

SECURITIES AND EXCHANGE COMMISSION

FORM SC 13D

Schedule filed to report acquisition of beneficial ownership of 5% or more of a class of equity securities

Filing Date: **2000-12-15**
SEC Accession No. **0000950142-00-001014**

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SUBJECT COMPANY

GENESEE & WYOMING INC

CIK: **1012620** | IRS No.: **060984624** | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **SC 13D** | Act: **34** | File No.: **005-48165** | Film No.: **790618**
SIC: **4011** Railroads, line-haul operating

Mailing Address
*66 FIELD POINT ROAD
GREENWICH CT 06830*

Business Address
*66 FIELD POINT ROAD
GREENWICH CT 06830
2036293722*

FILED BY

1818 FUND III LP

CIK: **1086778**
Type: **SC 13D**

Mailing Address
*C/O BROWN BROTHERS
HARRIMAN & CO
59 WALL STREET
NEW YORK NY 10005*

Business Address
*C/O BROWN BROTHERS
HARRIMAN & CO
NEW YORK NY 10005*

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

SCHEDULE 13D

Under the Securities Exchange Act of 1934

GENESEE & WYOMING INC.

(Name of Issuer)

COMMON STOCK

(Title of Class of Securities)

371559105
(CUSIP Number)

T. MICHAEL LONG
Brown Brothers Harriman & Co.
59 Wall Street
New York, New York
(212) 483-1818

(Name, Address and Telephone Number of
Person Authorized to Receive Notices
and Communications)

December 12, 2000

(Date of Event which Requires Filing of
this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(b) (3) or (4), check the following box [].

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the

CUSIP No. 371559105

1 NAME OF REPORTING PERSON

THE 1818 FUND III, L.P.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

00

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2 (D) OR 2 (E)

6 CITIZENSHIP OR PLACE OR ORGANIZATION

DELAWARE

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7 8 9 10	SOLE VOTING POWER -0- SHARED VOTING POWER 646,269 1/ SOLE DISPOSITIVE POWER -0- SHARED DISPOSITIVE POWER 434,783
--	-------------------------------	---

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

646,269 1/

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

18.5% 1/

14 TYPE OF REPORTING PERSON

PN

1/ See Item 6 for description of the Stockholders Agreement. The Fund may, pursuant to Rule 13d-3 of the Securities and Exchange Act of 1934, be deemed to beneficially own shares of Common Stock owned by Mortimer B. Fuller, III as a result of the Stockholders Agreement. The Fund disclaims beneficial ownership of such shares.

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CUSIP No. 371559105

1 NAME OF REPORTING PERSON

BROWN BROTHERS HARRIMAN & CO.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2 (D) OR 2 (E)

6 CITIZENSHIP OR PLACE OR ORGANIZATION

NEW YORK

	7	SOLE VOTING POWER
		-0-
NUMBER OF	8	SHARED VOTING POWER
SHARES		646,269 2/
BENEFICIALLY	9	SOLE DISPOSITIVE POWER
OWNED BY		-0-
EACH	10	SHARED DISPOSITIVE POWER
REPORTING		434,783
PERSON		
WITH		

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

646,269 1/

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
18.5% 2/

14 TYPE OF REPORTING PERSON
PN

2/ See Item 6 for description of the Stockholders Agreement. BBH&Co. may, pursuant to Rule 13d-3 of the Securities and Exchange Act of 1934, be deemed to beneficially own shares of Common Stock owned by Mortimer B. Fuller, III as a result of the Stockholders Agreement. BBH&Co. disclaims beneficial ownership of such shares.

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CUSIP No. 371559105

1 NAME OF REPORTING PERSON

T. MICHAEL LONG

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)
(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(D) OR 2(E)

6 CITIZENSHIP OR PLACE OR ORGANIZATION

UNITED STATES

7 SOLE VOTING POWER
NUMBER OF SHARES -0-

8 SHARED VOTING POWER
BENEFICIALLY OWNED BY EACH 646,269 3/

REPORTING
PERSON
WITH

9

SOLE DISPOSITIVE POWER
-0-

10

SHARED DISPOSITIVE POWER
434,783

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

646,269 3/

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN
SHARES []

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

18.5% 3/

14 TYPE OF REPORTING PERSON

IN

3/ See Item 6 for description of the Stockholders Agreement. Long may, pursuant to Rule 13d-3 of the Securities and Exchange Act of 1934, be deemed to beneficially own shares of Common Stock owned by Mortimer B. Fuller, III as a result of the Stockholders Agreement. Long disclaims beneficial ownership of such shares.

CUSIP No. 371559105

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1 NAME OF REPORTING PERSON

LAWRENCE C. TUCKER

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a) |X|

(b) |_ |

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO
ITEMS 2(D) OR 2(E) []

6 CITIZENSHIP OR PLACE OR ORGANIZATION

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7 8 9 10	SOLE VOTING POWER -0- SHARED VOTING POWER 646,269 4/ SOLE DISPOSITIVE POWER -0- SHARED DISPOSITIVE POWER 434,783
--	-------------------------------	---

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

646,269 4/

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN
 SHARES []

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

18.5% 4/

14 TYPE OF REPORTING PERSON

IN

 4/ See Item 6 for description of the Stockholders Agreement. Tucker may, pursuant to Rule 13d-3 of the Securities and Exchange Act of 1934, be deemed to beneficially own shares of Common Stock owned by Mortimer B. Fuller, III as a result of the Stockholders Agreement. Tucker disclaims beneficial ownership of such shares.

Item 1. SECURITY AND ISSUER.

This Statement on Schedule 13D relates to the Class A common stock, par value \$.01 per share (the "Common Stock"), of Genesee & Wyoming Inc., a Delaware corporation (the "Company"), beneficially owned by the Reporting Persons (as defined below), through their respective holdings of Series A Redeemable Convertible Participating Preferred Stock, par value \$.01 per share ("Preferred Stock") of the Company convertible into Common Stock at the option

of the holder. The Company's principal executive office is located at 66 Field Point Road, Greenwich, Connecticut 06830.

Item 2. IDENTITY AND BACKGROUND.

(a), (b), (c) and (f). This Statement on Schedule 13D is being filed by The 1818 Fund III, L.P., a Delaware limited partnership (the "Fund"), Brown Brothers Harriman & Co., a New York limited partnership and general partner of the Fund ("BBH&Co."), T. Michael Long ("Long"), Lawrence C. Tucker ("Tucker" and, collectively with the Fund, BBH&Co. and Long the "Reporting Persons").

The Reporting Persons constitute a group as such term is used in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Information with respect to each Reporting Person is given solely by such Reporting Person and no Reporting Person has responsibility for the accuracy or completeness of information supplied by any other Reporting Person.

1. FUND. The Fund was formed to provide a vehicle for institutional and substantial corporate investors to acquire significant equity interests in medium-sized

publicly owned United States corporations. The address of the principal business and principal offices of the Fund is 59 Wall Street, New York, New York 10005.

2. BBH&CO. BBH&Co. is a private bank. The address of the

principal business and principal offices of BBH&Co. is 59 Wall Street, New York, New York 10005.

3. TUCKER AND LONG. Pursuant to a resolution adopted by the partners of BBH&Co., BBH&Co. has designated and appointed Long and Tucker, or either of them, the sole and exclusive partners of BBH&Co. having voting power (including the power to vote or to direct the voting) and investment power (including the power to dispose or to direct the disposition) with respect to the Common Stock. The business address of each of Long and Tucker is 59 Wall Street, New York, New York 10005. The present principal occupation or employment of each of Long and Tucker is as a general partner of BBH&Co. Long and Tucker are citizens of the United States.

The name, business address, present principal occupation or employment (and the name, principal business and address of any corporation or other organization in which such employment is conducted) and the citizenship of each general partner of BBH&Co. is set forth on Schedule I hereto and is incorporated herein by reference.

(d) and (e). During the last five years, neither any Reporting Person nor, to the best knowledge of each Reporting Person, any person identified on Schedule I, has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of which any such person was or is subject to a judgement, decree or final order enjoining future violations of, or prohibiting or

mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

Item 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION.

Pursuant to a Stock Purchase Agreement, dated as of October 19, 2000 (the "Stock Purchase Agreement"), by and between the Company and the Fund, on December 12, 2000 the Company issued, and the Fund acquired from the Company, 10,000 shares of Preferred Stock. Copies of the Stock Purchase Agreement and the Certificate of Designation of the Preferred Stock are attached hereto as EXHIBIT 1 and EXHIBIT 2, respectively, and are hereby incorporated by reference. The Fund has also entered into a Registration Rights Agreement, dated as of December 12, 2000 (the "Registration Rights Agreement"), among the Company, the Fund and the other parties signatory thereto, pursuant to which the Company has agreed, under the terms and conditions set forth therein, to register under the Securities Act of 1933, as amended, the Common Stock issuable upon the conversion of the shares of Preferred Stock held by the Fund and all other shares of Common Stock held by the Fund. A copy of the Registration Rights Agreement is attached hereto as EXHIBIT 3 and is hereby incorporated by reference.

The consideration paid by the Fund for the shares of Preferred Stock it purchased under the Stock Purchase Agreement was \$10,000,000 in cash, which was obtained by the Fund from capital contributions made by its partners pursuant to pre-existing capital commitments.

Item 4.

PURPOSE OF TRANSACTION.

The Fund has acquired the securities of the Company for investment purposes only.

The Reporting Persons may from time to time acquire additional shares of Common Stock in the open market or in privately negotiated transactions, subject to the availability of shares of Common Stock at prices deemed favorable, the Company's business or financial condition and to other factors and conditions the Reporting Persons deem appropriate. Alternatively, the Reporting Persons may sell all or a portion of the shares of Common Stock or Preferred Stock in open market or in privately negotiated transactions, subject to the factors and conditions referred to above and compliance with applicable laws.

Except as described in the Registration Rights Agreement and as set forth above in this Item 4, no Reporting Person has any present plans or proposals which relate to or would result in: (a) the acquisition by any person of additional securities of the issuer, or the disposition of securities of the issuer; (b) an extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the Company or any of its subsidiaries; (c) a sale or transfer of a material amount of assets of the Company or of any of its subsidiaries; (d) any change in the present board of directors or management of the Company, including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the board; (e) any material change in the present capitalization or dividend policy of the Company; (f) any other material change in the Company's business or corporate structure; (g) changes in the Company's charter, bylaws or instruments corresponding

thereto or other actions which may impede

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the acquisition of control of the Company by any person; (h) causing a class of securities of the Company to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association; (i) a class of equity securities of the Company becoming eligible for termination of registration pursuant to Section 12(g)(4) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"); or (j) any action similar to any of those enumerated above.

Item 5. INTEREST IN SECURITIES OF THE ISSUER.

(a) through (c).

1. FUND. As set forth above, on December 12, 2000 the Fund acquired 10,000 shares of Preferred Stock. Accordingly, as of December 12, 2000, assuming the conversion of the shares of Preferred Stock held by the Fund into shares of Common Stock as of such date, the Fund may be deemed to own 434,783 shares of Common Stock, which, based on calculations made in accordance with Rule 13-d3(d) promulgated under the Exchange Act and there being 3,492,328 shares of Common Stock outstanding (as represented to the Fund by the Company in the Stock Purchase Agreement), represents 12.4% of the outstanding shares of Common Stock. Pursuant to the terms of the Stock Purchase Agreement and as described in Item 6, the Company has an option to require the Fund to purchase up to 15,000 additional shares of Preferred Stock on or before January 15, 2000. In addition, the Fund has the option to acquire an additional 10,000 shares of Preferred Stock if the Company makes certain acquisitions as set forth in the

amount of Preferred Stock purchased by the Fund cannot exceed \$25,000,000 in the aggregate.

As described in Item 6, the Fund and Mortimer B. Fuller, III ("Fuller") are parties to a Stockholders Agreement the result of which may be that the Fund be deemed to beneficially own Fuller's shares in addition to its own. If this were the case, the Fund may be deemed to have beneficial ownership of 646,269 shares of Common Stock representing 18.5% of the outstanding shares of Common Stock. The Fund disclaims beneficial ownership of Fuller's shares.

2. BBH&CO. By virtue of BBH&Co.'s relationship with the Fund, BBH&Co. may be deemed to beneficially own 434,783 shares of Common Stock, representing approximately 12.4% of the outstanding shares of Common Stock based on the number of shares of Common Stock outstanding (as represented by the Company to the Fund in the Stock Purchase Agreement). As described in Item 6, the Fund and Fuller are parties to a Stockholders Agreement the result of which may be that BBH&Co. be deemed to beneficially own Fuller's shares in addition to its own. If this were the case, BBH&Co. may be deemed to have beneficial ownership of 646,269 shares of Common Stock representing 18.5% of the outstanding shares of Common Stock. BBH&Co. disclaims beneficial ownership of Fuller's shares.

3. LONG AND TUCKER. By virtue of the resolution adopted by BBH&Co. designating Long and Tucker, or either of them, as the sole and

exclusive partners of BBH&Co. having voting power (including the power to vote or to direct the voting) and investment power (including the power to dispose or to direct the disposition) with respect to the securities of the Company, each of Long and Tucker may be deemed

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to beneficially own 434,783 shares of Common Stock, representing approximately 12.4% of the outstanding shares of Common Stock based on the number of shares of Common Stock outstanding (as represented by the Company to the Fund in the Stock Purchase Agreement). As described in Item 6, the Fund and Fuller are parties to a Stockholders Agreement the result of which may be that Long and Tucker be deemed to beneficially own Fuller's shares in addition to its own. If this were the case, Long and Tucker may be deemed to have beneficial ownership of 646,269 shares of Common Stock representing 18.5% of the outstanding shares of Common Stock. Long and Tucker disclaim beneficial ownership of Fuller's shares.

Except as set forth above, no Reporting Person nor, to the best knowledge of each Reporting Person, any person identified on Schedule I, beneficially owns any shares of Common Stock or has effected any transaction in shares of Common Stock during the proceeding 60 days.

Paragraphs (d) and (e) of Item 5 of Schedule 13D are not applicable to this filing.

Item 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO THE COMMON STOCK OF THE ISSUER.

The Company and the Fund are parties to the Stock Purchase

Agreement which gives the Company, among other things, the option, on the terms and conditions set forth therein, of requiring the Fund to acquire up to 15,000 additional shares of Preferred Stock before January 15, 2000. As of December 12, 2000, the Company has required the Fund to purchase an additional 10,000 shares of Preferred Stock. In

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addition, pursuant to the terms of the Stock Purchase Agreement, the Fund has the option to acquire an additional 10,000 shares of Preferred Stock if the Company makes certain acquisitions as set forth in the Stock Purchase Agreement. Notwithstanding the foregoing, the maximum amount of Preferred Stock purchased by the Fund cannot exceed \$25,000,000 in the aggregate.

The Company and the Fund are parties to the Registration Rights Agreement which gives the Fund, among other things, the right, on the terms and conditions set forth therein, to require the Company to register for sale to the public the shares of Common Stock issued upon the conversion of the Preferred Stock and any shares of Common stock held by the Fund.

The Company, the Fund and Fuller are parties to a Stockholders Letter Agreement, dated as of December 12, 2000 (the "Stockholders Agreement"), pursuant to which the Company and the other parties signatory thereto have agreed, under the terms and conditions set forth therein, to vote their shares for certain nominees for election to the Board of Directors. One nominee is to be designated by the Fund for so long as it holds 20% of the shares of Common Stock issued or issuable upon conversion of the shares of Preferred Stock acquired by the Fund (whether or not the Preferred Stock has been converted).

The current designee of the Fund is T. Michael Long. The parties to the Stockholders Agreement have also agreed to certain transfer restrictions as set forth therein. A copy of the Stockholders Agreement is attached hereto as EXHIBIT 4 and is hereby incorporated by reference.

Except as described elsewhere in this Statement and as set forth in the Stock Purchase Agreement, the Registration Rights Agreement and the Stockholders

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Agreement, copies of which are attached hereto as EXHIBIT 1, EXHIBIT 3 and EXHIBIT 4, respectively, and incorporated herein by reference, to the best knowledge of the Reporting Persons, there exist no contracts, arrangements, understandings or relationships (legal or otherwise) among the persons named in Item 2 and between such persons and any person with respect to any securities of the Company, including but not limited to transfer or voting of any securities of the Company, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or loss, or the giving or withholding of proxies.

Item 7. MATERIAL TO BE FILED AS EXHIBITS.

1. Stock Purchase Agreement, dated as of October 19, 2000, by and between the Company and the Fund.
2. Certificate of Designation of the Preferred Stock.
3. Registration Rights Agreement, dated as of December 12, 2000, among the Company, the Fund and the other parties signatory thereto.

2000, among the Company, the Fund and the other parties signatory thereto.

SIGNATURE

After reasonable inquiry and to the best of its knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: December 12, 2000

THE 1818 FUND III, L.P.

By: Brown Brothers Harriman & Co.,
General Partner

By: /s/ Lawrence C. Tucker

Name: Lawrence C. Tucker
Title: Partner

BROWN BROTHERS HARRIMAN & CO.

By: /s/ Lawrence C. Tucker

Name: Lawrence C. Tucker
Title: Partner

/s/ T. Michael Long

T. Michael Long

/s/ Lawrence C. Tucker

Lawrence C. Tucker

SCHEDULE I

Set forth below are the names and positions of all of the general partners of BBH&Co. The principal occupation or employment of each person listed below is private banker, and, unless otherwise indicated, the business address of each person is 59 Wall Street, New York, New York 10005. Unless otherwise indicated, each person listed below is a citizen of the United States.

NAME -----	BUSINESS ADDRESS (IF OTHER THAN AS INDICATED ABOVE) -----
J. William Anderson	
Peter B. Bartlett	
Brian A. Berris	
Taylor Bodman	
John J. Borland	
Douglas A. Donahue, Jr.	40 Water Street Boston, Massachusetts 02109
Anthony T. Enders	
Alexander T. Ercklentz	
Terrence M. Farley	
John A. Gehret	525 Washington Boulevard Jersey City, New Jersey 07310-1692
Elbridge T. Gerry, Jr.	
Kristen F. Giarrusso	
Robert R. Gould	
Kyosuke Hashimoto (citizen of Japan)	8-14 Nihonbashi 30-Chome Chuo-ku Tokyo 103, Japan

Ronald J. Hill
Landon Hilliard
Radford W. Klotz

NAME -----	BUSINESS ADDRESS (IF OTHER THAN AS INDICATED ABOVE) -----
Michael Kraynak, Jr.	
Susan C. Livingston	40 Water Street Boston, Massachusetts 02109
T. Michael Long	
Hampton S. Lynch, Jr.	
Michael W. McConnell	
William H. Moore III	
Donald B. Murphy	
John A. Nielsen	
Eugene C. Rainis	
A. Heaton Robertson	40 Water Street Boston, Massachusetts 02109
Jeffrey A. Schoenfeld	40 Water Street Boston, Massachusetts 02109
Stokley P. Towles	40 Water Street Boston, Massachusetts 02109
Andrew J.F. Tucker	
Lawrence C. Tucker	
Maarten van Hengel	

Douglas C. Walker

1531 Walnut Street
Philadelphia, Pennsylvania 19102

William J. Whelan

40 Water Street
Boston, Massachusetts 02109

Laurence F. Whittemore

Richard H. Witmer, Jr.

STOCK PURCHASE AGREEMENT

By and Between

GENESEE & WYOMING INC.

And

THE 1818 FUND III, L.P.

Dated October 19, 2000

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Schedule 5.21 of the Disclosure Schedules	Benefit Plans
Schedule 5.23 of the Disclosure Schedules	Registration Rights Agreement
Schedule 5.24 of the Disclosure Schedules	Stockholders Agreement
Schedule 5.26 of the Disclosure Schedules	Material Contracts
Schedule 5.27 of the Disclosure Schedules	Projections
Schedule 5.28 of the Disclosure Schedules	Financial Liabilities

STOCK PURCHASE AGREEMENT, dated October 19, 2000, by and between Genesee & Wyoming Inc., a corporation organized under the laws of Delaware (the "Company"), and The 1818 Fund III, L.P., a Delaware limited partnership (the "Purchaser").

The Company proposes that the Company issue to the Purchaser, and the Purchaser purchase, up to 25,000 shares of the Company's 4.0% Senior Redeemable Convertible Preferred Stock, Series A, par value \$.01 per share (the "Preferred Stock"), upon the terms and subject to the conditions set forth in this Agreement.

An amendment to the Company's Restated Certificate of

Incorporation in the form attached hereto as Exhibit A (the "Charter Amendment") authorizing 1,000,000 shares of Preferred Stock, par value \$.01 per share, has been approved by the Board of Directors of the Company and the holders of a majority of the voting power of the outstanding shares of Common Stock but not yet filed with the Secretary of State of the State of Delaware.

The Charter Amendment will be so filed on or about November 13, 2000 and, prior to Closing, the Certificate of Designation will be filed with the Secretary of State of the State of Delaware.

In consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions. As used in this Agreement, and unless the context requires a different meaning, the following terms have the meanings indicated:

"1998 Audited Financials" has the meaning assigned to that term in Section 5.10.

"1999 Audited Financials" has the meaning assigned to that term in Section 5.10.

"Acquisition Threshold" means the expenditure of \$25,000,000 or more (whether by means of cash payment, issuance of capital stock, assumption of indebtedness or, in the case of an asset acquisition only, assumption of Capitalized Lease Obligations) by the Company or its Subsidiaries to acquire (x) the assets or capital stock of any railway company or (y) concessions from any Governmental Authority to operate a railway; provided, however, that expenditures made (whether by means of cash payment, issuance of capital stock or assumption of indebtedness or Capitalized Lease

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Obligations) in connection with the acquisition of capital stock or assets of Bolivia. and Westrail shall not be included when calculating whether the Acquisition Threshold has been reached.

"Additional Closing Date" has the meaning assigned that term in Section 2.1(b) (iii).

