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Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

FILED

JUN 30 2011

**SURFACE
TRANSPORTATION BOARD**

Re: STB Finance Docket No. 35525, Patrick D. Broe and ST&E Holdings, Inc. -- Acquisition of Control Exemption -- Stockton Terminal & Eastern Railroad Company

Dear Ms. Brown:

Attached for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(2), and a check covering the \$1,300 filing fee.

Please time and date stamp the extra copy of the Verified Notice of Exemption and return it with our messenger.

If you have any questions, please call me.

Sincerely,

Karl Morell
Of Counsel

FEE RECEIVED

JUN 30 2011

**SURFACE
TRANSPORTATION BOARD**

Enclosure

230542

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35525

**PATRICK D. BROE AND ST&E HOLDINGS, INC.
--ACQUISITION OF CONTROL EXEMPTION--
STOCKTON TERMINAL & EASTERN RAILROAD COMPANY**

**VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(2)**

**KARL MORELL
Of Counsel
BALL JANIK LLP
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 638-3307**

Attorney for APPLICANTS

Dated: June 30, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35525

PATRICK D. BROE AND ST&E HOLDINGS, INC.
--ACQUISITION OF CONTROL EXEMPTION--
STOCKTON TERMINAL & EASTERN RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(2)

Patrick D. Broe (“Mr. Broe”) and ST&E Holdings, Inc. (“ST&E Holdings”) (collectively “Applicants”) file this Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(2), for Mr. Broe and ST&E Holdings to control Stockton Terminal & Eastern Railroad Company (“Stockton Terminal”), a Class III railroad. In support of this Notice of Exemption, the following information as required by 49 C.F.R. § 1180.4(g) is submitted:

Section 1180.6(a)

(1) A description of the proposed transaction.

- (i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of counsel to whom questions regarding the proposed transaction can be addressed.**

Mr. Broe is a non-carrier individual who directly controls ST&E Holdings, a non-carrier company. Stockton Terminal Company (“Terminal Company”) is a non-carrier holding company that currently controls Stockton Terminal & Eastern Railroad of Nevada (“Nevada Company”), a non-carrier holding company which controls Stockton Terminal. ST&E Holdings will acquire all of the stock of Terminal Company. Once that transaction is consummated, Terminal Company

and Nevada Company will be merged into ST&E Holdings and Mr. Broe and ST&E Holdings will control Stockton Terminal.

Mr. Broe also directly controls OmniTRAX, Inc. (“OmniTRAX”), a non-carrier company that currently controls the following eleven (11) Class III railroads operating in seven (7) States: Chicago Rail Link, LLC (“CRL”), Georgia Woodlands Railroad, LLC (“GWRC”), Great Western Railway of Colorado, LLC (“GWR”), Manufacturers’ Junction Railway, LLC (“MJ”), Newburgh & South Shore Railroad Limited (“NSR”), Northern Ohio & Western Railway, LLC (“NOW”), Panhandle Northern Railroad, LLC (“PNR”), Alliance Terminal Railroad, LLC (“ATR”), Fulton County Railway, LLC (“FCR”), Alabama & Tennessee River Railway, LLC (“ATN”), and Kettle Falls International Railway, LLC (“KFR”).

In addition, Mr. Broe directly controls BNS Holding, Inc. (“BNS”), a non-carrier company which indirectly controls the following three (3) Class III railroads operating in six (6) States: Nebraska, Kansas and Colorado Railway (“NKCR”), Illinois Railway, Inc. (“IR”), and Georgia & Florida Railway, Inc. (“GFR”).

The rail lines operated by CRL, GWRC, GWR, MJ, NSR, NOW, PNR, ATR, FCR, ATN, KFR, NKCR, IR and GFR do not connect with the rail lines operated by Stockton Terminal. The rail lines operated by Stockton Terminal are located in California. None of the railroads controlled by OmniTRAX or BNS Holdings operates a rail line in California.

Also, the involved transaction is not part of a series of anticipated transactions that would connect the rail lines operated by Stockton Terminal with any railroad in the OmniTRAX or BNS corporate family. Finally, Stockton Terminal is not a Class I rail carriers nor are any of the carriers controlled by OmniTRAX and BNS. Accordingly, this transaction falls within the class

of transactions described at 49 C.F.R. § 1180.2(d)(2), and exempt from prior approval by the Surface Transportation Board ("Board").

The name and business address of Applicants are as follows:

Patrick D. Broe
252 Clayton Street
Fourth Floor
Denver, CO 80206

ST&E Holdings, Inc.
252 Clayton Street
Fourth Floor
Denver, CO 80206

OmniTRAX, Inc.
252 Clayton Street
Fourth Floor
Denver, CO 80206

Stockton Terminal Company
800 N. Shaw Road
Stockton, CA 95215

Stockton Terminal & Eastern Railroad Company of Nevada
800 N. Shaw Road
Stockton, CA 95215

Stockton Terminal & Eastern Railroad Company
1330 N. Broadway Avenue
Stockton, CA 95205

Nebraska, Kansas & Colorado Railway, Inc.
128 1st Street
Grant, NE 69140

Kettle Falls International Railway, LLC
125 East Meyers Street
Kettle Falls, WA 99141

Alabama & Tennessee River Railway, LLC
3425 Forrest Avenue
Gadsden, AL 35904

Fulton County Railway, LLC
600 Wilson Mill Road SW
Atlanta, GA 30331
Denver, CO 80209

Alliance Terminal Railroad, LLC
1111 Intermodal Parkway
Haslet, Texas 76052

Chicago Rail Link, LLC
2728 E. 104th Street
Chicago, IL 60617

Georgia Woodlands Railroad, LLC
210 Depot Street
Washington, GA 30673

Great Western Railway of Colorado, LLC
950 Taylor Avenue
Loveland, CO 80539

Manufacturers' Junction Railway, LLC
2335 S. Cicero Avenue
Cicero, IL 60804

Newburgh & South Shore Railroad Limited
4200 East 71st Street
Marcelline Yard, OH 44105

Northern Ohio & Western Railway, LLC
525 Wall Street
Tiffin, OH 44883

Panhandle Northern Railroad, LLC
100 East Grand
Borger, TX 79007

Illinois Railway, Inc.
430 West Madison Street
Ottawa, IL 61350

Georgia & Florida Railway, Inc.
1019 Coastline Avenue
Albany, GA 31705

Applicants' representative:

Karl Morell
Of Counsel
Ball Janik LLP
655 Fifteenth Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

(ii) The proposed time schedule for consummation of the proposed transaction.

Applicants intend to consummate this transaction on or shortly after the effective date of this Notice of Exemption.

(iii) The purpose sought to be accomplished by the proposed transaction.

Applicants intend to acquire Terminal Company and its railroad subsidiary as an investment in order to reduce overhead expenses, coordinate billing, maintenance, mechanical and personnel policies and practices of its rail carrier subsidiaries and thereby improve the overall efficiency of rail service provided by, and financial viability of, the fifteen (15) railroads.

(5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

CRL's lines are located in Illinois.

GWRC's line is located in Georgia.

GWR's lines are located in Colorado.

MJ's lines are located in Illinois.

NSR's lines are located in Ohio.

NOW's line is located in Ohio.

PNR's line is located in Texas.

ATR's lines are located in Texas.

FCR's lines are located in Georgia.

ATN's lines are located in Alabama.

KFR's lines are located in Washington

IR's lines are located in Illinois.

GFR's lines are located in Georgia and Florida.

NKCR's lines are located in Nebraska, Kansas and Colorado.

Stockton Terminal's lines are located in California.

(6) Map.

Maps illustrating the rail lines of CRL, GWRC, GWR, MJ, NSR, NOW, PNR, ATR, FCR, ATN, KFR, IR, GFR, NKCR and Stockton Terminal are attached as Exhibit 1.

(7)(ii) Agreement.

The redacted version of the draft Agreement and Plan of Merger is attached as Exhibit 2. Unredacted copies of the draft Agreement and Plan of Merger are being filed under seal pursuant to the accompanying Motion for Protective Order.

Because CRL, GWRC, GWR, MJ, NSR, NOW, PNR, ATR, FCR, ATN, KFR, IR, G&FR, NKCR and Stockton Terminal are Class III carriers, no labor protection may be imposed on this transaction pursuant to 49 U.S.C. § 11326(c).

ENVIRONMENTAL AND HISTORIC IMPACTS

Mr. Broe and ST&E Holdings will control Stockton Terminal for the purpose of continued rail operations where further Board approval is required to abandon or discontinue any service, and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

The indirect control of Stockton Terminal by Mr. Broe and ST&E Holdings will not result in significant changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of these lines to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the lines; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. This transaction will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, this transaction does not contemplate the transportation of any ozone depleting materials. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,



KARL MORELL
Of Counsel
BALL JANIK LLP
655 Fifteenth Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorney for APPLICANTS

Dated: June 30, 2011

VERIFICATION

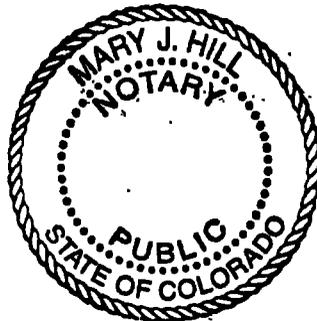
STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

I, Larry W. Bush, being duly sworn depose and state that I am Treasurer of ST&E Holdings, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

Larry W Bush
Larry W. Bush

SUBSCRIBED AND SWORN TO before me this 30th day of June, 2011, in the City and County of Denver, State of Colorado.

