

**IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

In re:

Connector 2000 Association, Inc.,

Debtor.

Case No. 10-04467-dd

Chapter 9

**FIRST AMENDED DISCLOSURE STATEMENT  
TO FIRST AMENDED PLAN FOR ADJUSTMENT OF DEBTS**

THE DEBTOR BELIEVES THAT THE PLAN IS FEASIBLE AND IN THE BEST INTEREST OF ITS CREDITORS. THE DEBTOR RECOMMENDS THAT YOU CAST YOUR BALLOT IN FAVOR OF THE PLAN.

This First Amended Disclosure Statement to the First Amended Plan for Adjustment of Debts, as modified, supplemented and amended (collectively, the “Disclosure Statement”), is being furnished by Connector 2000 Association, Inc. (“Debtor”) to its creditors pursuant to Sections 901 and 1125 of Title 11 of the United States Code (the “Bankruptcy Code”) in connection with a solicitation by the Debtor of Ballots for the acceptance of the First Amended Plan for Adjustment of Debts, filed by the Debtor, as modified, supplemented and amended (collectively, the “Plan”). Capitalized terms in this Disclosure Statement not otherwise defined herein shall have their respective meanings set forth in the Plan.

On June 24, 2010, the Debtor filed a voluntary petition for relief under Chapter 9 of the Bankruptcy Code. On November 23, 2010, the Debtor filed its initial First Amended Disclosure Statement and First Amended Plan for Adjustment of Debts, which were subsequently modified, amended, or supplemented from time to time including by Addendums to the First Amended Disclosure Statement and the First Amended Plan for Adjustment of Debts and subsequent filings all of which are reflected herein.<sup>1</sup> On January 19, 2011 (the “Approval Date”), the Court approved this Disclosure Statement as modified and authorized the Debtor to solicit acceptances of the Plan.

CLAIMANTS SHOULD READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY BEFORE VOTING ON THE PLAN. NO SOLICITATION OF VOTES FROM CREDITORS WITH RESPECT TO THE PLAN MAY BE MADE EXCEPT PURSUANT TO THIS DISCLOSURE STATEMENT. NO PERSON HAS BEEN AUTHORIZED TO USE ANY INFORMATION CONCERNING THE DEBTOR OR ITS BUSINESS IN CONNECTION WITH THE SOLICITING OF VOTES FROM THE CLAIMANTS WITH RESPECT TO THE PLAN OTHER THAN THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. CLAIMANTS SHOULD NOT RELY ON ANY

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<sup>1</sup> A redline copy of the Disclosure Statement showing the modifications made thereto since the filing on November 23, 2010 is located on the Debtor’s website at [www.southernconnector.com](http://www.southernconnector.com).

INFORMATION RELATING TO THE DEBTOR AND ITS BUSINESS OTHER THAN THAT CONTAINED IN THE PLAN, THIS DISCLOSURE STATEMENT AND THE APPENDICES AND SCHEDULES ATTACHED HERETO AND THERETO.

After carefully reviewing the Plan, this Disclosure Statement and all other plan documents, including the Amended Trust Indenture and New License Agreement, and exhibits and schedules attached hereto and thereto please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed Ballot.

Holders of claims in Class 1 and Class 2 are instructed to complete all required information on the Ballot, execute the Ballot, and return the completed Ballot to the Voting Nominee such that the Ballot is received in sufficient time to allow the Voting Nominee to receive the Ballot and summarize the results on a Master Ballot and return the Master Ballots to the Solicitation Agent by March 4, 2011. The Voting Nominee for holders of claims in Class 1 and Class 2 are instructed to complete all required information on their Master Ballots, execute the Master Ballots, and return the completed Master Ballots to the Solicitation Agent such that the Master Ballots are actually received by the Solicitation Agent by 4:00 p.m., prevailing Eastern Time, on or before March 4, 2011 (the "Voting Deadline"). Holders of claims in Class 4, Class 5 and Class 6 are instructed to complete all required information on the Ballot, execute the Ballot, and return the completed Ballot to the Solicitation Agent such that the Ballot is actually received by the Solicitation Agent by the Voting Deadline. Any failure to follow the voting instructions included with the relevant Ballot may disqualify that Ballot and the corresponding vote. Reference is made to the Solicitation Procedures Order for further information on voting and Ballot matters.

ANY BALLOTS RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE COUNTED AND SHALL BE DEEMED INVALID AND INEFFECTIVE (UNLESS OTHERWISE ALLOWED UNDER THE SOLICITATION PROCEDURES ORDER OR OTHER ORDER OF THE BANKRUPTCY COURT).

THE PURPOSE OF THIS DISCLOSURE STATEMENT IS TO ENABLE THOSE PERSONS WHOSE CLAIMS AGAINST THE DEBTOR ARE IMPAIRED UNDER THE PLAN TO MAKE AN INFORMED DECISION WITH RESPECT TO THE PLAN BEFORE EXERCISING THEIR VOTING RIGHTS TO ACCEPT OR REJECT THE PLAN IN ACCORDANCE WITH THE BANKRUPTCY CODE. ON THE APPROVAL DATE, AFTER NOTICE AND A HEARING, THIS DISCLOSURE STATEMENT WAS APPROVED BY THE BANKRUPTCY COURT AS CONTAINING INFORMATION OF A KIND AND IN SUFFICIENT DETAIL ADEQUATE TO ENABLE PERSONS WHOSE VOTES ARE BEING SOLICITED TO MAKE AN INFORMED JUDGMENT WITH RESPECT TO ACCEPTANCE OR REJECTION OF THE PLAN. A COPY OF THE ORDER APPROVING THE DISCLOSURE STATEMENT IS ENCLOSED HEREWITH. THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR AN ENDORSEMENT OF ANY OF THE REPRESENTATIONS CONTAINED IN THE DISCLOSURE STATEMENT OR THE PLAN; NOR DOES IT CONSTITUTE AN ENDORSEMENT OF THE PLAN.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED IN THIS DISCLOSURE STATEMENT. THE DELIVERY OF THIS DISCLOSURE STATEMENT SHALL NOT, UNDER ANY CIRCUMSTANCE, IMPLY OR CREATE AN IMPLICATION THAT NO CHANGE HAS OCCURRED IN THE FACTS SET FORTH IN THIS DISCLOSURE STATEMENT SINCE THE DATE OF THIS DISCLOSURE STATEMENT OR SUCH OTHER SPECIFIED DATE.

THE DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF, OR STIPULATION TO, ANY FACT OR LIABILITY, OR A WAIVER OF ANY RIGHTS, BUT RATHER AS STATEMENTS MADE IN THE CONTEXT OF SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY ADVERSARY PROCEEDING OR CONTESTED MATTER AGAINST THE DEBTOR, SENIOR BONDS TRUSTEE, SUBORDINATE BONDS TRUSTEE, SCDOT, THE STATE OR ANY OTHER PARTY, NOR SHALL IT BE CONSTRUED TO BE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN AS TO ANY INTERESTED PARTY.

AS SET FORTH ELSEWHERE IN THIS DISCLOSURE STATEMENT, INCLUDING SECTION II(C) BELOW, THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN COMPILED BY THE DEBTOR AND ITS ADVISORS FROM VARIOUS SOURCES AND IS BELIEVED TO BE MATERIALLY RELIABLE. HOWEVER, SUCH INFORMATION NOT BEEN INDEPENDENTLY AUDITED FOR INCLUSION IN THIS DISCLOSURE STATEMENT. THEREFORE, THE DEBTOR IS UNABLE TO WARRANT OR TO REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY OR OMISSION, ALTHOUGH EVERY REASONABLE EFFORT HAS BEEN MADE TO BE MATERIALLY ACCURATE. CREDITORS ARE URGED TO REVIEW THE PLAN AND ALL PLAN DOCUMENTS, INCLUDING THE AMENDED TRUST INDENTURE AND NEW LICENSE AGREEMENT, IN FULL PRIOR TO VOTING ON THE PLAN TO ENSURE A COMPLETE UNDERSTANDING OF THE PLAN AND THIS DISCLOSURE STATEMENT.

THIS DISCLOSURE STATEMENT IS INTENDED SOLELY FOR THE USE OF CREDITORS OF THE DEBTOR TO ENABLE SUCH CREDITORS TO MAKE AN INFORMED DECISION ABOUT THE PLAN.

**INDEX FOR DISCLOSURE STATEMENT**

DEFINITIONS ..... 7

II. INTRODUCTION..... 7

    A. EXPLANATION OF CHAPTER 9 OF THE BANKRUPTCY CODE..... 8

    B. FILING PROOFS OF CLAIM ..... 8

    C. REPRESENTATIONS..... 9

    D. PURPOSE OF THE DISCLOSURE STATEMENT ..... 9

    E. LEGALLY BINDING EFFECT OF PLAN WITH RESPECT TO CREDITORS..... 10

    F. VOTING REQUIREMENTS ..... 10

III. HISTORY OF THE DEBTOR..... 11

    A. HISTORY AND BACKGROUND OF THE PROJECTS..... 11

    B. CONNECTOR 2000 ASSOCIATION, INC..... 12

    C. FINANCIAL ISSUES FACING THE DEBTOR ..... 13

    D. COSTS OF OPERATING THE SOUTHERN CONNECTOR ..... 15

    E. FORBEARANCE AGREEMENT WITH SCDOT ..... 18

IV. CONDENSED FINANCIAL INFORMATION ..... 19

V. THE CHAPTER 9 CASE..... 21

    A. REASON FOR CHAPTER 9 FILING ..... 21

    B. ELIGIBILITY OF DEBTOR TO FILE CHAPTER 9 CASE ..... 24

    C. NOTICE OF THE CHAPTER 9 CASE ..... 30

    D. EVENTS SINCE THE FILING OF THE CHAPTER 9 CASE ..... 30

    E. CURRENT BOARD OF DIRECTORS FOR THE DEBTOR ..... 31

    F. POST CONFIRMATION OPERATION OF THE DEBTOR ..... 31

    G. RETENTION OF PROFESSIONALS ..... 31

    H. NON-BANKRUPTCY COURT LITIGATION ..... 31

    I. ORDINARY COURSE OF BUSINESS CREDITORS AND EMPLOYEES..... 31

VI. CAPITAL ASSETS OF THE DEBTOR..... 31

VII. DISCUSSION OF THE PLAN..... 32

    A. PURPOSE OF THE PLAN AND GENERAL PLAN REQUIREMENTS..... 32

    B. SUMMARY OF PLAN TERMS ..... 33

        1. *Amended and Restated Bonds* ..... 33

        2. *Distribution of Net Revenues* ..... 38

        3. *Release* ..... 43

        4. *Injunction* ..... 43

        5. *New License Agreement* ..... 45

    C. SUMMARY OF THE PLAN CLASSES AND TREATMENT OF CLAIMS ..... 47

        1. *Classification of Claims* ..... 47

        2. *Estimation of Claims* ..... 48

        3. *Treatment of Classes* ..... 48

            (i) Administrative Claims ..... 48

            (ii) Class 1. Senior Bondholders Claims..... 48

(iii) Class 2. Subordinate Bondholders Claims.....	49
(iv) Class 3. Bond Trustee Claims.....	49
(v) Class 4. SCDOT Claims.....	50
(vi) Class 5. Executory Contract Claims.....	50
(vii) Class 6. Lehman Brothers Claims.....	50
4. <i>Treatment of Executory Contracts and Unexpired Leases</i> .....	51
D. CONDITIONS PRECEDENT TO CONFIRMATION.....	51
E. EFFECTIVENESS OF THE PLAN.....	52
F. WAIVER OF CONDITIONS TO EFFECTIVENESS OF PLAN.....	53
G. AMOUNT AND METHOD OF PAYMENT OF ADMINISTRATIVE CLAIMS.....	53
VIII. FEASIBILITY OF THE PLAN.....	53
IX. ALTERNATIVES TO CONFIRMATION OF THE PLAN.....	53
A. ANALYSIS OF DISMISSAL OF THE CASE.....	54
B. ALTERNATIVE PLAN UNDER CHAPTER 9.....	54
X. CERTAIN FACTORS TO BE CONSIDERED.....	54
A. FACTORS RELATING TO CHAPTER 9 AND THE PLAN.....	54
1. <i>Preferences</i> .....	54
2. <i>Fraudulent Transfers</i> .....	55
B. RISK FACTORS ATTENDANT TO THE IMPLEMENTATION OF THE PLAN AND RELATING TO THE REPAYMENT OF CLAIMS AND OTHER CONSIDERATIONS.....	56
1. <i>Limited Obligation</i> .....	56
2. <i>No Right to Accelerate Debt Service on the Amended and Restated Bonds and         Reliance on Net Revenues for Payment of the Amended and Restated Bonds</i> .....	56
3. <i>Revised Traffic Study</i> .....	57
4. <i>Demographic and Development Trends</i> .....	58
5. <i>Competing Highways or Other Transportation Improvements</i> .....	59
6. <i>Toll Rates</i> .....	60
7. <i>Maintenance, Repair, Resurfacing Renewal and Replacement of the Southern         Connector</i> .....	60
8. <i>Fuel Supply and Pricing</i> .....	60
9. <i>Operating Costs</i> .....	61
10. <i>Limited Term of License Agreement</i> .....	61
11. <i>Amended and Restated Bonds</i> .....	61
12. <i>Deposits to R&amp;R Fund</i> .....	62
13. <i>Secondary Market Risk</i> .....	62
XI. INCOME TAX CONSEQUENCES OF THE PLAN.....	62
XII. VOTING PROCEDURES.....	62
A. BALLOTS AND VOTING DEADLINE.....	62
B. CLAIMANTS ENTITLED VOTE TO ACCEPT OR REJECT THE PLAN.....	63
C. VOTE REQUIRED FOR CLASS ACCEPTANCE.....	64
D. POSSIBLE RECLASSIFICATION OF CREDITORS.....	64
XIII. CONFIRMATION OF THE PLAN.....	64

A.	CONFIRMATION HEARING .....	64
B.	REQUIREMENTS FOR CONFIRMATION OF THE PLAN.....	64
	1. <i>Best Interests Test</i> .....	65
	2. <i>Acceptance by Impaired Classes</i> .....	65
C.	CONDITIONS PRECEDENT TO CONFIRMATION OF THE PLAN .....	66
D.	EFFECT OF CONFIRMATION AND DISCHARGE OF DEBTOR .....	66
XIV.	SOURCES OF INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT	66
XV.	RECOMMENDATION FOR ACCEPTANCES .....	67
	APPENDIX A – DEFINITIONS	
	APPENDIX B – SERIES 2011A, SERIES 2011B AND SERIES 2011C BOND PAYMENT TABLE	
	APPENDIX C – BONDHOLDER EXCHANGE TABLE	
	APPENDIX D – LIST OF CREDITORS THAT FILED PROOFS OF CLAIM	
	APPENDIX E – LIST OF MEMBERS OF DEBTOR’S BOARD OF DIRECTORS	
	APPENDIX F – ESTIMATION OF CLAIMS	
	APPENDIX G.1 AND G.2 – EXECUTORY CONTRACTS	

The Debtor will request Confirmation of the Plan at the Confirmation hearing to be scheduled by the Court.

## I. DEFINITIONS

Capitalized terms not otherwise defined in the text of this Disclosure Statement and the Plan are intended to have the meanings assigned thereto in Appendix A attached hereto. Capitalized terms not otherwise defined herein or in Appendix A are intended to have the meaning assigned thereto in the Amended Trust Indenture or in the Original Trust Indenture, if defined therein.

## II. INTRODUCTION

The Debtor was created for the design, financing, acquisition, construction and operation of the Southern Connector. The Southern Connector is an approximately 16-mile four-lane tollway as part of Interstate 185 in southern Greenville County, South Carolina. The Bonds were issued to finance substantially all of the costs of the Southern Connector. The Debtor issued its Toll Road Revenue Bonds (Southern Connector Project, Greenville, South Carolina), Series 1998A, Series 1998B and Series 1998C (the “Bonds”) to finance the Southern Connector.

Construction and equipping of the Southern Connector were completed in 2001, the toll road opened for traffic and the Debtor has been collecting Revenues from users of the Southern Connector for nearly ten years. As described in greater detail below, traffic on the Southern Connector is substantially lower than the traffic forecast at the time the Bonds were issued. Although the usage of the toll road is sufficient to permit the Debtor to pay its operating expenses, it is insufficient to permit the Debtor to pay the principal of, interest and accreted value of the Bonds as they become due. The Debtor has defaulted on the payment of certain of its Bonds and an Event of Default under the Original Trust Indenture has occurred and is continuing. After efforts to restructure its debts consensually failed, on June 24, 2010, the Debtor filed its voluntary petition under Chapter 9 of the Bankruptcy Code in the United States Bankruptcy Court for the District of South Carolina. Pursuant to the Court’s Commencement Order dated June 28, 2010, the Debtor published notice of the filing of its Chapter 9 petition and request for the entry of an order for relief thereunder in *The State*, *The Greenville News*, and the *Bond Buyer*, and in addition, mailed notice to all known creditors and parties in interest.

The Debtor is sending this Disclosure Statement to beneficial owners of the Bonds and other creditors and parties in interest to request their approval of a plan of debt adjustment of the Debtor’s obligations. Debtor has proposed the Plan, which the Debtor believes is in the best interests of the Debtor’s creditors, under which Bonds owned by Bondholders will be exchanged for one or more Amended and Restated Bonds. A copy of the Plan is attached to this Disclosure Statement and is incorporated herein by reference. Certain of the terms of the Amended and Restated Bonds are set forth and explained in this Disclosure Statement, but are set forth more fully in the Amended Trust Indenture, which creditors should read in its entirety. Forms of the Amended and Restated Bonds are attached to the Amended Trust Indenture filed with the Court as a Plan Supplement. The Amended and Restated Bonds will bear interest at the rates and are payable on the dates described in this Disclosure Statement and the Amended Trust Indenture. A Bondholder Exchange Table is attached hereto as Appendix C. Beneficial owners of the Bonds

will receive Amended and Restated Bonds in the amounts and having the terms set out in the Exchange Table. An explanation of how to determine the exchange of Amended and Restated Bonds for the outstanding Bonds appears at Section VII.B.1 hereof.

#### **A. Explanation of Chapter 9 of the Bankruptcy Code**

Chapter 9 is a chapter of the Bankruptcy Code that permits a municipality (as such term is defined in the Bankruptcy Code) to adjust debts owed to creditors through a plan of adjustment while permitting the municipality to continue to operate. The Debtor has continued to manage and operate the Southern Connector as a toll road since the filing of the Chapter 9 Case.

The commencement of a Chapter 9 case creates an “estate” comprised of the legal and equitable interests of the debtor in property. Section 904 of the Bankruptcy Code provides that a municipal debtor may continue to operate the debtor’s business. The Debtor has continued to operate since the commencement of this Chapter 9 case.

The filing of a Chapter 9 petition triggers the automatic stay provisions of the Bankruptcy Code. Sections 922 and 362 of the Bankruptcy Code provide for an automatic stay of all attempts to collect pre-petition claims from the chapter 9 debtor or otherwise interfere with its property or business. Except as otherwise ordered by the Court, the automatic stay remains in full force and effect in a Chapter 9 case until the confirmation of a plan of adjustment.

Formulation of a plan of adjustment is the principal purpose of a Chapter 9 case. The plan is the vehicle for satisfying the holders of claims against the debtor. The Debtor proposes in the Plan to restructure its obligations in order to pay creditors and continue operating as a going concern.

#### **B. Filing Proofs of Claim**

The Debtor filed a List of Creditors as required by Section 924 of the Code. A Proof of Claim is deemed filed for any Claim that appears in the List of Creditors that was filed in this case, except a Claim that is scheduled as disputed, contingent, or unliquidated as to amount. If a creditor agrees with the amount of the Claim as listed by the Debtor and such Claim was not listed as disputed, contingent, or unliquidated, the holder of that Claim need not have filed a Proof of Claim. The Senior Bonds Trustee has filed a Proof of Claim for amounts owed under the Senior 1998 Bonds. The Subordinate Bonds Trustee has filed a Proof of Claim for amounts owed under the Subordinate Bonds.

However, if (i) the Debtor did not list a holder’s Claim, (ii) the Debtor listed such holder’s Claim as disputed, contingent, or unliquidated, or (iii) the amount the Debtor listed for the holder’s Claim varies from the amount claimed by the holder of such Claim, the holder of such Claim must have filed a Proof of Claim in the amount of such Claim. The Court generally will recognize and allow a Proof of Claim only if such Proof of Claim is timely filed and is not objected to by the Debtor or any party in interest. If an objection to a Proof of Claim is filed, after notice and hearing, the Court will determine to what extent, if any, such Claim will be allowed. The List of Creditors is on file with the Clerk of the Court and is available for inspection during regular court hours or via the PACER system, which may be accessed on a subscription basis at the following internet address: <https://ecf.scb.uscourts.gov/>.



The Court established September 22, 2010 as the last date for filing proofs of claim, and any Claim filed after that date is subject to disallowance for untimely filing, unless otherwise ordered by the Court.

### **C. Representations**

NO REPRESENTATIONS CONCERNING THE DEBTOR (PARTICULARLY AS TO ITS FUTURE OPERATIONS, VALUE OF ITS ASSETS, OR THE VALUE OF ANY OTHER ASSETS TO BE CONSIDERED UNDER THE PLAN) ARE AUTHORIZED BY THE DEBTOR OTHER THAN THOSE SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS MADE TO SECURE YOUR ACCEPTANCE, WHICH ARE OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT, SHOULD NOT BE RELIED UPON IN ARRIVING AT YOUR DECISION WHETHER TO VOTE FOR OR AGAINST THE PLAN. THE DEBTOR IS NOT MAKING ANY REPRESENTATIONS WHATSOEVER AS TO ANY TAX CONSEQUENCES TO SPECIFIC CREDITORS OR HOLDERS OF THE DEBTOR'S DEBT RESULTING FROM THE PLAN.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS NOT BEEN INDEPENDENTLY AUDITED FOR INCLUSION IN THIS DISCLOSURE STATEMENT. THE DEBTOR IS UNABLE TO WARRANT OR TO REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY OR OMISSION, ALTHOUGH EVERY REASONABLE EFFORT HAS BEEN MADE TO BE ACCURATE. CREDITORS ARE URGED TO REVIEW THE PLAN AND ALL PLAN DOCUMENTS IN FULL PRIOR TO VOTING ON THE PLAN TO ENSURE A COMPLETE UNDERSTANDING OF THE PLAN AND THIS DISCLOSURE STATEMENT.

