision of any Award Notice, a Participant may not

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pay the exercise price of a stock option using shares of Common Stock if, in the opinion of counsel to the Company, ~~(i) the Participant is, or within the six months preceding such exercise was, subject to reporting under Section 16(a) of the Exchange Act, (ii) there is a substantial likelihood that the use of such form of payment or the timing of such form of payment would subject the Participant to a substantial risk of liability under Section 16 of the Exchange Act, or (iii)~~ there is a substantial likelihood that the use of such form of payment would result in accounting treatment to the Company under generally accepted accounting principles that the Committee reasonably determines is adverse to the Company.

ARTICLE 9

STOCK APPRECIATION RIGHTS

Section 9.1 *In General*. Awards may be granted in the form of stock appreciation rights (SARs). SARs entitle the Participant to receive a payment equal to the appreciation in a stated number of shares of Common Stock from the exercise price to the Fair Market Value of the Common Stock on the date of exercise. The exercise price for a particular SAR shall be defined in the Award Notice for that SAR. An SAR may be granted in tandem with all or a portion of a related stock option under the Plan (Tandem SARs), or may be granted separately (Freestanding SARs). A Tandem SAR may be granted either at the time of the grant of the related stock option or at any time thereafter during the term of the stock option. All Awards under the Plan issued to Covered Employees in the form of a SAR shall qualify as performance-based compensation under Section 162(m) of the Code.

Section 9.2 *Terms and Conditions of Tandem SARs*. A Tandem SAR shall be exercisable to the extent, and only to the extent, that the related stock option is exercisable, and the exercise price of such a SAR (the base from which the value of the SAR is measured at its exercise) shall be the option price under the related stock option. However, at no time shall a Tandem SAR be issued if the option price of its related stock option is less than the Fair Market Value of the Common Stock, as determined by the Committee, on the Effective Date of the Tandem SAR s grant. If a related stock option is exercised as to some or all of the shares covered by the Award, the related Tandem SAR, if any, shall be canceled automatically to the extent of the number of shares covered by the stock option exercise. Upon exercise of a Tandem SAR as to some or all of the shares covered by the Award, the related stock option shall be canceled automatically to the extent of the number of shares covered by such exercise. Moreover, all Tandem SARs shall expire not later than ten years from the Effective Date of the SAR s grant.

Section 9.3 *Terms and Conditions of Freestanding SARs*. Freestanding SARs shall be exercisable or automatically mature in accordance with such terms and conditions and at such times and during such periods as may be determined by the Committee. The exercise price of a Freestanding SAR shall be not less than 100 percent of the Fair Market Value of the Common Stock on the Effective Date of the Freestanding SAR s grant. Moreover, all Freestanding SARs shall expire not later than ten years from the Effective Date of the Freestanding SAR s grant.

Section 9.4 *Deemed Exercise*. The Committee may provide that a SAR shall be deemed to be exercised at the close of business on the scheduled expiration date of such SAR if at such time the SAR by its terms remains exercisable and, if so exercised, would result in a payment to the holder of such SAR.

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Section 9.5 *Payment*. Unless otherwise provided in an Award Notice, an SAR may be paid in cash, Common Stock or any combination thereof, as determined by the Committee, in its sole and absolute discretion, at the time that the SAR is exercised.

ARTICLE 10

STOCK AWARDS

Section 10.1 *Grants*. Awards may be granted in the form of Stock Awards. Stock Awards shall be awarded in such numbers and at such times during the term of the Plan as the Committee shall determine.

Section 10.2 *Performance Criteria*. For Stock Awards conditioned, restricted and/or limited based on performance criteria, the length of the performance period, the performance objectives to be achieved during the performance period, and the measure of whether and to what degree such objectives have been attained shall be conclusively determined by the Committee in the exercise of its absolute discretion. Performance objectives may be revised by the Committee, at such times as it deems appropriate during the performance period, in order to take into consideration any unforeseen events or changes in circumstances.

Section 10.3 *Rights as Stockholders*. During the period in which any restricted shares of Common Stock are subject to any restrictions, the Committee may, in its sole discretion, deny a Participant to whom such restricted shares have been awarded all or any of the rights of a stockholder with respect to such shares, including, but not by way of limitation, limiting the right to vote such shares or the right to receive dividends on such shares.

Section 10.4 *Evidence of Award*. Any Stock Award granted under the Plan may be evidenced in such manner as the Committee deems appropriate, including, without limitation, book-entry registration or issuance of a stock certificate or certificates, with such restrictive legends and/or stop transfer instructions as the Committee deems appropriate.

ARTICLE 11

RESTRICTED STOCK UNIT AWARDS

Section 11.1 *Grants*. Awards may be granted in the form of Restricted Stock Unit Awards. Restricted Stock Unit Awards shall be awarded in such numbers and at such times during the term of the Plan as the Committee shall determine.

Section 11.2 *Rights as Stockholders*. Until the shares of Common Stock to be received upon the vesting of such Restricted Stock Unit Award are actually received by a Participant, the Participant shall have no rights as a stockholder with respect to such shares.

Section 11.3 *Evidence of Award*. A Restricted Stock Unit Award granted under the Plan may be recorded on the books and records of G&W in such manner as the Committee deems appropriate.

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ARTICLE 12

PERFORMANCE UNITS

Section 12.1 *Grants*. Awards may be granted in the form of performance units. Performance units, as that term is used in this Plan, shall refer to units valued by reference to designated criteria established by the Committee, other than Common Stock.

Section 12.2 *Performance Criteria*. Performance units shall be contingent on the attainment during a performance period of certain performance objectives. The length of the performance period, the performance objectives to be achieved during the performance period, and the measure of whether and to what degree such objectives have been attained shall be conclusively determined by the Committee in the exercise of its absolute discretion. Performance objectives may be revised by the Committee, at such times as it deems appropriate during the performance period (subject to any applicable limitations under Section 162(m) of the Code), in order to take into consideration any unforeseen events or changes in circumstances.

ARTICLE 13

PAYMENT OF AWARDS

Section 13.1 *Payment*. Absent a Plan or Award Notice provision to the contrary, payment of Awards may, at the discretion of the Committee, be made in cash, Common Stock, a combination of cash and Common Stock, or any other form of property as the Committee shall determine. In addition, payment of Awards may include such terms, conditions, restrictions and/or limitations, if any, as the Committee deems appropriate, including, in the case of Awards paid in the form of Common Stock, restrictions on transfer and forfeiture provisions; provided, however, such terms, conditions, restrictions and/or limitations are not inconsistent with the Plan.

Section 13.2 *Withholding Taxes*. The Company shall be entitled to deduct from any payment under the Plan, regardless of the form of such payment, the amount of all applicable income and employment taxes required by law to be withheld with respect to such payment or may require the Participant to pay to it such tax prior to and as a condition of the making of such payment. In accordance with any applicable administrative guidelines it establishes, the Committee may allow a Participant to pay the amount of taxes required by law to be withheld from an Award by withholding from any payment of Common Stock due as a result of such Award, or by permitting the Participant to deliver to G&W, shares of Common Stock having a Fair Market Value equal to the minimum amount of such required withholding taxes. Notwithstanding the foregoing or the provision of any Award Notice, a Participant may not pay the amount of taxes required by law to be withheld using shares of Common Stock if, in the opinion of counsel to the Company, ~~(i) the Participant is, or within the six months preceding such exercise was, subject to reporting under Section 16(a) of the Exchange Act, (ii) there is a substantial likelihood that the use of such form of payment or the timing of such form of payment would subject the Participant to a substantial risk of liability under Section 16 of the Exchange Act, or (iii)~~ there is a substantial likelihood that the use of such form of payment would result in adverse accounting treatment to the Company under generally accepted accounting principles.

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ARTICLE 14

DIVIDEND AND DIVIDEND EQUIVALENTS

If an Award is granted in the form of a Stock Award or stock option, or in the form of any other stock-based grant, the Committee may choose, at the time of the grant of the Award or any time thereafter up to the time of the Award s payment, to include as part of such Award an entitlement to receive dividends or dividend equivalents, subject to such terms, conditions, restrictions and/or limitations, if any, as the Committee may establish. Dividends and dividend equivalents shall be paid in such form and manner (i.e., lump sum or installments), and at such time(s) as the Committee shall determine. All dividends or dividend equivalents which are not paid currently may, at the Committee s discretion, accrue interest, be reinvested into additional shares of Common Stock or, in the case of dividends or dividend equivalents credited in connection with Stock Awards, be credited as additional Stock Awards and paid to the Participant if and when, and to the extent that, payment is made pursuant to such Award.

ARTICLE 15

DEFERRAL OF AWARDS

~~At~~Subject to Section 16.8, at the discretion of the Committee, payment of any Award; salary or bonus compensation; or Company board compensation; dividend or dividend equivalent, or any portion thereof, may be deferred by a Participant until such time as the Committee may establish. All such deferrals shall be accomplished by the delivery of a written, irrevocable election by the Participant prior to the time established by the Committee for such purpose, on a form provided by the Company. Further, all deferrals shall be made in accordance with administrative guidelines established by the Committee to ensure that such deferrals comply with all applicable requirements of the Code. Deferred payments shall be paid in a lump sum or installments, as determined by the Committee. Deferred Awards may also be credited with interest, at such rates to be determined by the Committee, or invested by the Company, and, with respect to those deferred Awards denominated in the form of Common Stock, credited with dividends or dividend equivalents.

ARTICLE 16

MISCELLANEOUS

Section 16.1 *Nonassignability*. Except as otherwise provided in an Award Notice, no Awards or any other payment under the Plan shall be subject in any manner to alienation, anticipation, sale, transfer (except by will or the laws of descent and distribution), assignment or pledge, nor shall any Award be payable to or exercisable by anyone other than the Participant to whom it was granted.

Section 16.2 *Regulatory Approvals and Listings*. Notwithstanding anything contained in this Plan to the contrary, G&W shall have no obligation to issue or deliver certificates of Common Stock evidencing Stock Awards or any other Award resulting in the payment of Common Stock prior to (i) the obtaining of any approval from any governmental agency which G&W shall, in its sole discretion, determine to be necessary or advisable, (ii) the admission of such shares to listing on the stock exchange on which the Common Stock may be listed, and (iii) the completion of any registration or other qualification of said shares under any state or federal law or ruling of any governmental body which G&W shall, in its sole discretion, determine to be necessary or advisable.