My Commission Expires: 11/01/2012 Mary J Hill
Notary Public



My Commission Expires 11/01/2012

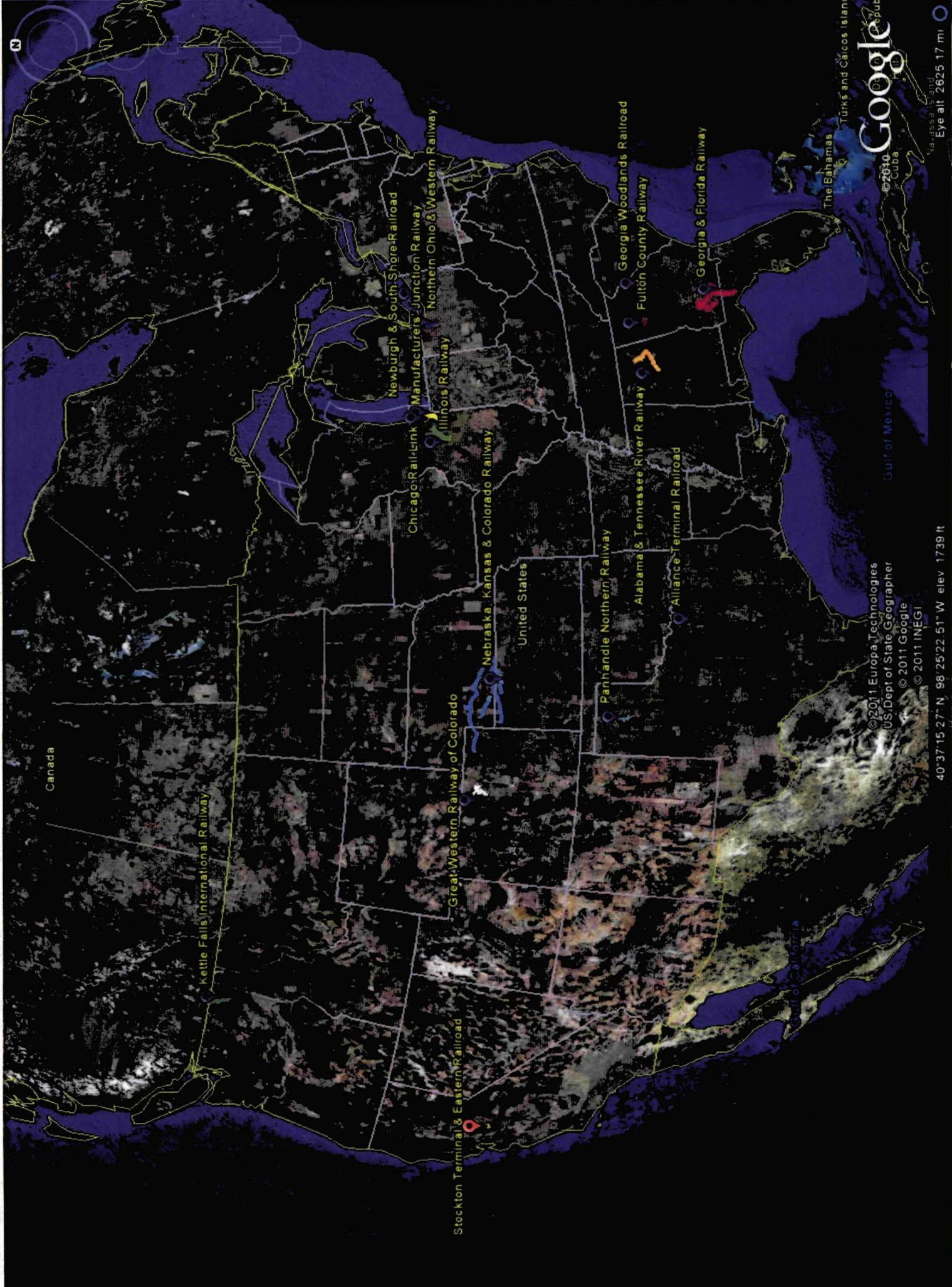
1950

THE NATIONAL BUREAU OF INVESTIGATION



FEDERAL BUREAU OF INVESTIGATION

EXHIBIT 1



0

Canada

Kettle Falls International Railroad

Stockton Terminal & Eastern Railroad

Great Western Railway of Colorado

Chicago Rail Link

Newburgh & South Shore Railroad

Manufacturers Junction Railway

Illinois Railway

Nebraska, Kansas & Colorado Railway

United States

Panhandle Northern Railway

Alabama & Tennessee River Railway

Alliance Terminal Railroad

Georgia Woodlands Railroad

Fulton County Railway

Georgia & Florida Railway

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Google

40°37'15.27" N 98°25'22.51" W elev 1739 ft

Eye alt 2625.17 mi

Gulf of Mexico

The Bahamas

Turks and Caicos Islands

Cuba

©2010

Malaysia, Singapore

EXHIBIT 2

REDACTED

AGREEMENT AND PLAN OF MERGER

by and among

STOCKTON TERMINAL COMPANY, a Nevada corporation

STOCKTON TERMINAL & EASTERN RAILROAD COMPANY OF NEVADA

THOMAS K. BEARD

and

ST&E HOLDINGS, INC., a Colorado corporation

Dated as of

JUNE 29, 2011

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AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this "Agreement") is made and entered into as of June 29, 2011, by and among Stockton Terminal Company, a Nevada corporation ("STC"), Stockton Terminal & Eastern Railroad Company of Nevada, a Nevada corporation ("STERN"), Thomas K. Beard ("Beard"), and ST&E Holdings, Inc., a Colorado corporation ("Acquirer").

RECITALS

A. Beard, through one or more revocable trusts of which he is a trustee (the "STC Stockholder"), is the owner of all of the issued and outstanding shares of capital stock of STC (the "STC Shares").

B. STC and the individual(s) (collectively, the "Stockholders") listed on Schedule 7.2 of the Disclosure Schedule (as defined in Section 4.2) are the owners of all of the issued and outstanding capital stock of STERN (the "STERN Shares"), with the number of STERN Shares and the percentage of STERN Shares owned by each Stockholder (such percentage for each Stockholder being the Stockholder's "Allocable Share") being as set forth on Schedule 7.2 of the Disclosure Schedule.

C. STERN owns all of the issued and outstanding shares of Stockton Terminal & Eastern Railroad, a California corporation (the "Railroad"). STC, STERN and the Railroad are referred to sometimes herein, collectively, as the "STC Group" and sometimes, individually, as a "Member of the STC Group."

D. Beard, for himself and as trustee of the STC Stockholder, and the respective Boards of Directors of STC, STERN and Acquirer have determined that the merger of STC and STERN with and into Acquirer (the "Merger"), upon the terms and subject to the conditions set forth in this Agreement, is fair and in the best interests of Beard, the current Stockholders and Acquirer, respectively.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, conditions and other agreements set forth herein, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

ARTICLE 1 STOCKHOLDERS' REPRESENTATIVE

1.1 **Designation of Stockholders' Representative.** Beard is designated to act on behalf of all of the Stockholders as set forth in this Agreement, including, without limitation, the following:

(a) Acting on behalf of the Stockholders with respect to the Adjustment Payment under Section 3.4; and

(b) Acting on behalf of the Stockholders in connection with all matters under Article 9.

1.2 **Acquirer's Reliance on Stockholders' Representative.** Acquirer will be entitled to act solely with and rely on the actions of Stockholders' Representative with respect to all matters relating to the Stockholders under this Agreement or in connection with the transactions contemplated hereunder.

1.3 **Replacement of Stockholders' Representative.** The Stockholders' Representative may only be replaced by written notice to Acquirer signed by Beard, or his attorney-in-fact or personal representative in the event of this disability or death, and until receipt of the notice replacing the Stockholders' Representative, Acquirer will have the right to continue to deal solely with the then acting Stockholders' Representative.

ARTICLE 2 THE MERGER

2.1 **The Merger.** Upon the terms and subject to the conditions of this Agreement and in accordance with the Chapter 78 - Private Corporations of the Nevada Revised Statutes (the "Nevada Act") and the Colorado Business Corporation Act (the "Colorado Act"), at the Effective Time (as defined below), STC and STERN will be merged with and into Acquirer and the separate corporate existence of STC and STERN will cease. Acquirer will be the surviving corporation in the Merger (Acquirer in its capacity as the surviving corporation is sometimes hereinafter referred to as the "Surviving Corporation") and the Surviving Corporation will have the name "ST&E Holdings, Inc." The Merger will have the effects specified in the Nevada Act and the Colorado Act.

2.2 **Effective Time.** If all the conditions to the Merger set forth in Section 5.2 have been fulfilled or waived in accordance herewith and this Agreement has not been terminated as provided in Section 4.3, at Closing (as defined in Section 5.1) the parties will execute and file Certificate of Mergers (the "Certificates of Merger") meeting the requirements of the Nevada Act and the Colorado Act with the Secretary of State of Nevada and the Secretary of State of Colorado in accordance with the Nevada Act and the Colorado Act. The Merger will become effective at the time of filing of the Certificate of Merger with the Secretary of State of the State of Colorado in accordance with the Colorado Act (the "Effective Time").

2.3 **Merger Consideration.** At Closing, Acquirer will have sufficient cash to permit the Surviving Corporation to pay the Merger Consideration (as defined in Section 3.1) to the Escrow Agent and the Stockholders, including the STC Stockholder, as set forth in Article 3.

2.4 **Articles of Incorporation.** The articles of incorporation of Acquirer will be the articles of incorporation of the Surviving Corporation following the filing of the Certificate of Merger.

2.5 **Bylaws.** The bylaws of Acquirer will be the bylaws of the Surviving Corporation following the filing of the Certificate of Merger.

2.6 Directors of the Surviving Corporation. The directors of Acquirer immediately prior to the Effective Time will be the directors of the Surviving Corporation, to serve until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

2.7 Officers of the Surviving Corporation. The officers of Acquirer immediately prior to the Effective Time will be the officers of the Surviving Corporation, to serve until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

2.8 Effect of Merger on Capital Stock. As of the Effective Time, by virtue of the Merger and without any action on the part of the STC Stockholders, the Stockholders or the holder of any shares of the capital stock of Acquirer:

(a) Each share of common stock of Acquirer issued and outstanding immediately prior to the Effective Time will be converted into one fully paid and non-assessable share of voting common stock of the Surviving Corporation;

(b) Each STERN Share will be converted into the right to receive from the Surviving Corporation, upon the consummation of the Merger, a portion of the Merger Consideration as set forth in Article 3 equal to the quotient of (i) the Merger Consideration, divided by (ii) the total number of STERN Shares immediately prior to the Effective Time, and the STC Shares will be converted into the right to receive from the Surviving Corporation, upon consummation of the Merger, STC's Allocable Share of the Merger Consideration (based on STC's ownership of STERN Shares). The Merger Consideration will be paid as follows:

(i) As of the Effective Time and subject to the provisions of Section 2.11, the Surviving Corporation will pay to each Stockholder, in currently available funds, the Stockholder's Allocable Share of the Closing Payment under Section 3.3, with STC's Allocable Share of the Closing Payment being made to the STC Stockholder;

(ii) No later than the time for payment specified in Section 3.4 and subject to the provisions of Section 2.11, the Surviving Corporation, will pay to each Stockholder the Stockholder's Allocable Share of any Adjustment Payment due to the Stockholders, with STC's Allocable Share of the Closing Payment being made to the STC Stockholder; and

(iii) No later than the time specified in the Escrow Agreement (as defined in Section 3.3(a)) and subject to the provisions of Section 2.11, the Stockholders' Representative and the Surviving Corporation will cause the Escrow Agent to pay to each Stockholder the Stockholder's Allocable Share of any portion of the Indemnity Escrow Fund to be paid to the Stockholders under the terms of the Escrow Agreement, with STC's Allocable Share of the Closing Payment being made to the STC Stockholder; and

(c) As of the Effective Time, all STC Shares issued and outstanding immediately prior to the Effective Time will no longer be outstanding and will be automatically canceled and retired, and each Stockholder will cease to have any rights with respect thereto, except the right to receive the Stockholder's proportionate share of the Merger Consideration as set forth in Sections 2.8(b) upon surrender of such certificate in accordance with Section 2.11.