THIS DISCLOSURE STATEMENT IS INTENDED SOLELY FOR THE USE OF CREDITORS OF THE DEBTOR TO ENABLE SUCH CREDITORS TO MAKE AN INFORMED DECISION ABOUT THE PLAN.

IF ANY IMPAIRED CLASS DOES NOT VOTE TO ACCEPT THE PLAN, THE DEBTOR INTENDS, PURSUANT TO SECTIONS 901(a) AND 943 OF THE BANKRUPTCY CODE, TO SEEK CONFIRMATION UNDER THE PROVISIONS OF SECTION 1129(b)<sup>2</sup> OF THE BANKRUPTCY CODE AND HEREBY GIVES NOTICE OF SUCH INTENT.

### **D. Purpose of the Disclosure Statement**

The Bankruptcy Code generally requires that the proponent of a plan of adjustment prepare and file with the Bankruptcy Code a "disclosure statement" that provides information that would enable a typical holder of claims in a class impaired under that plan to make an informed judgment with respect to the plan. This Disclosure Statement provides such information as to the Plan.

The Debtor is furnishing this Disclosure Statement to Classes of impaired creditors pursuant to the requirements of Sections 901(a) and 1125 of the Bankruptcy Code and

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<sup>2</sup> This section is commonly referred to as the "cram-down" section of the Bankruptcy Code and permits the Court to approve a plan over the objection of creditors if certain statutory requirements of the Bankruptcy Code are satisfied.

Bankruptcy Rule 3017 thereunder, for the purpose of soliciting Ballots for the acceptance of the Plan under Chapter 9 of the Bankruptcy Code. **A successful reorganization under the Bankruptcy Code depends upon the receipt of sufficient numbers of votes in favor of the Plan or applications of Sections 901(a), 943 and 1129(b). Your vote, therefore, is important.**

**The Disclosure Statement describes various transactions contemplated under the Plan as well as certain transaction or settlements embodied in the Plan including, without limitation, the settlement and compromise between the Debtor, SCDOT and the Bondholders. This Disclosure Statement serves as notice to creditors and parties in interest of all such transactions, contracts or settlements as allowed or required by the Bankruptcy Code or Bankruptcy or Local Rules including Rule 9019 of the Federal Rules of Bankruptcy Procedure. The time fixed by the Court for the filing of objections to Confirmation shall likewise be deemed to be the time fixed for the filing of any objections to the foregoing transactions, contracts or settlements, even if such transactions, contracts or settlements will be documented or consummated after Confirmation.**

If the Debtor receives Ballots accepting the Plan from at least two-thirds in amount, and more than one-half in number, of those voting in at least one Class of impaired creditors voting on the Plan, the Debtor intends to request confirmation of the Plan. Under the Bankruptcy Code, in order for the Plan to be confirmed, the Plan must be accepted by at least one impaired Class of Claims entitled to vote thereon.

Under the Bankruptcy Code, after the commencement of a bankruptcy case, the solicitation of acceptances of a plan of adjustment must be accompanied by disclosure materials containing information of a kind and in sufficient detail to enable solicited creditors to make informed judgments about the plan and the acceptance or rejection thereof. On the Approval Date, the Bankruptcy Court determined that this Disclosure Statement contains information that is in compliance with the “adequate information” requirement of Section 1125(a) of the Bankruptcy Code, as indicated by its Order Approving Disclosure Statement enclosed herewith.

#### **E. Legally Binding Effect of Plan with Respect to All Creditors**

**If confirmed, the provisions of the Plan will discharge the Debtor and bind all creditors and the Debtor to the fullest extent permitted by the Bankruptcy Code, including Section 944 and, without limiting the foregoing, will (1) bind all creditors, whether or not they accept the Plan, and (2) discharge the Debtor from all debts that arose before the Effective Date, except as otherwise provided in the Plan.**

#### **F. Voting Requirements**

The Classes of Claims that are impaired under the Plan and that are not deemed to have rejected the Plan, are entitled to vote to accept or reject the Plan. An impaired Class of Claims will be determined to have accepted the Plan if the holders of Allowed Claims in the Class casting votes in favor of the Plan (1) hold at least two-thirds of the allowed amount of the Allowed Claims of the holders of such class who actually vote, and (2) constitute more than one-half in number of holders of the Allowed Claims in such class voting on the Plan. If a Ballot is

submitted without an acceptance or rejection of the Plan the Debtor reserves the right to ask the Court to either (i) disqualify the Ballot or (ii) count the Ballot as an acceptance of the Plan. If a Class of impaired Claims does not receive or retain any property or interests in property under the Plan, such class is deemed to have rejected the Plan and the votes of creditors in such Class need not be solicited.

### **III. HISTORY OF THE DEBTOR**

#### **A. History and Background of the Projects.**

The construction of a major roadway around the southern perimeter of the City of Greenville, South Carolina had been proposed for over 30 years by the time the Southern Connector was built. In September of 1964, the Greenville County Planning Commission, with the support of the Greenville County delegation in the State legislature and the cities of Greenville, Greer, Mauldin and City View, joined in a collaborative effort with the South Carolina Department of Highways and Public Transportation (the predecessor of SCDOT) relating to the development of a coordinated transportation system for the Greenville urban area. The planning area was later expanded to include the cities of Travelers Rest, Simpsonville and Fountain Inn. In 1967, the participants in this planning effort published a two-volume report entitled *A Continuing Transportation Plan for the Greenville, S.C. Urban Area*. The Southern Connector was included in the report and in updates to it that were published in 1978 and 1988.

On December 18, 1991, the United States Congress adopted Public Law 102-240, known as the Intermodal Surface Transportation Efficiency Act of 1991 (“ISTEA”). Two separate sections of ISTEA specifically appropriated federal funds for the Southern Connector. First, pursuant to Section 1106 of ISTEA, the Southern Connector was listed as a project that would ensure better rural access and promote economic development in rural areas, and Congress authorized the appropriation of \$3.6 million for the Southern Connector. Second, under Section 1107 of ISTEA, the Southern Connector was also included as a project demonstrating innovative techniques of highway construction and finance, and Congress allocated \$11 million to three South Carolina projects, including the Southern Connector, with the funds to be equitably divided among the three projects.

On March 19, 1992, the SCDOT Commission authorized SCDOT to advertise for and select an engineering firm to prepare location, preliminary design and environmental studies for the Projects. On December 17, 1992, the SCDOT Commission unanimously authorized SCDOT to enter into a contract with Florence & Hutcheson, Inc. to prepare a feasibility analysis, develop functional plans, hold public hearings and prepare preliminary and final environmental documents, which contract was signed on January 8, 1993.

In 1993, the SCDOT Commission created the Transportation 2000 Committee, composed of public officials and private citizens. The Transportation 2000 Committee was charged with the responsibility of assessing the State’s transportation needs and priorities and formulating funding plans to support those needs. In December 1993, the Transportation 2000 Committee issued a report identifying the Southern Connector as one of the State’s critical needs for the next decade and recommending that the Southern Connector and four other major projects be built as toll roads, due to the unavailability of sufficient funds to construct these projects without tolls.

After the report of the Transportation 2000 Committee was formally accepted by the SCDOT Commission in early 1994, development activities for the Southern Connector proceeded on the assumption that it would be a tolled facility. Florence & Hutcheson retained Wilbur Smith Associates to prepare a preliminary traffic and toll revenue analysis for inclusion in its Preliminary Feasibility Study for the Greenville Southern Connector. The Florence & Hutcheson study, which was completed in October 1994, served as the basis for the draft environmental impact statement for the Projects which was approved by SCDOT and the Federal Highway Administration in November 1994. On January 24, 1995, SCDOT held a public hearing on the proposed location of the Southern Connector.

On July 1, 1995, SCDOT issued a Request for Proposals seeking conceptual proposals from entities qualified to plan, design, finance, construct and operate the Projects. The Request for Proposals was issued pursuant to S.C. Code Ann. § 57-3-200 (1976 Supp.), as amended, which authorized SCDOT to enter into partnership agreements with political subdivisions and private entities to finance the cost of transportation improvements, and was similar to one issued by SCDOT in November 1994 for the Conway Bypass Project in Horry County, South Carolina.

A group of citizens residing within Greenville County, working with the owners of the developer Interwest Carolina Transportation Group, LLC (“Developer”), caused the Debtor to be incorporated as a “public benefit corporation” under the South Carolina Nonprofit Corporation Act of 1994, as amended, in order to develop a response to SCDOT’s Request for Proposals. On January 3, 1996, the Developer and the Debtor and two other groups submitted proposals in response to SCDOT’s Request for Proposals. Each proposer was given an opportunity to make a presentation to the SCDOT Proposal Review Committee which was comprised of four SCDOT employees and one representative from the State of South Carolina’s Office of the State Treasurer. On February 29, 1996, the SCDOT Commission adopted a resolution selecting the proposal submitted by the Debtor and directing SCDOT staff to begin negotiation of a contract.

#### **B. Connector 2000 Association, Inc.**

Although the Debtor was formed in 1996, its first financial activity occurred on or about February 1998. At that time, the Debtor entered into a License Agreement with SCDOT that granted the Debtor certain rights and obligations to finance, acquire, construct, and operate the Southern Connector and to construct for SCDOT the SC 153 Extension. Under Section 13.1(a) of the License Agreement, the term of the License Agreement expires 50 years after the date of substantial completion of the Projects. In response to a certification by the Developer that the Projects were substantially complete, SCDOT executed a certificate of substantial completion dated March 29, 2001. The Debtor subsequently disputed the Developer’s assertion that the Southern Connector was substantially complete due to deficiencies in the electronic toll collection system. The Debtor certified the substantial completion of the Southern Connector Project on July 22, 2001. Based on the foregoing and related documentation, the parties agree that the term of the License Agreement ends July 22, 2051.

SCDOT accepted the Southern Connector as a part of the State highway system. SCDOT is the State agency generally responsible for maintaining the State highway system in safe and

serviceable condition. The License Agreement permits the Debtor to charge tolls of the users of the Southern Connector. The toll rates to be charged by the Debtor are currently set by SCDOT pursuant to Section 6.4 of the License Agreement.

To finance the construction of the Southern Connector, the Debtor issued \$200,177,680 original principal amount of Connector 2000 Association, Inc. Toll Road Revenue Bonds (Southern Connector Project, Greenville, South Carolina), Series 1998A, 1998B and 1998C on February 11, 1998 pursuant to the Original Trust Indenture between the Debtor and Senior Bonds Trustee. The Debtor was only responsible for financing the Southern Connector portion of the Projects through the issuance of the Bonds. SCDOT provided financing for the SC 153 Extension portion of the Projects through the issuance of general obligation State highway bonds.

The Southern Connector Bonds were issued as “63-20” bonds on behalf of SCDOT on a tax exempt basis and sold in three series: (i) \$66,200,000 original principal amount of the Series 1998A Bonds, (ii) \$87,385,622 original principal amount of the Series 1998B Bonds and, (iii) \$46,592,058 original principal amount of Series 1998C Bonds.

The Series 1998A Bonds consisted originally of (i) \$21,400,000 5.25% bonds maturing, subject to earlier mandatory sinking fund redemption, on January 1, 2023 and (ii) \$44,800,000 5.375% bonds maturing, subject to earlier mandatory sinking fund redemption, on January 1, 2038. Interest on the Series 1998A Bonds is payable semi-annually on January 1 and July 1 of each year. The principal of the Series 1998A Bonds is subject to mandatory sinking fund redemption on January 1 of each year commencing January 1, 2008 and continuing to January 1, 2038.

The Series 1998B Bonds and the Series 1998C Bonds are Capital Appreciation Bonds and consist of zero-coupon obligations which accrete interest and mature serially starting January 1, 2008 and continuing until January 1, 2038. Interest on a Capital Appreciation Bond accretes and is payable at maturity or such earlier time that it is otherwise payable. The Series 1998B Bonds have yields between 5.30% and 5.85%. The Series 1998C Bonds have yields between 6.15% and 6.30%. No interest has been paid to date on the Outstanding Capital Appreciation Bonds. The accreted value of the Capital Appreciation Bonds has increased from the original combined principal amount of \$133,977,680 to in excess of \$260,000,000 as of the Petition Date, reflecting such scheduled accretion since issuance of the Capital Appreciation Bonds.

### **C. Financial Issues Facing the Debtor.**

The organizational purpose of the Debtor is to design, finance, acquire, construct and operate the Southern Connector during the term of the License Agreement. At the time the Bonds were issued, Wilbur Smith Associates prepared the Wilbur Smith 1997 Study to estimate the future utilization of the road and Revenues and Operating Costs. The actual traffic on the highway and toll revenues received by the Debtor have been substantially less than projected in the Wilbur Smith 1997 Study. Currently, the Debtor is not receiving sufficient toll revenues to pay debt service on the Senior 1998 Bonds or the Subordinate Bonds. Prior to January 1, 2010, such shortfalls had been covered by withdrawals from the debt service reserve accounts (funded by original sale proceeds of the Bonds plus interest earnings thereon) maintained by the Senior

Bonds Trustee under the Original Trust Indenture. Insufficient funds existed for the Senior Bonds Trustee to fund the full payment of debt service on the Bonds due on January 1, 2010. The Senior Bonds Trustee advised Bondholders that unless a restructuring of the Bonds was implemented prior to January 1, 2010, no debt service payment would then be made. On January 1, 2010, the Debtor defaulted in the payment of principal and interest then due on certain of the Bonds.

Previously, the Senior Bonds Trustee had requested that the Debtor enter into the Second Supplement and a separate instrument appointing HSBC Bank USA, NA as standby co-trustee for the Subordinate Bonds. The Second Supplement became effective January 1, 2008 and the interests of the Subordinate Bonds are represented by the Subordinate Bonds Trustee.

Under the provisions of its Continuing Disclosure Agreement under the Original Trust Indenture, the Debtor timely filed the required "Event Notices" notifying Bondholders of the January 1, 2010 payment default, various downgrades in the published credit rating on the Bonds by Standard & Poor's Ratings Service and each withdrawal from the debt service reserve accounts established under the Original Trust Indenture (which withdrawals were used to pay a portion of the interest or principal payments). Due in part to the factors noted above, the Debtor has experienced a loss of (\$22,181,833) and (\$22,156,181) for 2009 and 2008, respectively, resulting in an increase in the Debtor's net deficit to a total of (\$173,302,626.00) and (\$151,120,793) as of December 31, 2009 and 2008, respectively. Debt service on the Bonds increased sharply in January 2008 as the Capital Appreciation Bonds began to mature and sinking fund installments became due on the current interest bonds.

Previously, as required under the Original Trust Indenture, the Debtor engaged a traffic and revenue consultant to prepare a series of toll rate studies in 2005, 2006 and 2007 to advise the Debtor regarding the toll rates necessary to maximize toll revenue from the Southern Connector. Each such study concluded that toll rates could be increased to maximize revenue, but even if the recommendations of the consultant were effected, projected toll revenues would be insufficient to pay principal and interest on the Bonds in full.

Despite the Debtor's implementation of the scheduled toll rate increase effective January 3, 2005 and an additional toll increase effective November 1, 2009, the Debtor has been unable to comply with the Revenue Covenant under the Original Trust Indenture. The Senior Bonds Trustee notified the Debtor that as of January 1, 2008, the Debtor was in default under the Original Trust Indenture. The bond documents provide the Senior Bonds Trustee, upon the written request of 25% or more of the bondholders, shall enforce certain default remedies in the event of a default. Such remedies include allowing the Senior Bonds Trustee to (a) take legal action to require the Debtor to perform covenants with respect to the Bonds, (b) take legal action to require the Debtor to account for revenues as if it were the trustee of an express trust for the holders of Senior 1998 Bonds, (c) take legal action to prohibit any acts or things that may be unlawful or in violation of the rights of holders of the Senior 1998 Bonds, (d) prohibit the Debtor from withdrawing monies from any bond accounts (other than the Rebate Fund and Renewal and Replacement Fund Accounts (each as defined in the Original Trust Indenture)), without the Senior Bonds Trustee's written consent, (e) take legal action to request that a court appoint a receiver of the trust estate (as defined in the Original Trust Indenture) and the Debtor's income, revenues, and use of profits, and (f) take legal action to protect and enforce its rights and those of

holders of the Senior 1998 Bonds to enforce payment of the principal, redemption price and interest due on the Senior 1998 Bonds. Neither the Bonds nor the Original Trust Indenture provide for the remedy of accelerating the due date of any debt service payments due on any Bonds still outstanding as of any event of default.

**D. Costs of Operating the Southern Connector.**

The Bonds are secured by the trust estate (as defined in the Original Trust Indenture), which includes (a) all bond funds except the Rebate Fund and the Renewal and Replacement Fund as defined in the Original Trust Indenture, (b) all Revenues as defined in the Original Trust Indenture, (c) all of the Debtor's rights in its License Agreement with SCDOT and certain related documents, and (d) any other property assigned to the Trustee under the Original Trust Indenture by the Debtor or which may come into the possession or control of the Trustee.

The Original Trust Indenture operates similarly to a "lock box" arrangement obligating the Debtor to daily transfer toll revenues to the Trustee for deposit into the Revenue Fund to be applied by the Senior Bonds Trustee monthly to pay the Debtor's obligations, including debt service in the priority specified under the Original Trust Indenture. Except as and to the extent otherwise provided in the Original Trust Indenture, funds in the Revenue Fund were to be applied for the following purposes in the priority listed below (the "Flow of Funds Schedule"):

- A. Operating Costs budgeted for the next succeeding month shall be distributed to the Debtor.
- B. Amounts shall be transferred to the Rebate Fund so that the amounts deposited equal the required amounts (if any).
- C. The Trustee shall transfer to the Senior Bonds Debt Service Account amounts which, when added to other amounts in the Senior Bonds Debt Service Account, and available for such purposes, will provide for the accumulation, in substantially equal monthly installments, of the amounts required to pay the sum of: (i) any interest to become due and payable on each series of outstanding Senior Bonds on the next interest payment date (within the next six months) for such Series; and (ii) any principal installments to become due and payable on any series of outstanding Senior Bonds on or before the next date (within the next 12 months) on which such principal installment is payable.
- D. If the Senior Bonds Debt Service Reserve Account contains less than the Senior Bonds Debt Service Reserve Account Requirement, the Trustee shall transfer into the Senior Bonds Debt Service Reserve Account, an amount equal to 1/24 of the Senior Bonds Debt Service Reserve Account Requirement or the amount needed to attain the Senior Bonds Debt Service Reserve Account Requirement, whichever is less. The transfers shall continue until the Senior Bonds Debt Service Reserve Account contains the Senior Bonds Debt Service Reserve Account Requirement.
- E. The Trustee shall transfer to the Subordinate Bonds Debt Service Account amounts which, when added to other amounts in the Subordinate Bonds Debt Service Account and available for such purposes, will provide for the accumulation, in substantially equal

monthly installments, or otherwise as may be provided in any Supplemental Indenture, of the amounts required to pay the sum of: (i) any interest to become due and payable on each series of outstanding Subordinate Bonds on the next interest payment date (within the next six months) for such Series; and (ii) any principal installments to become due and payable on any series of outstanding Subordinate Bonds on or before the next date (within the next 12 months) on which such principal installment is payable.

- F. If the Subordinate Bonds Debt Service Reserve Account contains less than the Subordinate Bonds Debt Service Reserve Account Requirement, the Trustee shall transfer into the Subordinate Bonds Debt Service Reserve Account, an amount equal to 1/60 of the Subordinate Bonds Debt Service Reserve Account Requirement or the amount needed to attain the Subordinate Bonds Debt Service Reserve Account Requirement, whichever is less. All transfers shall continue until the Subordinate Bonds Debt Service Reserve Account contains the Subordinate Bonds Debt Service Reserve Account Requirement.
- G. After the date of Final Completion of the Southern Connector Project, the Trustee shall deposit into the Renewal and Replacement Fund the amounts included in the annual budget of the Debtor, which are required pursuant to the Renewal and Replacement Plan then in effect under the License Agreement.
- H. The Trustee shall pay to SCDOT amounts certified by an Authorized Association Representative (as defined in the Original Trust Indenture) as being due SCDOT for (i) the Maintenance Costs reimbursable to SCDOT under the License Agreement, together with any accruals from prior periods and interest owed thereon under the License Agreement and (ii) any reimbursements to SCDOT for condemnation awards for rights of way for the Southern Connector Project in excess of the amounts reserved therefor on the Completion Date.
- I. The Trustee shall pay amounts certified by an Authorized Association Representative as being due SCDOT for the License Fee owing to SCDOT under the License Agreement, together with any accruals from prior periods and any interest owed thereon under the License Agreement.
- J. Money remaining in the Revenue Fund shall be used by the Trustee to make or provide for all deposits, payments, or transfers certified by an Authorized Association Representative as being required by any agreement or other instrument creating or evidencing any obligation of the Debtor which is not a Senior Bond or Subordinate Bond, at the time and in the amount provided for in such instrument.
- K. The Trustee shall transfer any money remaining in the Revenue Fund at the end of any fiscal year to the Program Fund.

The rights and obligations of the parties to the License Agreement which are to be satisfied from Revenues are subject to the same Flow of Funds Schedule.



Due to the shortfall of Revenues as described above, the Debtor has defaulted on the payment of principal and interest on certain of the Bonds and the funds remaining in the debt service reserve accounts under the Original Trust Indenture have been reserved by the Trustee as set forth in its past bondholder notices. There are no funds in the Renewal and Replacement Fund or the Program Fund of the Original Trust Indenture, and no License Fees or any other material amounts due under the Original Trust Indenture's Flow of Funds Schedule have been paid to SCDOT, other than initial maintenance reimbursements totaling less than \$300,000.00.