Section 16.3 *No Right to Continued Employment or Grants*. Participation in the Plan shall not give any Participant the right to remain in the employ or other service of the Company. The Company reserves the right to terminate the employment or other service of a Participant at any time. Further, the adoption of this Plan shall not be deemed to give any Employee, Director or any other individual any right to be selected as a Participant or to be granted an Award. In addition, no Employee, Director or any other individual having been selected for an Award, shall have at any time the right to receive any additional Awards.

Section 16.4 *Amendment/Termination*. The Committee may suspend or terminate the Plan at any time for any reason with or without prior notice. In addition, the Committee may, from time to time for any reason and with or without prior notice, amend the Plan in any manner, but may not without stockholder approval adopt any amendment which would require the vote of the stockholders of G&W if such approval is necessary or deemed advisable with respect to tax, securities, or other applicable laws or regulations, including, but not limited to, the listing requirements of the stock exchanges on which the securities of G&W are listed. Notwithstanding the foregoing, without the consent of a Participant (except as otherwise provided in Section 6.2), no amendment may materially and adversely affect any of the rights of such Participant under any Award theretofore granted to such Participant under the Plan. No Awards shall be granted under the Plan after March 22, 2021, but Awards theretofore granted may extend beyond that date.

This Plan and Awards issued hereunder shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretative guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date. Notwithstanding any provision of the Plan to the contrary, in the event that the Committee determines that any amounts payable hereunder will be taxable to a Participant under Section 409A of the Code and related Department of Treasury guidance prior to payment to such Participant of such amount, the Company may (a) adopt such amendments to the Plan and Awards and appropriate policies and procedures, including amendments and policies with retroactive effect, that the Committee determines necessary or appropriate to preserve the intended tax treatment of the benefits provided by the Plan and Awards hereunder and/or (b) take such other actions as the Committee determines necessary or appropriate to avoid the imposition of an additional tax under Section 409A of the Code.

Section 16.5 *Governing Law*. The Plan shall be governed by and construed in accordance with the laws of the State of New York, except as superseded by applicable federal law, without giving effect to its conflicts of law provisions.

Section 16.6 *No Right, Title, or Interest in Company Assets*. No Participant shall have any rights as a stockholder as a result of participation in the Plan until the date of issuance of a stock certificate in his or her name, and, in the case of restricted shares of Common Stock, such rights are granted to the Participant under the Plan. To the extent any person acquires a right to receive payments from the Company under the Plan, such rights shall be no greater than the rights of an unsecured creditor of the Company and the Participant shall not have any rights in or against any specific assets of the Company. All of the Awards granted under the Plan shall be unfunded.

Section 16.7 *No Guarantee of Tax Consequences*. No person connected with the Plan in any capacity, including, but not limited to, the Company and its directors, officers, agents and employees, makes any representation, commitment, or guarantee that any tax treatment, including, but not limited

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to, federal, state and local income, estate and gift tax treatment, will be applicable with respect to the tax treatment of any Award, any amounts deferred under the Plan, or paid to or for the benefit of a Participant under the Plan, or that such tax treatment will apply to or be available to a Participant on account of participation in the Plan.

Section 16.8 *Section 409A*. Notwithstanding other provisions of the Plan or any Award agreements thereunder, no Award shall be granted, deferred, accelerated, extended, paid out or modified under this Plan in a manner that would result in the imposition of an additional tax under Section 409A of the Code upon a Participant. In the event that it is reasonably determined by the Committee that, as a result of Section 409A of the Code, payments in respect of any Award under the Plan may not be made at the time contemplated by the terms of the Plan or the relevant Award agreement, as the case may be, without causing the Participant holding such Award to be subject to taxation under Section 409A of the Code, the Company will make such payment on the first day that would not result in the Participant incurring any tax liability under Section 409A of the Code. The Company shall use commercially reasonable efforts to implement the provisions of this Section 16.8 in good faith; provided that neither the Company, the Committee nor any of the Company s employees, directors or representatives shall have any liability to Participants with respect to this Section 16.8.

Section 16.9 *Successors and Assigns*. The Plan shall be binding on all successors and assigns of the Company and a Participant, including without limitation, the estate of such Participant and the executor, administrator or trustee of such estate, or any receiver or trustee in bankruptcy or representative of the Participant s creditors.

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ANNEX II

RESTATED

CERTIFICATE OF INCORPORATION

OF

GENESEE & WYOMING INC.

The undersigned, ~~Adam B. Frankel~~Allison M. Fergus, being the Secretary of Genesee & Wyoming Inc., hereby certifies that:

I. The name of the corporation is Genesee & Wyoming Inc. It was originally incorporated under the name Genesee and Wyoming Industries, Inc.

II. The original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware (the Secretary of State) on September 1, 1977.

III. The original Certificate of Incorporation was amended and restated by the Restated Certificate of Incorporation, which was filed with the Secretary of State on March 15, 2004.

III. This Restated Certificate of Incorporation, which amends and restates the ~~original~~Restated Certificate of Incorporation, was duly adopted in accordance with the provisions of Sections ~~228,~~ 242 and 245 of the General Corporation Law of the State of Delaware.

IV. The Restated Certificate of Incorporation of the corporation ~~shall~~is hereby further amended and restated to read in its entirety as follows:

~~RESTATED~~

~~CERTIFICATE OF INCORPORATION~~

~~OF~~

~~GENESEE & WYOMING INC.~~

1. Name. The name of the Corporation is Genesee & Wyoming Inc.

2. Registered Agent. The address of its registered office in the State of Delaware is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The registered agent at such address is The Corporation Trust Company.

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

4. Capitalization. The aggregate number of shares of capital stock which the Corporation shall have authority to issue is ~~One Hundred and Eight Million (108,000,000),consisting of Ninety Million (90,000,000~~two hundred thirteen million (213,000,000), consisting of one hundred eighty million (180,000,000) shares of Class A Common Stock, par value $.01 per share (the Class A Common ~~); Fifteen Million (15,000,000~~)thirty million (30,000,000) shares of Class B Common Stock, par value $.01 per share (the Class B Common and together with the Class A Common, the Common Stock); and three million (3,000,000) shares of Preferred Stock, par value $.01 per share (the Preferred Stock).

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A. Common Stock.

The Class A Common and the Class B Common shall be identical in all respects and shall entitle the holders thereof to the same rights, privileges and limitations, except as otherwise provided herein. The relative rights, privileges and limitations of the Class A Common and the Class B Common are as follows:

(a) Voting Rights. The holders of Class A Common and Class B Common shall have the following rights:

(i) The holders of Class A Common and Class B Common shall be entitled to vote as separate classes on all matters as to which a class vote is now, or hereafter may be, required by law.

(ii) On all other matters, the holders of Class A Common and Class B Common shall vote together as a single class, provided that the holders of Class A Common shall have one vote per share and the holders of Class B Common shall have ten votes per share.

(iii) There shall be no cumulative voting of any shares of either the Class A Common or the Class B Common.

(b) Conversion.

(i) No Conversion of Class A Common. The Class A Common shall not be convertible into any class of the securities of the Corporation.

(ii) Voluntary Conversion of Class B Common. Each holder of record of a share of Class B Common may at any time or from time to time, without cost to such holder and at such holder s option, convert any whole number or all of such holder s shares of Class B Common into fully paid and nonassessable shares of Class A Common at the rate of one share of Class A Common for each share of Class B Common surrendered for conversion. Any such conversion may be effected by any holder of Class B Common by surrendering such holder s certificate or certificates for the shares of Class B Common to be converted, duly endorsed, at the office of the corporation or the office of any transfer agent for the Class A Common, together with a written notice to the Corporation at such office that such holder elects to convert all or a specific number of such shares of Class B Common. Thereafter, the Corporation shall cause its transfer agent to issue and deliver to such holder a certificate or certificates for the number of shares of Class A Common to which such holder shall be entitled as aforesaid. Such conversion shall be made as of the close of business on the tenth business day following the date of such surrender, and the person or persons entitled to receive the shares of Class A Common issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Class A Common on such date.

(iii) Automatic Conversion of Class B Common Upon Certain Transfers. Upon any transfer, other than an Excluded Transfer (as hereinafter defined), of a share or shares of Class B Common by the holder of record thereof, such share or shares of Class B Common shall automatically convert into and become an equal number of shares of Class A Common. For purposes of this Article 4(A)(b)(iii), the term Excluded Transfers shall mean: (a) any transfer to an individual or entity that is, at the time of such transfer, a holder of record of any shares of Class B Common or an Executive Officer (as hereinafter defined) of the Corporation; (b) any transfer by gift to a spouse, child or grandchild of a holder of record of any shares of Class B Common, or to a trust for the benefit thereof; or (c) any transfer to a spouse, child or grandchild of a holder of record of any shares of Class B Common, or to a trust for the benefit thereof, which results, whether by bequest, operation of the laws of intestate succession or otherwise, from the death of such holder or record. For purposes of this Article 4(A)(b)(iii), the term Executive Officer shall mean an officer of the Corporation within the meaning of Rule 16a-1 promulgated under the Securities Exchange Act of 1934, as amended. The transferor of the Class B Common shall surrender the certificate or certificates representing the transferred shares at the principal office of the Corporation at any time during normal business hours, together with (a) a written notice stating that such holder has transferred the shares, or a stated number of the shares, represented by such certificate or certificates and (b) a written statement advising as to whether or not the transfer is an Excluded Transfer. In the event that, according to such statement, the transfer is an Excluded Transfer, the transferor shall also deliver to the Corporation proof acceptable to the Corporation and its counsel of the nature of the Excluded Transfer. If the transferor does not claim an Excluded Transfer, the transfer of shares and automatic conversion of shares of Class B Common into shares of Class A Common under this Article 4(A)(b)(iii) shall be deemed to have been effected as of the close of business on the date on which the transferor surrenders such certificate or certificates representing shares of Class B Common and delivers such notice, and at such time the rights of the holder of record of the converted shares of Class B Common shall cease and the person or persons in whose name or names the certificate or certificates for shares of Class A Common are to be issued because of the conversion shall be deemed to have become the holder or holders of record of the Class A Common represented thereby. If the transferor claims an Excluded Transfer, the transfer shall be deemed to have been effected as of the close of business on the date on which the transferor surrenders such certificate or certificates representing shares of Class B Common, but only following the determination by the Corporation and its counsel that the proof of Excluded Transfer submitted by the transferor is acceptable. In the event the transferor claims an Excluded Transfer and the Corporation and its counsel determine that the submitted proof is not acceptable, the Corporation shall so advise the transferor by written notice accompanied by any share certificates and stock powers previously tendered by the transferor.