"Additional Option Shares" has the meaning assigned to that term in Section 2.1(b) (i).

"Additional Purchase Price" has the meaning assigned that term in Section 2.1(b) (iii).

"Additional Shares" has the meaning assigned to that term in Section 2.1(b) (ii).

"Affiliate" has the meaning assigned that term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act; provided

that "Affiliate" shall not, unless the context requires otherwise, include the Purchaser or any Affiliate of the Purchaser; provided further, that, Mortimer B. Fuller III shall be deemed to be an Affiliate of the Company.

"Agreement" means this Agreement as the same may be amended, supplemented or modified in accordance with the terms hereof.

"Benefit Plans" has the meaning assigned that term in Section 5.21(a).

"Bolivia" means Empresa Ferroviaria Oriental, S.A.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in the City of New York, New York are authorized or required by law or executive order to close.

"Capitalized Lease" means any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with GAAP to be capitalized on the balance sheet of the lessee.

"Capitalized Lease Obligations" means as to any Person, the obligations of such Person to pay rent or other amounts under any Capitalized Leases; the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"Certificate of Designation" means the Certificate of Designation with respect to the Preferred Stock (the form of which is attached hereto as Exhibit B) to

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be adopted by the Board of Directors of the Company and filed with the Secretary of State of the State of Delaware.

"Claims" has the meaning assigned to that term in Section 5.13(b).

"Class A Common Stock" means the Class A Common Stock of the Company, par value \$.01 per share, and having one vote per share.

"Class B Common Stock" means the Class B Common Stock of the Company, par value \$.01 per share, and having ten votes per share.

"Closing" means the Initial Closing or an Additional Closing, as the case may be.

"Closing Date" means either the Initial Closing Date or any Additional Closing Date, as the case may be.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commission" means the Securities and Exchange Commission or any similar agency then having jurisdiction to enforce the Securities Act.

"Commission Documents" has the meaning assigned to that term in Section 5.12.

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

"Company Indemnified Party" has the meaning assigned that term in Section 7.2.

"Condition of the Company" means the assets, business, properties or financial condition of the Company and its Subsidiaries taken as a whole.

"Contractual Obligations" means as to any Person, any provision of any security issued by such Person or of any agreement, undertaking, contract, indenture, mortgage, deed of trust or other instrument to which such Person is a party or by which it or any of its property is bound.

"Credit Agreement" means the Third Amended and Restated Revolving Credit and Term Loan Agreement of the Company dated as of August 17, 1999, among the Company, Australia Southern Railroad Pty. Limited, Quebec Gatineau

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Railway Inc., Compania de Ferrocarriles Chiapas-Mayab, S.A. de C.V., The Guarantors, the Lending Institutions listed on Schedule II thereto, Fleet National Bank (formerly known as Bank Boston, N.A.) and The First National Bank of Chicago, as amended, modified, supplemented, restated or replaced and in effect from time to time.

"Disclosure Schedules" has the meaning assigned to that term in the preamble to Article 5.

"Documents" has the meaning assigned to that term in Section 5.20.

"Environmental Claims" means any written notification pursuant to Environmental Laws asserting that any of the current or past operations of the Company or any of its Subsidiaries, or any hazardous substance generated as a result of such operations or any of the property currently or formerly owned, leased or operated by the Company or any of its Subsidiaries, or the operations or property of any predecessor of the Company or any of its Subsidiaries, is or may be subject to any Claim, Requirements of Law, hearing, notice, agreement or evaluation by any Governmental Authority or any other person.

"Environmental Compliance Costs" means any expenditures, costs, assessments or expenses (including any expenditures, costs, assessments or expenses in connection with the conduct of any Remedial Action, as well as reasonable fees, disbursements and expenses of attorneys, experts, personnel and consultants), whether direct or indirect, necessary to cause the operations, real property, assets, equipment or facilities owned, leased, operated or used by the Company or any of its Subsidiaries to be in compliance with any and all requirements of Environmental Laws, or Permits issued pursuant to Environmental Laws; provided, however, that Environmental Compliance Costs do not include expenditures, costs, assessments or expenses necessary in connection with normal operation or maintenance of such real property, assets, equipment or

facilities or the replacement of equipment in the normal course of events due to ordinary wear and tear.

"Environmental Laws" means any federal, state, territorial, provincial or local law, common law doctrine, rule, order, decree, judgment, injunction, license, permit or regulation relating to environmental matters, including those pertaining to land use, air, soil, surface water, ground water (including the protection, cleanup, removal, remediation or damage thereof), or any other environmental matter, together with any other laws (federal, state, territorial, provincial or local) relating to emissions, discharges, releases or threatened releases of or human exposure to any pollutant, hazardous substance or contaminant including, without limitation, medical, biological, biohazardous or radioactive waste and materials, into ambient air, land, surface water, groundwater, personal property or structures, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, discharge or handling of any pollutant, hazardous substance or contaminant, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C.ss.9601 et seq.), the Hazardous Material Transportation

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Act (49 U.S.C.ss. 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C.ss.6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C.ss.1251 et seq.), the Clean Air Act (42 U.S.C.ss.1251 et seq.), the Toxic Substances Control Act (15 U.S.C.ss.2601 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C.ss.121 et seq.), the Asbestos Hazard Emergency Response Act (15 U.S.C.ss.et seq.); the Safe Drinking Water Act (42 U.S.C.ss.300F et seq.); and the Oil Pollution Act of 1990 (33 U.S.C.ss. 2701 et seq.), as such laws have been amended or supplemented and any analogous state or local laws, statutes and regulations promulgated thereunder.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder.

"Financial Liabilities" has the meaning assigned that term in Section 5.28.

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

"Governmental Authority" means the government of any nation, state or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity controlled, through stock or capital ownership or otherwise, by any of the foregoing.

"Hazardous Substance" means any toxic waste, pollutant, contaminant, hazardous substance, toxic substance, hazardous waste, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, radioactive substance or waste, or any other substance regulated under any Environmental Law.

"Holder", with respect to Preferred Shares or Class A Common Stock issued upon conversion of the Preferred Shares, means the Purchaser and any subsequent direct or indirect transferee of such security; provided that

the term Holder shall not include any Person who owns such security if it has been registered under the Securities Act or if it has been transferred to such Person after such security has been the subject of a distribution to the public pursuant to Rule 144 (or any successor provision) under the Securities Act or otherwise distributed under circumstances not requiring a restrictive legend.

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"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations of the Federal Trade Commission thereunder.

"HSR Filing" has the meaning assigned to that term in Section 2.4.

"Indemnified party" has the meaning assigned to that term in Section 7.1.

"Initial Closing" has the meaning assigned to that term in Section 2.4.

"Initial Closing Date" means the date specified in Section 2.4.

"Initial Preferred Shares" has the meaning assigned to that term in Section 2.1(a).

"Initial Purchase Price" has the meaning assigned to that term in Section 2.1(a).

"Interim Financials" has the meaning assigned to that term in Section 5.10.

"Liabilities" has the meaning assigned to that term in Section 7.1.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, encumbrance, lien (statutory or other) or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including, without limitation, those created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a capitalized lease obligation, or any financing lease having substantially the same economic effect as any of the foregoing).

"NASDAQ" means the National Market System of the National Association of Securities Dealers, Inc. Automated Quotations System.

"NYSE" means the New York Stock Exchange, Inc.

"Permits" means any licenses, franchises, permits and authorizations of any Governmental Authority as are necessary for the lawful conduct of the Company and its Subsidiaries.

"Person" means any individual, firm, corporation, partnership, limited liability company, trust, incorporated or unincorporated association, joint venture, joint stock company, Governmental Authority or other entity of any kind, and shall include any successor (by merger or otherwise) of such entity.

"PORTAL" means Private Offerings, Resales and Trading through Automated Linkages.

"Preferred Shares" means the Initial Preferred Shares and the Additional Shares.

"Projections" has the meaning assigned to that term in Section 5.27.

"Purchase Price" means the Initial Purchase Price and any Additional Purchase Price.

"Purchaser Option" has the meaning assigned that term in Section 2.1(b) (ii).

"Purchaser's Representative" has the meaning assigned that term in Section 8.2.

"Registration Rights Agreement" means the Registration Rights Agreement in the form attached hereto as Exhibit D.

"Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into or through the indoor or outdoor environment or into, through or out of any property, including the movement of Hazardous Substances through or in the air, soil, surface water, ground water or property.

"Remedial Action" means all actions, whether voluntary or involuntary, reasonably necessary to comply with, or discharge any obligation under, Environmental Laws to (i) clean up, remove, treat or cover Hazardous Substances in the indoor or outdoor environment; (ii) prevent or control the Release of Hazardous Substances so that they do not migrate or endanger or threaten to endanger public health or welfare or the environment; or (iii) perform remedial studies, investigations, restoration and post-remedial studies, investigations and monitoring on, about or in any real property.

"Requirements of Law" means as to any Person, the Certificate of Incorporation and By-laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder.

"Solvent" means, with respect to any Person, that the fair saleable value on a going concern basis of the assets and property of such Person is, on the date of determination, greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person as of such date and that, as of such date, such Person is able to pay all liabilities of such Person as such liabilities mature. In computing the amount of contingent or liquidated liabilities at any time, such liabilities will be computed as the amount which, in light of all the facts and circumstances

existing at such time, represents the amount that is probable to become an actual or matured liability.

"Stockholders Agreement" means the Letter Agreement in the form attached hereto as Exhibit E.

"Subsidiary" means, with respect to any Person, another Person of which 50% or more of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by such first-mentioned Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of the Company.

"USTs" means any underground or aboveground storage tanks or related piping or dispensers.

"Westrail" means Westrail Freight, which is owned by the government of Western Australia.

1.2 Accounting Terms; Financial Covenants. All accounting terms used herein not expressly defined in this Agreement shall have the respective meanings given to them in accordance with sound accounting practice. The term "sound accounting practice" shall mean such accounting practice as, in the opinion of the independent accountants regularly retained by the Company, conforms at the time to GAAP applied on a consistent basis except for changes with which such accountants concur. If any changes in accounting principles are hereafter occasioned by promulgation of rules, regulations, pronouncements or opinions by or are otherwise required by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or successors thereto or agencies with similar functions), and any of such changes results in a change in the method of calculation of, or affects the results of such calculation of, any of the financial covenants, standards or terms found herein, then the parties hereto agree to enter into and diligently pursue negotiations in order to amend such financial covenants, standards or terms so as to reflect fairly and equitably such changes, with the desired result that the criteria for evaluating the Company's financial condition and results of operations shall be the same after such changes as if such changes had not been made.

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ARTICLE 2

PURCHASE AND SALE OF PREFERRED STOCK

2.1 Purchase and Sale of Preferred Stock.

(a) Subject to the terms and conditions herein set forth, the Company agrees that it will issue to the Purchaser, and the Purchaser agrees that it will acquire from the Company, at the Initial Closing, 10,000 shares of Preferred Stock (the "Initial Preferred Shares") for an aggregate purchase price of \$10,000,000 (the "Initial Purchase Price"), in cash, by wire transfer of immediately available funds to an account designated by the Company in a notice delivered to the Purchaser no less than one day prior to the Closing Date.

(b) (i) The Company has the option of requiring the Purchaser (or, at the Purchaser's option, an Affiliate thereof) to acquire from time to time (in multiples of \$5,000,000) before January 15, 2001 up to 15,000 additional shares of Preferred Stock (the "Additional Option Shares") at a price of \$1,000 per share.

(ii) If the Company has equaled or exceeded the Acquisition Threshold on or before the first anniversary of the Initial Closing Date, the Purchaser shall have the one-time option (the "Purchaser Option") to elect, on or before the first anniversary of the Initial Closing, to acquire an additional 10,000 shares of Preferred Stock (such shares, together with the Additional Option Shares, the "Additional Shares") at a price of \$1,000 per share; provided, however, that the total number of shares of Preferred Stock to be acquired by the Purchaser upon exercise of the Purchaser Option shall be reduced to the extent necessary so that the aggregate purchase price of the Initial Preferred Shares and the Additional Shares does not exceed \$25,000,000; provided, further, that if the Company has not equaled or exceeded the Acquisition Threshold on or before the first anniversary of the Initial Closing Date, the Purchaser Option shall be extended until the second anniversary of the Initial Closing and may be exercised by the Purchaser until that time if the Acquisition Threshold is then equaled or exceeded. In addition, the Company shall give the Purchaser notice within 10 days of the closing of any acquisition occurring prior to the expiration of the Purchaser Option that is to be included when determining if the Acquisition Threshold has been equaled or exceeded.

(iii) The Company shall give the Purchaser written notice of its election to sell Additional Shares pursuant to clause (b)(i) and the Purchaser shall give the Company written notice of its election to purchase Additional Shares pursuant to clause (b)(ii), as the case may be, on a date specified in such notice (which date shall be a Business Day occurring at least 10 Business Days after the date of such notice). Such notice shall specify the number of Preferred Shares to be sold or purchased, as the case may be, and, if applicable, the name or names (with address) in which a certificate or certificates for the Additional Shares are to be issued. The purchase and sale of the Additional Shares shall, subject to the provisions contained in Section 2.4 in the event an HSR Filing is required, occur on the date specified in such notice (each, an "Additional

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Closing Date"). On each Additional Closing Date, the Company will issue to the Purchaser (or its Affiliate) the number of shares of Preferred Shares to be purchased on such date and the Purchaser shall deliver the purchase price therefore (the "Additional Purchase Price") in cash, by wire transfer of immediately available funds to an account designated by the Company in a notice delivered to the Purchaser. On each Additional Closing Date, the Purchaser shall deliver to the Company a certificate signed by a General Partner stating that the representations and warranties contained in Article 6 are true and correct as if made as of such Additional Closing Date (unless such representations and warranties relate to matters only as of a particular date, in which case such representations and warranties shall be true and correct in all material respects as of such date) and the President or a Vice President of the Company shall deliver to the Purchaser a certificate stating that the representations and warranties contained in Article 5 are true and correct in all material respects as of such Additional Closing Date as if made as of such date (unless such representations and warranties relate to matters only as of a particular date in which case such representations and warranties shall be true and correct in all material respects as of such date) and the Company is in compliance in all material respects with its obligations in Article 8 or 9; provided, that, (x) the references in Section 5.10 to the 1998 Audited Financials and the 1999 Audited Financials shall instead be to the audited consolidated financial statements of the Company for the two most recently completed fiscal years (which have been included in the Company's Commission Documents), (y) references in Section 5.10 to the Interim Financials shall be deemed to also include a

reference to the unaudited consolidated financial statements of the Company for each completed fiscal quarter ending September 30, March 31 and September 30 since the Initial Closing for which the Company has filed a quarterly report on Form 10-Q and (z) the Company shall deliver a supplemental schedule to the Purchaser updating the capitalization and material contracts (as to the first sentence thereof only) representations and warranties contained in Sections 5.16 and 5.26; provided, further, that the Company shall also satisfy and certify that the conditions contained in Sections 3.6, 3.8, 3.9, 3.10, 3.17 and 3.18 shall be satisfied as of the Closing Date in respect of the purchase of the Additional Shares.

2.2 Certificate of Designation. The Preferred Shares shall have the rights and preferences set forth in the Certificate of Designation.

2.3 Fees. The Company agrees it will pay to the Purchaser at each Closing, a facility fee of 3.75% of the Purchase Price of the Preferred Shares to be purchased by the Purchaser at such Closing in cash, by wire transfer of immediately available funds to an account designated by the Purchaser in a notice delivered to the Company at least one day prior to such Closing. Such facility fee may be paid by the Purchaser by deducting such amount from the Purchase Price.

2.4 Closing. The purchase and issuance of the Initial Preferred Shares shall take place at the closing (the "Initial Closing") to be held at the offices of Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York 10019-6064 on the second Business Day following the fulfillment of all conditions to the Initial Closing (other than those conditions contemplated to be fulfilled

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concurrently with the Initial Closing), or such later date on or prior to January 31, 2001 as the parties may agree (the "Initial Closing Date"), at 10:00 a.m., New York City time. The location and time of each purchase and issuance of Additional Shares (each an "Additional Closing" and, together with the Initial Closing, the " Closings") shall be set forth in the written notice from the Company or the Purchaser, as the case may be, referred to in Section 2.1(b); provided, however, that in the event that the Purchaser's purchase of Preferred Shares at an Additional Closing would result in a premerger notification filing requirement (an "HSR Filing") pursuant to the HSR Act, the Purchaser shall not be required to purchase and the Company shall not be required to sell such Preferred Shares at such Additional Closing until expiration or termination of the HSR Act waiting period, and; provided, further, that such purchase shall instead close on the second Business Day after expiration or termination of the HSR Act waiting period. At each Closing, subject to the terms and conditions set forth herein, the Company shall sell the Preferred Shares to be purchased at such Closing to the Purchaser by delivering to the Purchaser Preferred Shares registered in the name of the Purchaser or its designees, with appropriate issue stamps, if any, affixed at the expense of the Company, free and clear of any Lien, and the Purchaser shall purchase the Preferred Shares by depositing the purchase price therefor, in cash or by wire transfer of immediately available funds to an account designated by the Company in a notice delivered to the Purchaser no less than one day prior to the Additional Closing Date.

ARTICLE 3

CONDITIONS TO THE OBLIGATION

The obligation of the Purchaser to purchase the Initial Preferred Shares, to pay the Initial Purchase Price at the Initial Closing and to perform any obligations hereunder shall be subject to the satisfaction or waiver of the following conditions on or before the Closing Date:

3.1 Representations and Warranties True. The representations and warranties of the Company contained in Section 5 hereof shall be true and correct in all material respects at and as of the Closing Date as if made at and as of such date (unless such representations and warranties relate to matters only as of a particular date, in which case such representations and warranties shall be true and correct in all material respects as of such date).

3.2 Compliance with this Agreement. The Company shall have performed and complied in all material respects with all of its agreements and conditions set forth or contemplated herein that are required to be performed or complied with by the Company on or before the Closing Date.

3.3 Officer's Certificate. The Purchaser shall have received a certificate, dated the Closing Date and signed by the President or a Vice President of the

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Company, certifying that the conditions set forth in Sections 3.1 and 3.2 hereof have been satisfied on and as of such date.

3.4 Secretary's Certificate. The Purchaser shall have received a certificate, dated the Closing Date and signed by the Secretary or an Assistant Secretary of the Company, certifying the truth and correctness of attached copies of the Certificate of Incorporation and By-laws of the Company and resolutions of the Board of Directors of the Company approving this Agreement and the transactions contemplated hereby.

3.5 Documents. The Purchaser shall have received copies of such documents as it reasonably may request in connection with the sale of the Initial Preferred Shares and the transactions contemplated hereby, all in form and substance reasonably satisfactory to the Purchaser.

3.6 Purchase Permitted by Applicable Laws; Legal Investment. The acquisition of and payment for the Initial Preferred Shares to be acquired by the Purchaser hereunder and the consummation of the transactions contemplated hereby (a) shall not be prohibited by any applicable law or governmental regulation, (b) shall not subject the Purchaser to any penalty or, in its reasonable judgment, other onerous condition under or pursuant to any applicable law or governmental regulation and (c) shall be permitted by the laws and regulations of the jurisdictions to which it is subject.

3.7 Intentionally omitted.

3.8 Opinion of Counsel. The Purchaser shall have received the opinion of Simpson, Thacher & Bartlett, counsel to the Company, dated the Closing Date, with respect to the matters set forth in Exhibit C hereto.

3.9 Consents and Approvals. All consents, exemptions, authorizations, or other actions by, or notices to, or filings with, Governmental Authorities and other Persons, including with respect to

Contractual Obligations of the Company, necessary or required in connection with the execution, delivery or performance (including, without limitation, the payment of dividends on the Preferred Stock and the issuance of Class A Common Stock upon the conversion of the Preferred Stock) by the Company or enforcement against the Company of this Agreement, the Preferred Shares, the Registration Rights Agreement or the Stockholders Agreement shall have been obtained and be in full force and effect (and the Purchaser shall have been furnished with appropriate evidence thereof), other than those that would not impair the ability of the Company to perform its obligations under this Agreement,

3.10 No Material Adverse Change. Since December 31, 1999, there shall have been no material adverse change, nor shall any event occur which is reasonably likely to cause any such change in the Condition of the Company since that date; provided, however, that such change shall not include changes arising out of (i) changes in U.S. general economic or securities markets conditions; (ii) any changes

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that affect the railroad industry in general; or (iii) changes resulting from the announcement of the transactions contemplated by this Agreement.

3.11 Bolivia or Westrail Closing. The proposed investment by the Company in either Bolivia or Westrail shall have been consummated on terms and conditions satisfactory to the Purchaser in its reasonable judgment.

3.12 Conduct of Business. The Company shall not have from the date hereof to the Closing Date (i) taken any action or proposed to take any action that would require the vote of the Preferred Stock as contemplated by Section 3(b) of the Certificate of Designation if such Certificate of Designation were in effect as of the date hereof or (ii) allowed or agreed to allow a Change of Control (as defined in the Certificate of Designation) to occur, in each case without the prior written consent of the Purchasers.

3.13 Registration Rights Agreement. The Company shall have duly executed and delivered to the Purchaser the Registration Rights Agreement.

3.14 Stockholders Agreement. The Company and the other parties thereto (other than the Purchaser) shall have duly executed and delivered to the Purchaser the Stockholders Agreement.

3.15 Charter of the Company. The Charter Amendment and the Certificate of Designation shall each have been filed with the Secretary of State of the State of Delaware and each such filing shall have become effective and neither the Charter Amendment nor the Certificate of Designation shall have been amended or modified.