The Original Trust Indenture generally provides that the Debtor is to receive a monthly payment equal to one twelfth of the budgeted annual cost of operating the Southern Connector. Budgeted operating costs to be paid by the Debtor for 2010 totaled \$2,940,000 resulting in a monthly distribution to the Debtor from the Senior Trustee equal to \$245,000 (which did not include amounts paid directly by the Senior Trustee for its fees and expenses). This amount is paid before any transfer is made for debt service on the Bonds but does not include any payment for Maintenance Costs, as defined in the Original Trust Indenture.

Section 6.7(a) of the License Agreement provides: "Following Substantial Completion, SCDOT shall maintain in good operating condition, reasonable wear and tear excepted, S.C. 153 and the Southern Connector in accordance with applicable State and SCDOT standards and practices throughout the term of this License Agreement." "Maintenance Costs" is defined in Appendix A to the License Agreement as "the reasonable expenses of SCDOT incurred in repairing and maintaining the Southern Connector in good condition, reasonable wear and tear excepted, calculated on a per mile basis in accordance with Section 6.7" of the License Agreement. Such expenses "include, but shall not be limited to, mowing, debris removal, landscaping, planting of shrubs and vegetation, repair of and replacement of guardrails, signage, lighting, and bridge and roadway painting and repair, repairs and replacements to bridges or the roadway necessitated by damage or other casualty thereto and the costs of direct labor for such activities and any cost which would be accounted for by SCDOT as a maintenance cost for a State highway in accordance with standard SCDOT practice. Such costs shall not include any expense which is an Operating Cost, as defined in the License Agreement."

Under the License Agreement, SCDOT is to be reimbursed for Maintenance Costs on a subordinated basis from amounts remaining after debt service on the Bonds has been paid, replenishment of the reserve funds securing the Bonds has been paid and scheduled deposits to the Renewal and Replacement Fund have been accomplished. The Debtor has had insufficient Toll Revenues to permit such reimbursement in the recent past. SCDOT claims that it is owed in excess of \$775,786 for reimbursement of its past Maintenance Costs and interest thereon. Section 6.7(a) of the License Agreement provides: "To the extent any SCDOT expenses for maintenance are not reimbursed when due, and Toll Revenues are not available to pay the same . . . such failure to pay shall not be deemed to be an Event of Default by the [Debtor] under Section 14.1 hereof, so long as any Project Debt remains outstanding, but the unreimbursed amounts shall bear interest at a rate equal to five (5%) percent per annum compounded annually."

The Debtor also agreed to pay SCDOT a License Fee under Section 5.1 of the License Agreement. As described above, payment of the License Fee is to be made only after full payment of debt service owing on the Bonds, replenishment of the reserve funds securing the

Bonds, deposits of the scheduled amounts in the Renewal and Replacement Fund, and reimbursement of Maintenance Costs and associated interest. The Debtor has had insufficient Toll Revenues to fund the subordinated License Fee payment. SCDOT claims that it is owed in excess of \$7,500,000 for past due License Fees plus interest thereon. Section 5.1 provides in relevant part that: “To the extent any portion of the License Fee is not paid when due, and Toll Revenues are not available . . . such failure to pay shall not be deemed to be an Event of Default by the Association under Section 14.1 hereof, so long as any Project Debt remains outstanding, but such unpaid amounts shall be deferred and shall be paid upon the next License Fee payment date with interest at a rate equal to five (5%) percent per annum compounded annually.”

Section 6.11 of the License Agreement requires Debtor to prepare a renewal and replacement plan for the renewal and replacement of the Southern Connector and to establish and fund out of any available Revenues (after paying items that are senior in the Flow of Funds Schedule) the Renewal and Replacement Fund to provide monies to pay the cost of renewal and replacement of the Southern Connector. Specifically, Debtor is supposed to maintain the balance in the Renewal and Replacement Fund sufficient to pay for the costs of implementing the Renewal and Replacement plan but in an amount that is “subject to the availability of Toll Revenues for such purpose.” As described above, deposits to the Renewal and Replacement Fund are to be made only after full payment of debt service owing on the Bonds and replenishment of the reserve funds securing the Bonds. Because toll revenues have been insufficient to pay such senior obligations, no deposits have been made to the Renewal and Replacement Fund. The Debtor has no source of funds other than the Revenues with which to fund the renewal or replacement of the Southern Connector. The Debtor’s engineers have estimated that the costs of the first resurfacing of the Southern Connector, which may be necessary within the next 7 years, will exceed \$15,000,000.

#### **E. Forbearance Agreement with SCDOT.**

Section 14.1(d) of the License Agreement provides that insolvency of the Debtor is an event of default which allows SCDOT to terminate the License Agreement, but only if SCDOT complies with the terms of the License Agreement, including the rights of the holders of Project Debt, as defined in the License Agreement (e.g., the holders of the Bonds). By letter dated June 12, 2009, SCDOT informed the Debtor that it was in default under Section 14.1(d) of the License Agreement. The Debtor requested SCDOT not to terminate the License Agreement unless SCDOT gives the Debtor at least 90 days prior notice of its intention to terminate the License Agreement. SCDOT delivered a letter dated June 12, 2009 and supplemented October 1, 2009 (together, the “Forbearance Letter”) agreeing to such request. SCDOT asserts that the Forbearance Letter does not waive any claims that SCDOT may have against the Debtor. To date, SCDOT has not given notice of its intent to terminate the License Agreement. SCDOT does not have the right to terminate the License Agreement during the pendency of this bankruptcy proceeding without seeking and obtaining Court approval. However, if the Court were to allow the License Agreement to be terminated, Debtor would have no Revenues and be unable to pay any creditors.

#### **IV. CONDENSED FINANCIAL INFORMATION**

Although the Debtor continues to collect enough Revenues to pay Operating Costs each year, Revenues are not sufficient to cover all of the debt service payments and other non-operating expenses, including amortization and the subordinated SCDOT-related maintenance fees, license fees and interest. During the year ended December 31, 2009, Debtor's net deficit increased by \$22,181,833 to \$173,302,626. Total assets decreased approximately 7.2% to \$158,362,486, while total liabilities increased approximately 3.1% to \$331,665,112. For the year ended December 31, 2008, the Debtor's net deficit increased by \$22,156,181 to \$151,120,793. Total assets decreased by approximately 6.1% to \$170,610,456, and total liabilities increased by approximately 3.5% to \$321,731,249.

The net decrease in total assets for both years 2009 and 2008 resulted primarily from the fact that total revenues in these years were not sufficient to completely offset such non-operating expenses as amortization of the Debtor's interest in its License Agreement with SCDOT.

The increase in total liabilities for both years 2009 and 2008 was due mainly to accretions on the Capital Appreciation Bonds. These accretions caused the Bonds payable (both current and noncurrent) portions of total liabilities to increase by approximately 2.6% in both years 2009 and 2008. Capital appreciation bonds, or zero coupon bonds, are issued and initially recorded at amounts significantly less than their maturity values. Interest on capital appreciation bonds is not paid annually. Instead, interest accretions increase the balance due on such bonds and are generally paid at maturity. Accordingly, such accretions are recorded as increases in interest expense and the corresponding bonds payable liability.

In 2009 and 2008, other liabilities increased by approximately 18.4% and 40.3%, respectively, mainly due to accruals for license fees, maintenance costs and related interest payable to SCDOT.

**Net Assets (Deficit)****December 31**

	<u>2009</u>	<u>2008</u>	<u>2007</u>
Current and Other Assets	\$ 9,656,519	\$ 18,350,020	\$ 24,248,633
Capital Assets	<u>148,705,967</u>	<u>152,260,436</u>	<u>157,499,730</u>
Total Assets	<u>158,362,486</u>	<u>170,610,456</u>	<u>181,748,363</u>
Long-term Liabilities (Bonds Payable):			
Senior Bonds	(223,689,067)	(218,848,600)	(213,954,640)
Subordinate Bonds	<u>(88,026,222)</u>	<u>(85,502,926)</u>	<u>(82,944,424)</u>
Total Long-Term Liabilities	<u>(311,715,289)</u>	<u>(304,351,526)</u>	<u>(296,899,064)</u>
Other Liabilities:			
Senior Bonds, current portion	(4,400,000)	(4,000,000)	(3,600,000)
Subordinate Bonds, current portion	(2,900,000)	(2,700,000)	(2,600,000)
Interest Payable to Bondholders	(1,718,502)	(1,742,127)	(1,765,754)
Potential Excess Collateral Liability	(1,117,498)	(1,153,823)	-
Accounts Payable, Deferred Revenue and Deposits	(375,417)	(352,104)	(351,319)
Amounts Payable to SCDOT	<u>(9,438,406)</u>	<u>(7,431,669)</u>	<u>(5,496,838)</u>
Total Other Liabilities	<u>(19,949,823)</u>	<u>(17,379,723)</u>	<u>(13,813,911)</u>
Total Liabilities	<u>(331,665,112)</u>	<u>(321,731,249)</u>	<u>(310,712,975)</u>
Net Assets (Deficit):			
Invested in Capital Assets, Net of Related Debt	(55,505,123)	(57,079,587)	(51,715,907)
Restricted for Debt Service	-	7,514,277	6,277,665
Restricted for Capital and Other Projects	-	-	28
Unrestricted	<u>(117,797,503)</u>	<u>(101,555,483)</u>	<u>(83,526,398)</u>
Total Net Assets (Deficit)	<u>\$ (173,302,626)</u>	<u>\$ (151,120,793)</u>	<u>\$ (128,964,612)</u>

The unaudited figures as of December 31, 2010, were not available at the time this Disclosure Statement and the Plan were filed with the Court. The Debtor will post the unaudited figures as of December 31, 2010 on its website, [www.southernconnector.com](http://www.southernconnector.com), as soon as this information is available. Written copies of this information when available will be provided upon written request made to the Debtor's attorney at the following address: Stanley H. McGuffin, Haynsworth Sinkler Boyd, P.A., P.O. Box 11889, Columbia, SC 29211-1889.

## V. THE CHAPTER 9 CASE

### A. Reason for Chapter 9 Filing

The Wilbur Smith 1997 Study forecast that the Debtor would realize approximately 21,000 paid toll transactions per day within several months after the completion of the Southern Connector. A transaction consists of a single payment by a single motorist using the Southern Connector, so a vehicle driving the length of the highway in one direction would pay two tolls, resulting in two transactions. Actual paid transactions per day after completion in 2001 were less than 7,500. Many reasons have been put forward for the disappointing traffic on the Southern Connector; however, it became increasingly clear to the Debtor over the years that Revenues would not be adequate to meet all of the Debtor's obligations under the License Agreement and Original Trust Indenture. This shortfall is compounded by the financial structure of the Bonds, which include the Capital Appreciation Bonds to "back-load" debt service, a structure which was intended to allow the Debtor a ramp-up period to grow toll revenues to meet future debt service obligations. Total annual debt service on the Bonds was initially approximately \$3.5 million. In 2008 it increased to approximately \$9.7 million and is scheduled to increase each year to be nearly \$59 million in 2038.

In 2005, the Debtor interviewed international companies engaged in the acquisition of concessions for the financing and operation of toll facilities worldwide. The Debtor executed phase one and phase two agreements with Macquarie. After over a year of negotiations and joint effort, the Debtor discontinued this effort. Subsequently, the Debtor engaged Goldman on January 31, 2008 as its special financial advisor to investigate the ability of the Debtor to restructure its obligations outside of bankruptcy. Possibilities which were considered included consensual restructuring, a tender and exchange of new securities for the Bonds, and a sale by SCDOT of a concession to operate the Southern Connector to a for profit third party. The Debtor was advised that any restructuring of its obligations within the remaining term of the License Agreement would require a substantial reduction in the principal amount of the Bonds.

After an extensive procurement process, in March 2005, the Debtor engaged URS as the Debtor's traffic and revenue consultant for purposes of performing a toll rate study as required by the revenue covenant contained in Section 717 of the Original Trust Indenture after the first withdrawal from the Senior Bonds Debt Service Reserve Account. In 2006 and 2007, URS performed two additional annual toll rate studies for the Debtor and in 2007 provided a traffic and earnings report. The scope of the URS reports was limited to addressing the near term toll rates.

When Goldman was retained, Goldman advised that any successful restructuring of the Bonds, either as part of a bankruptcy proceeding or otherwise, would require an "investment grade" traffic and revenue study. The Debtor undertook a qualification analysis and solicited proposals to engage a new traffic and revenue consultant to provide an investment grade traffic and revenue study. The Debtor selected Stantec, which then investigated the Debtor's operation of the Southern Connector, regional development trends and projected traffic growth. Stantec submitted to the Debtor the Revised Traffic Study dated May 4, 2009.

Based on the Revised Traffic Study, the Debtor petitioned SCDOT for a toll rate increase that was approved by SCDOT in August 2009 and implemented in November 2009. However,

based on the Revised Traffic Study, Goldman's analyses, a preliminary valuation for a concession, and the traffic levels on the Southern Connector, the Debtor determined that defeasance of the Bonds was not possible, and that neither a long-term concession agreement with a new toll road operator nor a conventional refinancing of the Debtor's existing Bonds by issuance of new debt was feasible. Goldman had previously informed the Debtor that restructuring the Debtor's debt outside of bankruptcy would be extremely difficult.

Neither the Debtor, the Senior Bonds Trustee nor the Subordinate Bonds Trustee knows the identity of all of the beneficial owners of the Bonds. The Bonds are "book entry" securities without investment certificates, the ownership of which is administered by the DTC and its direct and indirect participating broker-dealers. If an individual customer of a broker or dealer requests that his or her identity not be disclosed to DTC, such information is generally not available without a court order. In November 2008, Goldman investigated the ownership of the Debtor's Bonds and was advised that beneficial ownership information was available for approximately 60% of the Senior 1998 Bonds and 40% of the Subordinate Bonds. Such 60% of the Senior 1998 Bonds were held by 330 different accounts. Such 40% of the Subordinate Bonds were held by 84 different accounts. The Debtor concluded that, since each of the hundreds of beneficial owners of the Bonds would be required to individually agree to a reduction in the principal amount of their holdings, a restructuring outside of bankruptcy was not feasible. The Debtor's engagement of Goldman generally gave Goldman the right to serve as special financial consultant in connection with future restructuring of the Debtor's debt. By letter dated January 22, 2010 the Debtor offered to engage Goldman as its special financial consultant in anticipation of this bankruptcy proceeding but Goldman declined such engagement. This concluded Goldman's engagement.

The Senior Bonds Trustee separately had undertaken an effort to locate beneficial owners of the Bonds to invite them to participate in informal discussions regarding the future restructuring of the Bonds. The Debtor negotiated confidentiality agreements among the Debtor, the Subordinate Bonds Trustee and certain beneficial owners of the Senior 1998 Bonds which permitted the Debtor to share non-public information with such owners and engage in discussions regarding the adjustment of the Debtor's debts. Beginning in August 2009, the Debtor entered into confidentiality agreements with the Restricted Owners which at the time of execution of such agreements owned or insured, in the aggregate, a majority of the outstanding principal amount or future maturity value of the Senior 1998 Bonds.

The Debtor and its advisors delivered the Debtor's Pre-Petition Plan to the Senior Bonds Trustee, the Subordinate Bonds Trustee, SCDOT and the Restricted Owners. The Debtor's Pre-Petition Plan was structured to attempt to return the greatest value to the owners of the Senior 1998 Bonds possible given the constraints of the remaining term of the License Agreement (2051), SCDOT's request that the Debtor include a provision for renewing and resurfacing the road out of toll revenues, and the projected toll revenues and operating expenses in the Revised Traffic Study. The Debtor's Pre-Petition Plan used the August 5, 2009 estimate provided by AECOM Technical Services, Inc. as the basis for the projected repair and resurfacing needs of the road. Under the Debtor's Pre-Petition Plan, since the Senior 1998 Bonds would not receive full payment, the Subordinate Bonds would receive no payment.

The Senior Bonds Trustee's counsel thereafter engaged Macquarie as financial advisor to review the Debtor's Pre-Petition Plan, consult with the Senior Bonds Trustee and their representatives, and respond to the Debtor's Pre-Petition Plan. The Debtor's Pre-Petition Plan was ultimately rejected by the Senior Bonds Trustee, the Subordinate Bonds Trustee and the Restricted Owners. Macquarie met with the Debtor, SCDOT and others and developed as an alternative plan, the Macquarie Pre-Petition Plan, which was presented to the Debtor, SCDOT and the Restricted Owners on October 12, 2009. The Macquarie Pre-Petition Plan was based on the Stantec projections contained in the Revised Traffic Study, proposed to exchange two new series of securities for the outstanding principal and interest owing on the Debtor's Senior 1998 Bonds, called for an extension of the License Agreement and included provisions to fund a substantial portion of the projected road resurfacing and repair costs out of toll revenues under the extended License Agreement. Although the Macquarie Pre-Petition Plan did not address repayment of the Subordinate Bonds, implementation of that plan under the assumptions set forth therein would permit the Debtor to use toll revenues to repay a portion of the amounts currently owing to the holders of Subordinate Bonds during the remaining term of the extended License Agreement after the securities exchanged for the Senior 1998 Bonds were repaid.

SCDOT advised the Debtor that SCDOT desired legislative clarification of its authority to grant an extension of the License Agreement's term under South Carolina law. At an October 12, 2009 meeting among the parties, it was determined that effectuating a consensual restructuring plan would be aided by the passage of legislation in the 2010 session of the South Carolina General Assembly. Negotiations on the detailed terms of a restructuring plan were held in abeyance while the parties pursued legislation in the South Carolina General Assembly to clarify or confirm SCDOT's authority regarding the extension of the License Agreement and its ability to enter into other revisions necessary to restructure the Bonds and the Debtor's obligations to SCDOT.

On January 20, 2010, the Board of Directors of the Debtor adopted a resolution authorizing the Debtor's management, when management so deemed it appropriate, to file a petition for bankruptcy protection under the United States Bankruptcy Code and to take related actions in connection with the bankruptcy. This resolution was authorized, among other purposes, in order for the Debtor to be in a position to effectuate a consensual restructuring through a bankruptcy plan. Notwithstanding this resolution, efforts continued to obtain a consensus among the major creditor constituent representatives for a debt adjustment plan to be presented to all creditors for a vote.

In late May of 2010, Debtor was informed by SCDOT that it did not expect to obtain approval of legislation deemed by SCDOT to be desirable to clarify SCDOT's authority to extend the term of the License Agreement. Since an extension was central to the Macquarie Pre-Petition Plan, further discussion of the Macquarie Pre-Petition Plan became fruitless. Based upon these developments, Debtor then pursued discussions with the Senior Bonds Trustee, Macquarie and the Restricted Owners regarding a debt adjustment plan which could be implemented over the remaining term of the License Agreement without any extension. These efforts resulted in the Restricted Owners developing the terms of a debt adjustment plan as set forth in the Plan Term Sheet.

In an effort to obtain consent from all interested parties, the Debtor presented the Plan Term Sheet to SCDOT. SCDOT informed the Debtor on June 16, 2010 that SCDOT would not agree to the debt adjustment plan described in the Plan Term Sheet. Efforts to solicit or negotiate acceptable changes to the Plan Term Sheet that might be acceptable to SCDOT failed.

Accordingly, on June 24, 2010, the Debtor filed its chapter 9 petition at the direction of its Executive Vice President and General Manager, Peter Femia.

## **B. Eligibility of Debtor to File Chapter 9 Case.**

Section 109(c) of the Bankruptcy Code sets forth the statutory criteria for eligibility as a chapter 9 debtor. The debtor must: (1) be a municipality; (2) be specifically authorized to be a chapter 9 debtor; (3) be insolvent; (4) be willing to effect a plan to adjust its debts; and (5) also meet one of the following four requirements: (i) the debtor has obtained the agreement of creditors holding at least a majority in the amount of claims of each class that the debtor intends to impair through its plan; (ii) the debtor has negotiated in good faith but failed to obtain the agreement of creditors holding at least a majority in the amount of claims of each class that the debtor intends to impair under its plan; (iii) the debtor is unable to negotiate with its creditors because such efforts are impracticable; or (iv) the debtor reasonably believes that a creditor may attempt to obtain a preference. 11 U.S.C. § 109(c).

Section 109(c)(1) requires that the debtor filing a petition under chapter 9 must be a municipality. A “municipality” is defined in section 101 of the Bankruptcy Code to mean “political subdivision or public agency or instrumentality of a State.” 11 U.S.C. § 101(40).

While the Code does not define the terms “public agency, or instrumentality of a State,” a legal test to determine public agency status was established in *Ex parte York County Natural Gas Authority*, 238 F. Supp. 964, 976 (W.D. S.C. 1965), modified on other grounds, 362 F.2d 78 (4th Cir. 1965), cert. denied, 383 U.S. 970 (1966), stating “the legal test between a private or public authority or agency is whether the authority or agency is subject to control by public authority, state or municipal.” *Id.* (holding a gas authority with the power to issue revenue bonds was a “municipality” for purposes of Chapter 9).

In this case, the Debtor is a non-profit corporation which is subject to the control by and formed on behalf of the State of South Carolina to, among other things, issue tax exempt debt to finance the Southern Connector project. For instance, the License Agreement provides:

Recitals, Section 2.