2.9 Dissenters' Rights. Notwithstanding any provision of this Agreement to the contrary, the STERN Shares ("Dissenting Shares") of any Stockholder who exercises his dissenter's rights under the Nevada Act, if any, will not be converted into the right to receive an Allocable Shares of the Merger Consideration as set forth in Section 2.8, but instead will be converted into the right to receive such consideration as may be determined to be due with respect to such Dissenting Shares pursuant to the Nevada Act. At the Effective Time, all Dissenting Shares will no longer be outstanding, will be canceled automatically and will cease to exist, and each holder of Dissenting Shares will cease to have any rights with respect thereto, except the right to receive the fair value of such Dissenting Shares of Class in accordance with the provisions of the Nevada Act. The Allocable Share of the Merger Consideration that would otherwise have been payable to the dissenting Stockholder will be withheld by the Surviving Corporation and will be used to pay the amounts due to the dissenting Shareholders under Section 2.10.

2.10 Payments to Dissenting Stockholders. A dissenting Stockholder who, pursuant to the provisions of Nevada Act, becomes entitled to payment and makes timely demand for payment of the fair value for Dissenting Shares will receive payment from the Surviving Corporation therefor in accordance with the provisions of the Nevada Act. To the extent permitted by the Nevada Act and authorized in any applicable judicial proceedings, a portion of the amounts payable to any dissenting Stockholder will be paid to the Escrow Agent to be added to the True-Up Escrow Fund and the Indemnity Escrow Fund.

2.11 Exchange of Certificates.

(a) On or after the Effective Time, the STC Stockholder must surrender to the Surviving Corporation the certificate(s) representing his STC Shares and each Stockholder must surrender to the Surviving Corporation the certificate(s) representing his STERN Shares and, upon receipt thereof by the Surviving Corporation, each Stockholder will be entitled to receive payment of the Stockholder's Allocable Share of the Merger Consideration into which such Stockholder's STC Shares have been converted pursuant to this Agreement. STC will request each Stockholder to submit to STC, not later than five (5) Business Days prior to the Closing Date (as defined in Section 5.1), instructions for delivery of the payment due under Section 2.8(b). No later than three (3) Business Days prior to the Closing Date, STC will deliver to Acquirer a schedule setting forth how the Merger Consideration will be distributed, including wire transfer instructions for the payments to be made to each Stockholder. After the Effective Time, there will be no further transfer on the records of STC representing STC Shares and no further transfer on the records of STERN representing STERN Shares. Until surrendered as contemplated by this Section 2.11(a), each certificate for STC Shares and STERN Shares will be deemed at any time after the Effective Time to

represent only the right to receive, upon such surrender, the payments of the Merger Consideration as contemplated by Section 2.8. No interest will be paid or will accrue on any amounts payable following the Closing Date because of the failure of the STC Stockholder to surrender the certificate(s) for his STC Shares or the failure of a Stockholder to surrender the certificate(s) for his STERN Shares.

(b) No dividends or other distributions with respect to STC Shares or the STERN Shares with a record date after the Effective Time will be paid to the STC Stockholder or any Stockholder who has not surrendered the certificate(s) for his STC Shares or STERN Shares, as applicable.

(c) The payments of Merger Consideration under Section 2.8 to any Stockholder who cannot be located will be held and paid to the Escrow Agent or an independent third party or entity mutually agreed upon by the Acquirer and Stockholder's Representative ("Unclaimed Funds Holder") under the terms of the Escrow Agreement (as defined in Section 3.3(a)) or similar agreement and paid pursuant to any applicable abandoned property, escheat laws or similar laws at such time as is required by such laws.

(d) If any certificate for STC Shares or STERN Shares has been lost, stolen or destroyed, upon the making of an affidavit of that fact by the STC Stockholder or the Stockholder or such STC Stockholder's or Stockholders' lawful representative, as applicable, claiming such certificate to be lost, stolen or destroyed, the Surviving Corporation will pay, in exchange for such lost, stolen or destroyed certificate, the Merger Consideration to be paid in respect of the STC Shares or STERN Shares, as applicable, represented by such certificate. The affidavit must provide for indemnification of the Surviving Corporation, Beard, and Stockholder's Representative on such terms as are reasonably acceptable to Acquirer.

ARTICLE 3 MERGER CONSIDERATION

3.1 **Merger Consideration.** The Merger Consideration for the STC Shares (the "Merger Consideration") will be \$ Base Merger Consideration"), adjusted as follows:

(a) The Base Merger Consideration will be (i) increased by the amount, if any, of the cash held in the accounts of the STC Group as of the Effective Time; and

(b) The Base Merger Consideration will be decreased by the amount, if any, by which the current assets, other than cash, of the STC Group (the "Current Assets") as of the Effective Time are less than the current liabilities of the STC Group (the "Current Liabilities") as of the Effective Time, with the Current Assets and Current Liabilities being determined on an accrual basis in accordance with generally accepted accounting principles, except that (i) all unused vacation, personal leave and sick days will be included in Current Liabilities; and (ii) the federal and state income tax liability of

the STC Group for the year ending July 31, 2011 (the "2010 Tax Liability") will be determined as set forth in Section 4.8.

3.2 Payment of Long Term Liabilities. The Merger Consideration is based on (i) the STC Group not having any long term liabilities, including capital leases, as of the Effective Time; and (ii) no related party transactions involving any Member of the STC Group remaining in place as of the Effective Time. Consequently, all long term liabilities of the STC Group, including capital leases, will be paid in full by the STC Group no later than immediately prior to Closing and all transactions between any Member of the STC Group and any Related Party (e.g., accounts or notes payable or receivable) will be eliminated by the STC Group as of the Effective Time, so that neither Current Assets nor Current Liabilities will include any amounts owed by or to any Related Party. "Related Party" means any direct or indirect owner of STC, or any family member of any direct or indirect owner of STC.

3.3 Determination of Preliminary Merger Consideration. No later than five (5) business days prior to the Closing Date, STC and Acquirer will estimate the Merger Consideration (the "Preliminary Merger Consideration") based on the most recent information available in the books and records of the STC Group and the income tax estimate for the STC Group determined as set forth in Section 4.8. At Closing and as of the Effective Time, the Surviving Corporation will pay the Preliminary Merger Consideration by:

(a) Wire transfer of \$ _____ to a title company or other entity acceptable to STC and Acquirer (the "Escrow Agent") to be held and distributed as set forth in the Escrow Agreement substantially in the form of **Exhibit A** attached hereto (the "Escrow Agreement") to be entered into by the Stockholders' Representative, Acquirer and the Escrow Agent at Closing as set forth in Section 3.5; and

(b) The balance by wire transfer of \$ _____ (the "Closing Payment") to the Stockholders in accordance with the provisions of Sections 2.8(b), 2.10 and 2.11.

3.4 [REDACTED]

[REDACTED]

3.5 Escrow Arrangement. At Closing and as of the Effective Time, the Surviving Corporation will deposit with the Escrow Agent, in part payment of the Merger Consideration as set forth in subsection 3.3(a): (a) \$ (such cash, together with the net amount of earnings or interest thereon, the "True-Up Escrow Fund"); and (b) \$ (such cash, together with the net amount of earnings or interest thereon, the "Indemnity Escrow Fund"), to be held and disbursed by the Escrow Agent pursuant to the Escrow Agreement. The True-Up Escrow Fund will be retained by the Escrow Agent until distributed as provided in Section 3.4(b). The Indemnity Escrow Fund will be held by the Escrow Agent to satisfy the Stockholders' indemnification obligations under Section 9.3(a) for the period of time set forth in Section 9.6, with any amount of the Indemnity Escrow Fund that is not used to pay the Stockholders' indemnification obligations being distributed to the Stockholders as set forth in the Escrow Agreement and Section 2.11. All fees and expenses of the Escrow Agent will be paid equally by Acquirer and the Stockholders, with the Stockholders' portion being paid from the Indemnity Escrow Fund.

ARTICLE 4 PRE-CLOSING ACTIONS

4.1 Initial Consideration. No later than the second business day following the mutual execution of this Agreement, Acquirer will pay STC the sum of \$. This payment, together with the costs and expenses to be incurred by Acquirer in proceeding with this Agreement, including the conduct of its investigation of the Property as set forth in Section 4.3, constitutes full and adequate consideration for STC and Beard, as the controlling Stockholder of STC entering into this Agreement.

4.2 STC's Preparation and Delivery of Disclosure Schedule. No later than July 15, 2011, STC will prepare and deliver to Acquirer a disclosure schedule in the form of **Exhibit B** (the "Disclosure Schedule") with the information required to complete STC's representations and warranties in Article 7. Thereafter, until Closing, STC will update the Disclosure Schedule with respect to any new information relating to STC's representations and warranties in Article 7.

4.3 Acquirer's Due Diligence Investigation. Until the Closing Date, Acquirer will have the right to conduct a due diligence investigation of the STC Group. In connection therewith, Acquirer will have the right to review all of STC's, STERN's and the Railroad's books, records and other information regarding the STC Group. Also, Acquirer will have the right to contact STERN's and the Railroad's employees, customers, suppliers, lawyers, accountants and other authorized representatives regarding the Business. STC will cooperate with Acquirer's due diligence investigation and will make available to Acquirer all of STC's, STERN's and the Railroad's books and records relating the STC Group. In addition, STC will make available to Acquirer, all of STC's, STERN's and the Railroad's employees and agents, including accountants and legal counsel, for the purpose of discussing Acquirer's due diligence matters. In the event Acquirer, in its sole discretion, is not satisfied with its due diligence investigation, Acquirer will have the right to terminate this Agreement at any time prior to Closing by written notice to STC. In the event of any termination of this Agreement, Acquirer will destroy all information relating to STC or STERN or Railroad and not use such information for any purpose.