(iv) Reserves of Class A Common. The Corporation will at all times reserve and keep available, solely for the purpose of issue upon conversion of the outstanding shares of Class B Common, such number of shares of Class A Common as shall be issuable upon the conversion of all outstanding shares of Class B Common, provided that the foregoing shall not be considered to preclude the Corporation from satisfying its obligations in respect of the conversion of the outstanding shares of Class B Common by delivery of shares of Class A Common which are held in the treasury of the Corporation.

(c) Dividends. Subject to the rights of the Class A Common and the Class B Common set forth in Article 4(A)(e) hereof: (i) the Board of Directors, acting in its sole discretion, may declare in accordance with law a dividend payable in cash, in property or in shares of Class A Common on only the Class A Common or on both the Class A Common and the Class B Common; (ii) no dividends may be declared payable (1) in shares of Class B Common or (2) only to holders of Class B Common; and (iii) if a dividend is to be paid on the Class B Common, a dividend shall also be paid on the Class A Common such that the market price of the dividend paid on each share of the Class A Common exceeds the market price of the dividend paid on each share of Class B Common by ten percent (rounded up, if necessary, to the nearest one-hundredth of a cent).

(d) Rights Upon Liquidation. Holders of Class A Common and Class B Common shall have identical rights in the event of liquidation of the Corporation, and shall be treated as a single class for purposes thereof.

(e) Other Terms. Neither the Class A Common nor the Class B Common may be subdivided (whether in the form of a stock dividend or otherwise), consolidated, reclassified or otherwise changed unless contemporaneously therewith the other class of shares is subdivided (whether in the form of a stock dividend or otherwise), consolidated, reclassified or otherwise changed in the same proportion and in the same manner. In any merger, consolidation, reorganization or other business combination, the consideration to be received per share by holders of either Class A Common or Class B Common must be identical to that received by holders of the other class. Holders of Common Stock are not entitled to preemptive rights, and neither the Class A Common nor the Class B Common is subject to redemption.

B. Preferred Stock.

~~(1) Board Authorization of Preferred Stock~~

The Board of Directors is authorized, subject to any limitations prescribed by law, to provide for the issuance of shares of Preferred Stock in one or more series, and by filing a certificate of designations pursuant to the ~~applicable law of the~~ ~~State of Delaware~~General Corporation Law (such certificate being hereinafter referred to as a Preferred Stock Designation), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers~~,~~ (including voting powers, if any), preferences, and rights of the shares of each such series and any qualifications, limitations or restrictions thereof. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of a majority of the voting power of all of the Common Stock, without a vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any Preferred Stock Designation.

~~(2) Series A Preferred Stock~~

~~The voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions of the 4.0% Senior Redeemable Convertible Preferred Stock, Series A, par value $.01 per share, are as follows:~~

~~(a) Designation and Number.~~

~~(i) The shares of such series shall be designated as 4.0% Senior Redeemable Convertible Preferred Stock, Series A (the Series A Preferred Stock). The number of shares initially constituting the Series A Preferred Stock shall be 25,000, which number may be decreased (but not increased) by the Board of Directors without a vote of stockholders; provided, however, that such number may not be decreased below the number of then outstanding shares of Series A Preferred Stock or shares of Series A Preferred Stock which may be issued pursuant to the Stock Purchase Agreement (as defined below).~~

~~(ii) The Series A Preferred Stock shall, with respect to dividend rights and rights on liquidation, dissolution or winding up, rank prior to all other classes and series of Junior Stock (as defined below) of the Corporation now or hereafter authorized including, without limitation, the Common Stock.~~

~~(iii) Capitalized terms used in this Article 4(B)(2) and not otherwise defined shall have the meanings set forth in Article 4(B)(2)(j). In the event that a capitalized term is defined in this Restated Certificate of Incorporation more than once, all capitalized terms used in Article 4(B)(2) shall have the meanings set forth in Article 4(B)(2)(j).~~

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~~(b) Dividends and Distributions.~~

~~(i) The holders of shares of Series A Preferred Stock, in preference to the holders of shares of Common Stock and of any shares of other Junior Stock of the Corporation, shall be entitled to receive, when, as and if declared by the Board of Directors, out of the assets of the Corporation legally available therefor, cumulative cash dividends at an annual rate on the Liquidation Preference thereof equal to 4.0% calculated on the basis of a 360-day year consisting of twelve 30-day months, accruing and payable in equal quarterly payments, in immediately available funds, on the last day of March, June, September and December or, if any such day is not a Business Day, the next succeeding Business Day, in each year (each such date being referred to in Article 4(B)(2) as a "Quarterly Dividend Payment Date"), commencing on the first such Quarte~~rly ~~Dividend Payment Date to occur after the Issue Date with respect to such shares; provided, however, that with respect to such first Quarterly Dividend Payment Date to occur after the Issue Date with respect to such shares, the holders of shares of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of the assets of the Corporation legally available therefor, a cash dividend in respect of each share of Series A Preferred Stock in the amount of (i) $10, multiplied by (ii) a fraction equal to (A) the number of days from (and including) the Issue Date to (but excluding) such Quarterly Dividend Payment Date divided by (B) 90.~~

~~(ii) Dividends payable pursuant to Article 4(B)(2)(b)(i) with respect to any shares of Series A Preferred Stock shall begin to accrue from the Issue Date with respect to such shares, and shall accrue on a daily basis, in each case whether or not declared. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares of Series A Preferred Stock at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend declared thereon, which record date shall be no more than 60 days or less than 10 days prior to the date fixed for the payment thereof. Accumulated but unpaid dividends for any past quarterly dividend periods may be declared and paid at any time, without reference to any regular Quarterly Dividend Payment Date, to holders of record on such date, not more than 60 nor less than 10 days preceding the payment date thereof, as may be fixed by the Board of Directors.~~

~~(iii) In addition to the dividends or distributions on the Series A Preferred Stock described in Article 4(B)(2)(b)(i), in the event that the Corporation shall declare a dividend (other than a Regular Dividend) or make any other distribution (including, without limitation, in cash, in capital stock (which shall include, without limitation, any options, warrants or other rights to acquire capital stock) of the Corporation, whether or not pursuant to a shareholder rights plan, "poison pill" or similar arrangement, or other property or assets) to holders of Common Stock, then~~ the ~~Board of Directors shall declare, and the holder of each share of Series A Preferred Stock shall be entitled to receive, a dividend or distribution in an amount equal to the amount of such dividend or distribution received by a holder of the number of shares of Common Stock for which such share of Series A Preferred Stock is convertible on the record date for such dividend or distribution. Any such amount shall be paid to the holders of shares of Series A Preferred Stock at the same time such dividend or distribution is made to holders of Common Stock.~~

~~(iv) The holders of shares of Series A Preferred Stock shall not be entitled to receive any dividends or other distributions except as provided in Article 4(B)(2).~~

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~~(c) Voting Rights.~~

~~In addition to any voting rights provided by law, the holders of shares of Series A Preferred Stock shall have the following voting rights:~~

~~(i) So long as the Series A Preferred Stock is outstanding, each share of Series A Preferred Stock shall entitle the holder thereof to vote, in person or by proxy, at a special or annual meeting of stockholders, on all matters voted on by holders of Common Stock voting together as a single class with other shares entitled to vote thereon. With respect to any such vote, each share of Series A 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 his shares of Series A Preferred Stock into Class A Common Stock on the record date for determining the stockholders of the Corporation eligible to vote on any such matters.~~

~~(ii) Unless the consent or approval of a greater number of shares shall then be required by law, the affirmative vote of the holders of at least 66% of the outstanding shares of Series A Preferred Stock, voting separately as a single class, in person or by proxy, at a special or annual meeting of stockholders called for the purpose, shall be necessary to:~~

~~(1) authorize, increase the authorized number of shares of or issue (including on conversion or exchange of any convertible or exchangeable securities or by reclassification) any shares of any class or classes of Senior Stock, Parity Stock or Class B Common Stock;~~

~~(2) authorize, increase the authorized number of shares of or issue any shares of any other class or classes of capital stock having an optional or mandatory redemption earlier than December 12, 2008;~~

~~(3) authorize, adopt or approve an amendment to the Restated Certificate of Incorporation that would increase or decrease the par value of the shares of Series A Preferred Stock, or alter or change the powers, preferences or special rights of the shares of Series A Preferred Stock, Parity Stock, Junior Stock or Senior Stock in a way that would adversely affect the preferences, rights or powers of the Series A Preferred Stock or amend the terms of any class of capital stock of the Corporation to provide that such class of capital stock has an optional or mandatory redemption date earlier than December 12, 2008;~~

~~(4) amend or alter the Restated Certificate of Incorporation so as to affect the shares of Series A Preferred Stock adversely, including, without limitation, by granting any voting right to any holder of notes, bonds, debentures or other debt obligations of the Corporation or by reclassifying any capital stock into Senior Stock or Parity Stock; or~~

~~(5) authorize or issue any security convertible into, exchangeable for or evidencing the right to purchase or otherwise receive any shares of any class or classes of Senior Stock or Parity Stock.~~

~~(iii) (1) The foregoing right of holders of shares of Series A Preferred Stock to take any action as provided in Article 4(B)(2)(c)(ii) may be exercised at any annual meeting of stockholders or at a special meeting of holders of shares of Series A Preferred Stock held for such purpose as provided in Article 4(B)(2) or at any adjournment thereof, or by the written consent, delivered to the Secretary of the Corporation, of the holders of the minimum number of shares required to take such action.~~

~~(2) The President of the Corporation may call, and upon the written request of holders of record of at least 25% of the outstanding shares of Series A Preferred Stock, addressed to~~

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~~the Secretary of the Corporation at the principal office of the Corporation, shall call, a special meeting of the holders of shares entitled to vote as provided in Article 4(B)(2)(e)(ii). The subject matter of such meeting shall relate solely to the matters set forth in Article 4(B)(2)(e)(ii). Such meeting shall be held within 30 days after delivery of such request to the Secretary, at the place and upon the notice provided by law and in the by-laws of the Corporation for the holding of meetings of stockholders.~~