The people of Greenville County, South Carolina in particular, and the people of the State of South Carolina in general, stand to benefit from the construction of two highway projects in the southern area of Greenville County, South Carolina, namely, the Southern Connector and the extension of South Carolina Route 153 (“S.C. 153”). SCDOT, as a servant of the People of the State of South Carolina, wishes to see these strategic projects completed, but limitations imposed by traditional methods of financing, designing, and constructing highways would mean that the Southern Connector and an extension of S.C. 153 could be



completed only after an unacceptable delay, if at all. SCDOT, working with other agencies of the State of South Carolina, has devised an innovative plan to allow the commencement and completion of the Southern Connector and the extension of S.C. 153 in a timely and cost-effective manner; and after a competitive process, the Association and Interwest Carolina Transportation Group, LLC (“ICTG”) were selected to participate in this venture by being responsible for the study, financing, design, construction, and operation of the Southern Connector (the “Southern Connector Project”) and design and building of an extension of S.C. 153 (the “S.C. 153 Project”) (collectively, the “Projects”). SCDOT wishes to avail itself of and rely on the Association and ICTG’s resources and capabilities in coordinating the financing, design and construction of such complex projects, on time and within a fixed budget. The Association desires to provide its expertise and to participate in this venture for the good of the people of Greenville County and the State of South Carolina.

Article III, Section 3.1 Development of the Projects.

...

In furtherance of these premises, conditions, and understandings, but subject to the limitations and conditions set forth in this Agreement, SCDOT hereby grants to the Association, in accordance with this License Agreement, the exclusive right and the Association hereby agrees:

(a) to acquire, in the name of SCDOT, the appropriate rights of way and other real property necessary to the development and operation of the Projects in accordance with the provisions of Article III hereof;

Article III, Section 3.8, Substantial Completion and Acceptance.

...

(c) Upon issuance of the Certificate of Substantial Completion for the Projects, the Projects shall immediately be opened to public traffic, and SCDOT shall be deemed to have accepted the Projects as a part of the South Carolina State Highway System.

Article III, Section 3.12, Responsibility for Right of Way Acquisition. Title to the rights of way for the Projects (the “Rights of Way”) shall be acquired in the name of SCDOT. ... With regard to Rights of Way for which the Association is responsible, SCDOT hereby appoints the Association and its employees, agents, servants and contractors as its agent to acquire such Rights of Way for SCDOT and to carry out all responsibilities associated therewith. These responsibilities shall be carried out as follows:

(a) Title in fee simple to properties acquired through negotiation (except that SCDOT may in its sole discretion direct the Association to acquire a right of way easement, in lieu of fee simple title, with respect to any portion of the Rights of Way) shall be conveyed to “The South Carolina Department of Transportation” by general warranty deed, free and clear of all liens and encumbrances except

Permitted Encumbrances. The Association shall cause its agents and consultants to prepare, obtain execution of, and record documents conveying title to such properties to SCDOT.

(b) In the event that the Association shall advise SCDOT that the Association has been unable to negotiate the acquisition of a parcel of land for the Rights of Way, the Association shall prepare and deliver to SCDOT a Declaration of Taking and an Annotated Notice of Condemnation (as more particularly described in Section 3.12(c)(3) hereof), and SCDOT shall proceed to acquire such parcel (at the sole cost and expense of the Association) by condemnation under the South Carolina Eminent Domain Procedure Act and pursuant to the procedures more particularly described in Section 3.13 hereof.

#### Article III, Section 3.13, Condemnation Authority.

Because these acquisitions are being made by the Association as agent on behalf of the State of South Carolina, SCDOT shall exercise the State's power of eminent domain where the Association or its agents and consultants reasonably determine that condemnation proceedings are necessary to timely acquire a portion of the rights of way. The Association and its agents and consultants shall assist in prosecuting or defending any actions involving issues of just compensation, SCDOT's right to take any property located within the Rights of Way and in resolving such actions as timely as practicable. At the sole cost and expense of the Association, the Association shall cause its agents and consultants to prepare in the name of SCDOT, file on behalf of SCDOT, serve appropriate condemnation documents, and prosecute condemnation proceedings to settle final judgment in compliance with the procedures required by the South Carolina Eminent Domain Procedure Act (provided that all pleadings will be signed by the attorney or attorneys selected by SCDOT and approved by the Association, which approval shall not be unreasonably withheld.)

#### Article IV, Section 6.1, Use.

...

The Association shall operate the Southern Connector Project during the term of this License, and agrees to keep the Southern Connector open to vehicular traffic at all times, unless otherwise approved by SCDOT. The right to operate the Southern Connector is hereby specifically permitted, authorized and granted by SCDOT. Notwithstanding the foregoing, SCDOT shall have the authority in its reasonable discretion to exercise police powers over the Southern Connector, including the right to require toll free travel in emergency or evacuation situations and close the Southern Connector temporarily if required to do so by executive order of the Governor of South Carolina.

Article IV, Section 6.4. Toll Rates.

Pursuant to Section 57-5-1340 of the Code, SCDOT hereby fixes the toll rates for the Southern Connector at those rates as set forth on Exhibit 3. The SCDOT Commission, after consultation with the Association, shall have the right (but not the obligation) to revise such toll rates from time to time to rates which are not less than 90% and not more than 120% of the optimum toll rates as estimated by an independent traffic consultant retained by the Association. Notwithstanding the foregoing, SCDOT acknowledges and agrees that all toll rates must satisfy the applicable revenue covenants contained in the Association's financing documents with the Lender(s) or otherwise applicable to any Project Debt, and SCDOT hereby agrees to maintain all toll rates in compliance with such revenue covenants at all times during the term of this License Agreement. All maintenance, supervisory and incident response vehicles owned or operated by SCDOT or its agents, and all police vehicles providing public health or safety services for the Southern Connector, shall be exempt from tolls.

Article IV, Section 6.5 Toll Collection Facilities, Systems and Methods; Enforcement of Collections

...

(b) The Association and SCDOT acknowledge that Section 57-5-1490 of the S.C. Code currently provides for fines, punishment, and liens imposed with respect to failures to pay tolls. SCDOT agrees to cooperate with the Association in encouraging the enactment of new and/or revised statutes which may enhance enforcement for toll violations and proper disposition of fines or penalties. SCDOT agrees to cooperate with the Association in securing the enactment of legislation to enhance enforcement procedures for toll violations and to pay to the Association any fines or penalties collected by SCDOT as part of the Toll Revenues.

(c) SCDOT hereby acknowledges that the Association may employ, to the extent permitted by law, private security officers, at the Association's expense, to respond to toll violations on the Southern Connector, provided that the activities of such employees shall not interfere with the actions or operations of the SCHP.

Article IV, Section 6.7. Operations and Maintenance Responsibility.

(a) During the term of the License, unless otherwise mutually agreed by the parties, SCDOT shall be responsible for all maintenance repair, renewal, and replacement of S.C. 153. SCDOT is responsible only for the maintenance of, and not the repair, renewal, or replacement of, the Southern Connector. SCDOT will be reimbursed for performing all maintenance activities for the Southern Connector. The Association shall be responsible for all repair, renewal, and replacement activities and costs of the Southern Connector. Following Substantial Completion, SCDOT shall maintain in good operating condition, reasonable wear and tear excepted, S.C. 153 and the Southern Connector in accordance with applicable State and SCDOT standards and practices throughout the term of this

License Agreement. The Association agrees to reimburse SCDOT for its costs and expenses incurred in maintaining the Southern Connector based upon the average fully allocated cost for maintenance of the Southern Connector during the preceding fiscal year ending June 30, said reimbursements to be made solely from the Toll Revenues paid in accordance with Item 1 of Exhibit 5 attached hereto.

(b) .... SCDOT shall, have the right to approve (which approval shall not be unreasonably withheld or delayed) any operations manager proposed to be retained by the Association to manage the operation of the Southern Connector on behalf of the Association and the terms of any contract with respect thereto, subject to applicable law. The Association shall be required to modify operations of the Southern Connector upon the issuance of a Compliance Order by SCDOT in accordance with Exhibit 4.

In summary, the Debtor was set up to benefit the people of South Carolina as described in the License Agreement. Specifically, SCDOT owns the Southern Connector; SCDOT has authorized the Debtor to exercise the State's power of eminent domain; and SCDOT has the power to approve or disapprove all the members of the Board of Directors of the Debtor, as well as the right to approve the operations manager of the Debtor. In addition, SCDOT sets the toll rates, which gives SCDOT control of the financial operation of the Debtor. Under the License Agreement, SCDOT is obligated to maintain the Southern Connector and the Debtor is obligated to reimburse SCDOT for such maintenance and pay a License Fee and fund the repair and resurfacing of the highway. The ability or inability of Debtor to provide such payments to SCDOT have a material affect on SCDOT's budget. The Debtor is very much like a "highway authority" with the exception that it was formed as a privately incorporated entity rather than a statutory corporation. Moreover, the State of South Carolina Office of Comptroller General has determined that the Debtor should be included and reported as a component unit of the State in the State's Consolidated Annual Financial Report.

Accordingly, the Debtor is a public agency or instrumentality of the State of South Carolina and is a municipality within the meaning of Section 109(c)(1).

Section 109(c)(2) also requires that a municipality be "specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter." 11 U.S.C. § 109(c)(2).

South Carolina has adopted measures which expressly enable municipalities to file bankruptcy under federal law, without further restriction. S.C. Code Ann. § 6-1-10 provides:

Power of political subdivisions to proceed under legislation dealing with bankruptcy or composition of indebtedness.

The consent of the State is hereby granted to, and all appropriate powers are hereby conferred upon, any county, municipal corporation, township, school district, drainage district or other taxing or governmental unit organized under the laws of the State to institute any appropriate action and in any other respect to

proceed under and take advantage of and avail itself of the benefits and privileges conferred, and to accept the burdens and obligations created, by any existing act of the Congress of the United States and any future enactment of the Congress of the United States relating to bankruptcy or the composition of indebtedness on the part of the counties, municipal corporations, townships, school districts, drainage districts and other taxing or governmental units or any of them.

This statute is applicable to the Debtor as the Debtor is a “governmental unit.” While the term “governmental unit,” is not defined in Title 6 of the South Carolina Code or by case law, under the Bankruptcy Code, “governmental unit” is defined to include a “municipality” and an “instrumentality of a ... State.” 11 U.S.C. § 101(27). Accordingly, because the Debtor is a municipality under 11 U.S.C. § 101(40) and for purposes of 11 U.S.C. § 109 as detailed above, the Debtor is a “governmental unit” for purposes of S.C. Code Ann. § 6-1-10.

Section 6-1-10 of the South Carolina Code meets the “specific authorization” requirement under 11 U.S.C. § 109(c)(2) and authorizes the Debtor to bring its petition under Chapter 9. *See In re Orange County*, 183 B.R. 594 (Bankr. C.D. Cal. 1995) (holding that under § 109(c), the enabling or other legislation governing the debtor must show such specific authorization by exact, plain and direct language). Additionally, on January 10, 2010, the Board of Directors of the Debtor adopted a resolution to authorize the commencement and prosecution of this case.

Section 109(c)(3) requires that the chapter 9 petitioner be insolvent. 11 U.S.C. § 109(c)(3). Section 101 of the Bankruptcy Code provides that a municipality is insolvent when its financial condition is such that it is (i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or (ii) unable to pay its debts as they become due. 11 U.S.C. § 101(32)(C). Insolvency is determined based on the debtor’s financial condition as of the date the petition is filed. As described in detail above, the Debtor is unable to pay its debts as they become due.

As of the Petition Date, it is clear the Debtor was unable to pay its bills as they became due in the upcoming year. 11 U.S.C. § 101(32)(C). On January 1, 2010 the Debtor defaulted in the payment of principal and interest on certain of the Bonds.

Section 109(c)(4) requires that a chapter 9 petitioner desire to effect a plan to adjust its debts. As certified by the Debtor in its Statement of Qualifications Under 11 U.S.C. § 109(c), and demonstrated by the pre-petition efforts of the Debtor, the Debtor desires to effect a plan of adjustment with respect to its debts in this case.

Section 109(c)(5) requires that a chapter 9 petitioner demonstrate that it has satisfied or is excused from certain pre-petition negotiation standards with respect to its creditors. *See* 11 U.S.C. § 109(c)(5). A debtor must satisfy one of the following four options to satisfy Section 109(c)(5):

- (1) The debtor has obtained the agreement of creditors holding at least a majority in the amount of claims of each class that the debtor intends to impair through its plan;

- (2) The debtor has negotiated in good faith but failed to obtain the agreement of creditors holding at least a majority in the amount of claims of each class that the debtor intends to impair under its plan;
- (3) The debtor is unable to negotiate with its creditors because such efforts are impracticable; or
- (4) The debtor must reasonably believe that a creditor may attempt to obtain a preference.

11 U.S.C. § 109(c)(5). The Debtor believes it has satisfied the second and third requirements: it has negotiated in good faith with creditors but has failed to obtain an agreement as described more fully above; and additionally, it is unable to negotiate with its creditors because such negotiation is impracticable due to the inability to indentify the Bondholders.

Accordingly, Debtor believes it is eligible to be a “debtor” under Chapter 9 of the Bankruptcy Code.

### **C. Notice of the Chapter 9 Case**

The Debtor filed a mailing matrix listing the names and addresses of its creditors and other parties-in-interest on June 24, 2010. Debtor served notices to those persons listed on this mailing matrix concerning the filing of the Chapter 9 case. Additionally, Notice of Commencement of Case Under Chapter 9 of the Bankruptcy Code was published locally and nationally three times in *The State*, *The Greenville News* and the *Bond Buyer* as required by the Court.

### **D. Events Since the Filing of the Chapter 9 Case**

Since the filing of the Chapter 9 case, Debtor has continued to pay its non-Bondholder and non-SCDOT creditors in the ordinary course, and Debtor anticipates that the only creditors holding any Claims on which there exist any payment defaults are the Bondholders and SCDOT. Additionally, Lehman Brothers Inc. asserts a right to certain funds being held by the Senior Bonds Trustee on behalf of the Debtor (which claim is disputed). A list of the creditors that filed proofs of claim by the Bar Date is attached as **Appendix D** hereto. To the extent any individual bondholder filed a Claim, it is believed to be included as part of or duplicative of the proofs of claim filed by the Senior Bonds Trustee and Subordinate Bonds Trustee.

After the filing of the Petition the Court entered the Commencement Order which stated that unless there was objection to the Petition filed by July 30, 2010, the Commencement Order would be deemed the Order for Relief in the case. On July 30, 2010, SCDOT filed its objection to Debtor’s Chapter 9 Petition, asserting that Debtor was not an eligible Chapter 9 debtor. Subsequent to the filing of the eligibility objection by SCDOT, Debtor along with representatives of certain of the Restricted Owners, entered into discussions with SCDOT in an effort to fashion a debt adjustment plan that would address concerns of SCDOT. The Plan as summarized in this Disclosure Statement is the product of those discussions. Acceptance of the Plan by SCDOT requires the approval of the governing body of SCDOT, a seven member Commission. Final approval has not yet been obtained. Initial approval by the SCDOT Commission for the material terms of the Plan as outlined in a Letter of Intent executed among the parties was obtained on

December 1, 2010. Additional SCDOT Commission approval will be sought for execution and delivery of the New License Agreement and the Amended and Restated Bonds now that the terms thereof have been finalized.

SCDOT's eligibility objection to the Debtor's Chapter 9 petition was withdrawn by Order dated December 16, 2010, subject to the terms and representations contained in the Order. On January 12, 2011, the Court entered its Order for Relief granting Debtor relief under Chapter 9 of the Bankruptcy Code subject only to the terms of the Court's Order entered on December 16, 2010, and the reservation of rights set forth therein in favor of SCDOT.

**E. Current Board of Directors for the Debtor.**

Attached as **Appendix E** is a list of the current members of the Board of Directors of the Debtor.

**F. Post Confirmation Operation of the Debtor**

Following plan confirmation, current management and the current Board of Directors will be permitted to remain in place, subject to future re-election in accordance with the By-Laws of the Debtor. As stated above, SCDOT must approve members of the Board of Directors and may remove members for cause.

**G. Retention of Professionals**

Debtor contemplates the continued need for the retention of professionals in the ordinary course of business and will retain and pay such professionals in the ordinary course of business after the Effective Date.

**H. Non-Bankruptcy Court Litigation**

There is no material non-bankruptcy court litigation pending at this time.

**I. Ordinary Course of Business Creditors and Employees.**

The Debtor's ordinary course of business creditors and the Debtor's employees have been paid in the ordinary course of business on a current basis. Accordingly, there are no ordinary course of business or employee claims.

**VI. CAPITAL ASSETS OF THE DEBTOR**

Capital assets of the Debtor as of December 31, 2009 and 2008 consisted of equipment and an intangible asset, Debtor's interest in the License Agreement with SCDOT. As of December 31, 2009, the Debtor had \$148,705,967 invested in capital assets. This amount represents a net decrease of \$3,554,469, or approximately 2.3%, from the 2008 amount. The amount invested at December 31, 2008, was \$152,260,436, a net decrease of \$5,239,294, or approximately 3.3%, from the 2007 amount. Debtor's primary asset is its interest in the License Agreement with SCDOT. In 2009, its book value decreased by approximately 2.3% to \$148,490,159. This decrease consisted of \$3,570,908 of amortization taken during the year. The

2008 carrying amount of the Debtor's interest in the License Agreement had decreased approximately 3.3% to \$152,061,067. The net decrease was composed of \$6,152 of electric heat strips placed in service during 2008 offset by amortization of \$5,243,468 taken during the year. Amortization of the Debtor's interest in the License Agreement decreased in 2009 from 2008 because of a change in the estimated life of the License Agreement to 2051.

**Changes in Capital Assets at Year-End  
(Net of Depreciation)**

	<u>2009</u>	<u>2008</u>	<u>2007</u>
Equipment, Net	\$ 215,808	\$ 199,369	\$ 201,347
Interest in License Agreement with SCDOT, Net	<u>148,490,159</u>	<u>152,061,067</u>	<u>157,298,383</u>
 Total Capital Assets, Net	 <u>\$ 148,705,967</u>	 <u>\$ 152,260,436</u>	 <u>\$ 157,499,730</u>

The unaudited figures as of December 31, 2010, were not be available at the time this Disclosure Statement and the Plan were filed with the Court. The Debtor will post the unaudited figures as of December 31, 2010 on its website, [www.southernconnector.com](http://www.southernconnector.com), as soon as this information is available. Written copies of this information when available will be provided upon written request made to the Debtor's attorney at the following address: Stanley H. McGuffin, Haynsworth Sinkler Boyd, P.A., P.O. Box 11889, Columbia, SC 29211-1889.

**VII. DISCUSSION OF THE PLAN**

**A. Purpose of the Plan and General Plan Requirements**

The purpose of the Plan is to implement a fair and equitable plan for treatment of all Claims and to put the Debtor on sound financial footing. The Plan separates creditors' Claims into 6 classes, exclusive of the Allowed Administrative Claims arising from the Case, which are unclassified in accordance with the Bankruptcy Code.

In order for the holder of a Claim to participate in the Plan and receive the treatment afforded to the applicable Class, such holder's Claim must be an Allowed Claim. A Claim will be allowed if it is filed or deemed filed, unless an objection to the allowance of the Claim is made. Generally, in order for a Claim to be allowed, a proof of Claim must be filed prior to the Bar Date on behalf of the holder thereof with the Court. However, a Claim will be deemed to be filed if it is listed on the Schedules filed with the Court, unless it is listed as disputed, contingent or unliquidated. If an objection to a Claim is made, the Court must make a determination with respect to the allowance of such Claim. Only holders of Allowed Claims are entitled to vote upon, participate in and receive distributions in accordance with the Plan.



## **B. Summary of Plan Terms**

### **1. Amended and Restated Bonds**

The Plan contemplates the amendment and restatement by the Debtor of the terms of the Bonds. The material terms and conditions of the Amended and Restated Bonds are summarized herein, but are set forth in detail in the forms of Amended and Restated Bonds and in the Amended Trust Indenture that is filed as part of the Plan Supplement, and attached to the Plan at Appendix E. While the Original Trust Indenture does not provide for automatic acceleration, as a matter of bankruptcy law, claims on the Bonds are deemed accelerated on the Petition Date. Accordingly, the Plan distributes the Amended and Restated Bonds to the existing holders of Senior 1998 Bonds pro rata (and also provides for the agreed distribution to the existing holders of Subordinate Bonds) pro rata based on unpaid principal and accrued/accreted interest as of the Petition Date. Although a summary is provided below for ease of reference, creditors are urged to read in its entirety the Amended Trust Indenture, which sets forth the full terms and provisions applicable with respect to the Amended and Restated Bonds.

Generally, the Amended and Restated Bonds will include approximately \$126,903,926 aggregate original principal amount of Series 2011A Bonds which will be senior secured capital appreciation bonds, consisting of serial bonds maturing January 1 of the years 2012 through 2022 (inclusive) and three term bonds, each subject to mandatory sinking fund redemption, maturing January 1, 2032, January 1, 2042 and July 22, 2051. The proposed debt service table for the Series 2011A Bonds is set forth in **Appendix B** attached hereto. The Debtor's obligations in respect of the Series 2011A Bonds will be secured by a lien on the Trust Estate, including the present collateral assignment of the Debtor's rights under the License Agreement. Payments on the Series 2011A Bonds will equal approximately 71.5% of the Debtor's Projected Net Revenues in each year.

The Amended and Restated Bonds will also include approximately \$21,086,245 aggregate original principal amount of the Series 2011B Bonds which will be senior subordinated secured capital appreciation bonds consisting of two term bonds, each subject to mandatory sinking fund redemption, maturing January 1, 2032 and July 22, 2051. The proposed debt service table for the Series 2011B Bonds is set forth in **Appendix B** attached hereto. The Debtor's obligations in respect of the Series 2011B Bonds will be secured by a lien on the Trust Estate. The Series 2011B Bonds will be subordinated to the Series 2011A Bonds in all respects, including in right of payment and priority of liens. Payments on the Series 2011B Bonds will equal approximately 16.5% of the Debtor's Projected Net Revenues in each year.

The Amended and Restated Bonds will also include approximately \$2,160,479 aggregate original principal amount of Series 2011C Bonds which will consist of junior subordinated secured capital appreciation term bonds accreting interest at 10.0% per annum, maturing, subject to mandatory sinking fund redemption, on July 22, 2051. The proposed debt service table for the Series 2011C Bonds is set forth in **Appendix B** attached hereto. The Debtor's obligations in respect of the Series 2011C Bonds will be secured by a lien on the Trust Estate. Series 2011C Bonds shall be subordinated to the Series 2011A Bonds and Series 2011B Bonds in all respects, including in right of payment and priority of liens. Payments on the Series 2011C Bonds will equal approximately 2.0% of the Debtor's Projected Net Revenues in each year.