4.4 Surface Transportation Board Filings. No later than the later of (i) five (5) business days following the execution of this Agreement, Acquirer, at its sole expense, will prepare and file such documents as may be required to secure any and all necessary approvals, or exemptions from approval, of the transactions contemplated in the Agreement by the Surface Transportation Board (the "STB Requirement"). Acquirer will make all reasonable efforts to cause the STB Requirement to be satisfied.

4.5 Operations Pending Closing. Pending Closing, STC will cause the business of the STC Group to be conducted in the ordinary course consistent with past practices. Without limiting the foregoing, STC will not take any actions or cause STERN or the Railroad to take any actions that would result in any of STC's representations and warranties in Article 7 to not be true and correct as of date of the Disclosure Schedule or as of Closing. STC will not make any distributions to the Stockholders except as set forth in Section 4.7.

4.6 Stockholder Approval. Promptly following the execution of this Agreement, STC will cause a meeting of the Stockholders (the "Stockholders' Meeting") to be held for the approval of this Agreement and the Merger in accordance with the STERN Bylaws (as defined in Section 7.1(c)) and the Nevada Act. In accordance with the Nevada Act, STC will advise the Stockholders of their dissenters' rights. At the Stockholders' Meeting, Beard will vote his STERN Shares in favor of this Agreement and the Merger, and Beard will not exercise his dissenters' rights. By signing this Agreement, Beard, for himself and as trustee of the STC Stockholder, consents to and approves this Agreement and the Merger, thereby waiving any dissenter's rights.

4.7 Distributions and Payments by STC. Prior to Closing, STC will take the following actions:

(a) [REDACTED]

(b) [REDACTED]

(c) STC will take the actions required to comply with Section 3.2.

In making the distributions contemplated by Sections 4.7(a), STC and Beard will make appropriate arrangements for reservation of the amounts due to the Stockholder(s) other than Beard. If the other Stockholder(s) cannot be located, Beard will make payment of such amounts pursuant to any applicable abandoned property, escheat laws or similar laws at such time as is required by such laws. If any Stockholder makes a claim against the Surviving Corporation relating to any distribution from STERN or any payment from the Railroad, Beard will be responsible for, and will indemnify and hold harmless the Surviving Corporation against, any and all Losses (as defined in Section 9.3(a)) resulting from such claim of the other Stockholder(s). Without limiting the foregoing, Beard will be responsible for, and will indemnify and hold harmless the Surviving Corporation against, any and all Losses resulting from any claim of the other Stockholder(s) relating to any other dividends or distributions to the

Stockholders not made in proportion to their ownership of the STERN Shares or from any claim relating to the redemption of STERN Shares from a former stockholder of STERN.

4.8 **Pro Forma 2010 Tax Return.** No later than ten (10) business days prior to the Closing Date, STC will deliver to Acquirer pro forma federal and state tax returns for the STC Group for the year ending July 31, 2011 showing the 2010 Tax Liability based on the following:

[REDACTED]

ARTICLE 5 CLOSING

5.1 Time and Place of Closing

The closing ("Closing") of the Merger under this Agreement will take place on July 31, 2011 (the "Closing Date"). In addition to the obligations in Sections 3.3 and 4.8, in order to facilitate Closing on the Closing Date, the parties will pre-close the Merger at STC's offices at 9:00 A.M. on the day prior to the Closing Date by executing all of the documents listed in Sections 5.3 and 5.4 and finalizing the Preliminary Merger Consideration as set forth in Section 3.3, with all of the documents to be held in escrow by STC's and Acquirer's respective legal counsel for delivery by them upon confirmation of the wire transfer of the Preliminary Merger Consideration by Acquirer on the Closing Date. Acquirer will cause the wire transfer of the Preliminary Merger Consideration to occur as soon as practicable on the Closing Date. If the STB Requirement has not been satisfied by the Closing Date, Acquirer will have the right to extend the Closing Date for up to sixty (60) days upon written notice to STC and Beard and payment to STC of \$, which will be applied in part payment of the Merger Consideration at Closing. If such payment is not made, this Agreement shall terminate.

5.2 Conditions Precedent to Closing

(a) The obligation of Acquirer to consummate the transactions contemplated by this Agreement is subject to the fulfillment to its satisfaction of the following conditions prior to or at Closing (unless expressly waived in writing by Acquirer):

(i) The representations and warranties made by STC must be true and correct in all material respects at and as of Closing, and STC and Beard must have performed and complied in all material respects with all covenants, agreements and conditions contained in this Agreement required to be performed or complied with by STC or Beard prior to Closing;

(ii) There must be no litigation pending or threatened against STC, STERN or the Railroad, with respect to the consummation of this Agreement, that would adversely affect the ability of STC to complete the Merger, or that would have a material adverse effect on any Member of the STC Group;

(iii) Acquirer must have completed its due diligence investigation of the STC Group to Acquirer's satisfaction, in its sole discretion, and must not have terminated this Agreement as set forth in Section 4.1;

(iv) Acquirer must have secured all necessary approvals, or exemptions from approval, of the transactions contemplated in the Agreement by the Surface Transportation Board; and

(v) [REDACTED]

(b) The obligation of STC to consummate the transactions contemplated by this Agreement is subject to the fulfillment to its satisfaction of the following conditions prior to or at Closing (unless expressly waived in writing by STC):

(i) The representations and warranties made by Acquirer must be true and correct in all material respects at and as of Closing and Acquirer must have performed and complied in all material respects with all covenants, agreements and conditions contained in this Agreement required to be performed or complied with by Acquirer prior to Closing;

(ii) There must be no litigation pending or threatened against Acquirer with respect to the consummation of this Agreement or that would adversely affect the ability of STC to complete the Merger with Acquirer;

(iii) Acquirer must have secured all necessary approvals, or exemptions from approval, of the transactions contemplated in the Agreement by the Surface Transportation Board; and

(iv) [REDACTED]

(c) This Agreement may be terminated by either STC or Acquirer if any condition precedent to such party's obligation to perform hereunder has not been satisfied as of the Closing Date. However, nothing herein will prevent the non-defaulting party from pursuing any and all rights at law or in equity in the event that the failure of the non-defaulting party's conditions precedent to be satisfied is the result of a default by the other party hereunder.

5.3 Actions and Deliveries by STC at Closing

At Closing, STC will take the following actions, all of which will be subject to the simultaneous actions and deliveries by Acquirer described in Section 5.4:

(a) STC will execute and deliver to Acquirer the Certificates of Merger;

(b) STC will deliver to Acquirer the original stock certificates issued to: (i) STC representing all of the issued and outstanding shares of capital stock of STERN, and (ii) STERN representing all of the issued and outstanding shares of capital stock of the Railroad;

(c) STC will deliver to Acquirer and the Escrow Agent the Escrow Agreement duly executed by STC;

(d) STC will deliver to Acquirer duly executed resignation letters addressed to STC, STERN and the Railroad, respectively, from each director and officer of STC, STERN and Railroad, to be effective as of the Effective Time;

(e) STC will cooperate as requested by Acquirer in changing the names of the authorized signers on the STC Group bank accounts effective as of Closing;

(f) STC will deliver or cause to be delivered to Acquirer all of the books, records and other property of the STC Group in the possession or control of any Member of the STC Group; and

(g) STC will execute and deliver such other documents and take such other action as reasonably are required to consummate the transactions contemplated by this Agreement.

5.4 Actions and Deliveries by Acquirer at Closing

At Closing, Acquirer will take the following actions, all of which will be subject to the simultaneous actions and deliveries by STC described in Section 5.3:

(a) Acquirer will execute and deliver the Certificates of Merger;

(b) Acquirer will pay the Preliminary Merger Consideration pursuant to the provisions of Section 3.3;

(c) Acquirer will deliver to STC and the Escrow Agent the Escrow Agreement duly executed by Acquirer; and

(d) Acquirer will execute and deliver such other documents and take such other action as reasonably are required to consummate the transactions contemplated by this Agreement.

ARTICLE 6 POST-CLOSING COVENANTS

6.1 [REDACTED]

6.2 Final 2010 Tax Returns. Promptly following the Closing, Johnston & Kelly Company, CPA's, Modesto, California, will prepare final federal and state income tax returns for the STC Group. Acquirer and Beard will engage an independent certified public accountant (the "Independent Accountant") with experience in preparing tax returns for railroads to review and give opinion on the tax positions taken on the final federal and state income tax returns for the STC Group for the year ending July 31, 2011 (the "Final 2010 Returns") and will use reasonable commercial efforts to cause the Final 2010 Returns to be delivered to the Surviving Corporation for review and approval no later than sixty (60) days following Closing. The Surviving Corporation's approval of the Final 2010 Tax Returns will not be withheld or delayed unreasonably. The Final 2010 Returns will take into account the tax matters described in Section 4.8, as well as any other matters determined by the Independent Accountant to be appropriately included in determining the 2010 Tax Liability of the STC Group, subject to the reasonable approval of the Stockholders' Representative. The cost of preparation of the Final 2010 Returns will be paid by STC Group, with Acquirer to receive credit for such costs in the calculation of merger consideration under Section 3.4. The Final 2010 Tax Returns will be filed by the Independent Accountant with the appropriate taxing authorities as soon as they are approved by the Surviving Corporation and the Stockholders' Representative.

6.3 Further Assurances

Upon the request of Acquirer or the Stockholders' Representative at any time after the Closing Date, the Stockholders' Representative or the Acquirer will promptly execute and deliver such further instruments of assignment, transfer, conveyance, endorsement, direction or authorization and other documents as the requesting party or parties or its or their counsel may reasonably request to effectuate the purposes of this Agreement.

6.4 Fees and Expenses

The Stockholders will pay all of the legal and other fees, costs and expenses incurred by any Member of the STC Group or the Stockholders in connection with this Agreement and the

transactions contemplated hereby. Acquirer will pay all of the legal, accounting and other fees, costs and expenses incurred by Acquirer in connection with this Agreement and the transactions contemplated hereby.

6.5 Non-Disclosure and Non-Solicitation

The covenants in this Section 6.5 are given in consideration of Acquirer's completion of the Merger and will survive Closing.