~~(3) At each meeting of stockholders at which the holders of shares of Series A Preferred Stock shall have the right, voting separately as a single class, to take any action, the presence in person or by proxy of the holders of record of one-third of the total number of shares of Series A Preferred Stock then outstanding and entitled to vote on the matter shall be necessary and sufficient to constitute a quorum. At any meeting at which a quorum of the holders of shares of Series A Preferred Stock is not present, a majority of the holders of such shares present in person or by proxy shall have the power to adjourn the meeting as to the actions to be taken by the holders of shares of Series A Preferred Stock from time to time and place to place without notice other than announcement at the meeting until a quorum shall be present.~~

~~For taking of any action as provided in Article 4(B)(2)(e)(ii) by the holders of shares of Series A Preferred Stock, each such holder shall have one vote for each share of such stock standing in his name on the transfer books of the Corporation as of any record date fixed for such purpose or, if no such date be fixed, at the close of business on the Business Day next preceding the day on which notice is given, or if notice is waived, at the close of business on the Business Day next preceding the day on which the meeting is held; provided, however, that shares of Series A Preferred Stock held by the Corporation or any Affiliate of the Corporation shall not be deemed to be outstanding for purposes of taking any action as provided in Article 4(B)(2)(e).~~

~~(d) Certain Restrictions.~~

~~(i) Whenever quarterly dividends payable on shares of Senior Stock are not paid in full, at such time and thereafter until all unpaid dividends payable, whether or not declared, on the outstanding shares of Senior Stock shall have been paid in full or declared and set apart for payment or whenever the Corporation shall not have redeemed or converted shares of Senior Stock at a time required by the designations of such Senior Stock, at such time and thereafter until all redemption, conversion and obligations that have come due shall have been satisfied or all necessary funds have been set apart for payment, the Corporation shall not: (A) declare or pay dividends, or make any other distributions, on any shares of Series A Preferred Stock, Parity Stock or Junior Stock or (B) declare or pay dividends, or make any distributions, on any shares of stock ranking pari passu with such Senior Stock, except dividends or distributions paid ratably on the Senior Stock and stock ranking pari passu with such Senior Stock on which dividends are payable or in arrears, in proportion to the total amounts to which the holders of all shares of the Senior Stock and such stock ranking pari passu with such Senior Stock are then entitled.~~

~~(ii) Whenever quarterly dividends payable on shares of Series A Preferred Stock as provided in Article 4(B)(2)(b) are not paid in full, at such time and thereafter until all unpaid dividends payable, whether or not declared, on the outstanding shares of Series A Preferred Stock shall have been paid in full or declared and set apart for payment or whenever the Corporation shall not have redeemed or converted shares of Series A Preferred Stock at a time required by Articles 4(B)(2)(e) or 4(B)(2)(h), at such time and thereafter until all redemption conversion and~~

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~~obligations provided in Articles 4(B)(2)(e) or 4(B)(2)(h) that have come due shall have been satisfied or all necessary funds have been set apart for payment, the Corporation shall not: (A) declare or pay dividends, or make any other distributions, on any shares of Junior Stock or (B) declare or pay dividends, or make any other distributions, on any shares of Parity Stock, except dividends or distributions paid ratably on the Series A Preferred Stock and all Parity Stock on which dividends are payable or in arrears, in proportion to the total amounts to which the holders of all shares of the Series A Preferred Stock and such Parity Stock are then entitled.~~

~~(iii) Whenever dividends payable on shares of Series A Preferred Stock as provided in Article 4(B)(2)(b) are not paid in full, at such time and thereafter until all unpaid dividends payable, whether or not declared, on the outstanding shares of Series A Preferred Stock shall have been paid in full or declared and set apart for payment, or whenever the Corporation shall not have redeemed or converted shares of Series A Preferred Stock at a time required by Articles 4(B)(2)(e) or 4(B)(2)(h), at such time and thereafter until all redemption conversion and obligations provided in Articles 4(B)(2)(e) or 4(B)(2)(h) that have come due shall have been satisfied or all necessary funds have been set apart for payment, the Corporation shall not redeem, purchase or otherwise acquire for consideration any shares of Junior Stock or Parity Stock; provided, however, that (A) the Corporation may accept shares of any Parity Stock or Junior Stock for conversion into Junior Stock and (B) the Corporation may at any time redeem, purchase or otherwise acquire shares of any Parity Stock pursuant to any mandatory redemption, put, sinking fund or other similar obligation contained in such Parity Stock, pro rata with the Series A Preferred Stock in proportion to the total amount then required to be applied by the Corporation to redeem, repurchase, convert, exchange or otherwise acquire shares of Series A Preferred Stock and shares of such Parity Stock.~~

~~(iv) The Corporation shall not permit any Subsidiary of the Corporation, or cause any other Person, to purchase or otherwise acquire for consideration any shares of capital stock of the Corporation unless the Corporation could, pursuant to Article 4(B)(2)(d)(iii), purchase such shares at such time and in such manner.~~

~~(e) Redemption; Change of Control.~~

~~(i) Optional Redemption. Except as otherwise set forth in this Article 4(B)(2)((e), the Corporation shall not have any right to redeem any shares of Series A Preferred Stock prior to the fourth anniversary of the Original Issue Date. On and after the fourth anniversary of the Original Issue Date, the Corporation shall have the right, at its sole option and election, to redeem the shares of Series A Preferred Stock, in whole but not in part, on not less than 30 days notice of the date of redemption (any such date an –Optional Redemption Date–) at a price per share (the –Opti~~onal ~~Redemption Price–) equal to (A) the Liquidation Preference plus (B) all accrued and unpaid dividends thereon, whether or not declared~~ or ~~payable, to the applicable Optional Redemption Date, in immediately available funds.~~

~~(ii) Mandatory Redemption. To the extent permitted by law, the Corporation shall redeem, on the eighth anniversary of the Original Issue Date (or, if such day is not a Business Day, on the first Business Day thereafter) (the –Mandatory Redemption Date–), all remaining shares of Series~~ A ~~Preferred Stock then outstanding, for an amount per share (the –Mandatory Redemption Price–) equal to (A) the Liquidation Preference plus (B)~~ all ~~accrued but unpaid dividends thereon, whether or not declared or payable, to the Mandatory Redemption Date, in immediately available funds. Prior to authorizing or making such redemption, the Corporation, by resolution of the Board of Directors shall, to the extent of funds legally available therefor, declare a dividend on the~~

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~~Series A Preferred Stock payable on the Mandatory Redemption Date in an amount equal to any accrued and unpaid dividends on the Series A Preferred Stock as of such date and, if the Corporation does not have sufficient legally available funds to declare and pay all dividends accrued at the time of such redemption, any remaining accrued and unpaid dividends shall be added to the Mandatory Redemption Price. After paying any accrued and unpaid dividends pursuant to the foregoing sentence, if the funds of the Corporation legally available for redemption of shares of the Series A Preferred Stock then required to be redeemed are insufficient to redeem the total number of such shares then outstanding, those funds which are legally available shall be used to redeem the maximum possible number of shares of the Series A Preferred Stock, which shares to be redeemed shall be allocated pro rata among the holders of the Series A Preferred Stock based on the number of shares of Series A Preferred Stock held by such holders. At any time and from time to time thereafter, when additional funds of the Corporation are legally available to discharge its obligation to redeem all of the outstanding shares of Series A Preferred Stock required to be redeemed pursuant to this Article 4(B)(2)(e)(the Mandatory Redemption Obligation), such funds shall be immediately used to discharge such Mandatory Redemption Obligati~~on ~~until the balance of such shares have been redeemed. If and so long as the Mandatory Redemption Obligation shall not be fully discharged, dividends on any remaining outstanding shares of Series A Preferred Stock shall continue to accrue and be added to the dividend payable pursuant to the second preceding sentence.~~

~~(iii) Change of Control. If, on or prior to the fourth anniversary of the Original Issue Date, a Change of Control occurs, a holder of Series A Preferred Stock may at its option require the Corporation to redeem all or a portion of the holder s shares of Series A Preferred Stock on th~~e ~~Control Redemption Date (as hereafter defined) at a price per share (the Control Redemption Price) equal to (A) 101% of the Liquidati~~on ~~Preference plus (B) all accrued and unpaid dividends thereon to the Control Redemption Date, whether or not declared or payable, in immediately available funds. (The Control Redemption Price, Optional Redemption Price and Mandatory redemption Price are sometimes referred to as the Applicable Redemption Price. The Control Redemption Date, Optional Redemption Date, and Mandatory Redemption Date~~ are ~~sometimes referred to as the Applicable Redemption Date~~.)

~~(iv) Notice.~~

~~(1) The Corporation will provide notice to holders of record of the Series A Preferred Stock (x) of any redemption pursuant to Articles 4(B)(2)(e)(i) or(4)(B)(2)(e)(ii) not less than 30 nor more than 60 days prior to the date fixed for such redemption (a Redemption Notice)~~ and ~~(y) of any Change of Control within 10 days of such Change of Control (a Change of Control Notice). Any Redemption Notice provi~~ded ~~pursuant to this Article 4(B)(2)(e)(iv) shall be provided by first-class mail postage prepaid, to each holder of record of the Series A Preferred Stock, at such holder s address as it appears on the stock transfer books of the Corporation and, in addition, any Notice provided pursuant t~~o ~~clause (x) of this Article 4(B)(2)(e)(iv) shall be given by publication in a newspaper of general circulation in the Borough of Manhattan, The City of New York (if such publication shall be required by applicable law, rule, regulation or securities exchange requirement).~~

~~(2) Each Redemption Notice shall state, as appropriate, (x) the Applicable Redemption Date; (y) that all the shares of Series A Preferred Stock will be redeemed; and (z) the Optional Redemption Price or Mandatory Redemption Price.~~

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~~(3) Each Change of Control Notice shall state that: (w) a Change of Control has occurred and the holder of the Series A Preferred Stock has the option of requiring the Corporation to redeem all or any portion of its shares of Series A Preferred Stock; (x) any shares of Series A Preferred Stock not tendered for redemption will remain outstanding and continue to accrue dividends; (y) the Control Redemption Price; and (z) the date on which the Corporation must redeem the shares (the "Control Redemption Date"), which shall be not later than 45 days from the date the Change of Control Notice is mailed.~~