Operation of the Exchange Tables. Under the Plan, beneficial owners of the Bonds will receive Amended and Restated Bonds equal to the pro-rata amount of the Bonds owned by such Bondholder as provided in the Bond Exchange Tables attached hereto as Appendix C. Each beneficial owner of a Senior Bond will receive its ratable portion of each of the 11 serial maturities of the Series 2011A Bonds, each of the three term Series 2011A Bonds and each of the two term Series 2011B Bonds. Each beneficial owner of a Subordinated Bond will receive its ratable portion of the term Series 2011C Bonds. The operation of the Bond Exchange Tables can be illustrated by the following examples.

Example 1 – Series 1998A Current Interest Bonds. Bondholder A is the beneficial owner of \$1,960,000 maturity value of a Series 1998A Current Interest Bond maturing on January 1, 2023 (10% of \$19,600,000 aggregate principal amount of such January 1, 2023 Current Interest Bonds). Bondholder A's claim for principal and accrued but unpaid interest as of June 23, 2010 is \$2,062,197, or approximately 0.867% of prepetition senior debt outstanding. See "*Senior Debt Exchange Table*" page 1 of Appendix C. Under the Plan, Bondholder A will receive in exchange for such Bond: (i) 0.867% ownership of each of the 11 serial maturities of the Series 2011A Bonds and each of the three term Series 2011A Bonds accreting interest at the rates and maturing in the maturity values and subject to mandatory sinking fund redemption set forth in Appendix B (*i.e.*, \$1,100,349 in aggregate original stated amount (as of March 31, 2011) of the Series 2011A Bonds), plus (ii) 0.867% ownership of each of the two term Series 2011B Bonds accreting interest at the rates and maturing in the maturity values and subject to mandatory sinking fund redemption set forth in Appendix B (*i.e.*, \$182,833 in aggregate original stated amounts (as of March 31, 2011)) for a total original stated amount of \$1,283,182.

Example 2 – Series 1998B Capital Appreciation Bonds. Bondholder B is the beneficial owner of \$910,000 maturity value of the Series 1998B Capital Appreciation Bonds maturing on January 1, 2018 (10% of \$9,100,000 total maturity value of such January 1, 2018 Capital Appreciation Bonds). Bondholder B's claim for principal and accreted interest as of June 23, 2010 is \$594,185, or approximately 0.25% of prepetition senior debt outstanding. See "*Senior Debt Exchange Table*" page 1 of Appendix C. Under the Plan, Bondholder B will receive in exchange for such Bond: (i) 0.25% ownership of each of the 11 serial maturities of the Series 2011A Bonds and each of the three term Series 2011A Bonds accreting interest at the rates and maturing in the maturity values and subject to mandatory sinking fund redemption set forth in Appendix B (*i.e.* \$317,046 in aggregate original stated amounts (as of March 31, 2011)) plus (ii) 0.25% ownership of each of the two term Series 2011B Bonds accreting interest at the rates and maturing in the maturity values and subject to mandatory sinking fund redemption set forth in Appendix B (*i.e.*, \$52,680 in aggregate original stated amounts (as of March 31, 2011)) for a total original stated amount of \$369,726.

Example 3 – Series 1998C Capital Appreciation Bonds. Bondholder C is the beneficial owner of \$560,000 maturity value of Series 1998C Capital Appreciation Bonds maturing on January 1, 2017 (10% of \$5,600,000 total maturity value of such January 1, 2017 Capital Appreciation Bonds). Bondholder C's claim for principal and accreted interest as of June 23, 2010 is \$375,637, or approximately 0.40% of prepetition subordinate debt outstanding. See "*Subordinate Debt Exchange Table*" page 2 of Appendix C. Under the Plan, Bondholder C will

receive in exchange for such Bond: 0.40% ownership of the 10% Series 2011C Term Bonds maturing July 22, 2051 and subject to mandatory sinking fund redemption set forth in **Appendix B** (i.e., \$8,665 in aggregate original stated amounts (as of March 31, 2011)).

On January 1, 2012 and on each January 1 thereafter and on the final maturity date of July 22, 2051, the New Trustee will apply Distributable Cash as described in the New Waterfall to the payment of the maturity values of the Series 2011A Bonds, and the mandatory sinking fund redemption of the Series 2011A Bonds, the Series 2011B Bonds and the Series 2011C Bonds as set out in the “*Series 2011A Maturity Values*” column for the Series 2011A Bonds, and the Sinking Fund Amounts Columns for the Series 2011A Bonds, the Series 2011B Bonds and the Series 2011C Bonds, respectively, set forth on **Appendix B**. Thus, Bondholder A will receive 0.867% and Bondholder B will receive 0.25% of the Maturity Value of the Series 2011A Bonds, and the mandatory sinking fund redemption of the term Series 2011A Bonds and the Series 2011B Bonds. This percentage is equal to such Bondholder’s unpaid prepetition Senior Bond principal and accrued/accreted interest divided by the aggregate prepetition Senior Bond unpaid principal and accrued/accreted interest. Bondholder C will receive 0.40% of the mandatory sinking fund redemption of the term Series 2011C Bonds on such dates. This percentage is equal to such Bondholder’s unpaid prepetition Subordinate Bond principal and accreted interest divided by the aggregate unpaid prepetition Subordinate Bond principal and accreted interest. The Amended and Restated Bonds will be governed by the Amended Trust Indenture between the Debtor and the New Trustee. The position of the Subordinate Bond Trustee will no longer be needed as of the Effective Date. Certain issues set forth in Section X(A)(4) below should also be reviewed with respect to the mechanics of the exchange under the Plan, including that no distribution on Bonds will be made where the Amended and Restated Bonds exchanged therefor would be below the Authorized Denomination of \$1.00.

A copy of the substantially final drafts of the Amended Trust Indenture and the forms of the Amended and Restated Bonds and the New License Agreement have been filed as part of the Plan Supplement. The Amended Trust Indenture, attached by the Plan Supplement as Exhibit E to the Plan, shall govern the Amended and Restated Bonds. Certain of the material terms from the Amended Trust Indenture are summarized below. However, this is not intended to be a comprehensive summary of all material terms therein, and the entire Amended Trust Indenture and the New License Agreement should be consulted and reviewed thoroughly by creditors:

- **Additional Bonds**. The Amended and Restated Bonds are issued under the Amended Trust Indenture and have the terms summarized herein. The Debtor may issue additional parity bonds (“Additional Bonds”) under the Indenture to (i) refund any Outstanding Series 2011A Bonds or Series 2011B Bonds (or, if no Series 2011A Bonds or Series 2011B Bonds are then Outstanding, the Series 2011C Bonds) if such refunding will reduce Debt Service on the Bonds in each year in which any Bonds are then Outstanding under the Amended Trust Indenture, or (ii) finance improvements to the Southern Connector so long as no Debt Service is payable on such Additional Bonds until a period after all Outstanding Bonds are scheduled to mature.
- **Extraordinary Mandatory Redemption Due to Excess Revenues**: If on any Bond Payment Date the Debtor has amounts on deposit in the Extraordinary Redemption Fund in excess

of \$50,000, then the Debtor shall apply such amounts to redeem Series 2011A Bonds and, if all Series 2011A Bonds have been redeemed, Series 2011B Bonds, and if all Series 2011B Bonds have been redeemed, Series 2011C Bonds, in the inverse order of their maturities. The redemption price shall be 105% of the accreted value of the relevant Amended and Restated Bonds, plus accrued and unpaid interest thereon to the redemption date. The mandatory sinking fund redemption schedule for the term bonds will be revised to reduce the latest required sinking fund redemption by an amount equal to the future value of the accreted value so redeemed to the date of the latest remaining mandatory sinking fund redemption for such term bonds, at the yield on the bonds so redeemed.

- Optional Redemption: The Amended and Restated Bonds are not subject to optional redemption prior to April 1, 2026. The Series 2011A Bonds and the Series 2011B Bonds are subject to redemption at the option of the Debtor on any date on or after April 1, 2026 (and, if all Series 2011A Bonds and Series 2011B Bonds have been previously repaid or defeased, the Series 2011C Bonds) in whole or in part, at a redemption price of 105% of the accreted value of such Amended and Restated Bonds so redeemed, such redemption price decreasing by 1% per year on successive anniversaries such that the redemption price on or after April 1, 2031 is 100% of the accreted value of such Bonds on the redemption date. Any partial redemptions shall be applied in the inverse order of maturities of the Amended and Restated Bonds so redeemed.
- Remedies. If the Debtor fails to make any payment in respect of the Series 2011A Bonds or there occurs another Event of Default as provided in Section 902 of the Amended Trust Indenture, the New Trustee may, and upon the direction of the holders of a majority of the aggregate Senior Bond Obligation shall, exercise the remedies set forth in the Amended Trust Indenture. Among these is that the New Trustee shall have the right to retain, or cause the Debtor to retain, (i) an independent consultant to recommend the optimum toll rates for the Southern Connector, on the terms and conditions set forth in the Amended Trust Indenture, and (ii) a management consultant or other third party to examine and make recommendations regarding the Debtor's operations and Operating Costs, and except to the extent holders of 25% of the aggregate Senior Bond Obligation object to the recommendations of such consultant or third party, the Debtor shall promptly implement all recommendations of such consultant or other third party to the extent within its power to do so. The Amended Trust Indenture, like the Original Trust Indenture, does not provide any right thereunder to accelerate the maturity of the Amended and Restated Bonds.

In addition, only a payment default on the Series 2011A Bonds constitutes an Event of Default under the Amended Trust Indenture. The failure to make scheduled payments on the Series 2011B Bonds or Series 2011C Bonds, does not constitute an Event of Default under such Bonds or under the Amended Trust Indenture. Such unpaid amounts accrue interest at the Bond rate as "Arrearages" which are payable when Distributable Cash is sufficient at a subsequent date, as further set forth in the Amended Trust Indenture. Other remedies may also be triggered under Section 706 of the Amended Trust Indenture, as discussed under "Toll Rate Covenant" below.

- 2011 Debt Service Reserve Fund: The Debtor shall maintain with the New Trustee the 2011 Debt Service Reserve Fund to pay shortfalls in debt service on the Series 2011A Bonds (and, if all Series 2011A Bonds have been redeemed, on the Series 2011B Bonds, and if all Series 2011B Bonds have been redeemed, on the Series 2011C Bonds). The 2011 Debt Service Reserve Fund shall be funded on the Effective Date of the Plan from any amounts on deposit in the Southern Connector Toll Road Revenue Fund (except for amounts deposited in the Southern Connector Toll Road Revenue Fund after the Confirmation Date and on or before the Effective Date which shall be transferred to the Revenue Fund established under the Amended Trust Indenture), the Southern Connector Toll Road Revenue Bond Debt Service Fund and the Southern Connector Toll Road Revenue Bond Debt Service Reserve Fund (each as defined in the Original Trust Indenture) that are under the control of the Senior Bonds Trustee as of the Effective Date of the Plan (the amount so deposited in the 2011 Debt Service Reserve Fund being referred to herein as the “2011 Debt Service Reserve Requirement”). If the New Trustee thereafter applies any amounts in the 2011 Debt Service Reserve Fund, the 2011 Debt Service Reserve Fund shall be fully replenished to the 2011 Debt Service Reserve Requirement before any payments or other distributions shall be made in respect of the Series 2011B Bonds or the Series 2011C Bonds, as applicable, as provided in the New Waterfall.
- Toll Rates: Toll rates have been initially established in amounts equal to the revised rates assumed from time to time to be in effect in Figure 4.4.1 of the Revised Traffic Study. Under the New License Agreement, the toll rates for use of the Southern Connector may be revised from time to time to the Optimum Rates for the Southern Connector as then estimated by an independent toll rate consultant selected by the Debtor, as and to the extent provided in the New License Agreement. The Amended Trust Indenture provides circumstances under which the Debtor is obligated to retain a toll rate consultant and undertake to revise rates as set forth below. Neither SCDOT nor the State of South Carolina shall be responsible to any person or entity for determining the adequacy of the toll rates for purposes of satisfying any of the Debtor’s obligations to third parties.
- Toll Rate Covenant: As set forth in Section 706 of the Amended Trust Indenture, the Debtor will retain from time to time an independent traffic and revenue Consultant of recognized expertise in the area of toll road traffic and revenue forecasting to study the operations of the Southern Connector and to recommend in a written report (each a “Toll Rate Study”) the optimum toll rates for the Southern Connector. The Debtor shall cause the Consultant to study the past and projected future traffic, growth, employment, alternative rate scenarios and other relevant factors and to determine the toll rates for the use of the Southern Connector which, in the opinion of the Consultant to be delivered to the Debtor and the New Trustee, would maximize the Toll Revenues estimated by the Debtor’s Consultant to be earned by the Debtor (the “Optimum Rates”) over a projected period of not less than five (5) years. The Optimum Rates may include different rates charged on the Southern Connector at different times of day. The Debtor shall provide a Toll Rate Study to the New Trustee on or before April 30, 2016 and once every five years thereafter. In addition, if on a Bond Payment Date (a) the Debtor fails to make any Debt

Service payment required to be made on the Series 2011A and/or Series 2011B Bonds, or (b) the Debt Service Coverage Ratio for the Series 2011A Bonds is less than (i) 1.20 for periods ending on or before January 1, 2016, and (ii) 1.25 for periods ending after January 1, 2016, or (c) the Debt Service Coverage Ratio for the Series 2011B Bonds is less than 1.00, then the Debtor will retain a Consultant and promptly cause a Toll Rate Study to be undertaken and the toll rates to be revised to the Optimum Rates as provided in Section 6.4 of the License Agreement. The Debtor will deliver to the New Trustee copies of any documents, reports or studies of the Consultant delivered to SCDOT, and any requests of the Debtor and responses thereto by SCDOT, under Section 6.4 of the License Agreement. The New Trustee will cause any Toll Rate Study promptly to be delivered to the Owners of the Amended and Restated Bonds. Unless the Owners of 25% or more of the aggregate Senior Bond Obligation deliver a written objection to the Debtor and the New Trustee to the implementation of the revised tolls set forth in such Toll Rate Study not later than 30 days after delivery of such Toll Rate Study to the Owners of the Amended and Restated Bonds, the toll rates on the Southern Connector shall be set at the Optimum Rates as determined by such Consultant. If the owners of 25% or more of the aggregate Senior Bond Obligation timely object in writing to the recommendations of such Consultant (and no contrary written direction from a greater percentage of ownership of the aggregate Senior Bond Obligation has been delivered to the Trustee) then the toll rates shall remain unaltered. Notwithstanding the foregoing, the Debtor shall not be required to retain a Consultant or undertake a Toll Rate Study more frequently than once every two years.

- Non-Recourse Obligations: The Amended and Restated Bonds will be expressly non-recourse to the Debtor, the State, SCDOT or any agency, department or political subdivision of the State, and payable solely from the Trust Estate.

## **2. Distribution of Net Revenues**

The Debtor is required to deliver all of the Revenues to the New Trustee immediately upon receipt for deposit into the Revenue Fund. After payment or reserve for Trustee Fees and Expenses and budgeted Operating Costs consistent with the Amended Trust Indenture, the New Trustee will maintain all Net Revenues in the Revenue Fund. The Amended Trust Indenture contains the New Waterfall to replace the existing Flow of Funds Schedule in Section 505 of the Original Trust Indenture and Section 6.13 and Exhibit 5 of the License Agreement. Whether an Event of Default has occurred and is then continuing or otherwise, in each fiscal year amounts in the Revenue Fund shall be applied for the following purposes in the priority in which listed below.

*First*, on or before the last day of each month, to the extent not paid from other sources, Operating Costs budgeted by the Debtor shall be distributed to, or on the order of, the Debtor.

All amounts remaining in the Revenue Fund as of any calculation date and after distribution of amounts in respect of Operating Costs and payment or reimbursement of Trustee Fees and Expenses, as described above, constitutes “Distributable Cash”; provided,

however, that Distributable Cash shall exclude (i) any proceeds from liability or casualty insurance or condemnation awards with respect to the Debtor's interest in the Southern Connector Project which shall be disbursed as provided in Section 717 of the Amended Trust Indenture, and (ii) all amounts derived as loans or otherwise from the United States of America, the State or any other Person relating to the Southern Connector. The Trustee shall transfer the Distributable Cash on the Business Day prior to each Bond Payment Date as provided in items *Second* through *Ninth*, below.

*Second*, the New Trustee will deposit into the R&R Fund (i) for Bond Payment Dates on or before January 1, 2016, an amount equal to 5.0% of the amount of Distributable Cash, and (ii) for Bond Payment Dates after January 1, 2016, an amount equal to 2.5% of the amount of Distributable Cash;

*Third*, the New Trustee shall transfer to the Senior Bonds Debt Service Account amounts which, when added to other amounts then in the Senior Bonds Debt Service Account, and available for such purposes, shall equal the Debt Service on the Series 2011A Bonds and any other Additional Bonds issued as Senior Bonds required to be paid on such Bond Payment Date, including any amounts representing Arrearages on the Senior Bonds from earlier Bond Payment Dates;

*Fourth*, the New Trustee shall deposit into the R&R Fund (i) for Bond Payment Dates on or before the January 1, 2016, an amount equal to 0.0% of the amount of Distributable Cash, and (ii) for Bond Payment Dates after January 1, 2016, an amount not to exceed 2.5% of the amount of Distributable Cash;

*Fifth*, if any subaccount in the Debt Service Reserve Fund contains less than the Debt Service Reserve Fund Requirement for such subaccount, the Trustee shall transfer into such subaccount an amount equal to the amount needed to restore the balance in such subaccount to the Debt Service Reserve Fund Requirement for such subaccount;

*Sixth*, the New Trustee shall transfer to the Senior Subordinate Bonds Debt Service Account amounts which, when added to other amounts then in the Senior Subordinate Bonds Debt Service Account, and available for such purposes, shall equal the Debt Service on the Series 2011B Bonds and any other Additional Bonds issued as Senior Subordinate Bonds required to be paid on such Bond Payment Date, including any amounts representing Arrearages on the Senior Subordinate Bonds from earlier Bond Payment Dates;

*Seventh*, the New Trustee shall deposit into the R&R Fund an amount not to exceed 2.5% of the amount of Distributable Cash;

*Eighth*, the New Trustee shall transfer to the Junior Subordinate Bonds Debt Service Account amounts which, when added to other amounts then in the Junior Subordinate Bonds Debt Service Account, and available for such purposes, shall equal the Debt Service on the Series 2011C Bonds and any other Additional Bonds issued as Junior Subordinate Bonds required to be paid on such Bond Payment Date, including any amounts representing Arrearages on the Junior Subordinate Bonds from earlier Bond Payment Dates; and

*Ninth*, the New Trustee will deposit into the R&R Fund an amount not to exceed 2.5% of the amount of Distributable Cash.

Any Distributable Cash remaining after the above listed distributions (“Excess Net Revenues”) will be deposited to the Extraordinary Redemption Fund to be used (if the amount on deposit therein exceeds a minimum amount of \$50,000) to effect the early redemption of the Amended and Restated Bonds in Authorized Denominations. Amounts owing on the Series 2011 Bonds and any Additional Bonds issued under the Amended Trust Indenture and unpaid due to insufficient Distributable Cash shall be deferred and bear interest from the date of non-payment at a rate equal to the interest rate or yield on the Bond to which such unpaid amount relates, compounded annually (such unpaid amounts plus interest being the “Arrearages”) to be added to amounts payable on future Bond Payment Dates. The above percentage distributions to the R&R Fund will be used to compute the amount of Distributable Cash to be deposited into the R&R Fund for each Bond Payment Date. Non-payment of amounts to the R&R Fund due to the insufficiency of Distributable Cash will not result in a default under the License Agreement or the Amended Trust Indenture, and shall not be added to the R&R Fund deposits for future Bond Payment Dates. However, as part of the financing of the Southern Connector, the Debtor is agreeing under the New License Agreement to reimburse SCDOT for the full unreimbursed Highway Maintenance Costs for the Southern Connector plus interest at the rate of five percent (5%) per annum compounded annually after all of the Amended and Restated Bonds (or any obligations issued to refinance such Amended and Restated Bonds) have been repaid. Any such repayment to SCDOT would require an extension of the term of the New License Agreement. One hundred percent (100%) of the Net Revenues received during any such extended term of the New License Agreement would be paid to SCDOT for this purpose of reimbursing the unreimbursed Highway Maintenance Costs with interest to SCDOT after all Project Debt has been repaid.

In the event on any Bond Payment Date any Debt Service payment is not made on any series of Bonds due to insufficiency of Distributable Cash, distributions of Distributable Cash in respect of the Debt Service on such Tier of Bonds on later Bond Payment Dates shall be applied, *First*, to any Arrearages and if the amount available is not sufficient to pay all of the Arrearages on such Tier of Bonds in full such Distributable Cash will be applied to the oldest unpaid Arrearages in the direct order of their due dates and within any due date ratably, and, *Second*, to the current Debt Service owing on such Tier of Bonds on such Bond Payment Date and if the amount available is not sufficient to pay all of the current Debt Service in full such remaining Distributable Cash will be applied ratably.