3.16 Market Conditions. Prior to the Closing Date, (a) trading in the Common Stock shall not have been suspended by the Commission or by the NASDAQ, (b) trading in securities generally on the NYSE or NASDAQ shall not have been suspended or limited for two consecutive Business Days or minimum or maximum prices shall not have been generally established on such exchange for two consecutive Business Days, or additional material governmental restrictions, not in force on the date of this Agreement, shall not have been imposed upon trading in securities generally by such exchange or by order of the Commission or any court or other Governmental Authority for two consecutive Business Days and (c) a general banking moratorium shall not have been declared by either Federal or New York State authorities and continued for two (2) consecutive Business Days.

3.17 No Litigation. Except as set forth in Schedule 5.6, no action, suit, proceeding, claim or dispute shall have been brought or otherwise arisen at law, in equity, in arbitration or before any Governmental Authority against the Company or any of its Subsidiaries which is reasonably likely to be successful against the Company and would, if adversely determined, (i) have a material adverse effect on the Condition of the Company or (ii) have a material adverse effect on the ability of the Company to perform

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its obligations under this Agreement, the Preferred Shares, the Registration Rights Agreement or the Stockholders Agreement.

3.18 No Default or Breach. Neither the Company nor any of its Subsidiaries shall be in default under or with respect to any Contractual Obligation in any respect, which, individually or together with all such defaults, would be materially adverse to the Condition of the Company or which could materially adversely affect the ability of the Company to perform its obligations under this Agreement, the Preferred Shares, the Registration Rights Agreement or the Stockholders Agreement.

3.19 Credit Agreement. The parties to the Credit Agreement shall have duly executed and delivered an amendment thereto in respect of the issuance of the Preferred Stock and the payment of the dividends thereon in form and substance acceptable to the Purchaser in its reasonable judgment.

ARTICLE 4

CONDITIONS TO THE OBLIGATION OF THE COMPANY TO CLOSE

The obligations of the Company to issue and sell the Initial Preferred Shares, and to consummate the transactions contemplated herein on the Initial Closing Date, shall be subject to the satisfaction or waiver of the following conditions on or before the Initial Closing Date:

4.1 Representations and Warranties True. The representations and warranties of the Purchaser contained in Section 6 hereof shall be true and correct in all material respects at and as of the Closing Date as if made at and as of such date (unless such representations and warranties relate to matters only as of a particular date, in which case such representations and warranties shall be true and correct in all material respects as of such date).

4.2 Compliance with this Agreement. The Purchaser shall have performed and complied with in all material respects all of its agreements and conditions set forth or contemplated herein that are required to be performed or complied with by the Purchaser on or before the Closing Date.

4.3 Issuance Permitted by Applicable Laws. The issuance of the Preferred Shares and the consummation of the transactions contemplated hereby by the Company (a) shall not be prohibited by any applicable law or governmental regulation, (b) shall not subject the Company to any penalty or, in its reasonable judgment, other onerous condition under or pursuant to any applicable law or governmental regulation and (c) shall be permitted by the laws and regulations of the jurisdictions in which it is subject.

4.4 Consents and Approvals. All consents, exemptions, authorizations, or other actions by, or notices to, or filings with, Governmental Authorities and other Persons, including with respect to Contractual Obligations of the Purchaser, necessary or required in connection with the execution, delivery or performance by the Purchaser or enforcement against the Purchaser of this Agreement shall have been obtained and be in full force and effect, and the Company shall have been furnished with appropriate evidence thereof.

4.5 Charter of the Company. The Charter Amendment and the Certificate of Designation shall each have been filed with the Secretary of State of the State of Delaware and each such filing shall have become effective.

4.6 Credit Agreement. The parties to the Credit Agreement shall have duly executed and delivered an amendment thereto in respect of the issuance of the Preferred Stock in form and substance acceptable to the Company in its reasonable judgment.

4.7 Bolivia and Westrail Closings. The proposed investment by the Company in either Bolivia or Westrail shall have been consummated on terms and conditions satisfactory to the Company in its reasonable judgment.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company has delivered a disclosure letter relating to this Agreement (the "Disclosure Schedules") to the Purchaser prior to the execution of this Agreement. The Company hereby represents and warrants to the Purchaser as follows:

5.1 Corporate Existence and Power. The Company, and each of its Subsidiaries:

(a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization;

(b) has (i) full corporate (or other organizational) power and authority and (ii) all governmental licenses, authorizations, consents and approvals to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged;

(c) is duly qualified as a foreign person, licensed and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification; and

(d) is in compliance with all Requirements of Law; except, in the case of (b) (ii), (c) or (d) of this Section 5.1, to the extent that the failure to do so would not have a material adverse effect on the

Condition of the Company.

5.2 Corporate Authorization; No Contravention. The execution, delivery and performance by the Company of this Agreement, the Registration Rights Agreement, the Stockholders Agreement and the transactions contemplated hereby and thereby, including without limitation the issuance of the Preferred Shares and the Class A Common Stock issuable upon the conversion of the Preferred Shares:

(a) is within the Company's corporate power and authority and has been duly authorized by all necessary corporate action; and

(b) will not violate, conflict with or result in any breach or contravention of or the creation of any Lien under, any Contractual Obligation of the Company or any of its Subsidiaries, or any order or decree directly relating to the Company or any of its Subsidiaries, other than any such violations, conflicts, contraventions or Liens that, individually or in the aggregate, could not reasonably be expected to (i) impair the ability of the Company to perform its obligations under this Agreement, the Registration Rights Agreement or the Stockholders Agreement or (ii) prevent or materially delay consummation of the transactions contemplated by this Agreement, the Registration Rights Agreement or the Stockholders Agreement.

5.3 Governmental Authorization; Third Party Consents. Other than with respect to compliance with the HSR Act or as set forth in Schedule 5.3 of the Disclosure Schedules, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person, is necessary or required in connection with the execution, delivery or performance by the Company or enforcement against the Company of this Agreement, the Preferred Shares, the Registration Rights Agreement, the Stockholders Agreement or the transactions contemplated hereby or thereby. As of the Closing Date, the issuance of and payment of dividends on the Preferred Stock will not be prohibited by the terms of the Credit Agreement

5.4 Binding Effect. This Agreement has been duly executed and delivered by the Company, and at the Initial Closing the Registration Rights Agreement, the Stockholders Agreement and the Initial Preferred Shares will be duly executed and delivered by the Company. This Agreement constitutes the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as enforcement may be limited by any implied covenant of good faith and fair dealing, by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability or as the enforcement may be limited by considerations of public policy. At the Closing, the Registration Rights Agreement, the Stockholders Agreement and the Preferred Shares will constitute the legal, valid and binding obligations of the Company

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enforceable against the Company in accordance with their respective terms, except as enforcement may be limited by any implied consent of good faith and fair dealing, by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability or as the enforcement may be limited by considerations of public policy.

5.5 No Legal Bar. Neither the execution, delivery and performance of this Agreement, the Registration Rights Agreement and the

Stockholders Agreement nor the issuance or performance of the terms of the Preferred Shares will violate any Requirement of Law in any material respect or any of its Subsidiaries or any rule or regulation of NASDAQ.

5.6 Litigation.

(a) Except as set forth in Schedule 5.6 of the Disclosure Schedules, there are no actions, suits, proceedings, claims or disputes pending, or to the best knowledge of the Company, threatened, at law, in equity, in arbitration or before any Governmental Authority against the Company or any of its Subsidiaries:

(i) with respect to this Agreement, the Preferred Shares, the Registration Rights Agreement or the Stockholders Agreement or any of the transactions contemplated hereby or thereby; or

(ii) which is reasonably likely to be successful against the Company and would, if adversely determined, (i) have a material adverse effect on the Condition of the Company or (ii) have a material adverse effect on the ability of the Company to perform its obligations under this Agreement, the Preferred Shares, the Registration Rights Agreement or the Stockholders Agreement.

(b) No injunction, writ, temporary restraining order, decree or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery and performance of this Agreement, the Preferred Shares, the Registration Rights Agreement or the Stockholders Agreement.

5.7 No Default or Breach. No event has occurred and is continuing or would result from incurring the obligations by the Company under this Agreement, the Preferred Shares or under the Registration Rights Agreement which would constitute a default under or breach of any of the provisions of Article 8 or 9. Neither the Company nor any of its Subsidiaries is (or would be as a result the issuance of the Preferred Shares and the conversion of such shares into Class A Common Stock) in default under or with respect to any Contractual Obligation in any respect, which, individually or together with all such defaults, would be materially adverse to the Condition of the Company or which could reasonably be expected to materially adversely affect the ability of the Company to perform its obligations under this Agreement, the Preferred Shares, the Registration Rights Agreement or the Stockholders Agreement.

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5.8 Title to Properties. The Company and each of its Subsidiaries have good and defensible title to, or hold leases in full force and effect in all their real property, except for such defects in title as could not reasonably be expected to, individually or in the aggregate, have a materially adverse effect on the Condition of the Company or the ability of the Company to perform its obligations under this Agreement, the Preferred Shares, the Registration Rights Agreement or the Stockholders Agreement.

5.9 Taxes. The Company and its Subsidiaries have filed or caused to be filed, or have properly filed extensions for, all material income tax returns which are required to be filed and have paid or caused to be paid all material taxes as shown on said returns and on all assessments received by it to the extent that such taxes have become due, except taxes the validity or amount of which is being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been set aside. The Company and its

Subsidiaries have paid or caused to be paid, or have established reserves that the Company reasonably believes to be adequate for all material income tax liabilities applicable to the Company and its Subsidiaries for all fiscal years which have not been examined and reported on by the taxing authorities (or closed by applicable statutes).

5.10 Financial Condition. The Company heretofore has delivered or made available to the Purchaser true and correct copies of audited consolidated financial statements of the Company and its Subsidiaries dated as of December 31, 1998 (the "1998 Audited Financials") and December 31, 1999 (the "1999 Audited Financials"), and the unaudited consolidated financial statements of the Company and its Subsidiaries dated as of March 31, 2000 and June 30, 2000 (the "Interim Financials"). The 1998 Audited Financials, 1999 Audited Financials and the Interim Financials have been prepared in accordance with GAAP applied consistently and present fairly the consolidated financial condition of the Company as of the dates thereof and the consolidated results of operations and cash flows of the Company for the period, or portion thereof, then ended (except in the case of the Interim Financials, for normal year- end adjustment or the absence of footnotes).

5.11 No Material Adverse Change. Except as expressly disclosed in the Commission Documents (excluding the financial statements) filed prior to the date hereof that describe the event, since December 31, 1999, there has not been any material adverse change, nor to the knowledge of the Company has any event occurred which is reasonably likely to result in such a change, in the Condition of the Company.

5.12 Commission Documents. The Company has filed all registration statements, proxy statements, reports and other documents required to be filed by them under the Securities Act or the Exchange Act, and all amendments thereto (collectively, the "Commission Documents") since January 1, 1998. The Company has furnished or made available to the Purchaser copies of all Commission Documents, each as filed with the Commission, since January 1, 1998. Each Commission Document when filed with the Commission was true and accurate in all material respects and in compliance in all material respects with the requirements of its respective report form.

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5.13 Environmental Matters. Except as set forth in Schedule 5.13 of the Disclosure Schedules and except for instances that would not adversely affect the Condition of the Company in any material respect.

(a) Neither the Company nor any of its Subsidiaries is or has been in violation of any applicable Environmental Law;

(b) (i) The Company and its Subsidiaries have all Permits required pursuant to applicable Environmental Laws for the conduct of the business of the Company or its Subsidiaries, (ii) all such Permits are in full force and effect, (iii) neither the Company nor any of its Subsidiaries has received written notice or has knowledge that any action, cause of action, suit, claim, complaint, demand, litigation or legal, administrative or arbitral proceeding or investigation (collectively, "Claims") to revoke, limit or modify any of such Permits is pending and (iv) the Company and each of its Subsidiaries is in compliance with all terms and conditions thereof;

(c) Neither the Company or any of its Subsidiaries has received any Environmental Claim, and none of them is subject, due to the consummation of the transactions contemplated by this Agreement, to

any obligation to investigate or remediate any property under any applicable Environmental Law;

(d) Neither the Company or any of its Subsidiaries has entered into any written agreement with any Governmental Body or any other Person by which the Company or any of the Subsidiaries agreed to undertake, or assume responsibility for, or guaranteed, any other Person's agreement to undertake, for the remediation of any condition arising from or relating to a Release or threatened Release of Hazardous Substances into the environment;

(e) To the knowledge of the Company or any of its Subsidiaries, there is not a Release or threatened Release of Hazardous Substances for which the Company or any of its Subsidiaries could reasonably be expected to be responsible;

(f) Except in cases which would not give rise to liability under any applicable Environmental Law, there is not now and has not been at any time in the past at, on or in any of the real properties owned, leased or operated by the Company or any of its Subsidiaries, and, to the knowledge of the Company or any of its Subsidiaries, there was not at, on or in any real property previously owned, leased or operated by the Company or any of its Subsidiaries or any predecessor, any UST, surface impoundment, lagoon, landfill, solid waste disposal area, or other containment facility (past or present) for the temporary or permanent storage, treatment or disposal of Hazardous Substances;

(g) To the knowledge of the Company or any of its Subsidiaries: (i) there is no basis for any Environmental Claim against any of them, and (ii) there is no condition that could reasonably be expected to result in Environmental Compliance costs to any of them;

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(h) To the knowledge of the Company or any of its Subsidiaries, neither the Company or any of its Subsidiaries has transported, stored, treated or disposed, nor has it allowed or arranged for any third persons to transport, store, treat or dispose, any Hazardous Substance to or at: (i) any location other than a site lawfully permitted to receive such substances for such purposes, or (ii) any location designated for Remedial Action pursuant to Environmental Laws; nor has it performed, arranged for or allowed by any method or procedure such transportation or disposal in contravention of any Environmental Laws or in any other manner which could reasonably be expected to result in Environmental Compliance Costs or in an Environmental Claim.

5.14 Investment Company. The Company is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

5.15 Subsidiaries. Schedule 5.15 of the Disclosure Schedules sets forth a complete and accurate list of all of the Subsidiaries of the Company together with their respective jurisdictions of incorporation or organization. Except as set forth on Schedule 5.15 of the Disclosure Schedules, each such Subsidiary is directly or indirectly wholly owned by the Company.

5.16 Capitalization. As of the date hereof, the authorized capital stock of the Company consists of 12,000,000 shares of Class A Common Stock and 1,500,000 shares of Class B Common Stock. Upon the filing and effectiveness of the Charter Amendment, the authorized capital stock of the Company will consist of 12,000,000 shares of Class A Common Stock, 1,500,000

shares of Class B Common Stock and 1,000,000 shares of preferred stock, par value \$.01 per share. Upon the filing and effectiveness of the Certificate of Designation, 25,000 of such shares of preferred stock will be designated as Preferred Stock. As of October 15, 2000, 3,492,328 shares of Class A Common Stock and 845,447 shares of Class B Common Stock are issued and outstanding. Except as set forth in Section 5.16 of the Disclosure Schedules or as contemplated by this Agreement, there are no shares of capital stock of the Company reserved for issuance. All of the outstanding shares of capital stock of the Company have been duly authorized and are fully paid and non-assessable. The Preferred Shares when issued upon payment of the Purchase Price, and the shares of Class A Common Stock when issued upon conversion of the Preferred Shares, are duly authorized, and, when issued, in each case will be validly issued, fully paid and nonassessable. Other than options granted pursuant to the Company's 1996 Stock Option Plan or Stock Option Plan for Outside Directors and except as set forth in Schedule 5.16 of the Disclosure Schedules or in the Certificate of Designation, there are no options, warrants or other rights to purchase shares of capital stock or other securities of the Company, nor is the Company obligated in any manner to issue shares of its capital stock or other securities. Except as set forth in the Company's Restated Certificate of Incorporation (as in effect on the date hereof) and except as contemplated hereby (including the filing of the Certificate of Designation) and for relevant state and federal securities laws, there are no restrictions on the transfer of shares of capital stock of the Company.

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5.17 Private Offering. No form of general solicitation or general advertising was used by the Company or, to its knowledge, its representatives in connection with the offer or sale of the Preferred Shares. Assuming the accuracy of the Purchaser's representations contained in Section 6.5, no registration of the Preferred Shares pursuant to the provisions of the Securities Act or any state securities or "blue sky" laws will be required by the offer, sale or issuance of the Preferred Shares pursuant to this Agreement. The Company agrees that neither it, nor anyone acting on its behalf, will offer or sell the Preferred Shares or any other security so as to require the registration of the Preferred Shares pursuant to the provisions of the Securities Act or any state securities or "blue sky" laws, unless such Preferred Shares are so registered.

5.18 Broker's, Finder's or Similar Fees. Except as set forth herein, there are no brokerage commissions, finder's fees or similar fees or commissions payable in connection with the transactions contemplated hereby based on any agreement, arrangement or understanding with the Company or any of its Subsidiaries, or any action taken by any such entity.

5.19 Outstanding Indebtedness. After giving effect to the issuance of the Preferred Shares, and the conversion of the Preferred Stock into Common Stock, neither the Company nor any of its Subsidiaries would be in default under or with respect to any covenant in the Credit Agreement (determined after giving effect to the amendment thereto contemplated in Sections 3.19 and 4.6).

5.20 Full Disclosure. No statement by the Company contained in (i) this Agreement or (ii) any Commission Documents or any other documents, certificates, notices or consents (collectively, "Documents") delivered to the Purchaser in connection with the purchase and sale of the Preferred Shares at or prior to the Closing contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements made, in the light of the circumstances in

which made, not materially false or misleading.

5.21 ERISA and Employee Benefit Plans.

(a) There are no material employee benefit plans, arrangements, policies or commitments of any type (including, but not limited to, plans described in section 3(3) of ERISA) maintained by the Company or its Subsidiaries, or with respect to which the Company or its Subsidiaries has or could have any direct or indirect liability, other than those described in Schedule 5.21(a) of the Disclosure Schedules ("Benefit Plans").

(b) Accurate and complete copies of all plan text and agreements, the most recent annual report, the most recent annual and periodic accounting of plan assets, and the most recent actuarial valuation with respect to each Benefit Plan have been made available upon request to the Purchaser.

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(c) Except as provided in Schedule 5.21(c) of the Disclosure Schedules, no Benefit Plan is or, in the preceding five calendar years, has been subject to Title IV of ERISA or section 412 of the Code. With respect to each Benefit Plan subject to Section 412 of the Code or section 302 of ERISA: (i) such plan uses a funding method permissible under ERISA and the actuarial assumptions used in connection therewith are reasonable individually and in the aggregate; (ii) no such Benefit Plan has incurred an accumulated funding deficiency, whether or not waived; (iii) the fair market value of the assets of such Benefit Plan will exceed or equal the "projected benefit obligation" (as defined in Statement of Financial Accounting Standard No. 87) and the "amount of unfunded benefit liabilities," as defined in section 4001(a)(18) of ERISA is zero; (iv) no such Benefit Plan has been terminated, no filing of a notice of intent to terminate such a Benefit Plan has been made, and the Pension Benefit Guaranty Corporation has not initiated any proceeding to terminate any such Benefit Plan; and (v) no event has occurred and to the Company's Knowledge, there exists no condition or set of circumstances which presents a material risk that any such Benefit Plan has or is likely to experience a "partial termination" within the meaning of section 411(d)(3) of the Code. No Benefit Plan is a "multiple employer plan" within the meaning of the Code or ERISA.

(d) With respect to each Benefit Plan, except as set forth in Schedule 5.21 of the Disclosure Schedules and to the extent that the failure to comply would not affect the condition of the Company in any material respect: (i) if it is intended to qualify under section 401(a) or 403(a) of the Code, such plan has received a favorable determination letter as to its qualification; (ii) such Benefit Plan has been maintained and administered at all times in compliance with its terms and applicable laws and regulations; and (iii) no event has occurred and there exists no circumstances under which the Company or its Subsidiaries could incur liability under ERISA, the Code or otherwise (other than routine claims for benefits) with respect to such plan.

(e) Except as provided in Schedule 5.21(e) of the Disclosure Schedules, with respect to each Benefit Plan that is a "welfare plan" (as defined in ERISA section 3(1)): no such plan provides medical benefits with respect to current or former employees of the Company or its Subsidiaries beyond their termination of employment (other than as required under Code section 4980B).

(f) Except as set forth in Schedule 5.21(f) of the Disclosure Schedules, the consummation of the transactions contemplated by this Agreement will not give rise to any liability or increase any existing liability under any Benefit Plan.

5.22 Regulatory Compliance. The Company and its Subsidiaries, in their ownership, management and operation of their business, as now conducted, do not require any authorization, filing, submission or exemption from the Surface Transportation Board, the Federal Railroad Administration or any similar Government Authority body in any country in which the Company or its Subsidiaries operate, other than those that have already been obtained and are in effect and except for instances of noncompliance that would not affect the Condition of the Company in any material respect.

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5.23 Registration Rights Agreement. Schedule 5.23 of the Disclosure Schedules sets forth all agreements to which the Company or any Subsidiary is a party or by which it is bound relating to the registration of its securities or, in the case of a Subsidiary, the securities of the Subsidiary. None of the agreements listed in Schedule 5.23 of the Disclosure Schedules grants any registration rights to any Person which conflict with the rights to be granted to the Purchaser in the Registration Rights Agreement; provided, however, that under Section 2(b) of the Registration Rights Agreement, dated September 30, 1999, by and between the Company and Unirail, LLC, in the case of a demand registration pursuant to Section 2.1 of the Registration Rights Agreement in which cutbacks are required, the Company would have priority over the Initiating Holders (as defined in the Registration Rights Agreement); provided, further, that in any such event, the Company hereby irrevocably waives such right and shall only be entitled to include its securities in any such registration in accordance with Section 2(e) of the Registration Rights Agreement.

5.24 Stockholders Agreement. Schedule 5.24 of the Disclosure Schedules sets forth all agreements to which the Company or any Subsidiary is a party or by which it is bound relating to shareholder actions or voting. None of the agreements listed in Schedule 5.24 of the Disclosure Schedules grants any shareholder rights which conflict with the rights to be granted to the Purchaser in the Stockholders Agreement.

