

Florida Department of State
Division of Corporations
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Division of Corporations
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10 JUL 27 PM 4:01

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

**MERGER OR SHARE EXCHANGE
ATLAS RAILROAD CONSTRUCTION, LLC**

| | |
|-----------------------|---------|
| Certificate of Status | 0 |
| Certified Copy | 1 |
| Page Count | 08 |
| Estimated Charge | \$58.75 |

80.00

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

10 JUL 27 AM 10:26

FILED

G. MCLEOD

JUL 28 2010

EXAMINER

**Certificate of Merger
For
Florida Limited Liability Company**

The following Certificate of Merger is submitted to merge the following Florida Limited Liability Company(ies) in accordance with s. 608.4382, Florida Statutes.

FIRST: The exact name, form/entity type, and jurisdiction for each merging party are as follows:

| <u>Name</u> | <u>Jurisdiction</u> | <u>Form/Entity Type</u> |
|------------------------------|---------------------|---------------------------|
| Atlas Railroad Services, LLC | Delaware | Limited Liability Company |
| | | |
| | | |
| | | |

SECOND: The exact name, form/entity type, and jurisdiction of the surviving party are as follows:

| <u>Name</u> | <u>Jurisdiction</u> | <u>Form/Entity Type</u> |
|----------------------------------|---------------------|---------------------------|
| Atlas Railroad Construction, LLC | Florida | Limited Liability Company |

THIRD: The attached plan of merger was approved by each domestic corporation, limited liability company, partnership and/or limited partnership that is a party to the merger in accordance with the applicable provisions of Chapters 607, 608, 617, and/or 620, Florida Statutes.

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TALLAHASSEE, FLORIDA

FOURTH: The attached plan of merger was approved by each other business entity that is a party to the merger in accordance with the applicable laws of the state, country or jurisdiction under which such other business entity is formed, organized or incorporated.

FIFTH: If other than the date of filing, the effective date of the merger, which cannot be prior to nor more than 90 days after the date this document is filed by the Florida Department of State:

n/a

SIXTH: If the surviving party is not formed, organized or incorporated under the laws of Florida, the survivor's principal office address in its home state, country or jurisdiction is as follows:

n/a

SEVENTH: If the survivor is not formed, organized or incorporated under the laws of Florida, the survivor agrees to pay to any members with appraisal rights the amount, to which such members are entitled under ss.608.4351-608.43595, F.S.

EIGHTH: If the surviving party is an out-of-state entity not qualified to transact business in this state, the surviving entity:



a.) Lists the following street and mailing address of an office, which the Florida Department of State may use for the purposes of s. 48.181, F.S., are as follows:

Street address: n/a

Mailing address:

b.) Appoints the Florida Secretary of State as its agent for service of process in a proceeding to enforce obligations of each limited liability company that merged into such entity, including any appraisal rights of its members under ss.608.4351-608.43595, Florida Statutes.

NINTH: Signature(s) for Each Party:

| Name of Entity/Organization: | Signature(s): | Typed or Printed Name of Individual: |
|----------------------------------|---|--------------------------------------|
| Atlas Railroad Construction, LLC |  | Scott G. Williams, Manager |
| Atlas Railroad Services, LLC |  | Scott G. Williams, Manager |
| | | |
| | | |

| | |
|-----------------------------------|---|
| Corporations: | Chairman, Vice Chairman, President or Officer (If no directors selected, signature of incorporator.) |
| General partnerships: | Signature of a general partner or authorized person |
| Florida Limited Partnerships: | Signatures of all general partners |
| Non-Florida Limited Partnerships: | Signature of a general partner |
| Limited Liability Companies: | Signature of a member or authorized representative |

| | |
|---|---------|
| <u>Fees:</u> For each Limited Liability Company: | \$25.00 |
| For each Corporation: | \$35.00 |
| For each Limited Partnership: | \$52.50 |
| For each General Partnership: | \$25.00 |
| For each Other Business Entity: | \$25.00 |

| | |
|--|---------|
| <u>Certified Copy (optional):</u> | \$30.00 |
|--|---------|

PLAN OF MERGER

FIRST: The exact name, form/entity type, and jurisdiction for each merging party are as follows:

| <u>Name</u> | <u>Jurisdiction</u> | <u>Form/Entity Type</u> |
|------------------------------|---------------------|---------------------------|
| Atlas Railroad Services, LLC | Delaware | Limited Liability Company |
| | | |
| | | |
| | | |

SECOND: The exact name, form/entity type, and jurisdiction of the surviving party are as follows:

| <u>Name</u> | <u>Jurisdiction</u> | <u>Form/Entity Type</u> |
|----------------------------------|---------------------|---------------------------|
| Atlas Railroad Construction, LLC | Florida | Limited Liability Company |

THIRD: The terms and conditions of the merger are as follows:

The Merging Party and the Surviving Party are each wholly-owned subsidiaries of RailTex, Inc., a Texas corporation, their Sole Member. The Sole Member which has approved the merger upon the terms and conditions set forth herein. The effective date of the Merger shall be upon filing the Certificate of Merger with the Florida Secretary of State (the "Effective Date").

(Attach additional sheet if necessary)

FOURTH:

A. The manner and basis of converting the interests, shares, obligations or other securities of each merged party into the interests, shares, obligations or others securities of the survivor, in whole or in part, into cash or other property is as follows:

All of the limited liability company interests of the Merging Party outstanding immediately prior to the Effective Date shall, by virtue of the Merger and without any action on the part of the holder thereof, be canceled and no consideration shall be issued in respect thereof.

Upon the Effective Date, the assets and liabilities of the Merging Party shall be taken on the books of the Surviving Party at the amount at which they shall at the time be carried on the books of the Merging Party, subject to such adjustments, if any, as may be necessary to conform to the accounting procedures of the Surviving Party.

(Attach additional sheet if necessary)

B. The manner and basis of converting rights to acquire the interests, shares, obligations or other securities of each merged party into rights to acquire the interests, shares, obligations or others securities of the survivor, in whole or in part, into cash or other property is as follows:

Upon the Effective Date, the Surviving Party shall thereupon and thereafter possess all the rights, privileges, immunities, power, franchises and authority, both public and private, of the Merging Party. All property of every description, including every interest therein and all obligations of or belongings of the Merging Party shall thereafter be taken and deemed to be transferred to and vested in the Surviving Party without further act or deed. The officers of the Surviving Party shall execute and deliver or cause to be executed and delivered after the Effective Date all such deeds and other instruments and shall take or cause to be taken such further action as the Surviving Party may deem necessary or desirable in order to confirm

(Attach additional sheet if necessary)

Plan of Merger (continuation page)

Atlas Railroad Services, LLC, a Delaware limited liability company
("Merging Party")

Into

Atlas Railroad Services, LLC, a Florida limited liability company
("Surviving Party")

FOURTH: (continued)

the transfer to and vesting in the Surviving Party of title to and possession of all such property, rights, privileges, immunities franchises and authority. All rights of creditors of each of the Merging Party shall be preserved unimpaired, limited in lien to the property affected by such liens immediately prior to the Effective Date, and the Surviving Party shall thereafter be liable for all the obligations of the Merging Party.

FIFTH: Any statements that are required by the laws under which each other business entity is formed, organized, or incorporated are as follows:

(Attach additional sheet if necessary)

SIXTH: Other provisions, if any, relating to the merger are as follows:

(Attach additional sheet if necessary)