UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:	)	Chapter 9
	)	
Connector 2000 Association, Inc.,	)	Case No. 10-04467-dd
	)	
Debtor.	)	
	)	

SUPPLEMENTAL STATEMENT OF U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE SENIOR BONDS, IN SUPPORT OF DEBTOR'S CHAPTER 9 PETITION AND STATEMENT OF QUALIFICATIONS AND RESPONSE TO THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION'S OBJECTION

U.S. Bank National Association, as the Trustee (the "Senior Bonds Trustee") for the Connector 2000 Association, Inc. (the "Association") Toll Road Revenue Bonds (Southern Connector Project, Greenville, South Carolina), Series 1998A and Series 1998B (the "Senior Bonds"), by and through its undersigned counsel, hereby files this supplemental statement (the "Supplemental Statement") in support of the Association's petition for relief under Chapter 9 of Title 11 of the United States Code (the "Bankruptcy Code") and in response to the South Carolina Department of Transportation's ("SCDOT") objection to and motion to dismiss this chapter 9 case (Docket No. 48) filed on July 30, 2010 (the "SCDOT Objection").

SCDOT's Objection and motion to dismiss this chapter 9 case represents its latest effort to delay and derail the inevitable and necessary restructuring of more than $300 million of municipal bond debt – a restructuring that is the product of more than a year's worth of negotiations and that, if achieved, will permit the Association to reduce its debt load by more than $120 million. Rather than participate in and support that restructuring, SCDOT (while accepting the benefits of the Southern Connector toll road for years after causing it to be built in the first place) has refused to accept any responsibility for the Association's financial woes and instead seeks additional delay. However, the time to solve the Association's financial problems

is now and it is chapter 9 that provides the appropriate solution. SCDOT's objection to this chapter 9 case is a thinly-veiled grasp for more political cover and distance from the Southern Connector, and reflects its repeated refusal to responsibly address the financial obligations issued on its behalf. In support of the chapter 9 petition and in opposition to SCDOT's Objection, the Senior Bonds Trustee respectfully represents as follows:

INTRODUCTION

1. SCDOT officially adopted a plan in the 1990's to raise money from private investors to build the "Southern Connector" – a sixteen-mile public toll highway south of the City of Greenville designated as Interstate I-185. The idea of the Southern Connector was first conceived in 1967 as a tool to promote economic development in southern Greenville County and to facilitate safe, efficient and convenient commuter, shipping and leisure travel access to, through and around greater Greenville County and upstate South Carolina.[1] Construction of the road was completed in 2001, and the road has been open since then for use and adjacent development. As of 2010, the Southern Connector has accrued over 46 million transactions. Development along its route is expanding and it is expected that new business, industry and residential areas will be serviced by the Southern Connector in the future. However, there is one significant problem. While the road envisioned by the Greenville county planners back in 1967 has been built and in operation for nearly a decade, it has not been paid for.

2. Central to SCDOT's plan to build the Southern Connector, SCDOT encouraged and formally approved the formation of the Association and caused it to issue in

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[1] *See generally* www.southernconnector.com. For additional history and background on the Southern Connector, the Senior Bonds Trustee respectfully refers the Court to pp. 35-37 of the offering memorandum related to the bonds issued to finance the Southern Connector, a copy of which is attached hereto as Exhibit 1.

excess of $200 million of municipal bonds (the "Bonds" and holders thereof, the "Bondholders") to, among others, institutional and individual investors that hold municipal bonds in mutual fund and other accounts.[2] The proceeds of the Bonds were used by the Association to build, finance and operate the Southern Connector pursuant to a license agreement dated February 11, 1998 (the "License Agreement") with SCDOT.

3. SCDOT owns the Southern Connector in fee simple, subject to the License Agreement and Bond documents. (SCDOT Objection at 2). SCDOT also has sole authority to adjust the toll rates on the Southern Connector and, to induce investors to buy the Bonds, it specifically promised in the License Agreement (the "SCDOT Rate Covenant") that it would maintain toll rates on the Southern Connector in accordance with a certain formula (the "Revenue Covenant") set out in the Master Indenture of Trust (the "Master Indenture") between the Association and the Trustee, which in any event are required to be sufficient to repay Bondholders.