~~(4) In addition, each Redemption Notice and Change of Control Notice shall state, as appropriate, the place or places where certificates for such shares are to be surrendered for redemption; (w) the amount of full cumulative dividends per share of Series A Preferred Stock to be redeemed up to but excluding the Applicable Redemption Date, and that dividends on shares of Series A Preferred Stock to be redeemed will cease to accrue on such Redemption Date unless the Corporation shall default in payment of the Applicable Redemption Price; (x) the name and location of any bank or trust company with which the Corporation will deposit redemption funds pursuant to Article 4(B)(2)(e)(vi) below; (y) the then-effective Conversion Price; and (z) that the right of holders to convert shares of Series A Preferred Stock to be redeemed will terminate at the close of business on the Business Day next preceding the Applicable Redemption Date (unless the Corporation shall default in the payment of the Applicable Redemption Price).~~

~~Any Notice that is mailed and published pursuant to clause (1) shall be conclusively presumed to have been duly given, whether or not the holder of shares of Series A Preferred Stock receives such notice, and failure to give such notice by mail, or any defect in such notice, to the holders of any shares designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Preferred Stock.~~

~~(v) Mechanics of Redemption. Upon surrender of the certificate for any shares redeemed pursuant to Articles 4(B)(2)(e)(i), 4(B)(2)(e) (ii) or 4(B)(2)(e) (iii) (duly endorsed or accompanied by appropriate instruments of transfer if so required by the Corporation), the holders of record of such shares shall be entitled to receive the Applicable Redemption Price out of funds legally available therefor. If fewer than all the shares represented by any such certificate are redeemed, a new certificate representing the unredeemed shares shall be issued without cost to the holder thereof.~~

~~(vi) Redemption Funds. On the date of any redemption being made pursuant to Article 4(B)(2)(e), the Corporation shall, and at any time after mailing the Redemption Notice or Change of Control Notice and before the Applicable Redemption Date the Corporation may, deposit for the benefit of the holders of shares of Series A Preferred Stock to be redeemed the funds necessary for such redemption with a bank or trust company having a capital and surplus of at least $500 million, with instructions to such bank or trust company to pay the full redemption amounts as provided in Article 4(B)(2) to the holders of shares of Series A Preferred Stock upon surrender of certificates for such shares; provided, however, that the making of such deposit shall not release the Corporation from any of its obligations hereunder. Any moneys so deposited by the Corporation and unclaimed at the end of twelve months from the Applicable Redemption Date shall revert to the general funds of the Corporation and, upon demand, such bank or trust company shall pay over to the Corporation such unclaimed amounts and thereupon such bank or trust company shall be relieved of all responsibility in respect thereof and any holder of shares of Series A Preferred Stock so redeemed shall look only to the Corporation for the payment of the full redemption amounts, as provided in Article 4(B)(2).~~

~~(vii) Rights After Redemption. Notice of redemption having been given as provided in Article 4(B)(2)(e)(iv), upon the deposit pursuant to Article 4(B)(2)(e)(vi) of the full redemption amounts as provided in Article 4(B)(2) in respect of all shares of Series A Preferred Stock then surrendered in accordance with Article 4(B)(2)(e)(v), from and after the Applicable Redemption Date: (i) the shares represented thereby shall no longer be deemed outstanding, (ii) the right to receive dividends thereon shall cease to accrue, and (iii) all rights of the holders of such shares of Series A Preferred Stock shall cease and terminate, excepting only the right to receive the full redemption amounts as provided in Article 4(B)(2) without interest thereon and the right to convert such shares of Series A Preferred Stock at any time on or prior to the Business Day next preceding the Applicable Redemption Date. If the funds deposited are not sufficient for redemption of the shares of the Series A Preferred Stock that were to be redeemed, then (a) in the case of redemption pursuant to Article 4(B)(2)(e)(i), no certificates evidencing any shares of Series A Preferred Stock shall be deemed surrendered and such shares shall remain outstanding and the rights of holders of shares of Series A Preferred Stock shall continue to be those of holders of shares of the Series A Preferred Stock or (b) in the case of redemption pursuant to Articles 4(B)(2)(e)(ii) or Article 4(B)(2)(e)(iii), certificates evidencing shares of Series A Preferred Stock for which the Applicable Redemption Price has not been deposited in full shall not be deemed surrendered and such shares shall remain outstanding and the rights of holders of shares of Series A Preferred Stock shall continue to be those of holders of shares of the Series A Preferred Stock.~~

~~(f) Reacquired Shares.~~

~~Any shares of Series A Preferred Stock converted, exchanged, redeemed, purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares of Series A Preferred Stock shall upon their cancellation become authorized but unissued shares of preferred stock, par value $.01 per share, of the Corporation and, upon the filing of an appropriate Certificate of Designation with the Secretary of State of the State of Delaware, may be reissued as part of another series of preferred stock, par value $.01 per share, of the Corporation subject to the conditions or restrictions on issuance set forth therein, but in any event may not be reissued as shares of Series A Preferred Stock or other Parity Stock unless all of the shares of Series A Preferred Stock shall have already been redeemed or converted or such issuance is approved in accordance with the terms contained in Article 4(B)(2).~~

~~(g) Liquidation, Dissolution or Winding Up.~~

~~(i) If the Corporation shall commence a voluntary case under the United States bankruptcy laws or any applicable bankruptcy, insolvency or similar law of any other country, or consent to the entry of an order for relief in an involuntary case under any such law or to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or make an assignment for the benefit of its creditors, or admit in writing its inability to pay its debts generally as they become due, or if a decree or order for relief in respect of the Corporation shall be entered by a court having jurisdiction in the premises in an involuntary case under the United States bankruptcy laws or any applicable bankruptcy, insolvency or similar law of any other country, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and on account of any such event the Corporation shall liquidate, dissolve or wind up, or if the~~

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~~Corporation shall otherwise liquidate, dissolve or wind up, no distribution shall be made:~~

~~(1) to the holders of Series A Preferred Stock, Parity Stock or Junior Stock unless, prior thereto, the holders of Senior Stock shall have received the total amounts to which such holders are entitled upon such liquidation, dissolution or winding up,~~

~~(2) to the holders of shares of Junior Stock unless, prior thereto, the holders of shares of Series A Preferred Stock, subject to Article 4(B)(2)(h), shall have received the Liquidation Preference, plus all accrued and unpaid dividends, whether or not declared or currently payable, to the date of distribution, with respect to each share, or~~

~~(3) to the holders of shares of Parity Stock, except distributions made ratably on the Series A Preferred Stock and all other Parity Stock in proportion to the total amounts to which the holders of all shares of the Series A Preferred Stock and other Parity Stock are entitled upon such liquidation, dissolution or winding up.~~

~~(ii) Neither the consolidation or merger of the Corporation with or into any other Person nor the sale or other distribution to another Person of all or substantially all the assets, property or business of the Corporation shall be deemed to be a liquidation, dissolution or winding up of the Corporation for purposes of this Article 4(B)(2)(g).~~

~~(h) Voluntary Conversion.~~

~~(i) Any holder of Series A Preferred Stock shall have the right, at its option and, provided that all waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, have expired or terminated, at any time and from time to time, to convert, subject to the terms and provisions of this Article 4(B)(2)(h), any or all of such holder s shares of Series A Preferred Stock into such number of fully paid and non-assessable shares of Class A Common Stock as is equal, subject to Article 4(B)(2)(h)(vii), to the product of the number of shares of Series A Preferred Stock being so converted multiplied by the quotient of (i) the Liquidation Preference divided by (ii) the Conversion Price (as defined below) then in effect, except that with respect to any shares which shall be called for redemption, such right shall terminate on the Business Day next preceding the Applicable Redemption Date, unless in any such case the Corporation shall default in performance or payment due upon redemption thereof. The Conversion Price shall be $23.00, subject to adjustment as set forth in Article 4(B)(2)(h)(iv). Such conversion right shall be exercised by the surrender of the shares to be converted to the Corporation at any time during usual business hours at its principal place of business to be maintained by it, accompanied by written notice that the holder elects to convert such shares of Series A Preferred Stock and specifying the name or names (with address) in which a certificate or certificates for shares of Class A Common Stock are to be issued and (if so required by the Corporation) by a written instrument or instruments of transfer in form reasonably satisfactory to the Corporation duly executed by the holder or its duly authorized legal representative and transfer tax stamps or funds therefor, if required pursuant to Article 4(B)(2)(h)(xi). All shares of Series A Preferred Stock surrendered for conversion shall be delivered to the Corporation for cancellation and canceled by it and no shares of Series A Preferred Stock shall be issued in lieu thereof.~~

~~(ii) As promptly as practicable after the surrender, as provided in Article 4(B)(2), of any shares of Series A Preferred Stock for conversion pursuant to Article 4(B)(2)(h)(i), the Corporation shall deliver to, or upon the written order of, the holder of such shares so surrendered a certificate or certificates representing the number of fully paid and non-assessable shares of~~

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~~Class A Common Stock into which such shares of Series A Preferred Stock may be or have been converted in accordance with the provisions of this Article 4(B)(2)(h). Subject to the following provisions of this paragraph and of Article 4(B)(2)(h)(iv), such conversion shall be deemed to have been made immediately prior to the close of business on the date that such shares of Series A Preferred Stock shall have been surrendered in satisfactory form for conversion, and the Person or Persons entitled to receive the Class A Common Stock deliverable upon conversion of such shares of Series A Preferred Stock shall be treated for all purposes as having become the record holder or holders of such Class A Common Stock at such time, and such conversion shall be at the Conversion Price in effect at such time; provided, however, that no surrender shall be effective to constitute the Person or Persons entitled to receive the Class A Common Stock deliverable upon such conversion as the record holder or holders of such Class A Common Stock while the share transfer books of the Corporation shall be closed (but not for any period in excess of five days), but such surrender shall be effective to constitute the Person or Persons entitled to receive such Class A Common Stock as the record holder or holders thereof for all purposes immediately prior to the close of business on the next succeeding day on which such share transfer books are open, and such conversion shall be deemed to have been made at, and shall be made at the Conversion Price in effect at the close of business on the date that such shares of Series A Preferred Stock shall have been surrendered in satisfactory form for conversion.~~

~~(iii) To the extent permitted by law, when shares of Series A Preferred Stock are converted, all dividends accrued and unpaid (whether or not declared or currently payable) on the Series A Preferred Stock so converted to the date of conversion shall be immediately due and payable and must accompany the shares of Class A Common Stock issued upon such conversion.~~