5.25 Trade Relations. To the best knowledge of the Company, there exists no actual or threatened termination, cancellation or limitation of, or any adverse modification or change in, the business relationship or business of the Company and its Subsidiaries taken as a whole or their business with any customer or any group of customers whose use of their services are individually or in the aggregate material to the business of the Company and its Subsidiaries taken as a whole, or with any material supplier.

5.26 Material Contracts. Schedule 5.26 of the Disclosure Schedules lists (i) all of the Company's "material contracts" (as defined in Item 601 of Regulation S-K of the Commission) and (ii) all agreements restricting the payments of dividends on the Preferred Stock. All of the contracts, agreements and commitments of the Company and its Subsidiaries listed in Schedule 5.26 of the Disclosure Schedules are (assuming due execution of the counterparties thereto) in full force and effect and binding upon the parties thereto in accordance with their terms (subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in equity or at law) and an implied covenant of

good faith and fair dealing). Neither the Company nor any of its Subsidiaries, nor to the knowledge of the Company or any of its Subsidiaries, or other party to such contracts, agreements and commitments is in default thereunder, nor does any condition exist that with notice or lapse of time, or both would constitute a default in any material respect thereunder. Neither the Company nor any of its Subsidiaries has any knowledge of any proposed, pending, or likely cancellation or termination of any such contract, agreement or commitment.

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5.27 Projections. Prior to the date hereof, the Company delivered to the Purchaser its latest budgets for the six months ended December 31, 2000 and fiscal year 2001 (prepared excluding the investments in Bolivia and Westrail but including the transactions contemplated by this Agreement) , a copy of which is included in Schedule 5.27 of the Disclosure Schedules (the "Projections"). The assumptions used in preparation of the Projections were reasonable when made and continue to be reasonable as of the Closing Date. The Projections have been prepared in good faith and the Projections give effect to the transactions contemplated by this Agreement. The Purchaser acknowledges that the Projections contain assumptions about future events and that actual results during the period or periods covered may differ from the data and results contained in such Projections.

5.28 No Undisclosed Financial Liabilities. Except as set forth in Schedule 5.28 of the Disclosure Schedules, the Company and its Subsidiaries, after giving effect to the transactions contemplated hereby, do not have any material direct or indirect indebtedness, liability (including, without limitation, product liability or warranty claim), obligation, fixed or unfixed, contingent or otherwise, (collectively "Financial Liabilities"), other than (i) Financial Liabilities fully and adequately reflected on the 1999 Audited Financials or the Interim Financials, (ii) those incurred since December 31, 1999 or in the ordinary course of business or pursuant to the Credit Agreement and (iii) Financial Liabilities incurred pursuant to this Agreement.

5.29 Labor Matters. Except as set forth in Schedule 5.29 of the Disclosure Schedules, as of the date hereof, (i) there are no controversies pending or, to the Company's knowledge, threatened, between the Company or any of its Subsidiaries and any of their respective employees, which controversies have had, or would reasonably be expected to have, a material adverse effect on the Company; (ii) neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or other labor union contract applicable to persons employed by the Company or its Subsidiaries, or does the Company or any of its Subsidiaries know of any activities or proceedings of any labor union to organize any such employees; and (iii) to the knowledge of the Company, there are no strikes, slowdowns, work stoppages, lockouts, or threats thereof, by or with respect to any employees of the Company or any of its Subsidiaries which would reasonably be expected to have a material adverse effect on the condition of the Company.

5.30 Absence of Certain Payments. None of the Company, any of its Subsidiaries or any of their respective Affiliates, officers, directors, employees or agents or other people acting on behalf of any of them have (i) engaged in any activity prohibited by the United States Foreign Corrupt Practices Act of 1977 or any other similar law, regulation, decree, directive or order of any other country and (ii) without limiting the generality of the preceding clause (i) used any corporate or other funds for unlawful contributions, payments, gifts or entertainment, or made any unlawful expenditures relating to political activity to government officials or others. None of the Company, any of its Subsidiaries or any of their respective

employees or agents of other persons acting on behalf of any of them, has accepted or received any unlawful contributions, payments, gifts or expenditures.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES
AND COVENANTS OF THE PURCHASER

The Purchaser represents and warrants to, and covenants and agrees with, the Company as follows:

6.1 Existence and Power. The Purchaser:

(a) is duly organized and validly existing under the laws of the jurisdiction of its organization;

(b) has all requisite power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder; and

(c) has the power and authority to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently, or is currently proposed to be, engaged.

6.2 Authorization; No Contravention. The execution, delivery and performance by the Purchaser of this Agreement:

(a) is within the Purchaser's power and authority and has been duly authorized by all necessary action;

(b) will not violate, conflict with or result in any breach or contravention of or the creation of any Lien under, any Contractual Obligation of the Purchaser in any material respect, or any order or decree directly relating to the Purchaser;

(c) as of the date hereof, will not subject the Purchaser to any material penalty or other onerous condition under or pursuant to any applicable law or governmental regulation; and

(d) as of the date hereof, is permitted by the laws and regulations of the jurisdiction to which it is subject.

6.3 Binding Effect. This Agreement and, when executed by the Company and the other parties thereto on the Closing Date, the Registration Rights Agreement and the Stockholders Agreement have been duly executed and delivered by

the Purchaser, constitute the legal, valid and binding obligation of the Purchaser enforceable against it in accordance with its terms, except as

enforceability may be limited by an implied covenant of good faith and fair dealing, by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability or as the enforcement may be limited by considerations of public policy.

6.4 No Legal Bar. The execution, delivery and performance of this Agreement will not violate any Requirement of Law in any material respect.

6.5 Purchase for Own Account. The Preferred Shares (including, for purposes of this Section 6.5, the Class A Common Stock issuable upon conversion of the Preferred Shares) to be acquired by the Purchaser pursuant to this Agreement are being acquired for its own account and with no intention of distributing or reselling such securities or any part thereof in any transaction that would be in violation of the securities laws of the United States of America, or any state, without prejudice, however, to the rights of such Purchaser at all times to sell or otherwise dispose of all or any part of the Preferred Shares under an effective registration statement under the Securities Act, or under an exemption from such registration available under the Securities Act, and subject, nevertheless, to the disposition of the Purchaser's property being at all times within its control. If the Purchaser should in the future decide to dispose of any of the Preferred Shares, the Purchaser understands and agrees that it may do so only in compliance with the Securities Act and applicable state securities laws, as then in effect, and that stop-transfer instructions to that effect, where applicable, will be in effect with respect to the Preferred Shares. If the Purchaser should decide to dispose of the Preferred Shares, other than pursuant to the provisions of the Registration Rights Agreement, the Purchaser, if requested by the Company, will have the obligation in connection with such disposition, at the Purchaser's expense, of delivering an opinion of counsel of recognized standing in securities law, in connection with such disposition to the effect that the proposed disposition of the Preferred Shares would not be in violation of the Securities Act or any applicable state securities laws and, assuming such opinion is required and is otherwise appropriate in form and substance under the circumstances, the Company will accept, and will recommend to any applicable transfer agent or trustee for any of the Preferred Shares that it accept, such opinion. The Purchaser agrees to the imprinting, so long as required by law, of a legend on certificates representing all of the Preferred Shares and the shares of Class A Common Stock issued on conversion thereof to the following effect:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR AN APPLICABLE EXEMPTION TO THE REGISTRATION REQUIREMENTS OF SUCH ACT OR SUCH LAWS."

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6.6 Investment Representation. The Purchaser is an "accredited investor" within the meaning of Regulation D, Rule 501(a), promulgated by the Commission.

6.7 Litigation. There is no order or claim, action, suit, audit, assessment, arbitration or inquiry, or any proceeding or investigation by or before any governmental authority, pending, or to the Purchaser's knowledge, currently threatened against the Purchaser which, if adversely determined, would, individually or in the aggregate, reasonably be expected to have a

material adverse effect on the ability of the Purchaser to perform its obligations under this Agreement and to consummate the transactions contemplated hereby.

6.8 Broker's, Finder's or Similar Fees. There are no brokerage commissions, finder's fees or similar fees or commissions payable in connection with the transactions contemplated hereby based on any agreement, arrangement or understanding with the Purchaser or any action taken by the Purchaser.

ARTICLE 7

INDEMNIFICATION

7.1 Indemnification by the Company. In addition to all other sums due hereunder or provided for in this Agreement, the Company agrees to indemnify and hold harmless the Purchaser and its Affiliates (including, without limitation, Brown Brothers Harriman & Co.) and their respective officers, directors, agents, employees, subsidiaries, partners and controlling persons (each, an "indemnified party") to the fullest extent permitted by law from and against any and all losses, claims, damages, reasonable expenses (including reasonable fees, disbursements and other charges of counsel) or other liabilities ("Liabilities") resulting from any breach of any covenant or agreement of the Company contained in this Agreement or any legal, administrative or other actions (including actions brought by the Company or any equity holders of the Company or derivative actions brought by any Person claiming through the Company or in the Company's name), proceedings or investigations (whether formal or informal), or written threats thereof, based upon, relating to or arising out of this Agreement, the Preferred Shares, the Registration Rights Agreement, the Stockholders Agreement, the transactions contemplated hereby or thereby, or any indemnified person's role therein or in the transactions contemplated hereby or thereby; provided, however, that the Company shall not be liable under this Section 7.1: (a) for any amount paid in settlement of claims without the Company's consent (which consent shall not be unreasonably withheld unless the Company shall have agreed in writing in a form satisfactory to the Purchaser to pay any amount (and not challenge an indemnified party's right to indemnification under this Article 7) required to be paid to settle a claim, in which case the Company may grant or withhold its consent in its sole discretion) or (b) to the extent that it is finally judicially determined that such Liabilities resulted primarily from the willful misconduct, bad faith or gross negligence of such indemnified party; provided, further, that if and to

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the extent that such indemnification is unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of such indemnified liability which shall be permissible under applicable laws. In connection with the obligation of the Company to indemnify for expenses as set forth above, the Company further agrees to reimburse each indemnified party for all such expenses (including reasonable fees, disbursements and other charges of counsel) incurred by such indemnified party on a monthly basis (subject to receipt of customary invoices and other appropriate documentation); provided, however, that if an indemnified party is reimbursed hereunder for any expenses, such reimbursement of expenses shall be refunded to the extent it is finally judicially determined that the Liabilities in question resulted primarily from the willful misconduct, bad faith or gross negligence of such indemnified party.

7.2 Indemnification by the Purchaser. In addition to all other sums due hereunder or provided for in this Agreement, the Purchaser agrees to indemnify and hold harmless the Company and its officers, directors, agents, employees, subsidiaries, partners and controlling persons (each, a "Company Indemnified Party") to the fullest extent permitted by law from and against any and all Liabilities resulting from any breach of any covenant or agreement of the Purchaser contained in this Agreement; provided, however, that the Purchaser shall not be liable under this Section 7.2: (a) for any amount paid in settlement of claims without the Purchaser's consent (which consent shall not be unreasonably withheld) or (b) to the extent that it is finally judicially determined that such Liabilities resulted primarily from the willful misconduct, bad faith or gross negligence of such Company Indemnified Party; provided, further, that if and to the extent that such indemnification is unenforceable for any reason, the Purchaser shall make the maximum contribution to the payment and satisfaction of such indemnified liability which shall be permissible under applicable laws. In connection with the obligation of the Purchaser to indemnify for expenses as set forth above, the Purchaser further agrees to reimburse each Company Indemnified Party for all such expenses (including reasonable fees, disbursements and other charges of counsel) incurred by such Company Indemnified Party on a monthly basis (subject to receipt of customary invoices and other appropriate documentation); provided, however, that if a Company Indemnified Party is reimbursed hereunder for any expenses, such reimbursement of expenses shall be refunded to the extent it is finally judicially determined that the Liabilities in question resulted primarily from the willful misconduct, bad faith or gross negligence of such Company Indemnified Party. Notwithstanding anything to the contrary in this Agreement, any claim for indemnification under this Section 7.2 shall be limited solely to the assets of the Purchaser and shall not be made against or in any way be construed to include the assets of Brown Brothers Harriman & Co. In addition, the indemnification provided by the Purchaser in this Section 7.2 shall be limited as follows: the Purchaser shall not be obligated to pay any amount for indemnification in excess of the Purchase Price paid by the Purchaser.

7.3 Notification. Each indemnified party under this Article 7 will, promptly after the receipt of notice of the commencement of any action or other proceeding against such indemnified party in respect of which indemnity may be sought

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from the Company or the Purchaser, as the case may be, under this Article 7, notify the Company or the Purchaser, as the case may be, in writing of the commencement thereof. The omission of any indemnified party so to notify the Company or the Purchaser, as the case may be, of any such action shall not relieve the Company or the Purchaser, as the case may be, from any liability which it may have to such indemnified party (i) other than pursuant to this Article 7 or (ii) under this Article 7, except to the extent the Company or the Purchaser, as the case may be, is prejudiced by such omission. In case any such action or other proceeding shall be brought against any indemnified party and it shall notify the Company or the Purchaser, as the case may be, of the commencement thereof, the Company or the Purchaser, as the case may be, shall be entitled to participate therein and, to the extent that it may wish, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party; provided, however, that any indemnified party may, at its own expense, retain separate counsel to participate in such defense. Notwithstanding the foregoing, in any action or proceeding in which both the Company or the Purchaser, as the case may be, and an indemnified party is, or is reasonably likely to become, a party, such indemnified party shall have the right to employ separate counsel at the Company's or the Purchaser's, as the case may be,

expense and to control its own defense of such action or proceeding if, in the reasonable opinion of counsel to such indemnified party, (a) there are or may be legal defenses available to such indemnified party or to other indemnified parties that are different from or additional to those available to the Company or the Purchaser, as the case may be, or (b) any conflict or potential conflict exists between the Company or the Purchaser, as the case may be, and such indemnified party that would make such separate representation advisable; provided, however, that in no event shall the Company or the Purchaser, as the case may be, be required to pay fees and expenses under this Section 7 for more than one firm of attorneys in any jurisdiction in any one legal action or group of related legal actions. The Company or the Purchaser, as the case may be, agrees that the Company or the Purchaser, as the case may be, will not, without the prior written consent of the Purchaser or the Company, as the case may be (such consent not to be unreasonably conditioned or withheld), settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated hereby (if any indemnified party is a party thereto or has been actually threatened to be made a party thereto) unless such settlement, compromise or consent includes an unconditional release of the Purchaser or the Company, as the case may be, and each other indemnified party from all liability arising or that may arise out of such claim, action or proceeding. The rights accorded to indemnified parties hereunder shall be in addition to any rights that any indemnified party may have at common law, by separate agreement or otherwise.

7.4 Registration Rights Agreement. Notwithstanding anything to the contrary in this Article 7, the indemnification and contribution provisions of the Registration Rights Agreement shall govern any claim made with respect to registration statements filed pursuant thereto or sales made thereunder.

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ARTICLE 8

AFFIRMATIVE COVENANTS

The Company hereby covenants and agrees (a) with the Purchaser, with respect to all of this Article 8, and (b) with any other Holder, with respect to Sections 8.1 (except with respect to Section 8.1(c)), 8.3 (provided such Holder has agreed to be bound by the provisions contained in Section 8.2), 8.4, 8.5, 8.7 and 8.8:

8.1 Financial Statements. The Company shall deliver to the Purchaser and make publicly available to any other Holder (except with respect to Section 8.1(c)) any other Holder:

(a) not later than ninety (90) days after the end of each fiscal year of the Company, a copy of the audited consolidated balance sheet of the Company and its Subsidiaries as of the end of such year and the related consolidated statements of income, stockholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous year, all in reasonable detail and accompanied by a management discussion and analysis of the operations of the Company and its Subsidiaries for such fiscal year and by the opinion of Arthur Andersen LLP (or any successor thereto) or another nationally recognized independent public accounting firm which report shall state that such consolidated financial statements present fairly, in all material respects, the financial position for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except for changes with respect to which such accounting firm concurs);

provided, however, that the delivery of a copy of the Company's Annual Report on Form 10-K shall satisfy the requirements of this Section 8.1(a);

(b) commencing with the fiscal period ending on September 30, 2000, not later than forty-five (45) days after the end of each of the first three fiscal quarters of each year, the unaudited consolidated balance sheet of the Company and its Subsidiaries, and the related consolidated statements of income and cash flow for such quarter and for the period commencing on the first day of the fiscal year and ending on the last day of such quarter, all certified by an appropriate officer of the Company; provided, however, that the delivery of a copy of the Company's Quarterly Report on Form 10-Q shall satisfy the requirements of this Section 8.1(b);

(c) so long as the Purchaser holds at least 20% of the shares of Class A Common Stock issued or issuable upon conversion of the Preferred Stock (whether or not the Preferred Shares have been converted), annual budgets and such other financial and operating data of the Company and its Subsidiaries, as the Purchaser reasonably may request, to the extent that such information is formally prepared for the Company's Chairman, President, Board of Directors, other investor groups and/or banks or other lenders;

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(d) at any time when it is not subject to Section 13 or 15(d) of the Exchange Act, upon request, to the Purchaser and prospective purchasers of the Preferred Shares, information of the type that would satisfy the requirement of subsection (d)(4)(i) of Rule 144A (or any similar successor provision) under the Securities Act; and

(e) except as otherwise provided in Sections 8.1(a) and (b), promptly after the same are filed, copies of all Commission Documents.

8.2 Confidentiality. The Purchaser will utilize reasonable good faith efforts to maintain as confidential any information obtained from the Company (to the extent the Purchaser reasonably believes such information is material and non-public or to the extent the Purchaser is advised by the Company that such information is confidential) (other than information which (i) at the time of disclosure or thereafter is generally available to and known by the public (other than as a result of a disclosure directly or indirectly by the Purchaser or any of its representatives); (ii) is available to the Purchaser on a non-confidential basis from a source other than the Company or its Subsidiaries; provided, that such source was not known by the Purchaser to be bound by a confidentiality agreement with the Company or any of its Subsidiaries; or (iii) has been independently developed by the Purchaser), and shall not disclose any information obtained from the Company pursuant to Section 8.1 and required to be maintained as confidential pursuant hereto, except (a) to Brown Brothers Harriman & Co. and its advisors, representatives, agents, partners and employees; (b) to its advisors, representatives, agents, partners (and their representatives and advisors) and employees (collectively, the "Purchaser's Representatives"); (c) as may be required by law (including a court order, subpoena or other administrative order or process) or applicable regulations to which the Purchaser is or becomes subject to; (d) in connection with any litigation arising out of or related to this Agreement; provided, that in any such event the Purchaser shall provide the Company with prompt notice of such requirement so that the Company may seek a protective order or other appropriate remedy and provided, further, that if such protective order or other remedy is not obtained, the Purchaser and the Purchaser's Representative shall disclose only that portion of such information which the Purchaser is advised by

counsel is legally required to be disclosed and shall take all reasonable steps to preserve the confidentiality of such information (including by obtaining, at the Company's expense, an appropriate protective order or other reliable assurance that confidential treatment will be accorded such information); (e) to the executive officers of the Company or any of its Subsidiaries; or (f) with the consent of the Company. Notwithstanding anything to the contrary in this Article 8, the Purchaser shall advise the parties set forth in clauses (a) and (b) of the proviso of the immediately preceding sentence of the terms of this Section 8.2 and, in any event, shall be responsible for any breach of this Section 8.2 by such persons.

8.3 Notices. Promptly following actual knowledge of the Chief Executive Officer, the President or the Chief Financial Officer of the Company of the

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events described below, the Company shall give written notice within 10 days to the Purchaser of:

(a) the occurrence of any material default under, or material breach of, any provision of Article 8 or 9 accompanied by a certificate specifying the nature of such default or breach, the period of existence thereof and the action that the Company has taken or proposes to take with respect thereto; and

(b) any (i) material default or event of default under any material Contractual Obligation of the Company or any of its Subsidiaries, or (ii) material dispute, litigation, investigation, proceeding or suspension which may exist at any time between the Company or any of its Subsidiaries and any Governmental Authority;

each accompanied by a statement setting forth details of the occurrence referred to therein and stating what action the Company proposes to take with respect thereto. Notice to the Purchaser shall be deemed satisfied if the Purchaser's representative on the Company's board of directors has actual knowledge of an event described in this section because of specific disclosure of such an event at a meeting of the Company's board of directors at which such representative is present.

8.4 Issue Taxes. The Company shall pay, or cause to be paid, all documentary and similar taxes levied under the laws of any applicable jurisdiction in connection with the issuance of the Preferred Shares and the execution and delivery of the other agreements and documents contemplated hereby and any modification of the Preferred Shares or such other agreements and documents and will hold the Purchaser harmless, without limitation as to time, against any and all Liabilities with respect to all such taxes.

8.5 Reservation of Shares.

(a) The Company shall reserve and keep available out of its authorized preferred stock, solely for the purpose of sale to the Purchaser of the Additional Shares, 15,000 Preferred Shares until the expiration of the Purchaser Option. The Additional Shares shall be duly and validly issued and, upon payment of the applicable Additional Purchase Price, be fully paid and non-assessable.

(b) The Company shall at all times reserve and keep available out of its authorized Class A Common Stock, solely for the purpose of

issue or delivery upon conversion of the Preferred Shares as provided in the Certificate of Designation, such number of shares of Class A Common Stock as shall then be issuable or deliverable upon the conversion of all outstanding Preferred Shares. Such shares of Class A Common Stock shall, when issued or delivered in accordance with the Certificate of Designation, be duly and validly issued and fully paid and non-assessable. The Company shall issue the Class A Common Stock into which the Preferred Shares are convertible upon the proper surrender of the Preferred Shares in accordance with the provisions of the Certificate of Designation and shall otherwise comply with the terms thereof.