### 3. Releases

**THE PLAN PROVIDES FOR RELEASES OF AND INJUNCTIVE RELIEF TO THOSE PERSONS AND ENTITIES WHO ARE EITHER (1) PROVIDING SUBSTANTIAL CONSIDERATION TO THE ESTATE OR (2) SUBSTANTIALLY COMPROMISING THEIR CLAIMS. THE PERSONS AND ENTITIES SO PROTECTED, AND THE SCOPE OF THE RELEASES AND INJUNCTION, ARE DEFINED IN ARTICLE V OF THE PLAN. IF THE PLAN IS CONFIRMED, ALL PERSONS AND ENTITIES IDENTIFIED IN THESE PROVISIONS OF THE PLAN WILL BE RELEASED FROM THE CLAIMS OF ANY CREDITOR OR PARTY IN INTEREST IN THIS CASE WHETHER OR NOT SUCH CREDITOR OR PARTY IN INTEREST VOTED ON OR TO ACCEPT THE PLAN.**

The Plan contains the following releases:

- A release by the holders of the Bonds, the Senior Bonds Trustee, the Subordinate Bonds Trustee and SCDOT of all of their claims (if any) existing as of the Effective Date against current and former officers, directors, employees, professionals, and agents of the Debtor or its Board of Directors.
- A release by the Debtor, the Senior Bonds Trustee, the Subordinate Bonds Trustee and the holders of the Bonds of all of their claims (if any) existing as of the Effective Date against SCDOT and the State, and their respective current and former commissioners, officers, directors, employees, professionals, and agents.
- A release by the Debtor and SCDOT of all of their claims (if any) existing as of the Effective Date against the Senior Bonds Trustee, the Subordinate Bonds Trustee and all holders of the Bonds and their respective current and former officers, directors, employees, professionals, and agents.
- A release by the holders of the Bonds of all of their claims (if any) existing as of the Effective Date against the Senior Bonds Trustee, the Subordinate Bonds Trustee, and their respective current and former officers, directors, employees, professionals, and agents.
- A release of all claims of SCDOT arising under or in connection with the License Agreement or otherwise existing as of the Effective Date, and all claims and causes of action arising in connection therewith, against the Senior Bonds Trustee, the Subordinate Bonds Trustee, all holders of the Bonds, the Debtor or its Board of Directors and their respective current and former officers, directors, employees, professionals, and agents.

- Provided, however, the foregoing releases shall not release claims or obligations of SCDOT or any other party arising after the Effective Date under the New License Agreement, Amended Trust Indenture, or other operative documents.

The Plan arises from unusual circumstances resulting in an involved and complex case. The Releases and Injunctions affect a global resolution of a multitude of complex issues among the Debtor and Plan Releasees. The resolution of these issues serves the public interests by allowing a needed interstate highway to remain available to all citizens. The various forms of value and consideration provided by the Debtor and Plan Releasees are mutually dependent upon one another and therefore are not severable from one another.

The Debtor believes the Plan Releasees and the Plan satisfy the conditions necessary to include the releases discussed above for the following reasons:

- Potential Rate Covenant Litigation. The Senior Bonds Trustee has indicated that it intended to commence an action seeking damages and/or other relief from SCDOT arising from, among other things, SCDOT's failure to maintain toll rates on the Southern Connector as specifically promised in the License Agreement. The Senior Bonds Trustee asserts that the License Agreement provides that at all times SCDOT, which possesses sole authority under the License Agreement to adjust the toll rates, will maintain all toll rates in compliance with the Original Trust Indenture. The Original Trust Indenture provides that there shall be fixed, charged and collected such tolls and other charges in respect of the Southern Connector as shall be sufficient to generate revenues to repay the Bonds and finance the highway's operations, pursuant to a formula set forth therein. The Senior Bonds Trustee asserts that since at least 2005, toll rates on the Southern Connector have been far too low to maximize revenue and fulfill SCDOT's legally enforceable promise. The Senior Bonds Trustee contends that SCDOT has failed to raise toll rates in accordance with the terms of the License Agreement, despite several independent traffic studies, published beginning in 2005, concluding Revenues could be increased thereby.
- However, SCDOT denies that it has any liability for the asserted claim. SCDOT contends that the Bonds were issued expressly non-recourse to SCDOT and the State of South Carolina. Accordingly, it is SCDOT's position that the rate covenant in the License Agreement cannot reasonably be interpreted to obligate SCDOT or the State of South Carolina to repay the Bonds if toll rates were insufficient. Moreover, SCDOT contends that any damages arising out of any breach by SCDOT for any alleged breach of the rate covenant would be speculative and de minimis.
- Renewal and Replacement of the Southern Connector. The Original Trust Indenture and License Agreement are ambiguous with respect to the scope of SCDOT's obligations, if any, to repair, renew, resurface and replace the Southern Connector on an ongoing basis if there are insufficient Revenues to pay these costs and whether SCDOT has the right to terminate the License Agreement if there are insufficient Revenues to pay for such expenses. The Debtor and Senior Bonds Trustee have indicated that they intended to seek a judicial determination of the obligation of

SCDOT to repair, renew, resurface and replace the road even if the Southern Connector did not produce sufficient Revenues to pay for such items and to prevent SCDOT from terminating the License Agreement under such circumstances. If it were determined that SCDOT had the continuing obligation to pay for such items, it would likely not receive any reimbursements for such expenditures due to the subordinated priority under the original Flow of Funds in the License Agreement.

- However, SCDOT denies that it has any obligations under the License Agreement to repair, renew, resurface and replace the Southern Connector on an ongoing basis and asserts that such obligations belong to the Debtor. If SCDOT is correct, SCDOT could attempt to terminate the License Agreement in the future should the Debtor fail to perform those obligations.

The Plan takes into account the risks, uncertainties, costs and delays in connection with litigating the foregoing issues and provides that SCDOT and the Bondholders are each contributing to a resolution of the issues by agreeing to the terms of the New License Agreement and New Waterfall pursuant to which:

- In consideration for the releases provided to it under the Plan, SCDOT agrees to (i) assume the responsibility for the maintenance, repair, renewal, resurfacing and replacement of the Southern Connector (excluding the toll facilities, canopies, equipment, systems, furnishings and non-highway fixtures), (ii) release its Claims arising under the License Agreement, and (iii) vote to accept the Plan. By agreeing to assume the responsibility for the maintenance, repair, renewal, resurfacing and replacement of the Southern Connector, the License Agreement can no longer be terminated should toll revenues be insufficient to fund such expenses.
- Bondholders agree (i) that SCDOT will be paid a percentage of the Net Revenues to reimburse SCDOT for a portion of its costs of maintenance, repair, renewal, resurfacing and replacement of the Southern Connector and (ii) to accept Amended and Restated Bonds in a lesser amount than the amount of their claims. The allocation of funds from the Net Revenues for maintenance, repair, renewal, resurfacing and replacement of the Southern Connector is at a higher priority than currently exists under the License Agreement.

These contributions and concessions by SCDOT and the Bondholders are believed to be an essential component to the reorganization of the Debtor and the future success of the Southern Connector and contribute to the feasibility of the Plan. The Debtor's ability to formulate any Plan for the Adjustment of Debts will be irreparably harmed absent any portion of the consideration described herein.

#### **4. Injunction**

As a consequence of the releases discussed in Section VII.B.3 of this Disclosure Statement, the Plan includes an injunction which provides as follows:

**EXCEPT AS OTHERWISE PROVIDED HEREIN, FROM AND AFTER THE EFFECTIVE DATE, ANY AND ALL POTENTIAL CLAIMANTS SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY SUIT, ACTION OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, REMEDY OR LIABILITY, OR ANY OTHER CLAIM OR CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT HERETO, AGAINST THE DEBTOR OR ANY OR ALL OF THE PLAN RELEASEES.**

The Final Confirmation Order shall permanently enjoin the commencement or prosecution by any person or entity, whether directly, derivatively or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities, released pursuant to the Plan against any Plan Releasee. Thus, except as otherwise provided in the Plan, all parties having a claim against the Debtor or any Plan Releasee arising prior to the Effective Date of the Plan **SHALL WITH RESPECT THERETO BE ENJOINED ON AND AFTER THE EFFECTIVE DATE FROM:**

- Commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind against any of the Plan Releasees or its direct or indirect successor in interest (including, without limitation, all suits, actions, and proceedings that are pending, or may be filed as of the Effective Date), which must be withdrawn or dismissed with prejudice;
- enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against a Plan Releasee or its assets or property, or its direct or indirect successor in interest, or any assets or property of such successor;
- creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any lien against a Plan Releasee or its assets or property, or its direct or indirect successors in interest, or any assets or property of such successor;
- asserting any set-off, right of subrogation, or recoupment of any kind, directly or indirectly, against any obligation due a Plan Releasee or its assets or property, or its direct or indirect successors in interest, or any assets or property of such successor; and
- proceeding in any manner that does not conform or comply with the provisions of the Plan.

In addition, all injunctions or stays, whether by operation of law or by order of the Bankruptcy

Court, provided for in the Case pursuant to Sections 105, 362, or 524 of the Bankruptcy Code, or otherwise that are in effect on the Confirmation Date, shall remain in full force and effect until the Final Decree.

## 5. New License Agreement

(i) Future Maintenance, Repair, Renewal and Replacement of the Southern Connector: In accordance with the Plan, Debtor and SCDOT will enter into a New License Agreement pursuant to which SCDOT will assume the obligation for the future Highway Maintenance and Highway Maintenance Costs of the Southern Connector in the same manner as any other State-owned interstate roads and in accordance with applicable State and SCDOT standards and practices, subject to the provisions set forth in the New License Agreement. SCDOT will be reimbursed for Highway Maintenance Costs from the R&R Fund as and to the extent described in the New Waterfall. Neither the Debtor nor the New Trustee or Bondholders will be responsible for any Highway Maintenance. The Debtor shall not be responsible for maintaining insurance against any casualty or damage to the Southern Connector other than the Toll Facilities. The Debtor shall be responsible for future Toll Facilities Maintenance and Toll Facilities Maintenance Costs, which shall be payable as an Operating Cost from the available Toll Revenues.

The New License Agreement provides in Section 6.7(e) that the Debtor may, from time to time, submit to SCDOT an inspection report of the Association Engineer. The Association Engineer's report may identify any Highway Maintenance needs of the Southern Connector, and contain the Association Engineer's assessment of materiality of the noted Highway Maintenance, an estimate of Highway Maintenance Cost associated therewith, and an assessment of the appropriate timing of identified Highway Maintenance needs. The Amended Trust Indenture requires submission of the Association Engineer's Report to SCDOT. Within 30 Days after submission by the Debtor of any such report to SCDOT's Deputy Director of Engineering and District Three Engineering Administrator (or successor officials) to SCDOT's notice address in Section 16.4(a) to the New License Agreement, the parties will collaborate to determine a reasonable schedule to address Highway Maintenance needs identified in the report; provided, that (subject to Section 6.7(a)) the application of SCDOT's resources shall always be in accordance with applicable Law, Regulations, and Ordinances including its generally applicable agency processes. To the extent there is on deposit in the R&R Fund monies estimated by the Association Engineer to be sufficient to address any or all Highway Maintenance needs or deficiencies then identified, SCDOT shall cooperate with the Debtor to reasonably promptly perform the necessary Highway Maintenance and/or to allocate funds in the R&R Fund as necessary to cause such work to be performed with reimbursement therefor from the R&R Fund.

(ii) Payments for the Benefit of SCDOT under the New Waterfall: The New Trustee will make deposits to the R&R Fund on each Bond Payment Date as and to the extent provided in the New Waterfall and the Amended Trust Indenture. The New Trustee will disburse amounts in the R&R Fund in accordance with the Amended Trust Indenture to reimburse SCDOT for Highway Maintenance Costs of the Southern

Connector. The Amended Trust Indenture requires SCDOT to provide the New Trustee with reasonable assurance that such amounts to be reimbursed from the R&R Fund were used for such Highway Maintenance Costs. The New License Agreement provides that, upon the repayment, redemption, or defeasance of all of the Amended and Restated Bonds or any obligations issued to refinance the Amended and Restated Bonds, the Debtor will become obligated to and will thereafter as promptly as possible reimburse SCDOT from Toll Revenues for any actual, documented Highway Maintenance Costs incurred by SCDOT pursuant to the New License Agreement in excess of the total amounts reimbursed to SCDOT from the R&R Fund, plus interest compounded annually at the rate of five percent (5%) per annum. Non-payment of any amounts to SCDOT (either from the R&R Fund or otherwise) resulting from the insufficiency of Toll Revenues will not constitute a default under the New License Agreement and will not permit SCDOT to terminate the New License Agreement or otherwise disturb the ability of the Debtor to operate and collect tolls for the use of the Southern Connector through the end of the license term as provided for in the New License Agreement.

(iii) Future License Fees: The New License Agreement eliminates past and future License Fees and other amounts payable to or for SCDOT other than as set forth above for distributions under the New Waterfall to the R&R Fund and payment of unreimbursed Highway Maintenance Costs with interest after repayment of the Amended and Restated Bonds or any Additional Bonds.

(iv) Operating Costs: Debtor will be responsible for paying from the available Toll Revenues all Operating Costs incurred in operating the Southern Connector.

(v) Toll Rates: Except as provided hereinafter, toll rates will be established in amounts equal to the amounts assumed from time to time to be in effect under the Revised Traffic Study. Under the New License Agreement, the toll rates for use of the Southern Connector may be revised from time to time to the Optimum Rates for the Southern Connector as then estimated by an independent toll rate consultant, in each case as and to the extent provided in the New License Agreement. The Amended Trust Indenture provides circumstances under which the Debtor is obligated to retain a toll rate consultant. Neither SCDOT nor the State of South Carolina shall be responsible for the adequacy of any toll rates charged by the Debtor for purposes of satisfying its obligations on the Amended and Restated Bonds. Specifically, under Section 6.4(a) of the New License Agreement, the toll rates for the Southern Connector may be revised from time to time to the Optimum Rates as follows:

Not later than 90 Days prior to the effective date of any proposed revision to the toll rates, the Association shall select an independent traffic and revenue Consultant consistent with the Master Trust Indenture (the "Association Consultant") of recognized expertise in the area of toll road traffic and revenue forecasting to study the toll rates charged for the use of the Southern Connector and shall deliver to the Authorized SCDOT Representative the name of the Association Consultant with a summary of the Consultant's credentials. SCDOT may reasonably object to the

selection of the Association Consultant based upon its lack of expertise or qualifications provided that such objection is made in writing to the Authorized Association Representative within 30 Days of SCDOT's receipt of the name of the Association Consultant and the Consultant's credentials ("SCDOT Response Period"). Such objection shall at minimum specify the following (if conforming, a "SCDOT Objection"): (1) the specific grounds for SCDOT's objections to such Consultant's expertise or qualifications and (2) at least one alternate independent traffic and revenue Consultant considered qualified and acceptable by SCDOT ("SCDOT Nominees"). If SCDOT fails to submit a SCDOT Objection in writing within the SCDOT Response Period, the Association may cause a toll rate study to be undertaken by the Association Consultant. If SCDOT timely submits a SCDOT Objection to the nominated Association Consultant, the Association shall nominate another Person as Association Consultant. If such Person is from the list of SCDOT Nominees, such Person shall be deemed accepted by SCDOT. Otherwise, the SCDOT Response Period shall be triggered again as to such proposed Association Consultant (and if another SCDOT Objection is filed, SCDOT shall specify one or more different SCDOT Nominees than previously submitted).

(vi) Insolvency: Neither the Debtor nor SCDOT shall have any right to terminate the license nor the New License Agreement based on the insolvency of the Debtor.

### **C. Summary of the Plan Classes and Treatment of Claims**

The following is a summary of the Classes of creditors of the Debtor under the Plan, an estimation of the dollar amounts of such Classes and a summary of the provisions made in the Plan for the treatment of each Class.

#### **1. Classification of Claims**

- a. Administrative Claims. Allowed Administrative Claims are not classified under the Plan and are unimpaired.
- b. Class 1. Class 1 consists of the claims of the holders of the Senior 1998 Bonds. This class is impaired.
- c. Class 2. Class 2 consists of the claims of the holders of the Subordinate Bonds. This class is impaired.
- d. Class 3. Class 3 consists of the claims of the Senior Bonds Trustee and Subordinate Bonds Trustee. This class is unimpaired.
- e. Class 4. Class 4 consists of the claims of the SCDOT. This class is impaired.

f. Class 5. Class 5 consists of all claims arising from the rejection of executory contracts, if any. This class is impaired.

g. Class 6. Class 6 consists of the claim of Lehman Brothers. This class is impaired.

## **2. Estimation of Claims.**

**Appendix F** sets forth an estimate of the Allowed Claims in Classes 1 through 4 under the Plan as of the Petition Date based upon the Claims filed as of the Bar Date.

Section 506 of the Bankruptcy Code provides that an allowed claim of a creditor secured by a lien on property of the estate is generally a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property and is an unsecured claim to the extent the value of such creditor's interest is less than the amount of such allowed claim. Here, the Bonds are secured by, among other things, the License Agreement and the Revenues generated from the operation of the Southern Connector. Any valuation of the secured portion of the Bonds is subject to uncertainties relating to the difficulty of projecting future toll revenues and the litigation risks related to the License Agreement in the absence of a consensual plan, including litigation concerning the renewal and replacement obligations absent sufficient toll revenues. Accordingly, Debtor has not filed a motion to value the Claims.

## **3. Treatment of Classes**

### **(i) Administrative Claims.**

Allowed Administrative Claims are claims of the kind described in sections 503(b) and 507(a)(2) of the Bankruptcy Code. Throughout the course of the Chapter 9 Case, the Debtor has endeavored to satisfy administrative expenses as they became due. Accordingly, the Debtor believes that all Claims that otherwise would constitute Allowed Administrative Claims previously have been or will be satisfied in the ordinary course of business prior to or within ten (10) days of the Effective Date, by the Debtor unless such Claim or Claims are not yet an Allowed Claim(s) by order of the Court where required. The Debtor expects to pay certain administrative expenses from funds held by the Trustee in the Revenue Fund, the Debt Service Fund and the Debt Service Reserve Fund securing the Original Bonds. The balance of available funds remaining in such Funds after payment of these expenses and any escrows related to unresolved claims as determined by the Senior Bonds Trustee will be transferred to the Debt Service Reserve Fund securing the Amended and Restated Bonds.

### **(ii) Class 1. Senior Bondholders Claims.**

Holders of the Senior 1998 Bonds will be issued Series 2011A Bonds in the aggregate original principal amount of approximately \$126,903,926 which will be senior secured capital appreciation bonds, consisting of serial bonds maturing January 1 of the years 2012 through 2022 (inclusive) and three term bonds, each subject to mandatory sinking fund redemption, maturing January 1, 2032, January 1, 2042 and July 22, 2051. The proposed debt service table for the Series 2011A Bonds is set forth in **Appendix B** attached hereto. The Debtor's obligations in respect of the Series 2011A Bonds will be secured by a lien on the Trust Estate. The details of



the Series 2011A Bonds are summarized in Section VII.B.1 of this Disclosure Statement.

The payment of debt service on Series 2011A Bonds will be made from Distributable Cash remaining after the First R&R Fund Deposit, which will equal 5% of the Distributable Cash to the R&R Fund for the first five years after the date of entry of the Confirmation Order and 2.5% thereafter as set forth in the New Waterfall described at Section VII.B.2 of this Disclosure Statement.

Debtor will also issue to Class 1 creditors Series 2011B Bonds in the aggregate original principal amount of approximately \$21,086,245 which will be senior subordinated secured capital appreciation bonds consisting of two term bonds, each subject to mandatory sinking fund redemption, maturing January 1, 2032 and July 22, 2051. The proposed debt service table for the Series 2011B Bonds is set forth in **Appendix B** attached hereto. The details of the Series 2011B Bonds are summarized in Section VII.B.1 of this Disclosure Statement. The Debtor's obligations in respect of the Series 2011B Bonds will be secured by a lien on the Trust Estate. The Series 2011B Bonds will be subordinated to the Series 2011A Bonds in all respects, including in right of payment and priority of liens.

The payment of debt service on the Series 2011B Bonds will also be made from Distributable Cash remaining after the First R&R Fund Deposit, the Second R&R Fund Deposit and the replenishment of the 2011 Debt Service Reserve Fund as set forth in the New Waterfall described at Section VII.B.2 of this Disclosure Statement.

**(iii) Class 2. Subordinate Bondholders Claims.**

The holders of the Series 1998C Bonds shall receive their pro rata share of approximately \$2,160,479 aggregate original principal amount of Series 2011C Bonds which will consist of junior subordinated secured capital appreciation term bonds bearing interest at 10.0% per annum, maturing, subject to mandatory sinking fund redemption, on July 22, 2051. The proposed debt service table for the Series 2011C Bonds is set forth in **Appendix B** attached hereto. The details of the Series 2011C Bonds are summarized in Section VII.B.1 of this Disclosure Statement. The Debtor's obligations in respect of the Series 2011C Bonds will be secured by a lien on the Trust Estate. The Series 2011C Bonds shall be subordinated to the Series 2011A Bonds and Series 2011B Bonds in all respects, including in right of payment and priority of liens.

The payment of debt service on the Series 2011C Bonds will be made from Distributable Cash remaining after the First R&R Fund Deposit, the Second R&R Fund Deposit, the Third R&R Fund Deposit and the replenishment of the 2011 Debt Service Reserve Fund as set forth in the New Waterfall described at Section VII.B.2 of this Disclosure Statement.

**(iv) Class 3. Bond Trustee Claims.** The claims of the Senior Bonds Trustee and Subordinate Bonds Trustee for administrative fees and expenses due under the Original Trust Indenture have been paid in the ordinary course of business. Debtor does not believe there are any past due amounts outstanding to these creditors. To the extent such ongoing fees and expenses have not been paid, they will be paid in the ordinary course, or they will be paid in cash prior to the Effective Date or at such later time as provided for by agreement between the Debtor and such creditors. The Debtor expects these fees and expenses will be paid

from funds held by the Trustee in the Revenue Fund, the Debt Service Fund and the Debt Service Reserve Fund securing the Original Bonds. Accordingly, holders of Class 3 claims are not impaired under or entitled to vote on the Plan.

(v) **Class 4. SCDOT Claims.** The claims of SCDOT are general unsecured claims arising under the License Agreement. However, such claims are being released by SCDOT and therefore will not be paid under the Plan.

(vi) **Class 5. Executory Contract Claims.** This class consists of any claims arising from the rejection of an executory contract. However, the Debtor does not believe there are any claims within this class, as set forth in Section VII(C)(4) below. Such claims, if any, would be general unsecured claims and would not receive any distribution.