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

~~(1) In case the Corporation shall at any time or from time to time after the Original Issue Date (A) pay a dividend or make a distribution (other than a dividend or distribution paid or made to holders of shares of Series A Preferred Stock in the manner provided in Article 4(B)(2)(b)(iii)) on the outstanding shares of Class A Common Stock in capital stock (which, for purposes of this Article 4(B)(2)(h)(iv) shall include, without limitation, any options, warrants or other rights to acquire capital stock) of the Corporation, (B) subdivide the outstanding shares of Class A Common Stock into a larger number of shares, (C) combine the outstanding shares of Class A Common Stock into a smaller number of shares, (D) issue any shares of its capital stock in a reclassification of the Class A Common Stock or (E) pay a dividend or make a distribution (other than a dividend or distribution paid or made to holders of shares of Series A Preferred Stock in the manner provided in Article 4(B)(2)(b)(iii)) on the outstanding shares of Class A Common Stock in securities of the Corporation pursuant to a shareholder rights plan, "poison pill" or simi~~lar ~~arrangement, then, and in each such case, the Conversion Price in effect immediately prior to such event shall be adjusted (and any other appropriate actions shall be taken by the Corporation) so that the holder of any share of Series A Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Class A Common Stock or other securities of the Corporation that such holder would have owned or would have been entitled to receive upon or by reason of any of the events described above, had such share of Series A Preferred Stock been converted immediately prior to the occurrence of such event. An adjustment made pursuant to this Article 4(B)(2)(e)(iv)(1) shall become effective retroactively (A) in the case of any such dividend or distribution, to a date immediately following the close of business on the record date for the determination of holders of Class A Common Stock entitled to receive such~~

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~~dividend or distribution or (B) in the case of any such subdivision, combination or reclassification, to he close of business on the day upon which such corporate action becomes effective.~~

~~(2) In case the Corporation shall at any time or from time to time after the Original Issue Date issue shares of Common Stock (or securities convertible into or exchangeable for Class A Common Stock, or any options, warrants or other rights to acquire shares of Class A Common Stock) for a consideration per share less than either the Conversion Price or the Current Market Price per share of Class A Common Stock (in each case, then in effect at the record date or issuance date, as the case may be (the —Date—)) (treating the price per share of any secur~~ity ~~convertible or exchangeable or exercisable into Class A Common Stock as equal to (A) the sum of the price for such security convertible, exchangeable or exercisable into Class A Common Stock plus any additional consideration payable (without regard to any anti-dilution adjustments) upon the conversion, exchange or exercise of such security into Class A Common Stock divided by (B) the number of shares of Class A Common Stock initially underlying such convertible, exchangeable or exercisable security), then, and in each such case, the Conversion Price then in effect shall be adjusted by dividing the Conversion Price in effect on the day immediately prior to the Date by a fraction (x) the numerator of which shall be the sum of the number of shares of Class A Common Stock outstanding on the Date plus the number of additional shares of Class A Common Stock issued or to be issued (or the maximum number into which such convertible or exchangeable securities initially may convert or exchange or for which such options, warrants or other rights initially may be exercised) and (y) the denominator of which shall be the sum of the number of shares of Class A Common Stock outstanding on the Date plus the number of shares of Class A Common Stock which the aggregate consideration for the total number of such additional shares of Class A Common Stock so issued or be issued upon the conversion, exchange or exercise of such convertible or exchangeable securities or options, warrants or other rights (plus the aggregate amount of any additional consideration initially payable upon such conversion, exchange or exercise of such security) would purchase at the greater of the Conversion Price or Current Market Price per share of Class A Common Stock on the Date, as the case may be. Notwithstanding the foregoing, the Conversion Price shall not be adjusted where, pursuant to an arms—length transaction with a non-Affiliate, th~~e ~~Corporation issues shares of Class A Common Stock (or securities convertible into or exchangeable for Class A Common Stock or any options, warrants or other rights to acquire Class A Common Stock) for a consideration per share less than either the Conversion Price then in effect or the Current Market Price per share of Class A Common Stock if issued as all or a portion of the purchase price for the stock or assets of another corporation.~~

~~Such adjustment shall be made whenever such shares, securities, options, warrants or other rights are issued, and shall become effective retroactively to a date immediately following the close of business (1) in the case of issuance to stockholders of the Corporation, as such, on the record date for the determination of stockholders entitled to receive such shares, securities, options, warrants or other rights and (2) in all other cases, on the date (—issuance date—) of such issuance; provided th~~at:

~~(A) the determination as to whether an adjustment is required to be made pursuant to this Article 4(B)(2)(h)(iv)(2) shall be made upon the issuance of such shares or such convertible or exchangeable securities, options, warrants or other rights;~~

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~~(B) if any convertible or exchangeable securities, options, warrants or other rights (or any portions thereof) which shall have given rise to an adjustment pursuant to Article 4(B)(2)(h)(iv)(1) or this Article 4(B)(2)(h)(iv)(2) shall have expired or terminated without the exercise thereof and/or if by reason of the terms of such convertible or exchangeable securities, options, warrants or other rights there shall have been an increase or increases, with the passage of time or otherwise, in the price payable upon the exercise or conversion thereof, then the Conversion Price hereunder shall be readjusted (but to no greater extent than originally adjusted) on the basis of (x) eliminating from the computation any additional shares of Class A Common Stock corresponding to such convertible or exchangeable securities, options, warrants or other rights as shall have expired or terminated, (y) treating the additional shares of Class A Common Stock, if any, actually issued or issuable pursuant to the previous exercise of such convertible or exchangeable securities, options, warrants or other rights as having been issued for the consideration actually received and receivable therefor and (z) treating any of such convertible or exchangeable securities, options, warrants or other rights which remain outstanding as being subject to exercise or conversion on the basis of such exercise or conversion price as shall be in effect at this time; and~~

~~(C) no adjustment in the Conversion Price shall be made pursuant to this Article 4(B)(2)(h)(iv)(2) as a result of any issuance of securities by the Corporation in respect of which an adjustment to the Conversion Price is made pursuant to Article 4(B)(2)(h)(iv)(1).~~

~~(3) In case the Corporation shall at any time or from time to time after the Original Issue Date distribute to all holders of shares of its Class A Common Stock (including any such distribution made in connection with a consolidation or merger in which the Corporation is the resulting or surviving corporation and the Class A Common Stock is not changed or exchanged) cash, evidences of indebtedness of the Corporation or another issuer, securities of the Corporation or another issuer or other assets (excluding (A) dividends or distributions paid or made to holders of shares of Series A Preferred Stock in the manner provided in Article 4(B)(2)(b)(iii), (B) Regular Dividends, and (C) dividends payable in shares of Class A Common Stock (or any options, warrants or other rights to acquire Class A Common Stock) for which adjustment is made under Article 4(B)(2)(h)(iv)(1)) or rights or warrants to subscribe for or purchase securities of the Corporation (excluding those referred to in Article 4(B)(2)(h)(iv)(2) or those in respect of which an adjustment in the Conversion Price is made pursuant to Articles 4(B)(2)(h)(iv)(1) or (2)), then, and in each such case, the Conversion Price then in effect shall be adjusted by dividing the Conversion Price in effect immediately prior to the date of such distribution by a fraction (x) the numerator of which shall be the Current Market Price of the Class A Common Stock on the record date referred to below and (y) the denominator of which shall be such Current Market Price of the Class A Common Stock less the then Fair Market Value (as determined by the Board of Directors of the Corporation) of the portion of the cash, evidences of indebtedness, securities or other assets so distributed or of such subscription rights or warrants applicable to one share of Class A Common Stock (but such denominator not to be less than one). Such adjustment shall be made whenever any such distribution is made and shall become effective retroactively to a date immediately following the close of business on the record date for the determination of stockholders entitled to receive such distribution.~~

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~~(4) In case the Corporation, at any time or from time to time after the Original Issue Date, shall take any action affecting its Class A Common Stock similar to or having an effect similar to any of the actions described in any of Article 4(B)(2)(h)(iv)(1) through Article 4(B)(2)(h)(iv)(3), inclusive, or Article 4(B)(2)(h)(viii) (but not including any action described in any such Article) and the Board of Directors of the Corporation in good faith determines that it would be equitable in the circumstances to adjust the Conversion Price as a result of such action, then, and in each such case, the Conversion Price shall be adjusted in such manner and at such time as the Board of Directors of the Corporation in good faith determines would be equitable in the circumstances (such determination to be evidenced in a resolution, a certified copy of which shall be mailed to the holders of the Series A Preferred Stock).~~

~~(5) Notwithstanding anything contained in Article 4(B)(2) to the contrary, no adjustment under this Article 4(B)(2)(h)(iv) need be made to the Conversion Price unless such adjustment would require an increase or decrease of at least 1% of the Conversion Price then in effect. Any lesser adjustment shall be carried forward and shall be made at the time of and together with the next subsequent adjustment, which, together with any adjustment or adjustments so carried forward, shall amount to an increase or decrease of at least 1% of such Conversion Price. Any adjustment to the Conversion Price carried forward and not theretofore made shall be made immediately prior to the conversion of any shares of Series A Preferred Stock pursuant hereto.~~

~~(6) Notwithstanding anything contained in Article 4(B)(2) to the contrary, no adjustment under this Article 4(B)(2)(h)(iv) shall be made upon the grant of options pursuant to the Corporation s 1996 Stock Option Plan and Stock Option Plan for Outside Directors, in each case as in effect on October 19, 2000, plus additional options not exceeding 480,000 options to employees, consultants or directors of the Corporation pursuant to benefit plans approved by the Board of Directors of the Corporation or upon the issuance of shares of Class A Common Stock upon exercise of such options if the exercise price thereof was not less than the Market Price of the Common Stock on the date such options were granted.~~

~~(v) If the Corporation shall take a record of the holders of its Class A Common Stock for the purpose of entitling them to receive a dividend or other distribution, and shall thereafter and before the distribution to stockholders thereof legally abandon its plan to pay or deliver such dividend or distribution, then thereafter no adjustment in the Conversion Price then in effect shall be required by reason of the taking of such record.~~

~~(vi) Promptly following any increase or decrease in the Conversion Price, the Corporation shall deliver to each registered holder of Series A Preferred Stock a certificate, signed by the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation, setting forth in reasonable detail the event requiring the adjustment and the method by which such adjustment was calculated and specifying the increased or decreased Conversion Price then in effect following such adjustment.~~