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8.6 Inspection. So long as the Purchaser owns at least 20% of the shares of Class A Common Stock issued or issuable upon conversion of the Preferred Shares (whether or not the Preferred Shares have been converted), the Company will permit, and will cause each of its Subsidiaries to permit, representatives of the Purchaser to visit and inspect any of its properties and to discuss its affairs, finances and accounts with a senior executive of the Company, all at such reasonable times during normal business hours and as often as may be reasonably requested, upon reasonable advance notice to the Company.

8.7 Registration and Listing. If any shares of Class A Common Stock required to be reserved for purposes of conversion of the Preferred Shares as provided in the Certificate of Designation require registration with or approval of any Governmental Authority under any Federal or state or other applicable law before such Class A Common Stock may be issued or delivered upon conversion, the Company will endeavor in good faith and use its best efforts to, as expeditiously as possible, to cause such Class A Common Stock to be duly registered or approved, as the case may be, unless such registration or approval is required solely because of a breach of the Purchaser's representation contained in Section 6.5. So long as the Class A Common Stock is quoted on the NASDAQ or listed on any national securities exchange, the Company, if permitted by the rules of such system or exchange, will quote or list and keep quoted or listed on such system or exchange, upon official notice of issuance, all Class A Common Stock issuable or deliverable upon conversion of the Preferred Shares. In addition, at the request of the Purchaser, the Company will endeavor in good faith and as expeditiously as possible obtain private placement numbers for the Preferred Shares and the Common Stock issued upon conversion of the Preferred Shares, assigned by the CUSIP Service Bureau of Standard & Poor's ratings group and make such securities PORTAL and DTC eligible.

8.8 HSR Act Filing. The Company and the Purchaser shall cooperate with one another to (including furnishing such necessary information and reasonable assistance as the other party may request) prepare and file notification and report forms in compliance with the HSR Act when necessary, and to otherwise ensure full compliance with the requirements of the HSR Act. The Company and the Purchaser shall each bear 50% of the aggregate expenses of the parties (including filing fees and reasonable attorneys' fees, charges and expenses) in connection with any such preparation and filing.

8.9 Use of Proceeds. The Company shall use the proceeds from the sale of the Preferred Shares for general corporate purposes and acquisitions, including the investment in Bolivia.

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NEGATIVE COVENANTS

The Company hereby covenants and agrees that:

9.1 Consolidations and Mergers. The Company shall not merge, consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whenever acquired), except the Company may consolidate or merge with or into, or sell all or substantially all of its assets to, any Person if:

(a) The corporation or partnership formed by such consolidation or surviving such merger or the Person which acquires all or substantially all of the assets of the Company shall be (after giving effect to such transaction) a Solvent corporation or partnership organized or formed, as the case may be, and existing under, the laws of the United States, any state thereof, or the District of Columbia and shall expressly assume in writing all of the obligations of the Company under this Agreement, the Preferred Shares, the Stockholders Agreement and the Registration Rights Agreement;

(b) immediately after giving effect to such transaction, no default under, or breach of, provisions of Article 8 and 9 exists; and

(c) the Company shall have furnished to the Holders (i) an opinion of counsel satisfactory to a majority in interest of the Holders addressing the matters (other than Solvency) set forth in clause (a) above and (ii) the certificate of the Chief Financial Officer of the Company to the effect that such transaction has been consummated in compliance with the foregoing requirements; provided that nothing in this Section 9.1 shall affect the rights of any Holder under this Agreement, the Preferred Shares, the Stockholders Agreement or the Registration Rights Agreement.

9.2 Transactions with Affiliates. The Company shall not, and shall not permit any of its Subsidiaries to, enter into any transaction with any Affiliate of the Company or of any such Subsidiary, except on terms no less favorable to the Company or such Subsidiary than those the Company or such Subsidiary would obtain in a comparable arm's-length transaction with a Person not an Affiliate of the Company or such subsidiary; provided that any transaction approved by a majority of the independent directors of the Company shall be conclusively deemed to be on such terms.

9.3 No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries shall enter into any loan or other agreement, or enter into any amendment or other modification to any currently existing agreement, which newly executed loan or other agreement or amendment or modification to a currently existing agreement by its terms restricts or prohibits the ability of the Company to pay the dividends on the Preferred Stock contemplated in the Certificate of Designation or to issue Class A

Common Stock upon conversion of the Preferred Stock in accordance with the Certificate of Designation and this Agreement; provided, however, that the foregoing shall not prevent the Company from entering into loan or other agreements that contain restrictions on the ability of the Company to pay dividends on the Preferred Stock either (i) during the existence of an event of

default under such agreements or (ii) if such payment would, although not in itself a breach of any covenant or a default or event of default under any such agreement, result in the occurrence of a default or event of default under any such agreement so long as, on the date such agreement is entered into, (x) the terms of any such agreement would not prohibit such payment on such date and (y) the Company does not reasonably anticipate based on facts available as of the date of the execution of any such loan or other agreement, that any of the terms of any such agreement is likely to be breached during the term of such agreement as a result of such payment of dividend.

9.4 Issuance of Preferred Stock. The Company shall not issue any Preferred Stock except pursuant to this Agreement.

Notwithstanding the foregoing provisions of this Article 9, this Article 9 shall cease to be operative and shall have no further force and effect if no Preferred Shares shall remain outstanding.

ARTICLE 10

MISCELLANEOUS

10.1 Survival of Provisions. All warranties, representations and covenants made by the Company in or under this Agreement shall be considered to have been relied upon by the Purchaser and shall survive the execution and delivery of this Agreement and the issuance to the Purchaser of the Preferred Shares, regardless of any investigation made by the Purchaser or on its behalf. All warranties, representations and covenants made by the Purchaser or on its behalf shall survive the execution and delivery of this Agreement and the issuance to the Purchaser of the Preferred Shares. Except as otherwise set forth in Article 8 or 9, all of the representations and warranties made herein and each of the provisions of Articles 5, 6, 7 and 10 shall survive the execution and delivery of this Agreement, any investigation by or on behalf of the Purchaser or any Affiliate, acceptance of the Preferred Shares and payment therefor, payment or prepayment of the Preferred Shares upon redemption or otherwise, conversion of the Preferred Shares or termination of this Agreement. Notwithstanding anything to the contrary contained in the foregoing, the representations and warranties set forth in Articles 5 and 6 shall, with respect to the Initial Closing and any Additional Closing pursuant to Section 2.1(b)(i), expire on the forty-fifth day following the earlier of (x) the delivery to the Purchaser of audited consolidated financial statements of the Company for the period commencing on the date of the last audited financial statements of the Company that are publicly available and ending on the last day of the month in which such Closing occurred, accompanied by the opinion of Arthur Andersen LLP (or any successor thereto) or another nationally recognized independent public account firm

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(which report shall state that such consolidated financial statements present fairly, in all material respects, the financial position for the period indicated in conformity with GAAP applied on a basis consistent with prior years (except for changes with respect to which such accounting firm concurs) and (y) the filing with the SEC by the Company of the Company's Annual Report on Form 10-K (including audited financial statements that comply with the requirements of Section 8.1(a) of this Agreement) for the year ended December 31) in which such Initial Closing or Additional Closing pursuant to Section 2.1(b)(i) occurred. In addition, the representations and warranties set forth in Articles 5 and 6 shall, with respect to any Additional Closing pursuant to Section

2.1(b) (ii), expire 180 days following such Additional Closing.

10.2 Further Actions. Each of the parties hereto agrees that, except as otherwise provided in this Agreement and subject to its legal obligations, it will use its reasonable best efforts to fulfill all conditions precedent specified herein, and to do all things reasonably necessary to consummate the transactions contemplated hereby.

10.3 Notices. All notices, demands and other communications provided for or permitted hereunder shall be made in writing and shall be by registered or certified first-class mail, return receipt requested, telecopier, courier service or personal delivery:

(a) if to the Purchaser at the following address:

The 1818 Fund III, L.P.
c/o Brown Brothers Harriman & Co.
59 Wall Street
New York, New York 10005
Telecopier No.: (212) 493-8429
Attention: Mr. T. Michael Long

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, New York 10019-6064
Telecopier No.: (212) 757-3990
Attention: Marilyn Sobel, Esq.

(b) if to the Company at the following address:

Genesee & Wyoming Inc.
66 Field Point Road
Greenwich, Connecticut 06830
Telecopier No.: (203) 661-4106
Attention: John C. Hellmann

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with a copy to:

Simpson, Thacher & Bartlett
425 Lexington Avenue
New York, New York 10017-3909
Telecopier No.: (212) 455-2502
Attention: Philip T. Ruegger, III, Esq.

All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; when delivered by courier, if delivered by commercial overnight courier service; five Business Days after being deposited in the mail, postage prepaid, if mailed; and when receipt is acknowledged, if telecopied.

10.4 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto. The Purchaser may assign any of its rights under this

Agreement, the Preferred Shares, the Registration Rights Agreement or the Stockholders Agreement to any of its Affiliates. Subject to the restrictions of this Agreement, the Purchaser may assign any of its rights under this Agreement (other than those set forth in Section 8.1(c), 8.3 (unless the Holder agrees to be bound by Section 8.2) or 8.6, assignments of which shall be void and of no force and effect), or the Preferred Shares, or a portion thereof to any other Holder. The Company may not assign any of its rights under this Agreement without the written consent of the Purchaser; provided, however, that any merger of the Company with or into any Person shall not be deemed to be an assignment hereunder. Except as provided in Article 7, no Person other than the parties hereto is intended to be a beneficiary of this Agreement, the Preferred Shares, the Registration Rights Agreement or the Stockholders Agreement.

10.5 Amendment and Waiver. No failure or delay on the part of the Company or the Purchaser in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to the Company or the Purchaser at law, in equity or otherwise. Any amendment, supplement, modification or termination of or to any provision of this Agreement, any waiver of any provision of this Agreement, and any consent to any departure by the Company from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which made or given and shall be effective only when signed in writing by or on behalf of holders of at least 50% of the outstanding Preferred Shares. Except where notice is specifically required by this Agreement, no notice to or demand on the Company in any case shall entitle the Company to any other or further notice or demand in similar or other circumstances.

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10.6 Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

10.7 Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

10.8 Determinations. Except where any provision expressly requires that a determination be reasonable or a consent not be unreasonably withheld, or be subject to qualifications to similar effect, all determinations to be made by the Company, the Purchaser or any Holder hereunder in its opinion or judgment or with its approval or otherwise shall be made by it in its sole discretion.

10.9 Governing Law. This Agreement has been negotiated, executed and delivered in the State of New York and shall be governed by and construed in accordance with the laws of the State of New York.

10.10 Jurisdiction. Each party to this Agreement hereby irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement or any agreements or transactions contemplated hereby may be brought in the courts of the State of New York located in New York City or of the United States of America for the Southern District of New York and hereby expressly submits to the personal jurisdiction and venue of such courts

for the purposes thereof and expressly waives any claim of improper venue and any claim that such courts are an inconvenient forum. Each party hereby irrevocably consents to the service of process of any of the aforementioned courts in any such suit, action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the address set forth in Section 10.3, such service to become effective 10 days after such mailing.

10.11 Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired, unless the provisions held invalid, illegal or unenforceable shall substantially impair the benefits of the remaining provisions hereof.

10.12 Rules of Construction. Unless the context otherwise requires, "or" is not exclusive, and references to sections or subsections refer to sections or subsections of this Agreement.

10.13 Remedies. If a breach of this Agreement or the Certificate of Designation by the Company occurs and is continuing, any Holder may pursue any available remedy by proceeding at law or in equity to enforce the performance (including, without limitation, the specific performance) of any provision of this Agreement or the Certificate of Designation. A Holder may maintain a proceeding even

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if it does not possess any of the Preferred Shares or does not produce any of them in the proceeding. Except as otherwise provided by law, a delay or omission by any Holder in exercising any right or remedy accruing upon any such breach shall not impair the right or remedy or constitute a waiver of or acquiescence in any such breach. No remedy is exclusive of any other remedy. All available remedies are cumulative.

10.14 Entire Agreement. This Agreement, together with the exhibits and schedules hereto, the Certificate of Designation, the Registration Rights Agreement and the Stockholders Agreement, is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein or therein. This Agreement, together with the exhibits and schedules hereto, the Certificate of Designation, the Registration Rights Agreement and the Stockholders Agreement supersede all prior agreements and understandings between the parties with respect to such subject matter.

10.15 Attorneys' Fees. In any action or proceeding brought to enforce any provision of this Agreement, the Certificate of Designation, the Registration Rights Agreement or the Stockholders Agreement or any other document or instrument contemplated hereby or thereby, or where any provision hereof or thereof is validly asserted as a defense, the successful party shall be entitled to recover reasonable attorneys' fees, charges and disbursements in addition to any other available remedy.

10.16 Publicity. Except as may be required by applicable law, neither party hereto shall issue a publicity release or announcement or otherwise make any public disclosure concerning this Agreement or the transactions contemplated hereby, without prior approval by the other party

hereto. If any announcement is required by law to be made by either party hereto, prior to making such announcement such party will deliver a draft of such announcement to the other party and shall give the other party an opportunity to comment thereon.

10.17 Expenses. The company acknowledges and agrees that if the transactions contemplated hereby are consummated at the Initial Closing, the Company shall reimburse the Purchaser for all (i) reasonable out-of-pocket expenses and all consulting and legal fees and expenses and other charges of the Purchaser in connection with the negotiation, execution and delivery of this Agreement, the Preferred Shares, the Registration Rights Agreement and the Stockholders Agreement; provided, however, that the Company's total liability for such expenses shall not exceed \$60,000 in the aggregate and (ii) reasonable out-of-pocket expenses for attendance at meetings of the Board of Directors of the Company by the Purchaser's director to the same extent and upon the same terms as the Company reimburses its other directors; provided, however, that if a representative of the Purchaser attends such meetings in lieu of the Purchaser's director, the Company shall reimburse the Purchaser for reasonable out-of-pocket expenses for such representative's attendance at meetings of the Board of Directors of the Company to the same extent as would have been provided for the Purchaser's director.

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10.18 Termination.

(a) This Agreement may be terminated prior to the Initial Closing Date as follows:

(i) at the election of the Company if any one or more of the conditions to its obligation to close has not been fulfilled as of the Initial Closing Date;

(ii) at the election of the Purchaser if any one or more of the conditions to its obligation to close has not been fulfilled as of the Initial Closing Date;

(iii) at the election of the Company if the Purchaser has breached a covenant or agreement in any material respect contained in this Agreement, which breach cannot be or is not cured by the Initial Closing Date;

(iv) at the election of the Purchaser if the Company has breached a covenant or agreement in any material respect contained in this Agreement, which breach cannot be or is not cured by the Initial Closing Date; or

(v) at any time on or prior to the Initial Closing Date, by mutual written consent of the Company and the Purchaser.

If this Agreement so terminates, it shall become null and void and have no further force or effect, except as provided in Section 10.18(b).

(b) If this Agreement is terminated in accordance with Section 10.18(a) and the transactions contemplated by this Agreement are not consummated, this Agreement shall become null and void and of no further force and effect, except for the provisions of Article 7; provided, however, that none of the parties shall have any liability in respect of a termination of

this Agreement except to the extent that failure to satisfy the conditions of Article 3 or Article 4, as the case may be, results from the intentional or willful violation by such party of its obligations contained in this Agreement or any documents delivered pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their respective representatives hereunto duly authorized as of the date first above written.

GENESEE & WYOMING INC.

By: _____
Name:
Title:

THE 1818 FUND III, L.P.

By: Brown Brothers Harriman & Co.,
Its General Partner

By: _____
Name:
Title:

GENESEE & WYOMING INC.

CERTIFICATE OF DESIGNATION OF
4.0% SENIOR REDEEMABLE CONVERTIBLE
PREFERRED STOCK, SERIES A, SETTING FORTH THE POWERS,
PREFERENCES, RIGHTS, QUALIFICATIONS, LIMITATIONS AND
RESTRICTIONS OF SUCH SERIES OF PREFERRED STOCK

Pursuant to Section 151 of the Delaware General Corporation Law, Genesee & Wyoming Inc., a Delaware corporation (the "Corporation"), DOES HEREBY CERTIFY:

The Restated Certificate of Incorporation of the Corporation (the "Charter") confers upon the Board of Directors the authority to provide for the issuance of shares of Preferred Stock in series and to fix the designations, powers, preferences and rights of the shares of each such series and any qualifications, limitations or restrictions thereof. On August 31, 2000, the Board of Directors of the Corporation, in accordance with Section 141(c) of the Delaware General Corporation Law conferred upon the Pricing Committee of the Board of Directors of the Corporation (the "Pricing Committee") the authority to determine any and all terms and provisions of a series of Senior Redeemable Convertible Preferred Stock, including, without limitation, the conversion price of such preferred stock. On October 18, 2000, the Pricing Committee duly adopted the following resolution creating a series of Preferred Stock designated as 4.0% Senior Redeemable Convertible Preferred Stock, Series A, and such resolution has not been modified and is in full force and effect on the date hereof:

RESOLVED that, pursuant to the authority vested in the Board of Directors of the Corporation in accordance with the provisions of the Charter, a series of the class of authorized Preferred Stock, par value \$0.01 per share, of the Corporation is hereby created and that the designation and number of shares thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations and restrictions thereof are as follows:

Section 1. Designation and Number.

(a) The shares of such series shall be designated as 4.0% Senior Redeemable Convertible Preferred Stock, Series A (the "Preferred Stock"). The number of shares initially constituting the 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 Preferred Stock or shares of Preferred Stock which may be issued pursuant to the Stock Purchase

Agreement.

(b) The Preferred Stock shall, with respect to dividend rights and rights on liquidation, dissolution or winding up, rank prior to all other classes and series

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of Junior Stock (as defined below) of the Corporation now or hereafter authorized including, without limitation, the Common Stock.

(c) Capitalized terms used herein and not otherwise defined shall have the meanings set forth in Section 10 below.

Section 2. Dividends and Distributions.

(a) The holders of shares of 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 herein as a "Quarterly Dividend Payment Date"), commencing on the first such Quarterly 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 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 Preferred Stock in the amount of (i) \$____, 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.

(b) Dividends payable pursuant to Section 2(a) with respect to any shares of 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 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 Preferred Stock at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of 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.

(c) In addition to the dividends or distributions on the Preferred Stock described in Section 2(a), 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

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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 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 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 Preferred Stock at the same time such dividend or distribution is made to holders of Common Stock.

(d) The holders of shares of Preferred Stock shall not be entitled to receive any dividends or other distributions except as provided herein.

Section 3. Voting Rights.

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

(a) So long as the Preferred Stock is outstanding, each share of 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 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 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.

(b) 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 2/3% of the outstanding shares of 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:

(i) 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;

(ii) 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 _____, 200[];

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(iii) authorize, adopt or approve an amendment to the Charter that would increase or decrease the par value of the shares of Preferred Stock, or alter or change the powers, preferences or special rights of the shares of Preferred Stock, Parity Stock, Junior Stock or Senior Stock in a way that would adversely affect the preferences, rights or powers of the 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 _____, 200[];

(iv) amend or alter the Charter so as to affect the shares of 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

(v) 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.

(c) (i) The foregoing right of holders of shares of Preferred Stock to take any action as provided in Section 3(b) may be exercised at any annual meeting of stockholders or at a special meeting of holders of shares of Preferred Stock held for such purpose as hereinafter provided 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.

(ii) 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 Preferred Stock, addressed to 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 Section 3(b). The subject matter of such meeting shall relate solely to the matters set forth in Section 3(b). 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.

(iii) At each meeting of stockholders at which the holders of shares of 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 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 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 Preferred Stock from time to time and place to place without notice other than announcement at the meeting until a quorum shall be present.

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For taking of any action as provided in Section 3(b) by the holders of shares of 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 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 this Section 3.

Section 4. Certain Restrictions.

(a) 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 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.

(b) Whenever quarterly dividends payable on shares of Preferred Stock as provided in Section 2 are not paid in full, at such time and thereafter until all unpaid dividends payable, whether or not declared, on the outstanding shares of 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 Preferred Stock at a time required by Section 5 or 8, at such time and thereafter until all redemption conversion and obligations provided in Section 5 or 8 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 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 Preferred Stock and such Parity Stock are then entitled.

(c) Whenever dividends payable on shares of Preferred Stock as provided in Section 2 are not paid in full, at such time and thereafter until all unpaid

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dividends payable, whether or not declared, on the outstanding shares of 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 Preferred Stock at a time required by Section 5 or 8, at such time and thereafter until all redemption conversion and obligations provided in Section 5 or 8 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 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 Preferred Stock and shares of such Parity Stock.

(d) 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 Section 4(c), purchase such shares at such time and in such manner.

Section 5. Redemption; Change of Control.

(a) Optional Redemption. Except as otherwise set forth in this Section 5, the Corporation shall not have any right to redeem any shares of 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 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 "Optional 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.

(b) 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 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 Preferred Stock payable on the Mandatory Redemption Date in an amount equal to any accrued and unpaid dividends on the Preferred Stock as of such date and, if the Corporation does not have sufficient legally available funds to declare and pay all

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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 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 Preferred Stock, which shares to be redeemed shall be allocated pro rata among the holders of the Preferred Stock based on the number of shares of 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 Preferred Stock required to be redeemed pursuant to this Section (the "Mandatory Redemption Obligation"), such funds shall be immediately used to discharge such Mandatory Redemption Obligation 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 Preferred Stock shall continue to accrue and be added to the dividend payable pursuant to the second preceding sentence.

(c) Change of Control. If, on or prior to the fourth anniversary of the Original Issue Date, a Change of Control occurs, a holder of Preferred Stock may at its option require the Corporation to redeem all or a portion of the holder's shares of Preferred Stock on the Control Redemption Date (as hereafter defined) at a price per share (the "Control Redemption Price") equal to (A) 101% of the Liquidation 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.")

(d) Notice.

(i) The Corporation will provide notice to holders of record of the Preferred Stock (x) of any redemption pursuant to Section 5(a) or 5(b) 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 provided pursuant to this Section 5(d) shall be provided by first-class mail postage prepaid, to each holder of record of the 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 to clause (x) of this Section 5(d) 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).