(vii) **Class 6. Lehman Brothers Claims.** Class 6. Lehman Brothers Claims. Lehman Brothers filed a Proof of Claim in the amount of \$2,769,643.00 related to the termination and liquidation, after Lehman Brother's bankruptcy filing, of a Repurchase Agreement issued in connection with the Bonds. Debtor intends to object to the claim of Lehman Brothers if it is not resolved consensually. The potential claim of Lehman Brothers is believed by the Senior Bonds Trustee and the Debtor to be less than \$1.2 million, which would be before any reduction or offset as described below. Any claim of Lehman may also be subject to a reduction or offset by a claim which the Debtor has asserted against Lehman Brothers, the value of which is unknown at this time (but for which a proof of claim was filed in the Lehman Brothers bankruptcy case). Out of abundance of caution, the Senior Bonds Trustee allocated approximately \$1.2 million out of original repurchase collateral held by the Senior Bonds Trustee in the debt service reserve fund of the Original Trust Indenture after the repurchase agreement liquidation to a specific suspense account as a maximum reserve for any valid Lehman claim. The Debtor and Senior Bonds Trustee are in discussions with Lehman Brothers concerning the reason for the discrepancy between the amount claimed by Lehman Brothers in its proof of claim versus the amounts above, as well as potential resolution of related claim issues. If consensual resolution cannot be reached, the Debtor intends to object to the proof of claim and to seek an order or judgment declaring that the property being held by the Senior Bonds Trustee (in the current debt service reserve fund including the suspense account) which was derived from the Repurchase Agreement liquidation is property of the Debtor and not subject to any right or interest of Lehman Brothers. To the extent that the Court rules that property being held by the Senior Bonds Trustee is property of the Debtor, the Senior Bonds Trustee will transfer such property to the Senior Bonds Debt Service Reserve Subaccount of the Series 2011 Bonds Debt Service Reserve Account as described under the Amended Trust Indenture. However, should the Court rule that any such property belongs to the Lehman Brother's estate, after reduction for damages or setoff, if applicable, the Senior Bonds Trustee will be required to turnover such property to Lehman Brothers. The amount of money available to be paid to the Senior Bonds Debt Service Reserve Subaccount of the Series 2011 Bonds Debt Service Reserve Account on the Effective Date of the Plan will be reduced by any amount to be repaid to Lehman Brothers (and may be reduced by a reserve escrow for such amount by the Senior Bonds Trustee if such claim is not resolved prior to confirmation of the Plan). To the extent the claim of Lehman Brothers is in excess of the property held by the Senior Bonds Trustee in the debt service reserve fund from the repurchase agreement liquidation, such claim would be a general unsecured claim. The Debtor does not expect to have sufficient funds to

make any distribution to Lehman Brothers to the extent it is determined to have a general unsecured claim against the Debtor. Accordingly, the holder of the Class 6 Claim is impaired under and entitled to vote on the Plan

#### **4. Treatment of Executory Contracts and Unexpired Leases.**

As discussed in Section V above, Debtor engaged Goldman to advise Debtor in connection with the potential restructuring of Debtor's obligations ("Goldman Contract"). Debtor asserts that such engagement has concluded and the Goldman Contract terminated. However, Goldman's engagement gave certain rights to Goldman that, under certain conditions, could be exercised at Goldman's option in the future. Debtor is listing the Goldman Contract as an executory contract which is being specifically rejected under the Plan to eliminate the possibility of any assertion by Goldman of subsequent claims thereunder.

All contracts and leases of the Debtor that may constitute executory contracts or unexpired leases as of the Petition Date shall be assumed except for the Goldman Contract or such contracts and leases that (a) have been rejected pursuant to Order of the Court entered prior to the Effective Date, (b) have been renegotiated and either assumed or rejected on renegotiated terms pursuant to Order of the Court entered prior to the Effective Date, (c) are the subject of a motion to reject that is pending before the Bankruptcy Court on the Effective Date, (d) are the subject of a motion to assume on renegotiated terms that is pending before the Court on the Effective Date, or (e) are specifically treated otherwise in the Plan or in the Confirmation Order. Contracts rejected or assumed pursuant to (a) - (e) above shall be rejected or assumed, as the case may be, as of the date set forth in the operative motion, agreement or order arising therewith. The Debtor intends to assume all known potential executory contracts to which the Debtor is a party, including but not limited to the Original Trust Indenture and License Agreement, as amended and restated in the Amended Trust Indenture and the New License Agreement, respectively, but excluding the Goldman Contract as set forth below.

Attached as **Appendix G.1** is a list of the known executory contracts being assumed by the Debtor, including but not limited to the Original Trust Indenture and License Agreement, as amended and restated in the Amended Trust Indenture and the New License Agreement, respectively. Attached as **Appendix G.2** is a list of the known potential executory contracts being rejected by the Debtor, specifically, the Goldman Contract (which Debtor believes has expired by its terms but is listing out of an abundance of caution).

The New License Agreement will be assumed by the Debtor pursuant to the Plan.

#### **D. Conditions Precedent to Confirmation**

Confirmation of the Plan shall not occur unless each of the following conditions precedent has occurred:

1. The Court has approved the Disclosure Statement by a Final Order; and
2. The Court has determined that all statutory requirements for Confirmation have been satisfied.

## **E. Effectiveness of the Plan**

The Plan provides that the following conditions precedent must be satisfied or waived on or prior to the Effective Date:

1. The Confirmation Order shall have been entered in form and substance reasonably satisfactory to the Debtor, SCDOT and the Senior Bonds Trustee, and shall, among other things, (i) provide for the issuance and distribution of the Amended and Restated Bonds, (ii) provide for the assumption of the New License Agreement and find that there are no defaults requiring cure thereunder and (iii) provide that notwithstanding Rule 3020(e) of the Bankruptcy Rules, the Confirmation Order shall be immediately effective, subject to the terms and conditions of the Plan; and

2. The Confirmation Order shall not then be stayed, vacated or reversed; and

3. The Confirmation Order shall be a Final Order and no request for revocation of the Confirmation Order shall have been made or, if made, remain pending; and

4. The Amended Trust Indenture and Amended and Restated Bonds have been executed and delivered and the New Trustee shall have received (as a condition to acceptance of delivery of the Amended and Restated Bonds):

(a) one executed counterpart of the Amended Trust Indenture and the Amended and Restated Bonds for each maturity thereof, together with a letter, signed by the Debtor, instructing the Trustee as to the delivery of such Bonds; and

(b) opinions of counsel acceptable to the New Trustee to the effect that, as of its date (i) the Amended Trust Indenture has been duly authorized, executed and delivered by the Debtor and constitutes the legal, valid and binding special, limited obligation of the Debtor; provided, however, that such opinion may include exceptions for limitations imposed by or resulting from bankruptcy, insolvency, moratorium, reorganization, or other laws affecting creditors' rights generally, matters relating to equitable principles and other customary exceptions or qualifications appropriate in the circumstances; (ii) the Amended Trust Indenture creates the valid pledge of and lien on the Trust Estate which it purports to create, subject only to the provisions of the Amended Trust Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Amended Trust Indenture; (iii) the Amended and Restated Bonds are valid and binding special, limited obligations of the Debtor, payable solely from the sources provided therefor in the Amended Trust Indenture; provided, however, that such opinion may include exceptions for limitations imposed by or resulting from bankruptcy, insolvency, moratorium, reorganization, or other laws affecting creditors' rights generally, matters relating to equitable principles and other customary exceptions or qualifications appropriate in the circumstances; (iv) the Confirmation Order has been duly entered and is final and unappealable; (v) all conditions precedent in the Plan and Confirmation Order to the delivery of the Amended and Restated Bonds in exchange for the Original Bonds have been accomplished or waived and (vi) interest on the Amended and Restated Bond will not be included in gross income of the Bondowners for federal income tax purposes; and

(c) a fully executed counterpart of the First Amendment to License Agreement; and

(d) evidence of filed UCC-1 financing statements relating to the pledge of the Trust Estate; and

(e) evidence that SCDOT shall have received true and correct copies of the documents set forth in subsection (a) above certified by the Debtor in accordance with the New License Agreement and Amended Trust Indenture; and

5. The New License Agreement shall have been fully executed and delivered and shall have become effective.

#### **F. Waiver of Conditions to Effectiveness of Plan**

Each of the conditions set forth in Article VII C. of the Plan may be waived in whole or in part by the Debtor and the Senior Bonds Trustee without notice to parties in interest or the Court and without a hearing.

#### **G. Amount and Method of Payment of Administrative Claims**

The distributions to holders of Administrative Claims will be made prior to or within ten (10) days of the Effective Date, by the Debtor unless such Claim or Claims are not yet an Allowed Claim(s) by order of the Court where required.

### **VIII. FEASIBILITY OF THE PLAN**

The Plan and the Debtor's satisfaction of its obligations as provided therein are conditioned on the restructuring of its obligations, in particular, the obligations arising under the Original Trust Indenture and the effectiveness of the New License Agreement. Upon the Confirmation of the Plan, the Debtor expects to be able to satisfy its obligations required under the Plan because the amounts necessary to implement the Plan and continue the operations of the Debtor are expected to be available or be made available by future revenues from the operation of the Southern Connector. The amount of the restructured debt is at a level that allows it to be serviced in accordance with its terms if the revenue projections of the Revised Traffic Study are achieved. Implementation of the Plan is feasible such that implementation of the Plan will occur on or about the Effective Date.

Post Effective Date operation of the Debtor's business is feasible based upon the restructured debt obligations, anticipated revenues and the restructured terms of the license as set forth in the New License Agreement.

### **IX. ALTERNATIVES TO CONFIRMATION OF THE PLAN**

The Debtor believes that the Plan affords all creditors the potential for the greatest economic return from the Debtor's assets; therefore, it is in the best interest of creditors. The Debtor has considered alternatives to the Plan. In the opinion of the Debtor, such alternatives would not afford creditors as great a return as achieved under the Plan.

The Debtor is unaware of any feasible alternative to this Plan. If this Plan is not confirmed then the possible alternatives are discussed below. These alternatives are bleak for the creditors of this Debtor.

**A. Analysis of Dismissal of the Case**

The Debtor could dismiss the Case. In the event of a dismissal of the Case, SCDOT may attempt to terminate the License Agreement which could result in the Debtor's operations being shut down leaving no revenue to pay the Bonds or other creditors of the Debtor and likely resulting in further litigation.

**B. Alternative Plan under Chapter 9**

In the event the Plan is not confirmed, the Debtor could attempt to formulate a different plan, for instance, a plan that preserves litigation against SCDOT. However, such a plan would likely be objected to by SCDOT and the State. The Debtor believes that the current Plan represents the best alternative for creditors. The Debtor believes that confirmation and implementation of the Plan is preferable to any alternative because it should provide greater and more certain recoveries of the Debtor's assets to the holders of Claims. For instance, as part of the Plan, the SCDOT has agreed to be responsible for the maintenance, repair, renewal, resurfacing and replacement of the Southern Connector (excluding the toll facilities, canopies, equipment, systems, furnishings and non-highway fixtures). In the event this Plan is not confirmed, there is a risk that a court could determine that those obligations belong to the Debtor. If that were to occur, and toll revenues generated insufficient funds to permit the Debtor to satisfy those obligations, SCDOT could attempt to terminate the License. While the Debtor believes that it would have defenses to such an attempt, if the SCDOT were successful, Bondholder recoveries would be adversely affected.

Accordingly, the Debtor believes that this Plan represents the best alternative for creditors.

**X. CERTAIN FACTORS TO BE CONSIDERED**

**A. Factors Relating to Chapter 9 and the Plan**

**1. Preferences**

Under federal bankruptcy law, an estate representative may avoid transfers of assets of a debtor as a "preferential transfer." To constitute a preferential transfer, the transfer must be (1) of an interest of the debtor in property; (2) for or on account of an antecedent debt; (3) made while the debtor was insolvent; (4) made within 90 days before the filing of a bankruptcy petition or made within one year if to an "insider" and (5) a transfer that enables the creditor to receive more that it would receive under a Chapter 7 liquidation of the debtor's assets. The Bankruptcy Code creates a rebuttable presumption that the debtor was insolvent during the 90 days immediately before the filing of the bankruptcy petition. The Debtor does not believe that any pre-petition transfers made by the Debtor are avoidable "preferential transfers."

## **2. Fraudulent Transfers**

Generally speaking, fraudulent transfer law is designed to avoid two types of transactions: (i) conveyances that constitute “actual fraud” upon creditors, and (ii) conveyances that constitute “constructive fraud” upon creditors. In the bankruptcy context, fraudulent transfer liability arises under Sections 548 and 544 of the Bankruptcy Code. Section 548 permits the estate representative or debtor-in-possession to “reach back” for a period of two years and avoid fraudulent transfers made by the Debtor or fraudulent obligations incurred by the Debtor during the two years prior to the Petition Date. Section 544 permits the trustee or debtor-in-possession to apply applicable state fraudulent transfer law. Assuming that South Carolina law were to apply, the estate representative could challenge conveyances, transfers or obligations made or incurred by the Debtor within at least three (3) years prior to the Petition Date. However, under Section 544 of the Bankruptcy Code, it is necessary to establish that at the time of the challenged conveyance or obligation, there in fact existed a creditor whose Claim remains unpaid on the Petition Date. The Debtor does not believe there are any fraudulent transfers to recover in this case.

## **3. Certain Approvals Still Needed.**

As set forth in Section V(D) above, certain approvals by the SCDOT Commission related to the Plan have not yet been obtained as of the date hereof and will be sought prior to the Confirmation hearing. Initial approval by the SCDOT Commission for the material terms of the Plan as outlined in a Letter of Intent executed among the parties has been obtained. Additional SCDOT Commission approval is being sought for execution and delivery of the New License Agreement and the Amended and Restated Bonds now that the terms thereof have been finalized. If such approvals were not obtained, the Plan as currently formulated could not be implemented by SCDOT.

## **4. Issues Related to Mechanics of Amended and Restated Bonds.**

It should be noted that Amended and Restated Bonds will be issued in Authorized Denominations of \$1.00 and integral multiples of \$1.00 in excess thereof. There is no provision for issuance of Amended and Restated Bonds in fractional amounts below the Authorized Denomination. Therefore, creditors will receive no distribution on any original Bonds to the extent the exchange calculations result in an amount less than the Authorized Denomination for the Amended and Restated Bonds.

Amended and Restated Bonds will be issued as soon as practicable after the Effective Date. However, due to the nature of the Amended and Restated Bonds as book entry securities held through DTC, the effectuation of the exchange may involve some time delay after the effective date to complete the exchange process. It should also be noted that the Bond Exchange Table sets forth the original issuance amount of the Amended and Restated Bonds to be received. However, as book entry securities, the Amended and Restated Bonds will be issued and noted in DTC’s records at their Maturity Value.

## **B. Risk Factors Attendant to the Implementation of the Plan and Relating to the Repayment of Claims and Other Considerations**

Prior to deciding whether to accept the Plan, each solicited person should carefully consider all of the information contained in this Disclosure Statement, including the factors described or cross-referenced in the following paragraphs, and other risks described elsewhere in this Disclosure Statement.

### **1. Limited Obligation.**

The Amended and Restated Bonds are payable from and secured by the same sources of payment as the Bonds. No additional guarantees, security or collateral will be provided or pledged to the payment of the Amended and Restated Bonds. The Debtor is dependent on the toll revenues to pay debt service on the Amended and Restated Bonds. The Amended and Restated Bonds will state on their face they are payable solely from and secured by the Trust Estate including toll revenues collected from users of the Southern Connector, and will not be a debt or loan of credit of the State. There will be no pledge of the State's credit. The Amended and Restated Bonds are subject to the same risks that existed prior to the date of filing of the Petition with respect to the Bonds including, without limitation, the following:

(i) The Debtor has no material assets with which to pay debt service on the Amended and Restated Bonds except its right to collect and apply tolls for the use of the Southern Connector.

(ii) The Debtor's ability to derive Revenues from the use and operation of the Southern Connector in amounts sufficient to pay debt service on the Amended and Restated Bonds depends upon numerous factors, many of which are not within the control of the Debtor.

(iii) Further, additional and as-yet-unforeseeable considerations may develop in the future that may significantly affect the operation of the Southern Connector, the Toll Revenues, the New License Agreement, or the Debtor's ability to repay the Amended and Restated Bonds.

### **2. No Right to Accelerate Debt Service on the Amended and Restated Bonds, Limited Payment Defaults, and Reliance on Net Revenues for Payment of the Amended and Restated Bonds.**

The Amended Trust Indenture does not permit the New Trustee or the owners of the Amended and Restated Bonds to accelerate the maturity of or the payment of debt service due on the Amended and Restated Bonds upon the occurrence of an Event of Default under the Amended Trust Indenture. Owners of the Amended and Restated Bonds may, therefore, be required to collect debt service due after an Event of Default on an annual basis from Distributable Cash or other property included in the Trust Estate as or after that debt service is scheduled to be paid.

In addition, only a payment default on the Series 2011A Bonds constitutes an Event of Default under the Amended Trust Indenture. If insufficient funds exist to make scheduled payments on the Series 2011B Bonds or Series 2011C Bonds, no Event of Default occurs



because of such nonpayment. Such unpaid amounts accrue interest and constitute Arrearages payable when Distributable Cash is sufficient at a subsequent date, as further set forth above and in the Amended Trust Indenture.

The Amended and Restated Bonds are special, limited obligations of the Debtor payable solely from toll revenues and moneys held in certain Funds and Accounts included in the Trust Estate. Any factor that adversely affects the receipt of toll revenues, therefore, creates a risk that debt service on the Amended and Restated Bonds will not be paid when due. Net Revenues are Revenues minus Trustee Fees and Expenses and other Operating Costs. The principal source of Revenues will be tolls paid by the users of the Southern Connector. The primary risk associated with the receipt of toll revenues is the level of traffic on the Southern Connector. Other risks associated with the receipt of toll revenues include the effectiveness of the toll collection system and toll collection enforcement. Because Operating Costs are paid from Revenues before debt service on the Amended and Restated Bonds, any factor that increases Operating Costs creates a risk that debt service on the Amended and Restated Bonds will not be paid when due.

The Plan allocates 100% of the Projected Net Revenues of the Southern Connector among SCDOT and the holders of the Amended and Restated Bonds based on the Revised Traffic Study discussed below. Therefore, if the Toll Revenues projected in the Revised Traffic Study are not realized, or Operating Costs are higher, actual Net Revenues in the form of Distributable Cash paid to SCDOT and holders may be insufficient to make in full the payments contemplated by the Plan.

### **3. Revised Traffic Study.**

The Plan pursuant to which the Amended and Restated Bonds are being delivered is based on the level of toll revenues projected in the Revised Traffic Study prepared by Stantec. The Revised Traffic Study is based on numerous assumptions, some or all of which may not prove to be correct. The history of the operation of the Southern Connector demonstrates that accurate forecasts of traffic and revenues are difficult to make.

Some of the assumptions in the Revised Traffic Study likely will not occur. For example, in January 2010, SCDOT closed the northbound lanes of I-385, several miles south of its intersection with I-385, in connection with resurfacing that portion of I-385. These lanes were reopened in July 2010. Much of the traffic on the Southern Connector originates or terminates on I-385 and this closure had a material adverse effect on the traffic on the Southern Connector during the closure. Since it had not been decided by SCDOT to close I-385 at the time the Revised Traffic Study was completed, the Revised Traffic Study did not forecast such closure. Thus, the Revised Traffic Study projected that the total number of toll transactions in 2010 would be 5,054,000 and the total toll revenue in 2010 would be \$5,814,000. See Figure 4.4.2 of the Revised Traffic Study. By contrast, during 2010, there were actually 4,538,473 toll transactions (515,527 less than projected) and total toll revenues were \$5,327,110 (\$486,890 less than projected). (During the August through December 2010 period – after I-385 was reopened – the monthly average toll transactions were 408,157, as compared to the monthly 2010 average of 421,167 transactions projected in the Revised Traffic Study, and the monthly average toll revenues were \$483,538, as compared to the monthly 2010 average of \$484,500 projected in the Revised Traffic Study.) A copy of the Revised Traffic Study (see Event Notice No. 2009-4,

dated 5/11/09) and the actual toll transactions and toll revenue of the Debtor are available on the Debtor's web site [www.southernconnector.com](http://www.southernconnector.com).

In addition, SCDOT has announced plans to widen the portion of I-385 that leads up to and runs between its intersection with the Southern Connector and its intersection with I-85. SCDOT currently estimates that this widening may take approximately two years to complete. Upon completion of the widening, SCDOT intends to reconfigure the intersection of I-385 and I-85, which work will likely take several additional years to complete. The portion of I-385 to be affected by this construction may serve as an alternative route for some drivers who use the Southern Connector. As stated in the Revised Traffic Study, "for some longer trips, the use of I-185 for part of the trip may provide an alternative routing to the portions of I-385 that are prone to peak period congestion." While underway, this planned improvement of I-385 could have the effect of increasing traffic on the Southern Connector, whereas the reverse may result upon completion of such construction.

If any one or more of the assumptions in the Revised Traffic Study proves to be incorrect, the toll revenues projected in the Revised Traffic Study may not be achieved and the Net Revenues may not be sufficient to pay the debt service on the Amended and Restated Bonds when due. As Stantec notes in the Revised Traffic Study, its forecasts will be subject to future economic and social conditions and demographic developments that cannot be predicted with certainty. Moreover, Stantec points out that the Revised Traffic Study's projections, while presented with numerical specificity, are based on a number of estimates and assumptions which, though considered reasonable to Stantec, are inherently subject to significant economic and competitive uncertainties and contingencies, many of which will be beyond Stantec's control and that of the Debtor. In many instances, a broad range of alternative assumptions could be considered reasonable. Changes in the assumptions used could result in material differences in projected outcomes. Claimants must read the Revised Traffic Study in full and reach their own conclusion regarding the reasonableness of the assumptions on which it is based.