~~(vii) No fractional shares or scrip representing fractional shares shall be issued upon the conversion of any shares of Series A Preferred Stock. If more than one share of Series A Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares of Class A Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate Liquidation Preference of the shares of Series A Preferred Stock so surrendered. If the conversion of any share or shares of Series A Preferred Stock results in a fraction, an amount equal to such fraction multiplied by the Current Market Price of the Class A Common Stock on the Business Day preceding the day of conversion shall be paid to such holder in cash by the Corporation.~~

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~~(viii) In case of any capital reorganization or reclassification or other change of outstanding shares of Class A Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value), or in case of any consolidation or merger of the Corporation with or into another Person (other than a consolidation or merger in which the Corporation is the resulting or surviving Person and which does not result in any reclassification or change of outstanding Class A Common Stock), or in case of any sale or other disposition to another Person of all or substantially all of the assets of the Corporation (any of the foregoing, a “Transaction”), the Corporation, or such succes~~sor ~~or purchasing Person, as the case may be, shall execute and deliver to each holder of Series A Preferred Stock at least 5 Business Days prior to effecting any of the foregoing Transactions a certificate that the holder of each share of Series A Preferred Stock then outstanding shall have the right thereafter to convert such share of Series A Preferred Stock into the kind and amount of shares of stock or other securities(of the Corporation or another issuer) or property or cash receivable upon such Transaction by a holder of the number of shares of Class A Common Stock into which such share of Series A Preferred Stock could have been converted immediately prior to such Transaction. Such certificate shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 4(B)(2)(h). If, in the case of any such Transaction, the stock, other securities, cash or property receivable thereupon by a holder of Class A Common Stock includes shares of stock or other securities of a Person other than the successor or purchasing Person and other than the Corporation, which controls or is controlled by the successor or purchasing Person or which, in connection with such Transaction, issues stock, securities, other property or cash to holders of Class A Common Stock, then such certificate also shall be executed by such Person, and such Person shall, in such certificate, specifically acknowledge the obligations of such successor or purchasing Person and acknowledge its obligations to issue such stock, securities, other property or cash to the holders of Series A Preferred Stock upon conversion of the shares of Series A Preferred Stock as provided above. The provisions of this Article 4(B)(2)(h)(viii) and any equivalent thereof in any such certificate similarly shall apply to successive Transactions.~~

~~(ix) In case at any time or from time to time after the Original Issue Date:~~

~~(A) the Corporation shall declare a dividend (other than a Regular Dividend) (or any other distribution) on its Class A Common Stock;~~

~~(B) the Corporation shall authorize the granting to the holders of its Class A Common Stock of rights or warrants to subscribe for or purchase any shares of stock of any class or of any other rights or warrants, other than pursuant to the grant of options for which, as specified in Article 4(B)(2)(h)(iv)(6), no adjustment is to be made;~~

~~(C) there shall be any reclassification of the Class A Common Stock, or any consolidation or merger to which the Corporation is a party and for which approval of any shareholders of the Corporation is required, or any sale or other disposition of all or substantially all of the assets of the Corporation; or~~

~~(D) of the voluntary or involuntary dissolution, liquidation or winding up of the Corporation; then the Corporation shall mail to each holder of shares of Series A Preferred Stock at such holder's address as it appears on the transfer books of the Corporation, as promptly as possible but~~ in ~~any event at least 5 days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants or, if a record is not to be taken, the date as of which the holders of Class A Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale,~~

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~~conveyance, dissolution, liquidation or winding up is expected to become effective. Such notice also shall specify the date as of which it is expected that holders of Class A Common Stock of record shall be entitled to exchange their Class A Common Stock for shares of stock or other securities or property or cash deliverable upon such reclassification, consolidation, merger, sale, conveyance, dissolution, liquidation or winding up.~~

~~(x) The Corporation shall at all times reserve and keep available for issuance upon the conversion of the Series A Preferred Stock pursuant to Article 4(B)(2)(h)(i) such number of its authorized but unissued shares of Class A Common Stock as will from time to time be sufficient to permit the conversion of all outstanding shares of Series A Preferred Stock, and shall take all action required to increase the authorized number of shares of Class A Common Stock if at any time there shall be insufficient authorized but unissued shares of Class A Common Stock to permit such reservation or to permit the conversion of all outstanding shares of Series A Preferred Stock.~~

~~(xi) The issuance or delivery of certificates for Class A Common Stock upon the conversion of shares of Series A Preferred Stock pursuant to Article 4(B)(2)(h)(i) shall be made without charge to the converting holder of shares of Series A Preferred Stock for such certificates or for any tax in respect of the issuance or delivery of such certificates or the securities represented thereby, and such certificates shall be issued or delivered in the respective names of, or (subject to compliance with the applicable provisions of federal and state securities laws) in such names as may be directed by, the holders of the shares of Series A Preferred Stock converted; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any such certificate in a name other than that of the holder of the shares of Series A Preferred Stock converted, and the Corporation shall not be required to issue or deliver such certificate unless or until the Person or Persons requesting the issuance or delivery thereof shall have paid to the Corporation the amount of such tax or shall have established to the reasonable satisfaction of the Corporation that such tax has been paid.~~

~~(xii) The Corporation may, one time only, at its option, 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. When the Conversion Price is so reduced, the Corporation shall mail to holders of record of the Series A Preferred Stock a notice of the reduction of 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. Notwithstanding the foregoing, any such voluntary reduction of the Conversion Price shall not be deemed to change or adjust the Conversion Price for purposes of Article 4(B)(2)(h)(iv) above.~~

~~(i) Certain Remedies.~~

~~Any registered holder of Series A Preferred Stock shall be entitled to an injunction or injunctions to prevent breaches of the provisions of Article 4(B)(2) of this Restated Certificate of Incorporation and to enforce specifically the terms and provisions of Article 4(B)(2) of this Restated Certificate of Incorporation in any court of the United States or any state thereof having jurisdiction, this being in addition to any other remedy to which such holder may be entitled at law or in equity.~~

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~~(j) Definitions.~~

~~For the purposes of Article 4(B)(2) of this Restated Certificate of Incorporation, the following terms shall have the meanings indicated:~~

~~"Affiliate" shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act; provi~~ded ~~that "Affiliate" shall not include the 1818 Fund III, L.P. or any Affiliate of the 1818 Fund III, L~~.P.

~~"Business Day" shall mean any day other than a Saturday, Sunday or other day on which commercial banks in The City of New York, New Y~~ork ~~are authorized or required by law or executive order to close.~~

~~A "Change of Control" of the Corporation shall mean such times~~ as:

~~(i) Any Person or "group" (within the meaning of Section 13(d)(3) of the Exchange Act), other than the Fuller Immediate Family, is or becom~~es ~~the beneficial owner, directly or indirectly, of outstanding shares of stock of the Corporation entitling such Person or Persons to exercise 50% or more of the total votes (including the Series A Preferred Stock) entitled to be cast at a regular or special meeting, or by action by written consent, of shareholders of the Corporation (the term "beneficial owner" shall be determined in accordance with Rule 13d-3, promulgated by~~ the ~~Commission under the Exchange Act);~~

~~(ii) A majority of the Board of Directors of the Corporation shall consist of Persons other than Continuing Directors. The term "Continuin~~g ~~Director" shall mean any member of the Board of Directors on the Initial Closing Date (as defined in the Stock Purchase Agreement) and an~~y ~~other member of the Board of Directors who shall be recommended or elected to succeed or become a Continuing Director by a majority of Continuing Directors who are then members of the Board of Directors.~~

~~(iii) The shareholders of the Corporation shall have approved a recapitalization, reorganization, merger, consolidation or similar transaction, in each case with respect to which all or substantially all the Persons who were the respective beneficial owners, directly or indirectly, of the outstanding shares of capital stock (excluding the holders of Series A Preferred Stock) of the Corporation immediately prior to such recapitalization, reorganization, merger, consolidation or similar transaction, will own less than 50% of either the combined voting power or the total number of the then outstanding shares of capital stock of the Corporation resulting from such recapitalization, reorganization, merger, consolidation or similar transaction;~~

~~(iv) The stockholders of the Corporation shall have approved of the sale or other disposition of all or substantially all the assets of the Corporation in one transaction or in a series of related transactions;~~

~~(v) Any transaction occurs, the result of which is that the Class A Common Stock is not required to be registered under Section 12 of the Exchange Act and that the holders of Class A Common Stock do not receive common stock of the Person surviving such transaction which is required to be registered under Section 12 of the Exchange Act; or~~

~~(vi) Immediately after any merger, consolidation, recapitalization or similar transaction, any Person or "group" (within the meaning~~ of ~~Section 13(d)(3) of the Exchange Act) shall be the beneficial owners, directly or indirectly, of outstanding shares of capital stock of the Corporation (or any Person surviving such transaction) entitling them collectively to exercise 50% or more of the total voting power of shares of capital stock of the Corporation (or the surviving Person in~~

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~~such transaction) and in connection with or as a result of such transaction, the Corporation (or such surviving Person) shall have incurred or issued additional indebtedness such that the total indebtedness so incurred or issued equals at least 50% of the consideration payable in such transaction; provided that any such recapitalization shall not be considered a Change of Control if the holders of the Series A Preferred Stock shall have been given the right to participate on at least a pari passu basis.~~

~~Class A Common Stock shall mean the Class A Common Stock of the Corporation, par value $.01 per share, and having one vote per sha~~re.

~~Class B Common Stock shall mean the Class B Common Stock of the Corporation, par value $.01 per share, and having ten votes per sha~~re.

~~Common Stock shall mean and include the Class A Common Stock and the Class B Common Stock and each other class of capital stock of~~ the ~~Corporation that does not have a preference over any other class of capital stock of the Corporation as to dividends or upon liquidation, dissolution or winding up of the Corporation and, in each case, shall include any other class of capital stock of the Corporation into which such stock is reclassified or reconstituted.~~

~~Current Market Price per share shall mean, on any date specified in Article 4(B)(2) for the determination thereof, (a) the average daily Mar~~ket ~~Price of the Class A Common Stock for those days during the period of 5 days, ending on such date, which are Trading Days, and (b) if the Class A Common Stock is not then listed or admitted to trading on any national securities exchange or quoted in the over-the-counter market, the Market Price on such date.~~

~~Exchange Act shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchan~~ge ~~Commission thereunder.~~

~~Fair Market Value shall mean (x) if available, the Current Market Price (determined without reference to the last sentence of the definition~~ of ~~Market Price) or (y) if there shall be no Current Market Price available, the amount which a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell, in an arm s-length transaction (assuming (i) that the Common Stock is valued as if fu~~lly ~~distributed and (ii) no consideration is given for minority investment discounts, or discounts related to illiquidity or restrictions o~~n ~~transferability).~~

~~Fuller Immediate Family shall mean Mortimer B. Fuller, III, his interest in his father s estate and any of his children or grandchildren and~~ any ~~trust or other Person controlled by, and a majority of the beneficial ownership interest of which is owned by, any of such individuals, singly or jointly.~~

~~Junior Stock shall mean any capital stock of the Corporation ranking junior (either as to dividends or upon liquidation, dissolution or wind~~ing ~~up) to the Series A Preferred Stock including, without limitation, the Common Stock.~~

~~Liquidation Preference with respect to a share of Series A Preferred Stock shall mean $1,000.~~00.