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

(iii) Each Change of Control Notice shall state that: (w) a Change of Control has occurred and the holder of the Preferred Stock has the option of requiring the Corporation to redeem all or any portion of its shares of Preferred Stock; (x) any shares of 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.

(iv) In addition, each Redemption Notice and Change of Control Notice shall state, as appropriate, (v) 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 Preferred Stock to be redeemed up to but excluding the Applicable Redemption Date, and that dividends on shares of 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 subsection (f) below; (y) the then-effective Conversion Price; and (z) that the right of holders to convert shares of 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 (i) shall be conclusively presumed to have been duly given, whether or not the holder of shares of 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.

(e) Mechanics of Redemption. Upon surrender of the certificate for any shares redeemed pursuant to Section 5(a), (b) or (c) (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.

(f) Redemption Funds. On the date of any redemption being made pursuant to this Section, 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 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

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bank or trust company to pay the full redemption amounts as provided herein to the holders of shares of 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 Preferred Stock so redeemed shall look only to the Corporation for the payment of the full redemption amounts, as provided herein.

(g) Rights After Redemption. Notice of redemption having been given as provided in Section 5(d), upon the deposit pursuant to subsection (f) of the full redemption amounts as provided herein in respect of all shares of Preferred Stock then surrendered in accordance with subsection (e), 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

Preferred Stock shall cease and terminate, excepting only the right to receive the full redemption amounts as provided herein without interest thereon and the right to convert such shares of 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 Preferred Stock that were to be redeemed, then (a) in the case of redemption pursuant to Section 5(a), no certificates evidencing any shares of Preferred Stock shall be deemed surrendered and such shares shall remain outstanding and the rights of holders of shares of Preferred Stock shall continue to be those of holders of shares of the Preferred Stock or (b) in the case of redemption pursuant to Sections 5(b) or 5(c), certificates evidencing shares of 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 Preferred Stock shall continue to be those of holders of shares of the Preferred Stock.

Section 6. Reacquired Shares.

Any shares of 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 Preferred Stock shall upon their cancellation become authorized but unissued shares of preferred stock, par value \$0.01 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 \$0.01 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 Preferred Stock or other Parity Stock unless all of the shares of Preferred Stock shall have already been redeemed or converted or such issuance is approved in accordance with the terms contained herein.

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Section 7. Liquidation, Dissolution or Winding Up.

(a) 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 Corporation shall otherwise liquidate, dissolve or wind up, no distribution shall be made:

(i) to the holders of 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,

(ii) to the holders of shares of Junior Stock unless, prior thereto, the holders of shares of Preferred Stock, subject to Section 8, 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

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

(b) 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 Section 7.

Section 8. Voluntary Conversion.

(a) Any holder of 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 Section 8, any or all of such holder's shares of Preferred Stock into such number of fully paid and non-

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assessable shares of Class A Common Stock as is equal, subject to Section 8(g), to the product of the number of shares of 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 Section 8(d). 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 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 Section 8(k). All shares of Preferred Stock surrendered for conversion shall be delivered to the Corporation for cancellation and canceled by it and no shares of Preferred Stock shall be issued in lieu thereof.

(b) As promptly as practicable after the surrender, as herein provided, of any shares of Preferred Stock for conversion pursuant to Section 8(a), 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 Class A Common Stock into which such shares of Preferred Stock may be or have been converted in accordance with the provisions of this Section 8. Subject to the following provisions of this paragraph and of Section 8(d), such conversion shall be deemed to have been made immediately prior to the close of business on the date that such shares of 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 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 Preferred Stock shall have been surrendered in satisfactory form for conversion.

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(c) To the extent permitted by law, when shares of Preferred Stock are converted, all dividends accrued and unpaid (whether or not declared or currently payable) on the 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.

(d) The Conversion Price shall be subject to adjustment

as follows:

(i) 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 Preferred Stock in the manner provided in Section 2(c)) on the outstanding shares of Class A Common Stock in capital stock (which, for purposes of this Section 8(d) 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 Preferred Stock in the manner provided in Section 2(c)) on the outstanding shares of Class A Common Stock in securities of the Corporation pursuant to a shareholder rights plan, "poison pill" or similar 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 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 Preferred Stock been converted immediately prior to the occurrence of such event. An adjustment made pursuant to this Section 8(d) (i) 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 dividend or distribution or (B) in the case of any such subdivision, combination or reclassification, to the close of business on the day upon which such corporate action becomes effective.

(ii) 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 security convertible or exchangeable or exercisable into Class A Common Stock as equal to (A) the sum of the

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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, the 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 that:

(A) the determination as to whether an adjustment is required to be made pursuant to this Section 8(d)(ii) shall be made upon the issuance of such shares or such convertible or exchangeable securities, options, warrants or other rights;

(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 Section 8(d)(i) or this Section 8(d)(ii) 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 Section 8(d)(ii) 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 Section 8(d)(i).

(iii) 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 Preferred Stock in the manner provided in Section 2(c), (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 Section 8(d)(i) or rights or warrants to subscribe for or purchase securities of the Corporation (excluding those referred to in Section 8(d)(ii) or those in respect of which an adjustment in the Conversion Price is made pursuant to Section 8(d)(i) or (ii)), 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.

(iv) 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 Section 8(d)(i) through Section 8(d)(iii), inclusive, or Section 8(h) (but not including any action described in any such Section) 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 Preferred Stock).

(v) Notwithstanding anything herein to the contrary, no adjustment under this Section 8(d) 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 Preferred Stock pursuant hereto.

(vi) Notwithstanding anything herein to the contrary, no adjustment under this Section 8(d) 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 __, 2001/, 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.

(e) 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.

(f) Promptly following any increase or decrease in the Conversion Price, the Corporation shall deliver to each registered holder of Preferred Stock a certificate, signed by the President or a Vice President and by the Treasurer or an

1/ As in effect upon signing.

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.

(g) No fractional shares or scrip representing fractional shares shall be issued upon the conversion of any shares of Preferred Stock. If more than one share of 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 Preferred Stock so surrendered. If the conversion of any share or shares of 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.

(h) 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 successor or purchasing Person, as the case may be, shall execute and deliver to each holder of Preferred Stock at least 5 Business Days prior to effecting any of the foregoing Transactions a certificate that the holder of each share of Preferred Stock then outstanding shall have the right thereafter to convert such share of 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 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 Section 8. 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 Preferred Stock upon conversion of the shares of Preferred Stock as provided above. The provisions of this Section 8(h) and any equivalent thereof in any such certificate similarly shall apply to successive Transactions.

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(i) 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 Section 8(d)(vi), 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 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, 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.

(j) The Corporation shall at all times reserve and keep available for issuance upon the conversion of the Preferred Stock pursuant to Section 8(a) 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 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 Preferred Stock.

(k) The issuance or delivery of certificates for Class A Common Stock upon the conversion of shares of Preferred Stock pursuant to Section 8(a) shall be made without charge to the converting holder of shares of Preferred Stock for such certificates

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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 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 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.

(l) 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 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 Section 8(d) above.

Section 9. Certain Remedies.

Any registered holder of Preferred Stock shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Certificate of Designation and to enforce specifically the terms and provisions of this Certificate of Designation 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.

Section 10. Definitions.

For the purposes of this Certificate of Designation of Preferred Stock, 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; provided that "Affiliate" shall not include the Purchaser or any Affiliate of the Purchaser.

"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 York are authorized or required by law or executive order to close.

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

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(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 becomes 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 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 "Continuing Director" shall mean any member of the Board of Directors on the Initial Closing Date (as defined in the Stock Purchase Agreement) and any 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 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 shareholders 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 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

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such transaction; provided that any such recapitalization shall not be considered a Change of Control if the holders of the 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 share.

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

"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 herein for the determination thereof, (a) the average daily Market 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 Exchange

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 fully distributed" and (ii) no consideration is given for minority investment discounts, or discounts related to illiquidity or restrictions on 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 winding up) to the Preferred Stock including, without limitation, the Common Stock.

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"Liquidation Preference" with respect to a share of 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 Stock 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 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 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 _____, 2000.

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

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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 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.

"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 equity 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 trading.

Section 11. Modification or Amendment.

Except as specifically set forth herein, modifications or amendments to this Certificate of Designation may be made by the Corporation with the consent of the holders of at least 50% of the outstanding shares of Preferred Stock.

IN WITNESS WHEREOF, Genesee & Wyoming, Inc. has caused this Certificate to be duly executed in its corporate name on this ____ day of _____, 2000.

GENESEEE & WYOMING INC.

By: _____
Name:
Title:

REGISTRATION RIGHTS AGREEMENT

between

GENESEE & WYOMING INC.

and

THE 1818 FUND III, L.P.

Dated December 12, 2000

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REGISTRATION RIGHTS AGREEMENT, dated as of December 12, 2000, between GENESEE & WYOMING INC., a Delaware corporation (the "COMPANY"), and THE 1818 FUND III, L.P., a Delaware limited partnership (the "PURCHASER").

1. BACKGROUND. Pursuant to a Stock Purchase Agreement, dated October 19, 2000, by and between the Company and the Purchaser (the "STOCK PURCHASE AGREEMENT"), (i) the Purchaser has agreed to purchase from the Company, and the Company has agreed to issue to the Purchaser, up to an aggregate of 25,000 shares of 4.0% Senior Redeemable Convertible Preferred Stock, Series A, \$.01 par value per share (the "PREFERRED STOCK"), for a price per share of \$1,000.00. The Preferred Stock is convertible, at the option of the Purchaser, into Class A Common Stock. Capitalized terms used herein but not otherwise defined shall have the meanings given them in the Stock Purchase Agreement or in Section 3 hereof.

2. REGISTRATION UNDER SECURITIES ACT, ETC.

2.1 REGISTRATION ON REQUEST.

(a) REQUEST. Subject to Section 2.1(f), at any time following December 12, 2001, one or more holders (the "INITIATING HOLDERS") of 25% or more of the total number of shares of Class A Common Stock issued or issuable upon conversion or issued upon exchange of the Preferred Stock that has been issued pursuant to the Stock Purchase Agreement, may, upon written request (if such request involves an underwritten offering, each such request shall specify the number of shares to be included in such registration and the acceptable price range for the shares to be included in such registration), require the Company to effect the registration under the Securities Act of any Registrable Securities held by such Initiating Holders. Should the Initiating Holders request registration of the Preferred Stock that constitute Registrable Securities, any legal expenses arising as a result of conforming the Preferred Stock for public trading shall be divided equally between and paid by the Company and the Initiating Holders. The Company promptly will give written notice of such requested registration to all other holders of Registrable Securities who are entitled to join in such registration. After December 12, 2001, the Company will use its reasonable best efforts to effect, not later than 90 days after the end of the period in which each request for registration is received (or, if the 90th day is not a business day, the first business day thereafter), the registration under the Securities Act, including, by means of a shelf registration on Form S-3 (or any successor form) pursuant to Rule 415 under the Securities Act if so requested in such request (but only if the Company is then eligible to use such a shelf registration and if Form S-3 (or

such successor form) is then available to the Company), of

(i) the Registrable Securities that the Company has been so requested to register by such Initiating Holders, and

(ii) all other Registrable Securities that the Company has been requested to register by the holders thereof (such holders

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together with the Initiating Holders hereinafter are referred to as the "SELLING HOLDERS") by written request given to the Company within 30 days after the giving of such written notice by the Company of such registration, all to the extent required to permit the disposition of the Registrable Securities so to be registered.

(b) REGISTRATION STATEMENT FORM. Registrations under this Section 2.1 shall be on such appropriate registration form of the Commission as shall be reasonably selected by the Company.

(c) EFFECTIVE REGISTRATION STATEMENT. A registration requested pursuant to this Section 2.1 shall not be deemed to have been effected:

(i) Subject to Section 2.7, unless a registration statement with respect thereto has become effective and remained effective in compliance with the provisions of the Securities Act with respect to the disposition of all Registrable Securities covered by such registration statement until the earlier of (x) such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof set forth in such registration statement and (y) 180 days after the effective date of such registration statement, except with respect to any registration statement filed pursuant to Rule 415 under the Securities Act, in which case the Company shall use its best efforts to keep such registration statement effective until 80% of the Registrable Securities included in such registration statement shall cease to be Registrable Securities,

(ii) if after it has become effective, such registration is interfered with by any stop order, injunction or other order or requirement of the Commission or other governmental agency or court for any reason not attributable to the Selling Holders and has not thereafter become effective, or

(iii) if the conditions to closing specified in the underwriting agreement, if any, entered into in connection with such registration are not satisfied or waived, other than by reason of a failure on the part of the Selling Holders

PROVIDED, HOWEVER, that in each of the foregoing cases, if a registration statement has not become effective due to the failure of a Selling Holder to perform its obligations under this agreement or in the event the Selling Holders withdraw or do not pursue the request for registration, then such registration shall be deemed to have been effected, except under circumstances described in Section 2.7.

(d) SELECTION OF UNDERWRITERS. If a requested registration pursuant to this Section 2.1 involves an underwritten offering, the

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underwriter or underwriters of each underwritten offering of the Registrable Securities so to be registered shall be selected by the Selling Holders of more than 50% of each class of Registrable Securities to be included in such registration and shall be reasonably acceptable to the Company.

(e) PRIORITY IN REQUESTED REGISTRATION. If the managing underwriter of any underwritten offering shall advise the Company (and the Company shall so advise each Selling Holder of Registrable Securities requesting registration in writing of such advice) that, in its opinion, the number of securities requested to be included in such registration exceeds the number that can be sold in such offering within a price range acceptable to the Initiating Holders (as specified in their request for registration), the Company, except as provided in the following sentence, will include in such registration, to the extent of the number and type that the Company is so advised can be sold in such offering, Registrable Securities requested to be included in such registration and securities held by Unirail, LLC and entitled to registration rights pursuant to the Registration Rights Agreement, dated September 30, 1999, between the Company and Unirail, LLC, pro rata among the Selling Holders requesting such registration and Unirail, LLC, on the basis of the estimated gross proceeds from the sale thereof. If the total number of Registrable Securities requested to be included in such registration cannot be included as provided in the preceding sentence, holders of Registrable Securities requesting registration thereof pursuant to Section 2.1, representing not less than 33 1/3% of the Registrable Securities with respect to which registration has been requested and constituting not less than 66 2/3% of the Initiating Holders, shall have the right to withdraw the request for registration by giving written notice to the Company within 20 days after receipt of such notice by the Company and, in the event of such withdrawal, such request shall not be counted for purposes of the requests for registration to which holders of Registrable Securities are entitled pursuant to Section 2.1 hereof. In connection with any such registration to which this Section 2.1(e) is applicable, no securities other than Registrable Securities or securities held by Unirail, LLC and entitled to registration rights pursuant to the Registration Rights Agreement, dated September 30, 1999, between the Company and Unirail, LLC, shall be covered by such registration.

(f) LIMITATIONS ON REGISTRATION ON REQUEST. Notwithstanding anything in this Section 2.1 or Section 2.3 to the contrary, in no event will the Company be required to (i) effect, in the aggregate, more than two registrations, or three registrations if the Purchaser has purchased Preferred Stock from the Company pursuant to the Stock Purchase Agreement for an aggregate purchase price of at least \$20,000,000, pursuant to this Section 2.1 or Section 2.3(d) (in respect of an underwritten "take-down"), or (ii) effect more than one registration pursuant to this Section 2.1 or Section 2.3(d) (in respect of an underwritten "take-down") within the twelve-month period occurring immediately subsequent to the effectiveness (within the meaning of Section 2.1(c)) of a registration statement filed pursuant to this Section 2.1 or Section 2.3(d) (in respect of an underwritten "take-down").

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(g) REDESIGNATION. In the case of Registrable Securities which are not Class A Common Stock, upon the request of holders of 51% of all such Registrable Securities to be covered by such registration or if advised by the managing underwriter of such offering, the Company shall reissue the Registrable Securities in denominations suitable for public trading (by depositary share arrangements or otherwise).

(i) EXPENSES. The Company will pay all Registration Expenses (except for any (x) underwriting commissions or discounts or (y) legal expenses for conforming Preferred Stock which shall be paid as set forth in Section 2.1(a)) in connection with any registration requested pursuant to this Section 2.1.

2.2 PIGGYBACK REGISTRATION.

(a) RIGHT TO INCLUDE REGISTRABLE SECURITIES.

Following December 12, 2001, if the Company at any time proposes to register any shares of Common Stock or any securities convertible into Common Stock under the Securities Act by registration on any form other than Forms S-4 or S-8, whether or not for sale for its own account, it will each such time give prompt written notice to all holders of Registrable Securities of its intention to do so and of such holders' rights under this Section 2.2. Upon the written request of any such holder (a "REQUESTING HOLDER") made as promptly as practicable and in any event within 10 days after the receipt of any such notice, the Company will use its reasonable best efforts to effect the registration under the Securities Act of all Registrable Securities that the Company has been so requested to register by the Requesting Holders thereof; PROVIDED that should a holder fail to provide timely notice to the Company as to whether it wishes to participate in a registration, such holder will forfeit any rights to participate in the registration with respect to such proposed offering; PROVIDED, FURTHER, that prior to the effective date of the registration statement filed in connection with such registration, immediately upon notification to the Company from the managing underwriter of the price at which such securities are to be sold, if such price is below the price that any Requesting Holder shall have indicated to be acceptable to such Requesting Holder, the Company shall so advise such Requesting Holder of such price, and such Requesting Holder shall then have the right to withdraw its request to have its Registrable Securities included in such registration statement; and, PROVIDED, FURTHER, that if, at any time after giving written notice of its intention to register any securities and prior to the effective date of the registration statement filed in connection with such registration, the Company shall determine for any reason not to register or to delay registration of such securities, the Company may, at its election, give written notice of such determination to each Requesting Holder of Registrable Securities and (i) in the case of a determination not to register, shall be relieved of its obligation to register any Registrable Securities in connection with such registration (but not from any obligation of the Company to pay the Registration Expenses in connection therewith), without prejudice, however, (but subject to Section 2.7) to the rights of any holder or holders of Registrable Securities entitled to do so to cause such registration to be effected as a registration under Section 2.1, and (ii) in the case of a determination to delay

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registering, shall be permitted to delay registering any Registrable Securities, for the same period as the delay in registering such other securities. No registration effected under this Section 2.2 shall relieve the Company of its obligation to effect any registration upon request under Section 2.1. As between the Company and the Requesting Holders, the Company shall be entitled to select the underwriters in connection with any registration pursuant to this Section 2.2.

(b) PRIORITY IN PIGGYBACK REGISTRATIONS. If the

managing underwriter of any underwritten offering shall inform the Company of its opinion that the number or type of Registrable Securities requested to be included in such registration would materially adversely affect the timing, price or distribution of such offering, and the Company has so advised the Requesting Holders in writing, then the Company will include in such registration, to the extent of the number and type that the Company is so advised can be sold in (or during the time of) such offering, FIRST, all securities proposed by the Company to be sold for its own account, SECOND, such securities requested to be included in such registration by such Persons having exercised "demand" registration rights pursuant to written agreements with the Company in respect of such registration that require that their securities be included in such registration, THIRD, such Registrable Securities requested to be included in such registration and (i) such securities held by Robert Wheeler and entitled to registration rights pursuant to the Stock Option Agreement, dated April 15, 1999, between the Company and Robert Wheeler, (ii) such securities held by Geoffrey Chambers and entitled to registration rights pursuant to the Stock Option Agreement, dated April 15, 1999, between the Company and Geoffrey Chambers and (iii) such securities held by Unirail, LLC and entitled to registration rights pursuant to the Registration Rights Agreement,

dated September 30, 1999, between the Company and Unirail, LLC, pro rata among the foregoing on the basis of the estimated proceeds from the sale thereof, and FOURTH, all other securities proposed to be registered.

(c) EXPENSES. The Company will pay all Registration Expenses in connection with any registration effected pursuant to this Section 2.2.

2.3 SHELF REGISTRATION

(a) FILING AND EFFECTIVENESS OF SHELF REGISTRATION. Promptly following December 12, 2001, if requested by holders of at least 25% of the Registrable Securities, if the Company is eligible to use Form S-3 (or such successor form) the Company shall file an "evergreen" shelf registration statement pursuant to Rule 415 under the Securities Act (the "SHELF REGISTRATION") on Form S-3 (or any successor form) solely with respect to (i) the Registrable Securities and (ii) to the extent requested, securities held by Unirail, LLC and entitled to registration rights pursuant to the Registration Rights Agreement, dated September 30, 1999, between the Company and Unirail, LLC. The Company shall use its reasonable best efforts to have the Shelf Registration declared effective as soon as reasonably practicable after such filing, and shall use its reasonable best efforts to keep the Shelf Registration effective and updated,

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from the date such Shelf Registration is declared effective until such time as 80% of the Registrable Securities included in such registration statement shall cease to be Registrable Securities.

(b) SUPPLEMENTS AND AMENDMENTS; EXPENSES. The Company shall supplement or amend, if necessary, the Shelf Registration, as required by the instructions applicable to such registration form or by the Securities Act or as reasonably required by the holders of (or any underwriter for) more than 50% of the Registrable Securities if such holders have been advised by counsel that such amendment or supplement is required to comply with the Securities Act and the Company shall furnish to the holders of the Registrable Securities to which the Shelf Registration relates copies of any such supplement or amendment prior to its being used and/or filed with the Commission. The Company shall pay all Registration Expenses in connection with the Shelf Registration, whether or not it becomes effective, and whether all, none or some of the Registrable Securities are sold pursuant to the Shelf Registration. In no event shall the Shelf Registration include securities other than Registrable Securities and securities held by Unirail, LLC and entitled to registration rights pursuant to the Registration Rights Agreement, dated September 30, 1999, between the Company and Unirail, LLC, unless holders of more than 662/3% of the Registrable Securities consent to such inclusion.