(a) Following Closing, Beard will keep all Confidential Information confidential and will not, without the advance written consent of the Surviving Corporation: (i) disclose any Confidential Information to any third party, other than as appropriate in the preparation and filing of tax returns or in connection with the preparation of the STC Group's financial statements; or (ii) use the Confidential Information in connection with any activities or for the benefit of any person or entity. "Confidential Information" will include, but not be limited to, proprietary information concerning STC, STERN or the Railroad, including financial information, patents, trademarks, trade secrets, customer lists and information, business account information, business and marketing plans, and various analyses, compilations, studies, and other information (in whatever form), or property prepared, possessed, licensed, developed, or otherwise obtained by or belonging to STC, STERN or the Railroad and considered confidential by STC, STERN or the Railroad; provided, however, that Confidential Information will not include any information or data that is generally known to the public at the time of receipt by STC or becomes generally known to the public thereafter through no act of STC in breach of this Agreement.

(b) For a period of three (3) years following Closing, the Stockholders will not induce or solicit, directly, or indirectly through any entity or with any other person, whether as a sole proprietor, owner, stockholder, partner, member, director, officer, employee, consultant, agent, lender or otherwise: (i) any employee of STC, STERN or the Railroad to terminate such employee's employment with the Surviving Corporation, Company or the Railroad; or (ii) any then present or former customer, client, supplier, or other person transacting business with STC, STERN or the Railroad to reduce the amount of business it conducts with, or cease doing business with, STC, STERN or the Railroad.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES OF STC

STC represents and warrants to Acquirer as set forth in this Article 7 as of the date of this Agreement (subject to delivery of the Disclosure Schedule as set forth in Section 4.2) and as of Closing. For the purposes of this Article 7, the phrase to "STC's Knowledge" means the actual knowledge of Beard, Greg Carney, Diane Musto, and Linda Kantack, after review of the books and records of STC, STERN and the Railroad and inquiry of the accountants and legal counsel for STC, STERN and the Railroad.

7.1 Corporate Organization

(a) STC is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada, and is qualified to do business and in good standing as a foreign corporation in the State of California. STC has all requisite power and authority and all governmental licenses, authorizations, permits, consents and approvals to own its properties and assets and to conduct its business as now conducted. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada, and is qualified to do business and in good standing as a foreign corporation in the State of California. The Company has all requisite power and authority and all governmental licenses, authorizations, permits, consents and approvals to own its properties and assets and to conduct its business as now conducted. The Railroad is a corporation duly organized, validly existing and in good standing under the laws of the State of California. The Railroad has all requisite power and authority and all governmental licenses, authorizations, permits, consents and approvals to own its properties and assets and to conduct its business as now conducted.

(b) No Member of the STC Group is required to be qualified to do business in any other jurisdiction.

(c) STC was formed under Articles of Incorporation filed with the Secretary of State of Nevada on the date specified on **Schedule 7.1** of the Disclosure Schedule (the "STC Articles"). STC has delivered to Acquirer true, correct and complete copies of the STC Articles and the bylaws of STC (the "STC Bylaws"). Except for the STC Articles and STC Bylaws, there are no other documents or agreements of any kind relating to the governance or voting rights of the STC. The Company was formed under Articles of Incorporation filed with the Secretary of State of Nevada on January 27, 1927 (the "STERN Articles"). STC has delivered to Acquirer true, correct and complete copies of STERN's Articles and STERN's bylaws (the "STERN Bylaws"). Except for STERN Articles and Company Bylaws, there are no other documents or agreements of any kind relating to the governance or voting rights of STERN. The Railroad was formed under Articles of Incorporation filed with the Secretary of State of California on May 10, 1926 (the "Railroad Articles"). STC has delivered to Acquirer true, correct and complete copies of the Railroad Articles and the bylaws of the Railroad (the "Railroad Bylaws"). Except for the Railroad Articles and Railroad Bylaws, there are no other documents or agreements of any kind relating to the governance or voting rights of STERN.

7.2 Capitalization; Title

(a) The authorized capital stock of STC and the number of shares of STC Shares issued and outstanding are as set forth on **Schedule 7.2** of the Disclosure Schedule. All of the issued and outstanding STC Shares are owned of record by the Stockholders, as set forth on **Schedule 7.2** of the Disclosure Schedule. All of the STC Shares have been duly authorized, validly issued, are fully paid and non-assessable for any purpose, and have been issued in compliance with all applicable federal and state securities laws. The authorized capital stock of STERN and the number of shares of STERN's capital stock that are issued and outstanding are as set forth on **Schedule 7.2** of

the Disclosure Schedule. All of the issued and outstanding Company Shares are owned of record by the Stockholders as shown on Schedule 7.2. All of the STERN Shares have been duly authorized, validly issued, are fully paid and non-assessable for any purpose, and have been issued in compliance with all applicable federal and state securities laws. The authorized capital stock of the Railroad and the number of shares (the "Railroad Shares") that are issued and outstanding are as set forth on Schedule 7.2 of the Disclosure Schedule. All of the Railroad Shares are owned of record by STERN. All of the Railroad Shares have been duly authorized, validly issued, are fully paid and non-assessable for any purpose, and have been issued in compliance with all applicable federal and state securities laws.

(b) The STC Shares represent all of the ownership interests of any kind in STC. Except for this Agreement, there are no agreements, outstanding options, warrants, conversion rights, preemptive rights or other rights to subscribe for, purchase, convert into or otherwise acquire the STC Shares or any of the other authorized capital stock of STC, or any stock appreciation rights, phantom stock rights or similar rights of any kind. There are no voting trusts or other agreements or understandings to which any Stockholder or STC is a party with respect to the voting of the STC Shares. There is no indebtedness or other obligation or agreement of STC having (or granting in the future) any voting rights or rights to participate in any of the dividends or other distributions of STC. There are no outstanding obligations of any person to repurchase, redeem or otherwise acquire outstanding STC Shares or any securities convertible into or exchangeable for any STC Shares.

(c) The STERN Shares represent all of the ownership interests of any kind in STERN. Except for this Agreement, there are no agreements, outstanding options, warrants, conversion rights, preemptive rights or other rights to subscribe for, purchase, convert into or otherwise acquire STERN Shares or any of the other authorized capital stock of STERN, or any stock appreciation rights, phantom stock rights or similar rights of any kind. There are no voting trusts or other agreements or understandings to which STC or STERN is a party with respect to the voting of STERN Shares. There is no indebtedness or other obligation or agreement of STERN having (or granting in the future) any voting rights or rights to participate in any of the dividends or other distributions of STERN. There are no outstanding obligations of any person to repurchase, redeem or otherwise acquire outstanding Company Shares or any securities convertible into or exchangeable for any Company Shares.

(d) The Railroad Shares represents all of the ownership interests of any kind in the Railroad. There are no agreements, outstanding options, warrants, conversion rights, preemptive rights or other rights to subscribe for, purchase, convert into or otherwise acquire the Railroad Shares or any of the other authorized capital stock of the Railroad, or any stock appreciation rights, phantom stock rights or similar rights of any kind. There are no voting trusts or other agreements or understandings to which STC, STERN or the Railroad is a party with respect to the voting of the Railroad Shares. There is no indebtedness or other obligation or agreement of STERN or the Railroad having (or granting in the future) any voting rights or rights to participate in any of the dividends or other distributions of the Railroad. There are no outstanding obligations of

any person to repurchase, redeem or otherwise acquire outstanding Railroad Shares or any securities convertible into or exchangeable for any Railroad Shares.

(e) The STC Stockholder has good and marketable title to the STC Shares, free and clear of any pledges, restrictions on transfer, proxies and voting or other agreements, liens, claims, charges, security interests or other legal or equitable encumbrances, limitations or restrictions of any nature whatsoever ("Encumbrances"). The Stockholders have good and marketable title to STERN Shares, free and clear of any Encumbrances. The Company has good and marketable title to the Railroad Shares, free and clear of any Encumbrances.

7.3 Subsidiaries and Equity Interests

Except as set forth on **Schedule 7.3** of the Disclosure Schedule:

(a) Except for STERN and the Railroad, STC has no subsidiaries and does not own, directly or indirectly, any shares of capital stock, voting rights or other equity interests or investments in any other entity;

(b) Except for the Railroad, STERN has no subsidiaries and does not own, directly or indirectly, any shares of capital stock, voting rights or other equity interests or investments in any other entity. The Railroad does not have any subsidiaries and does not own, directly or indirectly, any shares of capital stock, voting rights or other equity interests or investments in any other entity; and

(c) No Member of the STC Group has any rights to acquire by any means, directly or indirectly, any capital stock, voting rights, equity interests or investments in another entity.

7.4 Validity of Agreement; Authorization

(a) STC has the power to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the performance of the obligations hereunder have been duly authorized by STC, and no other proceedings on the part of STC are necessary to authorize STC's execution, delivery and performance of this Agreement.

(b) STERN has the power to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the performance of the obligations hereunder have been duly authorized by the board of directors of STERN, and no other proceedings on the part of STERN are necessary to authorize STERN's execution, delivery and performance of this Agreement, except for the approval of the Stockholders in the meeting to be called as set forth in Section 4.6.

(c) This Agreement has been duly executed and delivered by STC and constitutes the valid and binding obligation of STC enforceable against STC in accordance with its terms. The documents to be executed and delivered by STC in connection with Closing, will be duly executed and delivered and, when delivered at

Closing, will constitute the valid and binding obligation of STC enforceable against STC in accordance with their terms.

(d) This Agreement has been duly executed and delivered by STERN and constitutes the valid and binding obligation of STC enforceable against STC in accordance with its terms, subject to the approval of the Stockholders in the meeting to be called as set forth in Section 4.6. The documents to be executed and delivered by STERN in connection with Closing, will be duly executed and delivered and, when delivered at Closing, will constitute the valid and binding obligation of STERN enforceable against STERN in accordance with their terms.

7.5 No Conflict or Violation

Except as set forth on **Schedule 7.5** of the Disclosure Schedule, the execution, delivery and performance by STC and STERN of this Agreement does not and will not: (i) violate or conflict with any provision of the STC Articles or STC Bylaws, STERN Articles, STERN Bylaws, the Railroad Articles or the Railroad Bylaws; (ii) subject to receipt of the approval of the Stockholders in the meeting to be called as set forth in Section 4.6, violate any applicable provision of law, statute, judgment, order, writ, injunction, decree, award, rule, or regulation of any foreign, federal, tribal, state or local government, court, arbitrator, agency or commission or other governmental or regulatory body or authority ("Governmental Authority") applicable to any of STC, STERN or the Railroad; (iii) violate, result in a breach of, constitute (with due notice or lapse of time or both) a default or cause any obligation, penalty or premium to arise or accrue under any contract, lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which any of STC, STERN or the Railroad is a party or by which any of them is bound or to which any of their respective properties or assets is subject; (iv) result in the creation or imposition of any Encumbrance upon any of the properties or assets of STC, STERN or the Railroad; or (v) result in the cancellation, modification, revocation or suspension of any license, permit or agreement of STC, STERN or the Railroad.