~~Market Price shall mean, per share of Class A Common Stock on any date specified herein: (a) the closing price per share of the Common St~~ock ~~on such date published in The Wall Street Journal or, if no such closing price on such date is published in The Wall Street Journal, the average of the closing bid and asked prices on such date, as officially reported on the principal national securities~~

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~~exchange on which the Class A Common Stock is then listed or admitted to trading; (b) if the Class A Common Stock is not then listed or admitted to trading on any national securities exchange but is designated as a national market system security, the last trading price of the Class A Common Stock on such date; or (c) if there shall have been no trading on such date or if the Class A Common Stock is not so designated, the average of the reported closing bid and asked prices of the Class A Common Stock on such date as shown by NASDAQ and reported by any member firm of the NYSE, selected by the Corporation. If neither (a), (b) or (c) is applicable, Market Price shall mean the Fair Market Value per share determined in good faith by the Board of Directors of the Corporation which shall be deemed to be Fair Market Value unless holders of at least a majority of the outstanding shares of the Series A Preferred Stock request that the Corporation obtain an opinion of a nationally recognized investment banking firm chosen by such holders (at the Corporation s expense), in which event Fair Market Value shall be as determined by such investment banking firm.~~

~~NASDAQ shall mean the National Market System of the NASDAQ Stock Market.~~

~~NYSE shall mean the New York Stock Exchange, Inc.~~

~~Original Issue Date shall mean December 12, 2000.~~

~~Parity Stock shall mean any capital stock of the Corporation, including the Series A Preferred Stock, ranking on a par (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock.~~

~~Person shall mean any individual, firm, corporation, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, government (or an agency or political subdivision thereof) or other entity of any kind, and shall include any successor (by merger) of such entity.~~

~~Regular Dividend shall mean a cash dividend on the Common Stock declared by the Board of Directors of the Corporation with respect to the most recently completed quarter of the fiscal year of the Corporation (the Quarter), that satisfies either of the following conditions: (i) the product of four times the per share amount of such Common Stock cash dividend declared with respect to such Quarter is less than or equal to 110% of the aggregate per share amounts of the Common Stock cash dividends declared and paid with respect to the immediately preceding four fiscal quarters or (ii) the aggregate per share amounts of Common Stock cash dividends declared with respect to such Quarter and the immediately preceding three fiscal quarters is less than or equal to 10% of the consolidated net income of the Corporation and its Subsidiaries per share of Common Stock (as determined in accordance with generally accepted accounting principles) for the 12-month period ending on the last day of such Quarter. In the case of a cash dividend on the Common Stock declared by the Board of Directors of the Corporation with respect to semi-annual or annual period during which no quarterly cash dividends were declared, the preceding formula will be adjusted and applied appropriately to determine whether such cash dividend is a Regular Dividend.~~

~~Senior Stock shall mean any capital stock of the Corporation ranking senior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock.~~

~~Stock Purchase Agreement shall mean the Stock Purchase Agreement, dated October 19, 2000, by and between the Corporation and The 1818 Fund III, L.P., as the same may be amended from time to time.~~

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~~Subsidiary shall mean, with respect to any person, a corporation or other entity of which 50% or more of the voting power of the voting equi~~ty ~~securities or equity interest in owned, directly or indirectly, by such persons.~~

~~Trading Days shall mean a day on which the national securities exchanges are open for tradi~~ng.

~~(k) Modification or Amendment.~~

~~Except as specifically set forth in Article 4(B)(2), modifications or amendments to Article 4(B)(2) of this Restated Certificate of Incorporation may be made by the Corporation with the consent of the holders of at least 50% of the outstanding shares of Series A Preferred Stock Designation.~~

5. Perpetual Existence. The Corporation is to have perpetual existence.

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

7. Stockholders. Meetings of stockholders may be held within or without the State of Delaware, as the By-laws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-laws of the Corporation. Elections of directors need not be by written ballot unless the By-laws of the Corporation shall so provide.

8. Amendment. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

9. Liability to Directors. A member of the Corporation s Board of Directors shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except for liability of the director (a) for any breach of the director s duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the ~~Delaware~~ General Corporation Law, relating to the payment of unlawful dividends or unlawful stock repurchases or redemptions, or (d) for any transaction from which the director derived an improper personal benefit. If the ~~Delaware~~ General Corporation Law is hereafter amended to further eliminate or limit the liability of a director of a corporation, then a director of the Corporation, in addition to the circumstances set forth herein, shall have no liability as a director (or such liability shall be limited) to the fullest extent permitted by the ~~Delaware~~ General Corporation Law as so amended. No repeal or modification of the foregoing provisions of this Article 9 nor, to the fullest extent permitted by law, any modification of law, shall adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

10. Indemnification.

(a) Right to Indemnification. Each person who was or is made a party or is threatened to be made party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a proceeding), by reason of the fact that he or she is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an indemnitee), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the ~~Delaware~~ General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by the indemnitee in connection therewith, and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee s heirs, executors and administrators; provided, however, that, except as provided in Section (b) of this Article 10 with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred by this Article 10 shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an advancement of expenses); provided, however, that, if ~~the Delaw~~are General Corporation Law so requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including without limitation service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an undertaking), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a final adjudication) that such indemnitee is not entitled to be indemnified for such expenses under this Article 10 or otherwise.

(b) Right of Indemnitee to Bring Suit. If a claim under Section (a) of this Article 10 is not paid in full by the Corporation within sixty days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In any suit brought by an indemnitee to enforce a right to indemnification hereunder (other than a suit brought by an indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the indemnitee has not met the applicable standard of conduct set ~~froth~~ forth in the ~~Delaware~~ General Corporation Law. In any suit by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met the applicable standard of conduct set forth in the ~~Delaware~~ General Corporation Law. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the ~~Delaware~~ General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense of such a suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to such indemnification or to such advancement of expenses, under this Article 10 or otherwise, shall be on the Corporation.

(c) Non-Exclusive Rights. The rights to indemnification and to the advancement of expenses conferred by this Article 10 shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Corporation s Restated Certificate of Incorporation, as amended or supplemented, By-law, agreement, vote of stockholders or disinterested directors or otherwise.

(d) Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation, or another corporation, partnership, joint venture, trust or other enterprise, against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the ~~Delaware~~General Corporation Law.

(e) Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article 10 with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

11. Super-Majority Voting Requirement.

(a) Without the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the Common Stock of the Corporation entitled to vote thereon (voting together as one class), the Corporation shall not:

(i) consolidate with or merge into or with any other Person (as hereinafter defined) unless the Corporation is the survivor of such consolidation or merger and no Change of Control (as hereinafter defined) has occurred thereby; or

(ii) sell, lease, exchange, transfer (by liquidation or otherwise), or otherwise dispose of all or substantially all of its properties and assets (or the properties and assets of all of its Subsidiaries (as hereinafter defined), taken as a whole) to any Person or Persons, whether in a single transaction or a series of related transactions; or

(iii) amend or otherwise modify or repeal this Article 11.

(b) For the purposes of this Article 11, the following terms shall have the following meanings:

(i) Affiliate of a Person is any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such Person.

(ii) Change of Control shall be deemed to have occurred if and when any Person or Persons shall become the beneficial owner or owners, directly or indirectly, of shares of the Class A Common and/or the Class B Common which represent 50 percent or more of the votes represented by all outstanding shares of Class A Common and Class B Common.

(iii) Control (including the terms controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

(iv) Person means and includes any individual, partnership, corporation, trust, unincorporated organization or other entity, and any government or governmental authority, agency or political subdivision thereof. The term Persons shall include a Person and all Affiliates of such Person. The term Person and Persons shall also include any person or group of persons within the meaning of the Securities Exchange Act of 1934, as amended.

(v) Subsidiaries means, with respect to the Corporation, all corporations, partnerships, joint ventures, trusts and other entities of which the Corporation, directly or indirectly, owns an amount of voting securities, or possesses other ownership interests, having the power, direct or indirect, to elect a majority of the Board of Directors or other governing body thereof.

12. Relevant Considerations. In discharging the duties of their respective positions, the Board of Directors, committees of the Board of Directors and individual Directors may, in considering the best interests of the Corporation, consider the effects of any action upon employees, general agents, and other customers and creditors of the Corporation and its subsidiaries, communities in which offices or other establishments of the Corporation are located, the economy of the state and nation, and the long-term as well as the short-term interests of the Corporation and its stockholders, including the possibility that these interests may be best served by the continued independence of the Corporation, and all other pertinent factors.

13. Classified Board of Directors. The Board of Directors shall be and are divided into three classes, designated Class I, Class II and Class III, as nearly equal in number as possible, and the term of office of Directors of one class shall expire at each annual meeting of stockholders, and in all cases as to each Director, until his successor shall be elected and qualified or until his earlier resignation, removal from office, death or incapacity. Additional directorships resulting from an increase in number of Directors shall be apportioned among the classes as equally as possible. At each annual meeting of stockholders, the number of Directors equal to the number of Directors of the class whose term expires at the time of such meeting (or if less, the number of Directors properly nominated and qualified for election) shall be elected to hold office until the third succeeding annual meeting of stockholders after their election.

IN WITNESS WHEREOF, ~~I have signed~~the Corporation has caused this Restated Certificate of Incorporation to be executed by its duly authorized officer on this ~~______ day of ______, 2004.~~

~~______________________ Adam B. Frankel, Secretar~~y

_____ day of May, 2011.

Genesee & Wyoming Inc.

By: ____________________

Allison M. Fergus

Secretary

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