(c) EFFECTIVE SHELF REGISTRATION STATEMENT. A Shelf Registration pursuant to this Section 2.3 shall not be deemed to have been effected unless a Shelf Registration has become effective and remained effective in compliance with the provisions of the Securities Act with respect to the disposition of all Registrable Securities and until such time as 80% of the Registrable Securities included in such Shelf Registration have been disposed of under the Shelf Registration.

(d) UNDERWRITTEN SHELF "TAKE-DOWN". It is expressly agreed and understood that for purposes of this Agreement any subsequent underwritten "take-down" with respect to the Shelf Registration shall constitute a registration for purposes of Section 2.1 and shall be counted toward the number of registrations required to be effected by the Company under Section 2.1(f); PROVIDED, HOWEVER, that any subsequent "take-downs" with respect to the Shelf Registration which are not underwritten shall not constitute a registration for purposes of Section 2.1 and shall not be counted toward the number of registrations required to be effected by the Company under Section 2.1(f). The Company shall not be required to effect a registration pursuant to

Section 2.1 if the Company shall at the time have effective a Shelf Registration pursuant to which the holders that requested such registration could effect the disposition of such holders' Registrable Securities in the manner requested.

(e) LIMITATION ON SHELF REGISTRATIONS.

Notwithstanding anything in this Section 2.3 to the contrary, in no event shall the Company be required to effect more than one Shelf Registration pursuant to this Section 2.3.

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2.4 REGISTRATION PROCEDURES. Subject to Section 2.7, if and whenever the Company is required to effect the registration of any Registrable Securities under the Securities Act as provided in Sections 2.1, 2.2, and 2.3, the Company will, as expeditiously as possible:

(i) use its reasonable best efforts to prepare and (within 90 days after the end of the period within which requests for registration may be given to the Company or in any event as soon thereafter as is reasonably practicable) file with the Commission the requisite registration statement to effect such registration on any form for which the Company then qualifies and which counsel for the Company shall deem appropriate and available for the sale of the Registrable Securities to be registered thereunder in accordance with the intended method of distribution thereof, and thereafter use its reasonable best efforts to cause such registration statement to become effective; PROVIDED, HOWEVER, the Company will effect such registration statement on a Form S-3 and pursuant to Rule 415 if the Company is eligible to use Form S-3 and if requested by the Initiating Holders; and, PROVIDED, FURTHER, that the Company may discontinue any registration of its securities that are not Registrable Securities (and, under the circumstances specified in Section 2.2(a), its securities that are Registrable Securities) at any time prior to the effective date of the registration statement relating thereto;

(ii) use its reasonable best efforts to prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities covered by such registration statement until the earlier of (a) such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof set forth in such registration statement and (b) 180 days after the effective date of such registration statement, except with respect to any registration statement filed pursuant to Rule 415 under the Securities Act if the Company is eligible to file a registration statement on Form S-3, in which case the Company shall use its best efforts to keep the registration statement effective and updated, from the date such registration statement is declared effective until such time as 80% of the Registrable Securities included in such registration statement cease to be Registrable Securities;

(iii) furnish to each seller of Registrable Securities covered by such registration statement, such number of conformed copies of such registration statement and of each such amendment and supplement thereto (in each case including all exhibits), such number of copies of the prospectus contained in such registration statement (including each preliminary prospectus and any summary prospectus) and any other prospectus filed under Rule 424

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under the Securities Act, in conformity with the requirements of the Securities Act, and such other documents, as such seller may reasonably request;

(iv) use its reasonable best efforts (x) to register or qualify all Registrable Securities and other securities covered by such registration statement under such other securities or blue sky laws of such States of the United States of America where an exemption is not available and as the sellers of Registrable Securities covered by such registration statement shall reasonably request, (y) to keep such registration or qualification in effect for so long as such registration statement remains in effect and (z) to take any other action that may be reasonably necessary or advisable to enable such sellers to consummate the disposition in such jurisdictions of the securities to be sold by such sellers, except that the Company shall not for any such purpose be required to qualify generally to do business as a foreign corporation or keep such qualification in effect in any jurisdiction wherein it would not but for the requirements of this subdivision (iv) be obligated to be so qualified or to consent to general service of process or subject itself to taxation in any such jurisdiction;

(v) use its reasonable best efforts to cause all Registrable Securities covered by such registration statement to be registered with or approved by such other federal or state governmental agencies or authorities as may be necessary in the opinion of counsel to the Company and counsel to the seller or sellers of Registrable Securities to enable the seller or sellers thereof to consummate the disposition of such Registrable Securities;

(vi) in the case of an underwritten or "best efforts" offering, furnish at the effective date of such registration statement to each seller of Registrable Securities, and each such seller's underwriters, if any, a signed counterpart of:

(x) an opinion of counsel for the Company, dated the effective date of such registration statement and, if applicable, the date of the closing under the underwriting agreement, and

(y) a "comfort" letter signed by the independent public accountants who have certified the Company's financial statements included or incorporated by reference in such registration statement,

covering substantially the same matters with respect to such registration statement (and the prospectus included therein) and, in the case of the accountants' comfort letter, with respect to events subsequent to the date of such financial statements, as are customarily covered in opinions of issuer's counsel and in accountants' comfort letters delivered to the underwriters in underwritten public offerings of securities and, in the case of the accountants' comfort letter, such other financial

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matters, and, in the case of the legal opinion, such other legal matters, as the underwriters may reasonably request;

(vii) cause representatives of the Company to participate in any "road show" or "road shows" reasonably requested by any underwriter of an underwritten or "best efforts" offering of any Registrable Securities; PROVIDED that such offering relates to at least 25% of the Registrable Securities;

(viii) notify each seller of Registrable Securities

covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act, upon discovery that, or upon the happening of any event as a result of which, the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, in the light of the circumstances under which they were made, and at the request of any such seller promptly prepare and furnish to it a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances under which they were made;

(ix) otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the Commission, and, if required, make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve months, but not more than eighteen months, beginning with the first full calendar month after the effective date of such registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 promulgated thereunder, and promptly furnish to each such seller of Registrable Securities a copy of any amendment or supplement to such registration statement or prospectus;

(x) provide and cause to be maintained a transfer agent and registrar (which, in each case, may be the Company) for all Registrable Securities covered by such registration statement from and after a date not later than the effective date of such registration; and

(xi) use its reasonable best efforts to list all Registrable Securities covered by such registration statement on the NASDAQ or any national securities exchange on which Registrable Securities of the same class covered by such registration statement are then listed and, if no such Registrable Securities are so listed, on the NASDAQ or any national securities exchange on which the Class A Common Stock is then listed.

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The Company may require each seller of Registrable Securities as to which any registration is being effected to promptly furnish in writing to the Company such information regarding such seller and the distribution of such securities as the Company may from time to time reasonably request in writing; PROVIDED, that any such information or questionnaires shall be given or made by a seller of Registrable Securities without representation or warranty of any kind whatsoever except representations with respect to the identity of such seller, such seller's Registrable Securities and such seller's intended method of distribution or any other representations required by applicable law.

Each holder of Registrable Securities agrees by acquisition of such Registrable Securities that, upon receipt of any notice from the Company of the happening of any event of the kind described in subdivision (viii) of this Section 2.4, such holder will forthwith discontinue such holder's disposition of Registrable Securities pursuant to the registration statement relating to such Registrable Securities until such holder's receipt of the copies of the supplemented or amended prospectus contemplated by subdivision (viii) of this Section 2.4 and, if so directed by the Company, will deliver to the Company (at the Company's expense) all copies, other than permanent file copies, then in such holder's possession of the prospectus relating to such Registrable Securities current at the time of receipt of such notice.

(a) REQUESTED UNDERWRITTEN OFFERINGS. If

requested by the underwriters for any underwritten offering by holders of Registrable Securities pursuant to a registration requested under Section 2.1, the Company will use its reasonable best efforts to enter into an underwriting agreement with such underwriters for such offering, such agreement to be reasonably satisfactory in substance and form to a majority of such holders and the underwriters and to contain such representations and warranties by the Company and such other terms as are generally prevailing in agreements of that type, including, without limitation, indemnities to the effect and to the extent provided in Section 2.8. The holders of the Registrable Securities proposed to be sold by such underwriters will reasonably cooperate with the Company in the negotiation of the underwriting agreement. Such holders of Registrable Securities to be sold by such underwriters shall be parties to such underwriting agreement and may, at their option, require that any or all of the representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of such underwriters shall also be made to and for the benefit of such holders of Registrable Securities and that any or all of the conditions precedent to the obligations of such underwriters under such underwriting agreement be conditions precedent to the obligations of such holders of Registrable Securities. No holder of Registrable Securities shall be required to make any representations or warranties to, or agreements with, the Company other than representations, warranties or agreements regarding the absence of litigation against the holder in respect of its intended distribution of Registrable Securities, the identity of such holder, such holder's due organization and good standing, such holder's authority to execute and deliver the underwriting agreement, such holder's Registrable Securities

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(including title and absence of liens) and such holder's intended method of distribution or any other representations required by applicable law.

(b) PIGGYBACK UNDERWRITTEN OFFERINGS. If the

Company proposes to register any of its securities under the Securities Act as contemplated by Section 2.2 and such securities are to be distributed by or through one or more underwriters, the Company will, if requested by any Requesting Holder of Registrable Securities, use its reasonable best efforts to arrange for such underwriters to include all the Registrable Securities to be offered and sold by such Requesting Holder among the securities of the Company to be distributed by such underwriters, subject to the provisions of Section 2.2(b). The holders of Registrable Securities to be distributed by such underwriters shall be parties to the underwriting agreement between the Company and such underwriters and may, at their option, require that any or all of the representations and warranties by, and the other agreements on the part of, the Company to and for the benefit of such underwriters shall also be made to and for the benefit of such holders of Registrable Securities and that any or all of the conditions precedent to the obligations of such underwriters under such underwriting agreement be conditions precedent to the obligations of such holders of Registrable Securities. No holder of Registrable Securities shall be required to make any representations or warranties to, or agreements with, the Company or the underwriters other than representations, warranties or agreements regarding the absence of litigation against the holder in respect of its intended distribution of Registrable Securities, the identity of such holder, such holder's due organization and good standing, such holder's authority to execute and deliver the underwriting agreement, such holder's Registrable Securities (including title and absence of liens) and such holder's intended method of distribution or any other representations required by applicable law.

(c) UNDERWRITING DISCOUNTS AND COMMISSION. The

holders of Registrable Securities sold in any offering pursuant to Section 2.5(a) or Section 2.5(b) shall pay all underwriting discounts and commissions of the underwriter or underwriters with respect to the Registrable Securities sold thereby.

2.6 PREPARATION; REASONABLE INVESTIGATION. In connection with the preparation and filing of each registration statement under the Securities Act pursuant to this Agreement, the Company will give the holders of Registrable Securities registered under such registration statement, their underwriters, if any, and their respective counsel the opportunity to review such registration statement, each prospectus included therein or filed with the Commission, and each amendment thereof or supplement thereto, and will give each of them such reasonable access to its books and records and such opportunities to discuss the business of the Company with its officers and the independent public accountants who have certified its financial statements as shall be necessary, in the opinion of such holders' and such underwriters' respective counsel, to conduct a reasonable investigation within the meaning of the Securities Act; provided, however that (A) such holders, underwriters and counsel agree in writing to keep all non-public information confidential and to use such information only in accordance with applicable

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law and (B) unless the disclosure of such information is necessary to avoid or correct a material misstatement or omission in the registration statement or the release of such information is ordered pursuant to a subpoena or other order from a court of competent jurisdiction, the Company shall not be required to provide any information pursuant to this Section 2.6 if (i) the Company is advised by counsel for the Company, that to do so would cause the Company to forfeit an attorney-client privilege that was applicable to such information or (ii) if either (A) the Company has requested and been granted from the Commission confidential treatment of such information contained in any filing with the Commission or documents provided supplementally or otherwise or (B) the Company reasonably determines in good faith that such information is confidential and so notifies the holders in writing unless prior to furnishing any such information with respect to clause (ii) such holders and their representatives agree to enter into a confidentiality agreement in customary form and subject to customary exceptions.

2.7 LIMITATIONS, CONDITIONS AND QUALIFICATIONS TO OBLIGATIONS UNDER REGISTRATION COVENANTS. The Company shall be entitled to (A) postpone, for a reasonable period of time (but not exceeding an aggregate of 90 days within any 360 day period), the filing or updating of any registration statement otherwise required to be prepared and filed by it pursuant to Section 2.1 or (B) take such actions that would result in holders of Registrable Securities not being able to offer or sell Registrable Securities pursuant to registration for a reasonable period of time, if (i) the Company determines, in its good faith judgment, that such registration or offering would (x) require the disclosure of material information for which the Company or any of its subsidiaries has a bona fide business reason for preserving as confidential (provided that the period for which holders of Registrable Securities shall not be able to offer or sell Registrable Securities pursuant to registration in accordance with this Section 2.7(B)(i)(x) shall not exceed 15 days within any 360 day period) or (y) interfere with any material financing, acquisition, corporate reorganization or other material transaction involving the Company or any of its affiliates (provided that the period for which holders of Registrable Securities shall not be able to offer or sell Registrable Securities pursuant to registration in accordance with this Section 2.7(B)(i)(y), together with any period under Section 2.7(B)(i)(x), shall not exceed 90 days in any 360 day period) or (ii) if (A) the effective date of any registration statement would otherwise be at least 45 calendar days, but fewer than 90 calendar days, after the end of the Company's fiscal year and (B) the Securities Act requires the Company to include audited financials as of the end of such fiscal year, the Company may delay the effectiveness of such registration statement for such period as is reasonably necessary to include therein the audited financial statements for such fiscal year (but in no event shall the Company delay more beyond 90 calendar days after the Company's fiscal year), and, in each case, promptly gives the holders of Registrable Securities requesting registration thereof written notice of such determination, containing a general statement of the reasons for such postponement or such actions, as the case may be, and an approximation of the anticipated delay; PROVIDED, that the number of days of any

actual Suspension Period (as hereinafter defined) shall be added on to the end of the periods specified in Section 2.1(c)(i) or 2.4(ii). Any such period during which the Company is excused from filing, updating or keeping the registration statement effective

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and usable for offers and sales of Registrable Securities is referred to herein as a "Suspension Period". A Suspension Period shall commence on and include the date that the Company gives notice that the registration statement is no longer effective or the prospectus included therein is no longer usable for offers and sales of Registrable Securities and shall end on the date on which each seller of Registrable Securities covered by the registration statement either receives copies of the supplemented or amended prospectus contemplated by Section 2.4(viii) hereof or is advised in writing by the Company that the use of the prospectus may be resumed. Notwithstanding anything to the contrary in this Section 2.7, in no event shall Suspension Periods be in effect for more than an aggregate of 90 days in any 360 day period. If the Company shall so postpone the filing of a registration statement, holders of Registrable Securities requesting registration thereof pursuant to Section 2.1, representing not less than 33 1/3% of the Registrable Securities with respect to which registration has been requested and constituting not less than 66 2/3% of the Initiating Holders, shall have the right to withdraw the request for registration by giving written notice to the Company within 30 days after receipt of the notice of postponement and, in the event of such withdrawal, such request shall not be counted for purposes of the requests for registration to which holders of Registrable Securities are entitled pursuant to Section 2.1 hereof.

2.8 INDEMNIFICATION.

(a) INDEMNIFICATION BY THE COMPANY. The Company will, and hereby does, indemnify and hold harmless, in the case of any registration statement filed pursuant to Section 2.1, 2.2 or 2.3, each seller of any Registrable Securities covered by such registration statement and each other Person, if any, who participates as an underwriter in the offering or sale of such securities and each other Person, if any, who controls such seller or any such underwriter within the meaning of the Securities Act, and their respective directors, officers, partners, members, agents and affiliates against any losses, claims, damages or liabilities, joint or several, to which such seller or underwriter or any such director, officer, partner, member, agent, affiliate or controlling person may become subject under the Securities Act or otherwise, including, without limitation, the reasonable fees and expenses of legal counsel (including those incurred in connection with any claim for indemnity hereunder), insofar as such losses, claims, damages or liabilities (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which such securities were registered under the Securities Act, any preliminary prospectus, final prospectus or summary prospectus contained therein, or any amendment or supplement thereto, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, and the Company will reimburse such seller or underwriter and each such director, officer, partner, member, agent, affiliate and controlling Person for any legal or any other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, liability, action or proceeding; PROVIDED, HOWEVER, that the Company shall not be liable in

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any such case to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, any such preliminary prospectus,

final prospectus, summary prospectus, amendment or supplement in reliance upon and in conformity with written information furnished to the Company by or on behalf of such seller or underwriter, as the case may be, specifically stating that it is for use in the preparation thereof; and PROVIDED FURTHER, that the Company shall not be liable to any Person who participates as an underwriter in the offering or sale of Registrable Securities or any other Person, if any, who controls such underwriter within the meaning of the Securities Act, or, to the extent required by law, Selling Stockholder, in any such case to the extent that any such loss, claim, damage, liability (or action or proceeding, in respect thereof) or expense arises out of such Person's or Selling Stockholder's, as the case may be, failure to send or give a copy of the final prospectus, as the same may have been supplemented or amended, to the Person asserting an untrue statement or alleged untrue statement or omission or alleged omission at or prior to the written confirmation of the sale of Registrable Securities to such Person if such statement or omission was corrected in such final prospectus and such Person or Selling Stockholder, as the case may be, was required by law to send or give a copy of a prospectus to the Person making such assertions. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such seller or any such director, officer, partner, member, agent or controlling person and shall survive the transfer of such securities by such seller.

(b) INDEMNIFICATION BY THE SELLERS. As a condition to including any Registrable Securities in any registration statement, the Company shall have received an undertaking satisfactory to it from the prospective seller of such Registrable Securities, to indemnify and hold harmless (in the same manner and to the same extent as set forth in Section 2.8(a)) the Company, and each director of the Company, each officer of the Company and each other Person, if any, who participates as an underwriter in the offering or sale of such securities and each other Person who controls the Company or any such underwriter within the meaning of the Securities Act, with respect to any statement or alleged statement in or omission or alleged omission from such registration statement, any preliminary prospectus, final prospectus or summary prospectus contained therein, or any amendment or supplement thereto, if such statement or alleged statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such seller specifically stating that it is for use in the preparation of such registration statement, preliminary prospectus, final prospectus, summary prospectus, amendment or supplement; PROVIDED, HOWEVER, that the liability of such indemnifying party under this Section 2.8(b) shall be limited to the amount of the net proceeds received by such indemnifying party in the offering giving rise to such liability. Such indemnity shall remain in full force and effect, regardless of any investigation made by or on behalf of the Company or any such director, officer or controlling person and shall survive the transfer of such securities by such seller.

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(c) NOTICES OF CLAIMS, ETC. Promptly after receipt by an indemnified party of notice of the commencement of any action or proceeding (including any governmental investigation) involving a claim referred to in Section 2.8(a) or (b), such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the latter of the commencement of such action; PROVIDED, HOWEVER, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations under the preceding subdivisions of this Section 2.8, except to the extent that the indemnifying party is actually prejudiced by such failure to give notice. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it may wish, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party; PROVIDED, HOWEVER, that any indemnified party may, at its own expense, retain separate counsel to participate in such defense. Notwithstanding the foregoing, in any action or proceeding in which both the Company and an indemnified party is, or is reasonably likely to become, a party, such indemnified party shall

have the right to employ separate counsel at the Company's expense and to control its own defense of such action or proceeding if, in the reasonable opinion of counsel to such indemnified party, (a) there are or may be legal defenses available to such indemnified party or to other indemnified parties that are different from or additional to those available to the Company or (b) any conflict or potential conflict exists between the Company and such indemnified party that would make such separate representation advisable; PROVIDED, HOWEVER, that in no event shall the Company be required to pay fees and expenses under this Section 2.8 for more than one firm of attorneys in any jurisdiction in any one legal action or group of related legal actions. No indemnifying party shall be liable for any settlement of any action or proceeding effected without its written consent, which consent shall not be unreasonably withheld unless the indemnifying party shall have agreed in writing in a form satisfactory to the indemnified party to pay any amount (and not challenge an indemnified party's right to indemnification under this Section 2.8) required to be paid to settle a claim, in which case the indemnifying party may grant or withhold its consent in its sole discretion. No indemnifying party shall, without the prior written consent of the indemnified party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation or which requires action other than the payment of money by the indemnifying party.

(d) CONTRIBUTION. If the indemnification provided for in this Section 2.8 shall for any reason be held by a court to be unavailable to an indemnified party under Section 2.8(a) or (b) hereof in respect of any loss, claim, damage or liability, or any action in respect thereof, then, in lieu of the amount paid or payable under Section 2.8(a) or (b), the indemnified party and the indemnifying party under Section 2.8(a) or (b) shall contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating the same, including those incurred in connection with any claim for

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indemnity hereunder), (i) in such proportion as is appropriate to reflect the relative fault of the Company and the prospective sellers of Registrable Securities covered by the registration statement which resulted in such loss, claim, damage or liability, or action or proceeding in respect thereof, with respect to the statements or omissions which resulted in such loss, claim, damage or liability, or action or proceeding in respect thereof, as well as any other relevant equitable considerations or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as shall be appropriate to reflect the relative benefits received by the Company and such prospective sellers from the offering of the securities covered by such registration statement; PROVIDED, HOWEVER, that for purposes of this clause (ii), the relative benefits received by the prospective sellers shall be deemed not to exceed the amount of proceeds received by such prospective sellers. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. Such prospective sellers' obligations to contribute as provided in this Section 2.8(d) are several in proportion to the relative value of their respective Registrable Securities covered by such registration statement and not joint. In addition, no Person shall be obligated to contribute hereunder any amounts in payment for any settlement of any action or claim effected without such Person's consent, which consent shall not be unreasonably withheld.