7.6 Consents and Approvals

Except as set forth on **Schedule 7.57.6** no consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority or any other person, on the part of any of STC, STERN or the Railroad, is required as a condition to the execution and delivery of this Agreement by STC or the performance by STC of its obligations hereunder, or as a result of the Merger.

7.7 Financial Statements

(a) STC has heretofore furnished to Acquirer copies of the internally prepared financial statements listed on **Schedule 7.7** of the Disclosure Schedule (the "Financial Statements"). The Financial Statements were prepared on a consistent basis throughout the periods covered thereby generally in accordance with the STC Group's income tax method of accounting and, on that basis, fairly represent, in all material respects, the financial condition of STC, STERN and the Railroad, as applicable, as of the

date thereof and the results of operations of STC, STERN and the Railroad, as applicable, for the periods then ended.

(b) Except as set forth on Schedule 7.7, no Member of the STC Group has any liability, whether absolute, accrued, contingent or otherwise, other than (i) liabilities shown on the Financial Statements of STC, STERN or the Railroad, as applicable, or (ii) Current Liabilities or otherwise disclosed in the accounting records or incurred in the ordinary course of business since April 30, 2011 (the "Last Balance Sheet Date"), all of which will be included in the calculation of the Merger Consideration as set forth in Section 3.1.

(c) No Member of the STC Group has and is not subject to any "Off-Balance Sheet Arrangement" (as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated under the Securities Act).

7.8 Absence of Certain Changes or Events

(a) Since the Last Balance Sheet Date, the businesses of STC, STERN and the Railroad have been conducted in the ordinary course consistent with past practices and no Member of the STC Group has taken any of the following actions:

(i) Made, or committed to make, any sale, assignment, transfer, abandonment or other conveyance of any of its assets or any part thereof except for dispositions of worn-out or obsolete equipment for fair or reasonable value (and provided such equipment is replaced as required for the continued operation of the business) in the ordinary course of business consistent with past practices; or

(ii) Changed any of its accounting practices or procedures.

(b) Since the Last Balance Sheet Date, there has not been:

(i) Any material adverse change in the financial condition or in the operations, business, prospects, properties or assets of STC, STERN or the Railroad;

(ii) Any damage, destruction or loss to any of the properties or assets of STC, STERN or the Railroad, whether or not covered by insurance, that has materially and adversely affected or impaired (or which may materially and adversely affect or impair) the ability of STC, STERN or the Railroad to conduct its business consistent with past practices; or

(iii) Any strikes, work stoppages or other labor trouble affecting STC, STERN or the Railroad or any event or condition of any character which has materially and adversely affected or which may materially and adversely affect or impair the business of STC, STERN or the Railroad.

7.9 Tax Matters

“Tax” or “Taxes” means any and all federal, state, local, foreign and other taxes, levies, fees, imposts, duties and charges of whatever kind (including any interest, penalties or additions to the tax imposed in connection therewith or with respect thereto), including, without limitation, taxes imposed on, or measured by, income, franchise, profits or gross receipts, and also ad valorem, value added, sales, use, service, real or personal property, capital stock, license, payroll, withholding, employment, social security, railroad retirement, workers’ compensation, unemployment compensation, utility, excise, stamp, occupation, premium, transfer and gains taxes and customs duties.

(a) All federal, state and local tax returns (**“Tax Returns”**) required to be filed by or on behalf of any Member of the STC Group have been filed (taking into account any extension of time to file);

(b) All Tax Returns were true, complete and correct in all material respects as of the time of filing;

(c) STC has provided to Acquirer true and complete copies of the federal and state income Tax Returns listed on **Schedule 7.9** of the Disclosure Schedule.

(d) All Taxes required to be paid by or on behalf of any Member of the STC Group (i) that were due and payable prior to the date of this Agreement have been paid in full, or (ii) if not yet due and payable, are properly accrued in the Financial Statements or will be accrued in full as of the Effective Time as part of the Current Liabilities as set forth in Section 3.1(b);

(e) No Member the STC Group has any obligations to STC’s Stockholders for payment or reimbursement of any Taxes, except for the amounts that have been or will be accrued for payment as part of the Current Liabilities;

(f) There are no written proposed deficiencies or other written claims for unpaid Taxes by any Member of the STC Group and no Taxes are being contested by any Member of the STC Group;

(g) All Taxes that any Member of the STC Group is required to withhold or collect relating to compensation or benefits provided to employees have been duly withheld or collected and have been paid over, as required, to the appropriate taxing authority, or will be accrued for payment as part of the Current Liabilities;

(h) There are no audits or proceedings in progress, nor to STC’s Knowledge, pending with respect to Taxes of the STC Group or any Member of the STC Group;

(i) No Member of the STC Group has entered into, or agreed to enter into, any closing or other agreement or settlement with respect to Taxes affecting or relating to the STC Group or any Member of the STC Group;

(j) There are no waivers of statutes of limitations with respect to the STC Group or any Member of the STC Group that are in effect as of the date hereof; and

(k) No Member of the STC Group (i) has been a member of an affiliated group (within the meaning of Code § 1504(a)) filing a consolidated federal income Tax Return (other than a group the common parent of which is the STC), or (ii) has any liability for the Taxes of any person under Treasury Regulations § 1.1502-6 (or any similar provision of state, local, or foreign law, as a transferee or successor, by contract, or otherwise;

7.10 Accounts Receivable

All of the STC Group's accounts receivable resulted from bona fide transactions in the ordinary course of business with unrelated third parties.

7.11 Real and Personal Property

(a) Except as set forth on **Schedule 7.11** of the Disclosure Schedule, no Member of the STC Group leases any real property.

(b) The real property owned by each Member of the STC Group is described on **Schedule 7.11** of the Disclosure Schedule (the "STC Group Real Property").

(c) Except as set forth on **Schedule 7.11**, the Company and the Railroad own all of the right-of-way and other real property used by the Railroad in the conduct of its rail operations;

(d) Except as set forth on **Schedule 7.11** of the Disclosure Schedule, no Member of the STC Group has entered into any agreement of any kind granting any Related Party, or any third party any right to purchase, lease or otherwise use any STC Group Real Property, and none of the STC Group Real Property is subject to any such right.

(e) **Schedule 7.11** of the Disclosure Schedule lists all of the leases of personal property (whether treated as a capital or operating lease) by any Member of the STC Group (the "Personal Property Leases"), true, correct and complete copies of which have been provided to Acquirer. All of the Personal Property Leases are currently in full force and effect, there are no defaults thereunder and no event has occurred which, with the passage of time or upon giving of notice, would constitute a default thereunder.

(f) Except for the assets and properties that are leased or licensed under the terms of the Personal Property Leases or licenses, each Member of the STC Group has good and marketable title to all of the tangible and intangible assets and properties used by it in the conduct of its business, including the STC Real Property.

(g) No Related Party owns or has the right to use any of the tangible or intangible personal property used by any Member of the STC Group in the conduct of its business.

(h) Except as set forth on Schedule 7.11 of the Disclosure Schedule, all of the tangible and intangible assets and properties owned or used by each Member of the STC Group in the conduct of its business, including the STC Group Real Property, will be free and clear of all Encumbrances as of Closing.

(i) STC has provided Acquirer with a copy of a fixed asset list for the STC Group (the "Fixed Asset List"), which lists all of the material tangible personal property owned by each Member of the STC Group as of the Last Balance Sheet Date. Since the date of the Fixed Asset List, no Member of the STC Group has disposed of any of the assets listed thereon, except for (A) tangible personal property disposed of in the ordinary course of business that has been replaced as required for the conduct of STERN's or the Railroad's business in the ordinary course consistent with past practices, and (B) the real property to be distributed by STC to the Stockholders as set forth in Section 4.7(a).

(j) Except as disclosed on Schedule 7.11 of the Disclosure Schedule, all of the assets listed on the Fixed Asset List are in reasonable condition and repair (ordinary wear and tear excepted) as required for carrying on STC's, STERN's or the Railroad's business, as applicable, in the ordinary course consistent with past practices.

7.12 Books and Records of the STC Group

The books of account, minute books, record books, and other records of the STC Group, all of which have been made available to Acquirer or their representatives, are complete and correct in all material respects.

7.13 Intellectual Property

(a) Schedule 7.13 of the Disclosure Schedule lists all of the patents, trademarks, and tradenames owned and used by any Member of the STC Group in the conduct of its business and all of the licenses, including software licenses, for the use of any intellectual property, which are all intellectual property rights necessary for STC, STERN or the Railroad, as applicable, to conduct its business as presently conducted.

(b) No use of intellectual property by any Member of the STC Group infringes upon or violate the rights of any other party and no other party is infringing on any of the intellectual property rights of any Member of the STC Group.

(c) Each Member of the STC Group has valid licenses providing for the necessary number of authorized users for all of the software used by it in the conduct of its business.

7.14 Licenses, Permits and Governmental Approvals

Schedule 7.14 of the Disclosure Schedule lists all of the licenses, permits, certificates, franchises, authorizations and approvals issued or granted to each Member of the STC Group by any Governmental Authority. To STC's Knowledge, each Member of the STC Group has all licenses, permits, certificates, franchises, authorizations and approvals necessary for the conduct of its business in the ordinary course consistent with past practices (each a "License"). Each License has been issued to, and duly obtained and fully paid for by the applicable Member of the STC Group, is valid, and is in full force and effect.

7.15 Operational Matters.

(a) Except as disclosed in **Schedule 7.15** of the Disclosure Schedule, STC has not conducted any business of any kind since January 1, 2005.

(b) Except as disclosed in **Schedule 7.15** of the Disclosure Schedule, no customer of the Railroad who shipped more than 350 carloads during calendar year 2010 has ceased doing business with STC, STERN or the Railroad or, to STC's Knowledge, contemplates ceasing business with the Railroad.