Some of the events or conditions that could adversely affect the projections in the Revised Traffic Study are also discussed below. The material below should be read in conjunction with the Revised Traffic Study.

#### **4. Demographic and Development Trends.**

The Revised Traffic Study assumes that population, household, employment and other development trends within the influence area of the Southern Connector will be similar to the estimates developed by Greenville Pickens Area Transportation Study ("GPATS"), as those estimates were adjusted by Stantec. GPATS is the Metropolitan Planning Organization for the Greenville, South Carolina region. There is no assurance that the estimates used by Stantec will prove to be accurate.

Future development in the Southern Connector corridor may be affected by existing and future laws and regulations relating to zoning and land use controls. There can be no assurance that one or more growth initiatives or related controls will not be imposed by Greenville County, the City of Greenville, the State, the federal government or another governmental authority. The

imposition of any such initiatives or related controls could reduce the amount of toll revenues available to pay debt service on the Amended and Restated Bonds.

The Revised Traffic Study assumes that economic conditions in the Greenville, South Carolina area and the United States will follow a generally normal trend and there will be no major depression, national emergency condition or extended fuel shortage.

The Revised Traffic Study further assumes that utility infrastructure in the area served by the Southern Connector will be developed so that it is adequate to serve the projected increases in population and land use development. In this regard, the Study notes that “there is a lack of adequate sewer service south of the Southern Connector. Since there are no trunk lines in the area between US 25 and Fork Shoals Road, the type and size of development has been limited.” The Revised Traffic Study further states that a study prepared by a local real estate firm “noted that the availability of utilities and infrastructure will have a significant impact on location and timing of development activity. Water service, electricity and natural gas service are not a concern in the Southern Connector area; however, the relative lack of sanitary sewer service is a constraint to development in this area.”

## **5. Competing Highways or Other Transportation Improvements.**

The Revised Traffic Study assumes that transportation improvements in the Greenville area will be the same as those included in the GPATS model and there will be no improvements to existing competing routes to the Southern Connector or construction of any additional competing routes. See discussion above under the subheading “Revised Traffic Study.” Construction or implementation of highway or other transportation improvements that compete with the Southern Connector could reduce the amount of toll revenues available to pay debt service on the Amended and Restated Bonds.

SCDOT has agreed, in the New License Agreement, to refrain from initiating, authorizing, franchising or financing Competitive Transportation Facilities within a Competitive Transportation Facilities Zone extending 10 miles west and south of the Southern Connector which have a material adverse impact on the ability of the Debtor to operate and maintain the Southern Connector; to cover costs of debt service on the Amended and Restated Bonds or to observe its covenants with respect to the Amended Trust Indenture; and to exercise all discretionary authority available to it under applicable law to prevent any other governmental or private entity from developing Competitive Transportation Facilities within the Competitive Transportation Facilities Zone which could reasonably be foreseen to have adverse impacts on the ability of the Debtor to cover costs of debt service on the Amended and Restated Bonds or to observe its covenants with respect to the Amended Trust Indenture. There are, however, a number of exceptions to SCDOT’s agreement regarding Competitive Transportation Facilities, including, but not limited to, any State highway improvement, enhancement or modification necessary for improved safety or emergency purposes, any State project listed in the approved State Transportation Improvement Plan, the distribution of federal or State funds to local agencies for Competitive Transportation Facilities to the extent required as a non-discretionary act under federal law and the rendering of advice and the making of recommendations as the State may deem to be in the best interests of the State. In addition, the provisions of the New License Agreement do not restrict Greenville County, any city, the South Carolina State

Infrastructure Bank, the federal government or any other unit of the State or federal government from constructing competing highways or other transportation systems or improving existing highway or transportation that would compete with the Southern Connector. Construction or implementation of other highway or other transportation improvements that compete with the Southern Connector could reduce the amount of toll revenues available to pay debt service on the Amended and Restated Bonds.

## **6. Toll Rates.**

The Revised Traffic Study assumes that toll rates for the Southern Connector will be set at the levels and adjusted at periodic intervals as set forth in the Revised Traffic Study. The New License Agreement and Amended Trust Indenture require the Debtor in certain circumstances to revise and amend such toll rates to the optimum rates as determined by an independent traffic and revenue consultant. There is a risk that SCDOT or the Debtor may fail to revise rates or to do so in a timely manner. In addition, there is a risk that the Optimum Rates determined at any time by the independent traffic and revenue consultant engaged by the Debtor under the New License Agreement are not in fact the optimum rates. Any such determination involves uncertainties and the application of judgment, and as a result, may turn out to be erroneous. Moreover, there can be no assurance that the toll rates, even if set at optimum levels, will produce sufficient toll revenues to permit the Debtor to pay debt service on the Amended and Restated Bonds. An increase in toll rates may result in reduced traffic and a consequent reduction in toll revenues available to pay debt service on the Amended and Restated Bonds.

## **7. Maintenance, Repair, Resurfacing, Renewal and Replacement of the Southern Connector By SCDOT.**

Under the New License Agreement, SCDOT has agreed that it will maintain, repair, resurface, renew and replace the Southern Connector in the same manner and to the same extent as any other State-owned interstate roads and in accordance with and subject to applicable State and SCDOT standards and practices. State law and regulations currently establish guidelines and priorities for repair and resurfacing of State highways. The SCDOT Commission has discretion as to the application of SCDOT's revenues and resources. Debtor can provide no assurance that SCDOT will timely perform its obligations set forth above or that the Southern Connector will be maintained in good repair in the future. If the Southern Connector is not maintained in good condition, this may adversely affect the willingness of drivers to pay a toll to travel thereon, which would adversely affect Toll Revenues.

## **8. Fuel Supply and Pricing.**

The Revised Traffic Study assumes that motor fuel will remain in adequate supply during the forecast period and that fuel prices will not be significantly higher than the range of prices experienced in 2008 (after adjustment for inflation). Over the past 35 years, the price and availability of crude oil have been negatively impacted several times to the point of disrupting normal travel patterns on the nation's highways. There can be no assurance that the supply and/or price of motor fuel during the forecast period will not change, either temporarily or permanently, in a manner that would result in a reduction of traffic on the Southern Connector

and a consequent reduction in the toll revenues available to pay debt service on the Amended and Restated Bonds.

## **9. Operating Costs.**

The principal amounts of the Amended and Restated Bonds were determined, in part, on the basis of projected Net Revenues. These projected Net Revenues were in turn based on the projected toll revenues contained in the Revised Traffic Study, net of projected Operating Costs. For the methodology used to estimate future Operating Costs, see the definition of “Projected Net Revenues” in Appendix A. Actual Operating Costs will likely differ from those projected for purposes of the Plan. Many of those costs will be beyond the ability of the reorganized Debtor to control and will be affected by circumstances and events that cannot be predicted. If actual Operating Costs exceed those projected, the Debtor’s actual Net Revenues may be materially adversely affected.

Such increased Operating Costs could foreseeably include, for example without limitation, amounts required to be expended for Toll Facilities Maintenance in the future and amounts required to comply with the Debtor’s obligations under the New License Agreement, including its obligation related to interoperability of the Southern Connector with other current and future toll highways operated by SCDOT, as further set forth in Section 6.5 and Exhibit 7 of the New License Agreement. These or other events could foreseeably or unforeseeably increase Operating Costs, as noted above.

## **10. Limited Term of License Agreement.**

The stated term of the New License Agreement pursuant to which the Debtor has the right to use the Southern Connector expires on July 22, 2051. If any debt service or Arrearage on the Amended and Restated Bonds is not paid when due and is not paid before expiration of the New License Agreement, it may not be paid at all.

## **11. Amended and Restated Bonds.**

Debt service on the Amended and Restated Bonds is payable only after certain transfers to the R&R Fund as more fully set forth in the New Waterfall described in Section VII.B.2 of this Disclosure Statement. Further, payment of debt service on Series 2011B Bonds is subordinate to payment of debt service on the Series 2011A Bonds and the replenishment of the 2011 Debt Service Reserve Fund. Payment of debt service on the Series 2011C Bonds is subordinate to payment of debt service on the Series 2011A Bonds and on the Series 2011B Bonds and the replenishment of the 2011 Debt Service Reserve Fund. Timely payment of debt service on the Series 2011A, Series 2011B and Series 2011C Bonds is dependent upon Distributable Cash being available in sufficient amounts after all claims on such Net Revenues that are payable prior to the payment of debt service thereon.

Also, as set forth above, the Plan allocates 100% of the Projected Net Revenues of the Southern Connector among SCDOT and the holders of the Amended and Restated Bonds based on the Revised Traffic Study. Therefore, if the Toll Revenues projected in the Revised Traffic

Study are not realized, or Operating Costs are higher than estimated, amounts paid to creditors may be insufficient to make the payments contemplated under the New Waterfall.

## **12. Deposits to R&R Fund.**

Some of the deposits to the R&R Fund as provided for in the Plan are subordinate to certain debt service requirements as set forth in the New Waterfall described in Section VII.B.2 of this Disclosure Statement. Timely payment of deposits to the R&R Fund is dependent upon Net Revenues being available in sufficient amounts after all claims on such Net Revenues that are payable prior to deposits to the R&R Fund.

## **13. Secondary Market Risk.**

At this time, no credit rating for the Amended and Restated Bonds has been applied for, and no representation is made concerning the existence of any secondary market for the Amended and Restated Bonds. No assurance can be given that any secondary market will develop following the confirmation of the Plan and delivery of the Amended and Restated Bonds. No assurance can be given that the Amended and Restated Bonds may be resold at a price equal to the original principal amount thereof or that the value of the Amended and Restated Bonds at the confirmation of the Plan will continue for any length of time. The Amended and Restated Bonds will not be readily liquid. Recipients of Amended and Restated Bonds should be prepared to hold the Amended and Restated Bonds to their stated maturity date.

The foregoing description of risks attendant with the Plan is a summary only of significant risks associated with the implementation of the Plan that the Debtor has identified. There may exist other risks which the Debtor has been unable to identify or which are not deemed significant by the Debtor.

## **XI. INCOME TAX CONSEQUENCES OF THE PLAN**

The federal, state and local and other tax consequences of the Plan to the holders of Claims may vary based upon the individual circumstances of each holder, including as to tax issues peculiar to certain types of taxpayers (such as life insurance companies, S corporations, financial institutions, tax exempt organizations and foreign taxpayers). The Debtor urges each creditor to seek and obtain its own careful tax planning and advice based upon the individual circumstances of each holder of a Claim. Accordingly, holders of Claims are urged to consult their own tax advisors for the federal, state, local and other tax consequences peculiar to them under the Plan.

## **XII. VOTING PROCEDURES**

### **A. Ballots and Voting Deadline**

A Ballot to be used to accept or reject the Plan for creditors whose Claims are impaired under the Plan and who are not deemed to reject the Plan accompanies this Disclosure Statement.

Pursuant to Rule 3018 of the Federal Rule of Bankruptcy Procedure, the Court has established January 5, 2011 as the record date for the determination of the identity of the

impaired Creditors from whom acceptances or rejections of the Plan will be solicited. Holders of claims in Class 1 and Class 2 are instructed to complete all required information on the Ballot, execute the Ballot, and return the completed Ballot to the Voting Nominee such that the Ballot is received in sufficient time to allow the Voting Nominee to receive the Ballot and summarize the results on a Master Ballot and return the Master Ballots to the Solicitation Agent by March 4, 2011. The Voting Nominee for holders of claims in Class 1 and Class 2 are instructed to complete all required information on their Master Ballots, execute the Master Ballots, and return the completed Master Ballots to the Solicitation Agent such that the Master Ballots are actually received by the Solicitation Agent by 4:00 p.m., prevailing Eastern Time, on or before March 4, 2011 (the “Voting Deadline”). Holders of claims in Class 4, Class 5 and Class 6 are instructed to complete all required information on the Ballot, execute the Ballot, and return the completed Ballot to the Solicitation Agent such that the Ballot is actually received by the Solicitation Agent by the Voting Deadline. Any failure to follow the voting instructions included with the relevant Ballot may disqualify that Ballot and the corresponding vote. Reference is made to the Solicitation Procedures Order for further information on voting and Ballot matters.

Except to the extent allowed by the Bankruptcy Court, Ballots received after the Voting Deadline may not be accepted or used by or against the Debtor in connection with the Debtor’s request for Confirmation of the Plan or any modification thereof.

**B. Claimants Entitled to Vote to Accept or Reject the Plan.**

1. Allowance for Voting Purposes. All creditors holding Allowed Claims in an impaired Class that is not deemed to reject the Plan may vote to accept or reject the Plan. Generally, a claim is deemed “allowed” for voting purposes if a proof of claim was timely filed, and no objection to the claim has been filed that has not been resolved. If such an objection has been filed, the Claimant cannot vote on the Plan unless the Court, after notice and hearing, either overrules the objection or temporarily allows the claim for voting purposes pursuant to Bankruptcy Rule 3018(a). See the Solicitation Procedures Order for more detailed requirements related to voting matters.

2. Impaired Classes of Claims. As noted above, the holder of a claim has the right to vote on the Plan if that claim is allowed and classified into a Class that is *impaired* under the Plan and that is not deemed to reject the Plan. A Class is impaired if the Plan alters the legal, equitable, or contractual rights of the members of that Class with respect to their claims or interests. The Debtor believes that Classes 1, 2, 4, 5 and 6 are impaired under the Plan.

3. Claimants Not Entitled to Vote. The holders of the following types of claims are not entitled to vote on the Plan: (a) claims that have been disallowed; (b) claims that are subject to a pending objection and which have not been allowed for voting purposes pursuant to Bankruptcy Rule 3018(a); (c) claims that are not impaired or are deemed to reject the plan; and (d) claims entitled to priority pursuant to section 507(a)(2) of the Bankruptcy Code (defined as “Administrative Expense Claims” in the Plan). Holders of Administrative Claims are not entitled to vote because such claims are not classified and are required to receive certain treatment specified by the Bankruptcy Code. Any party that disputes the characterization of its claim as unimpaired, however, may request that the Court find that its claim is impaired in order to obtain the right to vote on the Plan.

### **C. Vote Required for Class Acceptance.**

As part of the Confirmation Hearing, the Court will determine whether the impaired voting classes have accepted the Plan by determining whether sufficient acceptances have been received from the holders of Allowed Claims in such Classes. An impaired Class of Claims will be determined to have accepted the Plan if the holders of Allowed Claims in the Class casting votes in favor of the Plan (i) hold at least two-thirds of the allowed amount of the Allowed Claims of the holders in such Class who vote, and (ii) constitute more than one-half in number of holders of the Allowed Claims in such Class voting on the Plan. Ballots of holders of impaired Claims that are signed and returned, but not expressly voted for either acceptance or rejection of the Plan, may be disqualified or counted as Ballots for the acceptance of the Plan if permitted by the Court. Except as may be allowed by the Court, a Ballot accepting the Plan may not be revoked.

### **D. Possible Reclassification of Creditors**

The Debtor is required pursuant to Section 1122 of the Bankruptcy Code to place Claims in Classes that contain Claims substantially similar to each other. While the Debtor believes it has classified all Claims in compliance with Section 1122, it is possible a creditor may challenge the Debtor's classification of such creditor's Claim. If the Debtor is required to reclassify any Claims under the Plan, the Debtor, to the extent permitted by the Court, intends to continue to use the acceptances received from any creditor pursuant to the solicitation of acceptance using this Disclosure Statement for the purpose of obtaining the approval of the Class or Classes of which such creditor is ultimately deemed a member. Any reclassification of Claims could adversely affect the Class in which such Claims were initially a member, or any other Class under the Plan, by changing the composition of such Class and the required vote thereof on approval of the Plan. Further, a reclassification of Claims could necessitate the re-solicitation of votes.

## **XIII. CONFIRMATION OF THE PLAN**

### **A. Confirmation Hearing**

The Bankruptcy Code requires that the Court, after notice, hold a Confirmation hearing. The Bankruptcy Court may adjourn the Confirmation hearing from time to time without further notice except for an announcement made at the Confirmation hearing.

### **B. Requirements for Confirmation of the Plan**

At the Confirmation hearing, the Bankruptcy Court will determine whether the requirements of Section 943 of the Bankruptcy Code have been satisfied in which event the Bankruptcy Court will enter an order confirming the Plan. Some of the principal requirements include:



## 1. Best Interests Test

One of the determinations that the Court must make before confirming the Plan is whether the Plan is in the best interests of creditors and is feasible. There are very few authorities on what constitutes the best interests of creditors under chapter 9 of the Bankruptcy Code. One leading commentator notes that the proposed plan must be better than the alternative available to creditors:

In the chapter 9 context, the alternative is dismissal of the case, permitting every creditor to fend for itself in the race to obtain the mandamus remedy and to collect the proceeds. Clearly, such a result is chaos, especially in those cases where the debt burden of the municipality is too high to support the taxes that the lands of the municipality will bear or the taxes or fees that the inhabitants or the users of municipal services will pay.

See 6 Collier on Bankruptcy § 943.03 [a] (15th ed. Rev. 2002). This test does not contemplate the Bankruptcy Court considering the liquidation test commonly used in Chapter 11 proceedings. The Debtor believes that the Plan is in the best interests of creditors because the Plan maximizes the economic return to the Debtor's creditors in the most practicable way given the unusual and complex nature of this Case.

## 2. Acceptance by Impaired Classes

Section 1129(a)(8) of the Bankruptcy Code requires that, unless the Plan satisfies the "cramdown" provisions of Section 1129(b) as discussed below, each impaired Class must accept the Plan by their requisite vote for Confirmation to occur. As more fully described herein, a class of Claims will have accepted the Plan if holders of at least two-thirds in amount and more than one-half in number of Allowed Claims in such class voting to accept or reject the Plan have voted in favor of acceptance.

It is important to recognize that the majorities required by Section 1126(b) of the Bankruptcy Code are calculated based on those creditors in a class that actually vote on a plan. Thus, for example, if there were 100 creditors, and only five creditors voted to accept or reject the plan, such creditors could determine the acceptance or rejection of the plan for the entire class of creditors. Thus it is important that each holder of Claims in Classes 1, 2, 4, 5, and 6, votes on the Plan.

The Bankruptcy Code provides that the Court may confirm a plan of adjustment that is not accepted by all impaired classes if at least one impaired class of Claims accepts the Plan and the "cramdown" provisions set forth in Section 1129(b)(1) and 1129(b)(2) are satisfied. The Plan may be confirmed under the cramdown provisions if, in addition to satisfying the other requirements of Section 943(b) of the Bankruptcy Code, the Plan is (i) fair and equitable; and (ii) does not discriminate unfairly with respect to each class of claims that is impaired under and has not accepted the Plan.

Among other things, the "fair and equitable" standard requires that unless a dissenting unsecured class of claims receives payment in full for its allowed claims, no holder of allowed claims in any class junior to that class may receive or retain any property on account of such

claims. Additionally, the “fair and equitable” standard has been interpreted to prohibit any class senior to a dissenting class from receiving under a plan more than 100% of its allowed claims. Under the Plan no class senior to a dissenting unsecured class will receive more than 100% payment of its allowed claims, and therefore, the Debtor believes the Plan satisfies the “fair and equitable” standard.

The requirement that the plan not “discriminate unfairly” means that a dissenting class must be treated substantially equally with respect to other classes of equal rank. The Debtor does not believe that the Plan unfairly discriminates against any class that may not accept or otherwise consent to the Plan.

### **C. Conditions Precedent to Confirmation and Effectiveness**

At the Confirmation hearing, the Court will determine whether the Plan meets all of the requirements of Section 943 of the Bankruptcy Code governing the confirmation of a plan of adjustment. Among the conditions precedent to the Court’s Confirmation of the Plan are: (i) a finding that the Plan was solicited upon disclosure of adequate information as defined in Section 1125(a) of the Bankruptcy Code; and (ii) a finding that at least one of the impaired Classes of Claims that is voting in the Chapter 9 Case has accepted the Plan by the affirmative vote of Claimants that hold at least two-thirds in amount and not less than one-half in number of the Allowed Claims of such Classes that have voted on such Plan, but excluding any Claimants designated under Section 1126(e) of the Bankruptcy Code.

### **D. Effect of Confirmation and Discharge of Debtor**

Pursuant to Section 944 of the Bankruptcy Code, except as otherwise provided in the Plan, **the entry of the Confirmation Order, as of the Effective Date, will act as a full and complete discharge of all Claims against the Debtor, the post-Effective Date Debtor, or the post-Effective Date Debtor’s assets of any nature whatsoever**, including, without limitation, any liability of a kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, that arose or have been asserted against the Debtor at any time before the entry of the Confirmation Order or that arise from any pre-Confirmation conduct of the Debtor whether or not the Claim(s) are known to or knowable by the Claimant. **The discharge of the Debtor will become effective as to each Claim, whether or not the Claim constituted an Allowed Claim and whether or not the holder of the Claim voted to accept the Plan. In addition, the Confirmation Order will operate as a general resolution with prejudice, as of the Effective Date, of all pending legal proceedings against the Debtor and its respective assets and properties as well as any proceedings not yet instituted against the Debtor or its respective assets and properties, except as otherwise provided in this Plan. As provided in section 524 of the Bankruptcy Code, the discharge provided in the Plan operates as an injunction against the prosecution of any Claim so discharged.**

## **XIV. SOURCES OF INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT**

The information contained in this Disclosure Statement has been compiled from various sources including: (1) management of the Debtor; (2) the books and records of the Debtor; and

(3) the Debtor's general counsel and bankruptcy counsel, which has provided to management the discussion of the procedures applicable in a Chapter 9 bankruptcy case and other legal matters. See also Section II(C) above regarding information provided hereunder.

#### **XV. RECOMMENDATION FOR ACCEPTANCES**

The Debtor believes that the Plan is feasible, and in the best interest of the Creditors of the Debtor. Accordingly, the Debtor recommends that you vote for acceptance of the Plan.

A Ballot for acceptance or rejection of the Plan is enclosed. It is important that you vote.

Respectfully submitted,

**HAYNSWORTH SINKLER BOYD, P.A.**

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