(e) OTHER INDEMNIFICATION. Indemnification and contribution similar to that specified in the preceding subdivisions of this Section 2.8 (with appropriate modifications) shall be given by the Company and each seller of Registrable Securities with respect to any required registration or other qualification of securities under any federal or state law or regulation of any governmental authority other than the Securities Act.

(f) INDEMNIFICATION PAYMENTS. The

indemnification and contribution required by this Section 2.8 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or expense, loss, damage or liability is incurred.

3. DEFINITIONS. As used herein, unless the context otherwise requires, the following terms have the following respective meanings:

"CERTIFICATE OF DESIGNATION" means the Certificate of Designation of the Series A Preferred Stock.

"CLASS A COMMON STOCK" means the Class A Common Stock of the Company, par value \$.01 per share, and having one vote per share.

"CLASS B COMMON STOCK" means the Class B Common Stock of the Company, par value \$.01 per share, and having ten votes per share.

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"COMMISSION" means the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

"COMMON STOCK" shall mean the Class A Common Stock and the Class B Common Stock, and each other class of capital stock of the Company into which such stock is reclassified or reconstituted.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended, or any other similar Federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time. Reference to a particular section of the Securities Exchange Act of 1934, as amended, shall include a reference to the comparable section, if any, of any such similar Federal statute.

"PERSON" means any individual, firm, corporation, partnership, limited liability company, 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 or otherwise) of any such entity.

"REGISTRABLE SECURITIES" means (i) any shares of Class A Common Stock issued or issuable upon conversion or exchange of the Preferred Stock, (ii) if the Purchaser has purchased Preferred Stock from the Company pursuant to the Stock Purchase Agreement for an aggregate purchase price of at least \$25,000,000, the Preferred Stock and (iii) any Related Registrable Securities. As to any particular Registrable Securities, once issued, such securities shall cease to be Registrable Securities when (a) a registration statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such registration statement, (b) they shall have been sold as permitted by Rule 144 (or any successor provision) under the Securities Act and the purchaser thereof does not receive "restricted securities" as defined in Rule 144, (c) they shall have been otherwise transferred, new certificates for them not bearing a legend restricting further transfer shall have been delivered by the Company and subsequent public distribution of them shall not, in the opinion of counsel for the holders, require registration of them under the Securities Act or (d) they shall have ceased to be outstanding. All references to percentages of Registrable Securities shall be calculated pursuant to Section 9.

"REGISTRATION EXPENSES" means all expenses incident to the Company's performance of or compliance with Section 2, including, without limitation, all registration and filing fees, all fees of the New York Stock Exchange, Inc., NASDAQ, other national securities exchanges or the National Association of Securities Dealers, Inc., all reasonable fees and expenses of

complying with securities or blue sky laws, all word processing, duplicating and printing expenses, messenger and delivery expenses, the fees and disbursements of counsel for the Company and of its independent public accountants, including the expenses of "cold comfort" letters required by or incident to such performance and compliance, any reasonable fees and disbursements of

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underwriters customarily paid by issuers or sellers of securities (excluding any underwriting fees, discounts or commissions relating to the sale or disposition of the Registrable Securities) and the reasonable fees and expenses of one counsel to the Selling Holders (selected by Selling Holders representing at least 50% of the Registrable Securities covered by such registration). Notwithstanding the foregoing, in the event the Company shall determine, in accordance with Section 2.2(a) or Section 2.7, not to register any securities with respect to which it had given written notice of its intention to so register to holders of Registrable Securities, all of the costs of the type (and subject to any limitation to the extent) set forth in this definition and incurred by Requesting Holders in connection with such registration on or prior to the date the Company notifies the Requesting Holders of such determination shall be deemed Registration Expenses.

"RELATED REGISTRABLE SECURITIES" means, with respect to shares of Preferred Stock or shares of Class A Common Stock issuable upon conversion or exchange of the Preferred Stock, any securities of the Company issued or issuable with respect to such shares of Preferred Stock or Class A Common Stock by way of a dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization or otherwise.

"SECURITIES ACT" means the Securities Act of 1933, as amended, or any similar Federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time. References to a particular section of the Securities Act of 1933, as amended, shall include a reference to the comparable section, if any, of any such similar Federal statute.

"STOCKHOLDERS AGREEMENT" means the Letter Agreement, dated December 12, 2000, by and among the Company, the Purchaser and the other parties signatory thereto.

4. RULE 144 AND RULE 144A. The Company shall take all actions reasonably necessary to enable holders of Registrable Securities to sell such securities without registration under the Securities Act within the limitation of the provisions of (a) Rule 144 under the Securities Act, as such Rule may be amended from time to time, (b) Rule 144A under the Securities Act, as such Rule may be amended from time to time, or (c) any similar rules or regulations hereafter adopted by the Commission. Upon the request of any holder of Registrable Securities, the Company will deliver to such holder a written statement as to whether it has complied with such requirements.

5. AMENDMENTS AND WAIVERS. This Agreement may be amended with the consent of the Company and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company shall have obtained the written consent to such amendment, action or omission to act, of the holder or holders of at least 50% of the Registrable Securities affected by such amendment, action or omission to act. Each holder of any Registrable Securities at the time or thereafter outstanding shall be bound by any consent authorized by this Section 5,

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whether or not such Registrable Securities shall have been marked to indicate such consent.

6. NOMINEES FOR BENEFICIAL OWNERS. In the event that any Registrable Securities are held by a nominee for the beneficial owner thereof, the beneficial owner thereof may, at its election in writing delivered to the Company, be treated as the holder of such Registrable Securities for purposes of any request or other action by any holder or holders of Registrable Securities pursuant to this Agreement or any determination of any number or percentage of shares of Registrable Securities held by any holder or holders of Registrable Securities contemplated by this Agreement. If the beneficial owner of any Registrable Securities so elects, the Company may require assurances reasonably satisfactory to it of such owner's beneficial ownership of such Registrable Securities.

7. NOTICES. All notices, demands and other communications provided for or permitted hereunder shall be made in writing and shall be by registered or certified first-class mail, return receipt requested, telecopier, courier service or personal delivery:

(i) if to the Purchaser, addressed to it in the manner set forth in the Stock Purchase Agreement, or at such other address as it shall have furnished to the Company in writing in the manner set forth herein;

(ii) if to any other holder of Registrable Securities, at the address that such holder shall have furnished to the Company in writing in the manner set forth herein, or, until any such other holder so furnishes to the Company an address, then to and at the address of the last holder of such Registrable Securities who has furnished an address to the Company; or

(iii) if to the Company, addressed to it in the manner set forth in the Stock Purchase Agreement, or at such other address as the Company shall have furnished to each holder of Registrable Securities at the time outstanding in the manner set forth herein.

All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; when delivered to a courier, if delivered by overnight courier service; five Business Days after being deposited in the mail, postage prepaid, if mailed; and when receipt is acknowledged, if telecopied.

8. ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and, with respect to the Company, its respective successors and permitted assigns and, with respect to the Purchaser, any holder of any Registrable Securities, subject to the provisions respecting the minimum numbers of percentages of shares of Registrable Securities required in order to be entitled to certain rights, or take certain actions, contained herein. Except by operation of law, this Agreement may not be assigned by the Company without the prior written consent of

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the holders of a majority in interest of the Registrable Securities outstanding at the time such consent is requested.

9. CALCULATION OF PERCENTAGE INTERESTS IN REGISTRABLE SECURITIES. For purposes of this Agreement, all references to a percentage of the Registrable Securities shall be calculated based upon the number of shares of Registrable Securities constituting Class A Common Stock outstanding at the time such calculation is made, assuming the conversion of all Preferred Stock into shares of Class A Common Stock.

10. NO INCONSISTENT AGREEMENTS. The Company will not hereafter enter into any agreement or modify any existing agreement with respect to its securities that would result in a breach of, or conflict with, this

Agreement or the rights granted to the holders of Registrable Securities in this Agreement. Without limiting the generality of the foregoing, the Company will not hereafter enter into any agreement with respect to its securities that grants, or modify any existing agreement with respect to its securities to grant, to the holder of its securities in connection with an incidental registration of such securities more favorable rights with respect to priority than to the rights granted to the Purchasers under Section 2.2(b).

11. REMEDIES. Each holder of Registrable Securities, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement and hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

12. CERTAIN DISTRIBUTIONS. The Company shall not at any time make a distribution on or with respect to the Common Stock (including any such distribution made in connection with a consolidation or merger in which the Company is the resulting or surviving corporation and such Registrable Securities are not changed or exchanged) of securities of another issuer if holders of Registrable Securities are entitled to receive such securities in such distribution as holders of Registrable Securities and any of the securities so distributed are registered under the Securities Act, unless the securities to be distributed to the holders of Registrable Securities are also registered under the Securities Act.

13. SEVERABILITY. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be in any way impaired thereby, it being intended that all of the rights and privileges of the Purchaser shall be enforceable to the fullest extent permitted by law.

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14. ENTIRE AGREEMENT. This Agreement, together with the Stock Purchase Agreement (including the exhibits and schedules thereto) and the Certificate of Designation, is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the Stock Purchase Agreement (including the exhibits and schedules thereto), the Stockholders Agreement and the Certificate of Designation supersede all prior agreements and understandings between the parties with respect to such subject matter.

15. HEADINGS. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

16. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

17. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered by their respective representatives hereunto duly authorized as of the date first above written.

GENESEE & WYOMING INC.

By: _____
Name:
Title:

THE 1818 FUND III, L.P.

By: Brown Brothers Harriman & Co.,
Its General Partner

By: _____
Name:
Title:

[Letterhead of G&W]

December 12, 2000

Mortimer B. Fuller III
c/o Genesee & Wyoming Inc.
66 Field Point Road
Greenwich, CT 06830

The 1818 Fund III, L.P.
c/o Brown Brother Harriman & Co.
59 Wall Street
New York, NY 10005
Attention: Mr. T. Michael Long

Dear Sirs:

Reference is made to the Stock Purchase Agreement, dated October 19, 2000 (as amended from time to time, the "STOCK PURCHASE AGREEMENT"), by and between Genesee & Wyoming Inc. (the "COMPANY"), and The 1818 Fund III L.P. (the "PURCHASER"). This letter (the "AGREEMENT") sets forth the terms and conditions of the agreement reached between the Company, Mortimer B. Fuller III ("MBF") and the Purchaser regarding the Purchaser's rights to representation on the Board of Directors of the Company (the "BOARD OF DIRECTORS") and certain other matters.

All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Stock Purchase Agreement.

1. BOARD REPRESENTATION.

(a) The Company shall, within 30 days after the date hereof, promptly cause one vacancy to be created on its Board of Directors (by increasing the number of members of the Board of Directors or otherwise) and at such time shall cause one person designated by the Purchaser and that is reasonably acceptable to the Company to be selected to fill such vacancy; provided that each of T. Michael Long and Walter Grist shall be deemed to be acceptable to the Company. Such designee shall serve until the next succeeding annual meeting of stockholders of the Company to be held after such election. Notwithstanding the foregoing, at any time that the Purchaser does not continue to own at least 20% of the shares of Class A Common Stock issued or issuable upon conversion of the Preferred Stock (whether or not the Preferred Stock has

been converted), such designee shall tender his or her resignation to the Company's Board of Directors at the next succeeding annual meeting of stockholders, whether or not such designee's term of office expires at such meeting.

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(b) Commencing with such next succeeding annual meeting of stockholders of the Company referred to in subsection (a) above and at each annual meeting of stockholders of the Company thereafter, so long as the Purchaser holds 20% of the shares of Class A Common Stock issued or issuable upon conversion of the Preferred Shares (whether or not the Preferred Shares have been converted) the Purchaser shall be entitled to designate one director who shall be acceptable to the Company to the Company's Board of Directors; provided that each of T. Michael Long and Walter Grist shall be deemed to be acceptable to the Company. The Company shall cause such designee of the Purchaser to be included in the slate of nominees recommended by the Board to the Company's stockholders for election as directors, and the Company shall use its reasonable best efforts to cause the election of such designee, including voting all shares for which the Company holds proxies (unless otherwise directed by the stockholder submitting such proxy) or is otherwise entitled to vote, in favor of the election of such person. Notwithstanding the foregoing, at any time that the Purchaser does not continue to own at least 20% of the shares of Class A Common Stock issued or issuable upon conversion of the Preferred Stock (whether or not the Preferred Stock has been converted), such designee shall tender his or her resignation to the Company's Board of Directors at the next succeeding annual meeting of stockholders, whether or not such designee's term of office expires at such meeting.

(c) In the event such designee of the Purchaser shall cease to serve as a director for any reason, other than by reason of the Purchaser not being entitled to designate a designee as provided in Section 1(a) or 1(b), the Company shall use its reasonable best efforts to cause the vacancy resulting thereby to be filled by a designee of the Purchaser that is reasonably acceptable to the Company; provided that each of T. Michael Long and Walter Grist shall be deemed to be acceptable to the Company.

(d) In addition to the rights granted pursuant to Section 1(a), (b) and (c) above, the Purchaser shall have the right to have a representative reasonably acceptable to the Company attend all portions of regular and special meetings of the Board of Directors of the Company not reserved for members of the Board of Directors of the Company only except to the extent counsel to the Company advises that such attendance or receipt of information thereat could jeopardize matters of attorney-client privilege or otherwise not be in the Company's best interests as a whole. Such representative shall agree in writing at the time of his or her designation that he or she shall be bound by the same fiduciary duties (including those relating to confidentiality) as apply to members of the Board. Such right is further conditioned upon the receipt of an agreement in writing pursuant to which such

representative agrees to keep confidential all discussions held, and materials distributed, at the meeting of the Company's Board of Directors. The visitation rights set forth above shall include the right to receive the same notice and materials provided to Board and committee members. For the avoidance of doubt, it is understood and agreed that each of T. Michael Long and Walter Grist shall be deemed acceptable to the Company for purposes of this Section 1(d).

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(e) From and after the date hereof and so long as the Purchaser continues to hold at least 20% of the shares of Class A Common Stock issued or issuable upon conversion of the Preferred Stock (whether or not the Preferred Stock has been converted), at each annual or special stockholders meeting called for the election of directors, and whenever the stockholders of the Company act by written consent with respect to the election of directors, MBF agrees to vote or otherwise give such stockholder's consent in respect of all shares of the capital stock of the Company (whether now or hereafter acquired) owned (whether jointly or severally) or, to the extent permitted by law, controlled (including shares held by the Estate of Frances A. Fuller (until distributed in accordance with Section 2(f)), but excluding shares held by the Overlook Estate Foundation, Inc. or the Frances A. Fuller Family Trust) by such stockholder, and take all other appropriate action, in order to cause:

(i) the election to the Board of Directors of the designee of the Purchaser pursuant to this Section 1;

(ii) the removal from the Board of Directors (with or without cause) of any director elected in accordance with clause (i) above upon the written request of the Purchaser; and

(iii) upon any vacancy in the Board as a result of any individual designated as provided in clause (i) above ceasing to be a member of the Board of Directors, whether by resignation or otherwise, the election to the Board of Directors as promptly as possible of an individual designated by the Purchaser that is reasonably acceptable to the Company; provided that each of T. Michael Long and Walter Grist shall be deemed to be acceptable to the Company.

(f) No party hereto shall grant any proxy or enter into or agree to be bound by any voting trust with respect to shares of capital stock held by it, nor shall any party hereto enter into any stockholder agreement or arrangement of any kind with respect to shares of capital stock held by it, which conflicts or is inconsistent in any manner with the provisions of this Agreement.

2. TRANSFER.

(a) MBF shall not sell, transfer, assign, pledge or otherwise dispose of any capital stock of the Company in a single or series

of related private transactions (a "TRANSFER") other than in compliance with this Section 2. MBF agrees not to consummate any Transfer (other than a Transfer to a Permitted Transferee pursuant to Sections 2(c), 2(d) and 2(e) or transaction permitted under Section 2(f)) until the expiration of a 15-day period (the "ELECTION PERIOD") following delivery by MBF of a Transfer Notice pursuant to Section 2(b).

(b) If at any time MBF desires to transfer 15% or more of the shares of Common Stock directly owned (whether jointly or severally) by him (which,

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for purposes of this section 2 shall include shares owned by the Estate of Frances A. Fuller (until distributed in accordance with Section 2(f)), but exclude shares owned by the Overlook Estate Foundation, Inc. or the Frances A. Fuller Family Trust) in a single or series of related private transactions to a Person other than a Permitted Transferee or as set forth in Section 2(f), and, so long as the Purchaser owns 20% of the shares of Common Stock issued or issuable upon conversion of the Preferred Stock, MBF shall notify the Company and the Purchaser of such desire (the "TRANSFER NOTICE"). The Purchaser shall have the right, exercisable by written notice to the Company and to MBF prior to the expiration of the Election Period, to participate in such Transfer on a pro rata basis on the same terms and conditions as MBF. In the event that the Purchaser elects to participate in a Transfer pursuant to this Section 2(b), MBF and the Purchaser shall be entitled to sell in such Transfer the number of shares of Common Stock determined by multiplying the number of shares covered by the Transfer Notice by a fraction, the numerator of which is the number of shares of Common Stock or Common Stock issued or issuable upon conversion of the Preferred Stock held by MBF or the Purchaser (determined on a fully diluted basis), as the case may be, and the denominator of which is the number of shares of Common Stock or Common Stock issued or issuable upon conversion of the Preferred Stock held by both MBF and the Purchaser (determined on a fully diluted basis). MBF shall not effect any Transfer subject to this Section 2(b) unless the purchaser agrees to the participation of the Purchaser in such transaction as specified above or, in the alternative, MBF purchases the shares that the Purchaser is entitled to include in such Transfer on the terms set forth in the Transfer Notice concurrently with the closing of such Transfer. For the avoidance of doubt, it is understood and agreed that this Section 2(b) does not apply to Transfers by MBF, in a single or series of related transactions that do not exceed, individually or in the aggregate, 15% or more of the shares of Common Stock directly owned by him.

(c) PERMITTED TRANSFERS. The restrictions set forth in this Section 2 shall not apply to Transfers of Common Stock to (i) a member of MBF's immediate family, which shall include MBF, his spouse, siblings (except as set forth in Section 2(f)), children or grandchildren ("Family Members") or (ii) a trust, corporation, partnership or limited liability company, all of the beneficial interests in which shall be held by MBF or one or

more Family Members of MBF; PROVIDED, HOWEVER, that during the period that any such trust, corporation, partnership or limited liability company holds any right, title or interest in any shares of Common Stock, no Person other than MBF or one or more Family Members of MBF may be or may become beneficiaries, stockholders, limited or general partners or members thereof (the Persons referred to in the preceding clauses (i) and (ii) are each referred to hereinafter as a "Permitted Transferee"). A Permitted Transferee of shares of Common Stock pursuant to this Section 2(c) may transfer shares of Common Stock received after the date hereof pursuant to this Section 2(c) only to MBF or to a Person that is a Permitted Transferee. MBF shall not avoid the provisions of this Agreement by making one or more transfers to one or more Permitted Transferees and then disposing of all or any portion of MBF's interest in any such Permitted Transferee, and any transfer or attempted transfer in violation of this covenant shall be null and void AB INITIO.

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(d) PERMITTED TRANSFER PROCEDURES. If MBF wishes to transfer shares of Common Stock to a Permitted Transferee under Section 2(c), MBF shall give notice to the Company of his intention to make such a transfer not less than seven (7) days prior to effecting such transfer, which notice shall state the name and address of each Permitted Transferee to whom such transfer is proposed, the relationship of such Permitted Transferee to MBF, and the number of shares of Common Stock proposed to be transferred to such Permitted Transferee.

(e) TRANSFERS IN COMPLIANCE WITH LAW; SUBSTITUTION OF TRANSFEREE. Except as set forth in Section 2(f), notwithstanding any other provision of this Agreement, no transfer may be made pursuant to this Section 2 to a Permitted Transferee unless (a) the Permitted Transferee has agreed in writing to be bound by the terms and conditions of this Agreement pursuant to an instrument in form and substance satisfactory to the Company, (b) the transfer complies in all respects with the applicable provisions of this Agreement and (c) the transfer complies in all respects with applicable federal and state securities laws, including, without limitation, the Securities Act. Upon becoming a party to this Agreement, a Permitted Transferee shall be substituted for, and shall enjoy the same rights and be subject to the same obligations as MBF hereunder with respect to the shares of Common Stock transferred to such Permitted Transferee.

(f) EXEMPT TRANSACTIONS. Notwithstanding any other provision of this Agreement, the restrictions set forth in this Section 2 shall not apply to (i) Transfers of Common Stock to permit MBF to, directly or indirectly, satisfy his obligations under the Agreement, dated May 13, 1997, between MBF and Suzanne Fuller; PROVIDED, HOWEVER, that such Transfers do not, individually or in the aggregate, exceed 45,000 shares of Common Stock, (ii) sales of Common Stock by financial institutions pursuant to pledge agreements executed by MBF and existing as of the date of this agreement, or (iii) distributions of Common Stock by the Estate of Frances A. Fuller to Patricia A.

Fuller or Frances F. Gunster, whether directly or in trust. For the avoidance of doubt, the transferees in transactions effected pursuant to the preceding sentence shall not be required to agree in writing to or otherwise be bound by the terms and conditions of this Agreement.

3. OTHER AGREEMENTS.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(b) This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and cannot be modified or amended except in writing signed by the parties hereto.

(c) This Agreement may be executed in counterparts, all of which taken together shall constitute one instrument.

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Please confirm that the foregoing correctly sets forth our understanding by signing and returning the enclosed duplicate copy of this Agreement.

Sincerely,

GENESEE & WYOMING INC.

By: _____
Name:
Title:

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Accepted and Agreed to
this 12th day of December, 2000

THE 1818 FUND III, L.P.

By: Brown Brothers Harriman & Co.
its General Partner

By: _____
Name:
Title:

Mortimer B. Fuller, III