(c) Except as set forth in **Schedule 7.15** of the Disclosure Schedule, each Member of the STC Group is conducting its business in compliance, in all material respects, with all laws, statutes, rules, regulations, decrees or orders of any Governmental Entity applicable to it and its properties; and

(d) **Schedule 7.15** of the Disclosure Schedule lists:

(i) All citations, notices of violations or notices of investigation resulting in liability (or alleging liability if no final determination of liability has been made) to STC, STERN or the Railroad;

(ii) All orders, consent orders, administrative or judicial enforcement proceedings from any Governmental Authority received by STC, STERN or the Railroad since January 1, 2008 relating to safety or health matters involving the business or operations of STC, STERN or the Railroad;

(iii) The results of each federal or state health or safety inspection since January 1, 2008 relating to STC, STERN or the Railroad, including any responses thereto filed by STC, STERN or the Railroad, as applicable;

(iv) A summary of each audit (including any audits by any insurance company or carrier) relating to the safety of STC's, STERN's or the Railroad's operations (including any action plans prepared in response thereto) which has been prepared since January 1, 2008; and

(v) All slow orders currently in effect applicable to the Railroad.

(e) **Schedule 7.15** of the Disclosure Schedule lists all litigation currently pending or, to STC's Knowledge, threatened against STC, STERN or the Railroad.

(f) Except as disclosed in **Schedule 7.15** of the Disclosure Schedule, there are no lawsuits, claims, actions, proceedings or governmental investigations pending or, to STC's Knowledge, threatened in writing against STC, STERN or the Railroad which, if adversely determined, would result in a liability of STC, STERN that is not fully covered by insurance or for which the full self insured retainage has not been accrued as of the Last Balance Sheet Date or will not be accrued as of the Effective Time as a Current Liability.

(g) **Schedule 7.15** of the Disclosure Schedule lists all accidents or incidents since January 1, 2008, that have or reasonably could result in a claim of liability against any of STC, STERN or the Railroad, including any reportable injuries or derailments or damage to property;

(h) No Member of the STC Group is subject to any outstanding and unsatisfied order, writ, judgment, injunction or decree or settlement or consent agreement by or with a Governmental Authority.

7.16 Environmental Matters

(a) The following terms will have the following meanings:

"Environmental Law" means current local, county, state, federal, and/or foreign law (including common law), statute, code, ordinance, rule, regulation or other legal obligation relating to the protection of the environment or natural resources, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. section 9601 et seq.), as amended, the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.), as amended ("RCRA"), the Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.), as amended, the Clean Air Act (42 U.S.C. section 7401 et seq.), as amended, the Toxic Substances Control Act (15 U.S.C. section 2601 et seq.), as amended, the Occupational Safety and Health Act (29 U.S.C. section 651 et seq.), as amended, the Safe Drinking Water Act (42 U.S.C. section 300(f) et seq.), as amended, analogous state, tribal or local laws, and any similar, implementing or successor law, and any amendment, rule, regulation, or directive issued thereunder.

"Hazardous Material" means any substance, material or waste which is regulated by any Environmental Law as hazardous, toxic, a pollutant, contaminant or words of similar meaning including, without limitation, petroleum, petroleum products, asbestos, urea formaldehyde and polychlorinated biphenyls.

(b) Except as set forth on **Schedule 7.16** of the Disclosure Schedule:

(i) To STC's Knowledge, each Member of the STC Group is in compliance with all applicable Environmental Laws;

(ii) There are no underground storage tanks currently located on any of the STC Group Real Property and, to STC's Knowledge, no underground storage tanks have ever been located on any of the STC Group Real Property;

(iii) No Member of the STC Group has received any written request for information, or has not been notified that it is a potentially responsible party, under CERCLA or any similar state law with respect to any on-site or off-site location for which liability is currently being asserted (or was asserted during the most recent five (5) year period) with respect to the activities or operations of STC, STERN or the Railroad;

(iv) There are no writs, injunctions, decrees, orders or judgments entered during the last five (5) years or currently outstanding, nor any actions, suits, proceedings or investigations pending or to STC's Knowledge threatened, involving STC, STERN or the Railroad relating to (A) compliance with any Environmental Law, or (B) the release, disposal, discharge, spill, treatment, storage or recycling of Hazardous Materials into the environment at any location; and

(v) Each Member of the STC Group has obtained, currently maintains and is in material compliance with all licenses and permits which are required under Environmental Laws for the operation of its business (collectively, "Environmental Permits"), all such Environmental Permits are listed on **Schedule 7.16** of the Disclosure Schedule and are in effect and no appeal nor any other action is pending to revoke any such Environmental Permit.

(vi) **Schedule 7.16** of the Disclosure Schedule lists all environmental reports, audits or inspections that have been conducted by (or at the request of) STC, STERN, the Railroad or any Governmental Authority with respect to any aspect of the business or operations of STC, STERN or the Railroad during the immediately preceding five (5) year period. True, correct and complete copies of all of the reports, audits and inspections listed on **Schedule 7.16** of the Disclosure Schedule have been provided to Acquirer.

7.17 Contracts

(a) **Schedule 7.15(e)** of the Disclosure Schedule sets forth a true and complete list or description of the following contracts, agreements, instruments and commitments (other than the Personal Property Leases) to which STC, STERN or the Railroad is a party or otherwise relating to or affecting any of its assets, properties or operations, whether written or oral ("Material Contracts"): (a) contracts calling for payments by STC, STERN or the Railroad of amounts greater than \$ per year; (b) contracts providing payments to STC, STERN or the Railroad for services involving the shipment of more than 350 carloads by the Railroad per year; (c) contracts, loan agreements, letters of credit, repurchase agreements, mortgages, security agreements, guarantees, pledge agreements, trust indentures, promissory notes and similar documents

relating to the borrowing of money or for lines of credit; (d) any other contract or agreement with a remaining term greater than one year; (e) contracts or agreements requiring the posting of any surety bond or other collateral by STC, STERN or the Railroad; and (e) contracts or agreements restricting STC, STERN or the Railroad from engaging in any business or venture of any kind.

(b) Each Member of the STC Group has taken all actions necessary for each Material Contract to constitute a valid, binding and enforceable obligation of STC, STERN or the Railroad, as applicable; each Material Contract is in full force and effect on the date hereof; there are no defaults thereunder by STC, STERN or the Railroad, as applicable or, to STC's Knowledge, by the other party thereto; and no event has occurred which, with the passage of time or upon giving of notice, would constitute a default thereunder.

(c) The copies of the Material Contracts provided to Acquirer by STC, STERN, or the Railroad are complete and correct and include all amendments thereto.

7.18 Employees

(a) **Schedule 7.18** of the Disclosure Schedule sets forth a true and complete list showing the names of all employees of STC, STERN or the Railroad (the "Employees") and the current annual compensation (including non-discretionary bonuses) payable to each salaried Employee and the current hourly wage rate and non-discretionary bonuses for each other Employee. Except as set forth on **Schedule 7.18** of the Disclosure Schedule, there are no written or oral employment contracts between STC, STERN or the Railroad and any Employee, including any contracts, agreements, plans or arrangements covering any Employee with "change of control" or similar provisions that would be triggered as a result of the consummation of this Agreement.

(b) Except for the collective bargaining agreements listed on **Schedule 7.18** of the Disclosure Schedule, no Member of the STC Group is a party to any collective bargaining agreements and to STC's Knowledge, there are no current union organizing activities with respect to any of the non-union Employees of any Member of the STC Group.

(c) Each Member of the STC Group has: (i) complied with all federal, state and local laws relating to wages and hours, and no Member of the STC Group is liable for (and there is no basis for any claim against any of STC, STERN or the Railroad for) any amounts (including any arrears of wages or any taxes or penalties) for failure to comply with any of the foregoing; (ii) each Member of the STC Group has complied with all federal, state and local laws relating to employment discrimination, wrongful discharge or harassment and all other federal, state and local laws relating to employment and working conditions; and (iii) there are no proceedings, investigations or citations pending or, to the STC's Knowledge, threatened before any court, Governmental Authority or instrumentality or arbitrator relating to any failure to comply therewith. There have been no investigations of STC, STERN or the Railroad during the most recent five (5) year period by any Governmental Authority relating to any employee matters and

no Member of the STC Group has received any notice that any such investigation is planned.

7.19 Employee Plans

(a) Except as disclosed on **Schedule 7.19** of the Disclosure Schedule, no Member of the STC Group sponsors, maintains, or contributes to, and at any time during the past five years has not sponsored or maintained contributed to, any “employee benefit plan,” as defined under Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), or any other bonus, pension, stock option, Purchase, welfare benefit, profit-sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation and other similar fringe or employee benefit plans, funds, programs or arrangements, whether written or oral (“**Employee Plans**”), in each of the foregoing cases which cover, are maintained for the benefit of, or relate to any or all current or former employees of STC, STERN or the Railroad.

(b) STC has made available to Acquirer a complete and current copy of each Employee Plan document or a written description of any unwritten plan; any trust agreement or insurance contract related to an Employee Plan; the most recent employee handbooks, policies and statements of practices and, for each Employee Plan subject to ERISA, the most recent summary plan description, the most recent IRS determination letter for each plan intended to be tax-qualified; and the forms for the last five plan years required to be filed with any Governmental Authority.

(c) Except as set forth on **Schedule 7.19** of the Disclosure Schedule, no Employee Plan maintained by STC, STERN or the Railroad is subject to the funding requirements of Section 412 of the Code or Title IV of ERISA, and neither STERN nor the Railroad has any obligation to contribute to any “multi-employer plan” within the meaning of Section 3(37)(A) of ERISA.

7.20 Insurance

(a) **Schedule 7.20** of the Disclosure Schedule sets forth a true and complete list of all current policies of property, casualty, liability and other insurance, including the applicable deductibles thereunder, insuring the properties, assets, employees and/or operations of STC, STERN or the Railroad (collectively, the “**Policies**”) and a claims history since January 1, 2008. All of the Policies provide coverage on an “occurrence” basis.

(b) All Policies are in full force and effect, and coverage for STC, STERN and the Railroad under the Policies will continue following the Closing Date, subject to the payment by STC, STERN or the Railroad of the applicable premiums.

7.21 Bank Accounts

Schedule 7.21 of the Disclosure Schedule is a complete and accurate list of all bank accounts currently used or held by STC, STERN or the Railroad and the authorized signatories on each account.

7.22 Brokers

No Member of the STC Group has employed the services of any investment banker, financial advisor, broker or finder in connection with this Agreement or any of the transactions contemplated hereby.

7.23 Full Disclosure

No representation or warranty of STC in this Agreement or in any writing furnished or to be furnished pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact required to make the statements herein or therein contained not misleading in light of the circumstances.

ARTICLE 8 REPRESENTATIONS AND WARRANTIES OF ACQUIRER

Acquirer represents and warrants to the STC as set forth in this Article 8 as of the date of this Agreement and as of Closing.

8.1 Corporate Organization

Acquirer is a corporation duly organized, validly existing and in good standing under the laws of the State of Colorado and has all requisite power and authority to own its properties and assets and to conduct its business as now conducted. Acquirer is duly qualified to do business as a foreign entity in every jurisdiction where the character of the properties owned or leased by it or the nature of the business conducted by it makes such qualifications necessary.

8.2 Validity of Agreement

Acquirer has the power to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the performance of Acquirer's obligations hereunder have been duly authorized by the Board of Directors of Acquirer, and no other proceedings on the part of Acquirer are necessary to authorize such execution, delivery and performance. This Agreement has been duly executed by Acquirer and constitutes the valid and binding obligation of Acquirer enforceable against Acquirer in accordance with its terms.

8.3 No Conflict or Violation; No Defaults

The execution, delivery and performance by Acquirer of this Agreement does not and will not violate or conflict with any provision of its organizational documents and does not and will not violate any applicable provision of law, or any order, judgment or decree of any Governmental Authority, nor violate or result in a breach of or constitute (with due notice or

lapse of time or both) a default under any contract, lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which Acquirer is a party or by which it is bound or to which any of its properties or assets is subject.

8.4 Consents and Approvals

Except as set forth in Section 4.4, no consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority or any other person (on the part of Acquirer), is required as a condition to the execution and delivery of this Agreement or the performance of its obligations hereunder.

8.5 Brokers

Acquirer has not employed the services of an investment banker, financial advisor, broker or finder in connection with this Agreement or any of the transactions contemplated hereby.

8.6 Investment Representation

Acquirer is entering into the Merger for investment and is not acquiring the shares of the Surviving Corporation in the Merger in connection with any distribution thereof within the meaning of the Securities Act of 1933, as amended. Acquirer acknowledges that the shares of the Surviving Corporation have not been registered under the Securities Act of 1933, as amended, or any other federal or state securities laws.

ARTICLE 9 SURVIVAL; INDEMNIFICATION, DISPUTE RESOLUTION

9.1 Survival of Representations and Warranties

All of the representations and warranties of STC and Acquirer contained in this Agreement must be true and correct as of Closing. The representations and warranties will survive for the following periods (the "Warranty Period"):

(a) all of STC' representations and warranties will survive Acquirer's due diligence investigation and Closing, and will continue in effect for a period of two (2) years following the Closing Date, except for STC' representations and warranties contained in Section 7.9, which will survive for a period of time applicable to the statute of limitations period applicable to the liability being asserted; and

(b) all of Acquirer's representations and warranties will survive for a period of time applicable to the statute of limitations period applicable to the liability being asserted.

All indemnification claims for breach or inaccuracy of any representations or warranties must be filed prior to the expiration of the applicable Warranty Period. Notwithstanding anything herein to the contrary, STC and Acquirer will continue to have liability for any inaccuracy or breach of such party's representation or warranty that constitutes fraud on the part of such party, without regard to the Warranty Period specified above or, in the case of STC, the

dollar limitations set forth in Section 9.4 or the limitation of liability to the Indemnity Escrow Fund set forth in Section 9.6.

9.2 Survival of Covenants

The covenants of all the parties herein and the documents executed and delivered by the parties in connection with Closing (excluding the representations and warranties, the survival of which is governed by Section 9.1), including the indemnity obligations relating thereto, will survive Closing subject only to the applicable limitation period under applicable law.

9.3 [REDACTED]

9.4 [REDACTED]

9.5 [REDACTED]

[REDACTED]

[REDACTED]

9.6 [REDACTED]

**ARTICLE 10
MISCELLANEOUS PROVISIONS**

10.1 Publicity

Neither party will issue or cause the publication of any press release or other announcement with respect to this Agreement or the transactions contemplated hereby without the consent of the other party hereto.

10.2 Successors and Assigns; No Third-Party Beneficiaries

This Agreement will inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, personal representatives successors and assigns; provided, however, that neither party may assign or delegate any of the obligations created under this Agreement without the prior written consent of the other party. Nothing in this Agreement will confer upon any person or entity not a party to this Agreement, or the legal representatives of such person or entity, any rights or remedies of any nature or kind whatsoever under or by reason of this Agreement, except to the extent that such person or entity is an heir, personal representative, or a permitted successor or assign of a party to this Agreement.

10.3 Notices

All notices and other communications given or made pursuant hereto must be in writing and will be deemed to have been duly given and received when delivered personally, sent by facsimile (with evidence of confirmation of receipt), or upon receipt from an overnight courier (in each case on a business day) to the parties at the following addresses:

If to Acquirer, to:

252 Clayton Street, Fourth Floor
Denver, Colorado 80206
Facsimile: (303) 398-4540
Attention: Chief Financial Officer and Legal Counsel

with a copy to:

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.
950 17th Street, Suite 1600

Denver, Colorado 80202
Facsimile: (303) 825-6525
Attention: William R. Neff

If to STC, Beard or the Stockholders' Representative to:

800 N. Shaw Road
Stockton, CA 95215
Facsimile: (209) 576-6725
Attention: Thomas K. Beard,

with a copy to:

Wendel, Rosen, Black & Dean, LLP
1111 Broadway, 24th Floor
Oakland, CA 94607
Facsimile: (209) 576-6725
Attention: Sidney A. Israels

or to such other persons or at such other addresses as may be furnished by either party by like notice to the other, and such notice or communication will be deemed to have been given or made as of the date so delivered or mailed.

10.4 Entire Agreement

This Agreement, together with the Schedules and the Exhibits hereto, represent the entire agreement and understanding of the parties with reference to the transactions set forth herein and no representations or warranties have been made in connection with this Agreement other than those expressly set forth herein or in the Schedules, Exhibits, certificates and other documents delivered in accordance herewith. This Agreement supersedes all prior negotiations, discussions, correspondence, communications, understandings and agreements between the parties relating to the subject matter of this Agreement and all prior drafts of this Agreement, all of which are merged into this Agreement. No prior drafts of this Agreement and no words or phrases from any such prior drafts will be admissible into evidence in any action or suit involving this Agreement.

10.5 Waivers and Amendments

STC or Acquirer may, by written notice to the other: (a) extend the time for the performance of any of the obligations or other actions of the other; (b) waive any inaccuracies in the representations or warranties of the other contained in this Agreement or in any document delivered pursuant to this Agreement by the other party; (c) waive compliance with any of the covenants of the other contained in this Agreement; (d) waive performance of any of the obligations of the other created under this Agreement; or (e) waive fulfillment of any of the conditions to its own obligations under this Agreement or in any documents delivered pursuant to this Agreement by the other party. The waiver by any party hereto of a breach of any provision of this Agreement will not operate or be construed as a waiver of any subsequent breach, whether or not similar, unless such waiver specifically states that it is to be construed as

a continuing waiver. This Agreement may be amended, modified or supplemented only by a written instrument executed by the parties hereto.

10.6 Severability

This Agreement will be deemed severable, and the invalidity or unenforceability of any term or provision hereof will not affect the validity or enforceability of this Agreement or of any other term or provision hereof. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there will be added as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

10.7 Titles and Headings

The Article and Section headings and any table of contents contained in this Agreement are solely for convenience of reference and will not affect the meaning or interpretation of this Agreement or of any term or provision hereof.

10.8 Signatures and Counterparts

Facsimile transmission of any signed original document and/or retransmission of any signed facsimile transmission will be the same as delivery of an original. At the request of Acquirer or STC, the parties will confirm facsimile transmission by signing a duplicate original document. This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which together will be considered one and the same agreement.

10.9 Governing Law

This Agreement will be governed by and construed in accordance with the internal and substantive laws of California and without regard to any conflicts of laws concepts which would apply the substantive law of some other jurisdiction.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

STC:

Stockton Terminal Company, a Nevada corporation

**By: _____
Thomas K. Beard, President and CEO**

Stockton Terminal & Eastern Railroad Company of Nevada

**By: _____
Thomas K. Beard, President and CEO**

BEARD:

Thomas K. Beard

ACQUIRER:

ST&E Holdings, Inc., a Colorado corporation

**By: _____
Larry Bush, Chief Financial Officer**

EXHIBIT A
Form of Escrow Agreement
(See Attached)

ESCROW AGREEMENT

[REDACTED]

1

EXHIBIT B

Form of Disclosure Schedule

**DISCLOSURE SCHEDULE DATED JUNE 29, 2011 TO PLAN AND AGREEMENT OF
MERGER**

by and amon

STOCKTON TERMINAL COMPANY

THOMAS K. BEARD

and

ST&E HOLDINGS, INC.

SCHEDULE 4.7 OF THE DISCLOSURE SCHEDULE

SCHEDULE 7.2 OF THE DISCLOSURE SCHEDULE

Capitalization of STC, STERN and the Railroad

SCHEDULE 7.7 OF THE DISCLOSURE SCHEDULE

List of Financial Statements

SCHEDULE 7.9 OF THE DISCLOSURE SCHEDULE

List of Tax Returns

SCHEDULE 7.11 OF THE DISCLOSURE SCHEDULE

STC Group Real Property, Personal Property Leases and Exceptions to Fixed Asset Condition

SCHEDULE 7.13 OF THE DISCLOSURE SCHEDULE

Intellectual Property

SCHEDULE 7.14 OF THE DISCLOSURE SCHEDULE

Licenses

SCHEDULE 7.15 OF THE DISCLOSURE SCHEDULE

Operational Matters

SCHEDULE 7.16 OF THE DISCLOSURE SCHEDULE

Environmental Disclosure

SCHEDULE 7.17 OF THE DISCLOSURE SCHEDULE

Contracts

SCHEDULE 7.18 OF THE DISCLOSURE SCHEDULE

Employee Information

SCHEDULE 7.19 OF THE DISCLOSURE SCHEDULE

Employee Plan Information

SCHEDULE 7.20 OF THE DISCLOSURE SCHEDULE

Insurance

SCHEDULE 7.21 OF THE DISCLOSURE SCHEDULE

Bank Accounts