4. The reasons for the Association's bankruptcy filing are straight-forward. First, traffic levels on the Southern Connector have not been as high as was originally projected to Bondholders. Second, SCDOT broke its specific contractual promise to maintain toll rates at sufficient levels. Indeed, since at least 2005, the Association has failed to generate sufficient toll revenue to remain in compliance with the Revenue Covenant. Despite this, SCDOT repeatedly failed to raise toll revenues as it was obligated to do under the License Agreement, even though

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[2] The Bonds are comprised of the Senior Bonds and Subordinate Capital Appreciation Bonds, Series C (the "Subordinated Bonds"). The Senior Bonds Trustee does not represent holders of the Subordinated Bonds. The Senior Bonds Trustee is in the process of preparing its proof of claim which will set forth the total amount of the Senior Bonds Trustee's claims in this case. As of the petition date, the total amount of principal and accrued and accreted interest as of the petition date exceeds $230 million. The claims of the holders of Senior Bonds are secured by substantially all of the Association's assets, including the Association's rights under the License Agreement (as defined herein) and rank contractually senior to the claims of the holders of Subordinated Bonds and those of SCDOT.

three independent traffic consultant reports (in 2005, 2006 and 2007) each concluded that toll rates were too low to maximize revenue and that revenue could be maximized by raising toll rates as much as 63% or higher. In 2009, another independent consultant confirmed that toll rates were too low to maximize revenue and concluded that rates could be increased between 50% and 75%. This time, SCDOT's response was to approve inadequate increases in toll rates. For instance, the $1.00 general toll rate was increased by a mere 25 cents (*i.e.*, 25%). This response was simply too little, too late and was insufficient to enable (i) the Association to come into compliance with the Revenue Covenant and (ii) SCDOT to fulfill its specific promise to maintain sufficient toll rates under the SCDOT Rate Covenant. As a result, bondholders have not received semi-annual debt service payments since January 2010.

5. As a result of the Association's financial woes, the Senior Bonds Trustee and certain holders of Senior Bonds engaged in extensive negotiations with the Association for more than a year prior to its bankruptcy filing to evaluate the various alternatives available to the Association. While the Senior Bondholders tried to substantively engage SCDOT in these negotiations, they were met with nothing but tactical delay from SCDOT, even though the Association has desperately needed to restructure its debt for quite some time. Holding every party hostage, SCDOT has been unwilling to move forward on multiple and reasonable proposals for restructuring the Association's debt. SCDOT refuses to own up to its true role as a governmental planner and sponsor of a struggling toll road which owes hundreds of millions of dollars in defaulted municipal bond debt issued to build the Southern Connector, a road deemed a "critical" need by SCDOT itself. (Ex. 1 (Offering Memorandum) at 35.) Instead of assisting the parties in restructuring the Bond obligations issued on its behalf, SCDOT refers to itself merely as a creditor with millions of dollars of claims – **without clarifying for this Court that,**

in order to attract financing for the toll road, SCDOT agreed to a deal structure where SCDOT's claims would be deeply subordinated and paid only after holders of both the Senior and Subordinated bonds (which financed the toll road) are paid in full.

6. In light of SCDOT's unwillingness to move forward consensually with a substantive deal, the Association and the Senior Bonds Trustee negotiated the term sheet (attached hereto as Exhibit 2) for a debt restructuring plan (the "Debt Adjustment Plan") that, if accepted by Bondholders, would result in the (i) holders of Senior Bonds reducing their claims by at least $40 million, and (ii) holders of Subordinated Bonds reducing their claims from $86 million to $4 million. Under the Debt Adjustment Plan, SCDOT's rights and obligations would either be left untouched, or SCDOT would receive a percentage of revenues on a subordinated basis to help cover maintenance and other costs for the Southern Connector going forward and a release from the Bondholders' potentially substantial claims against SCDOT.

7. To date, SCDOT has not consented to the Debt Adjustment Plan. Instead of working on a consensual solution that responsibly addresses the Association's financial woes and permits it to exit bankruptcy promptly, SCDOT has now filed a motion to dismiss the Association's chapter 9 petition. This is yet another delay tactic by SCDOT to try to improperly increase its political cover and leverage vis a vis the Bondholders – who would be walking away from more than $120 million in claims after financing a road that has improved and expanded the South Carolina State highway system and that was "designed, constructed, operated and maintained for the benefit of the people of Greenville County and the State of South Carolina." (License Agreement § 3.1, a copy of which is annexed hereto as Exhibit 3.)

8. For the reasons stated herein and as will be demonstrated in supplemental briefing and at trial, the Court should overrule SCDOT's objection and deny its motion to dismiss this chapter 9 case.

STATEMENT IN SUPPORT OF CHAPTER 9 PETITION AND IN OPPOSITION TO SCDOT'S MOTION TO DISMISS

9. Section 109(c) of the Bankruptcy Code sets forth the statutory criteria for eligibility as a chapter 9 debtor. The debtor must be (1) a municipality, (2) specifically authorized to be a chapter 9 debtor, (3) insolvent, (4) willing to effect a plan to adjust its debts and (5) must also meet one of the following four requirements: (A) 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, (B) 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, (C) the debtor is unable to negotiate with its creditors because such efforts are impracticable, or (D) the debtor must reasonably believe that a creditor may attempt to obtain a preference. 11 U.S.C. § 109(c).

10. SCDOT admits that the Association satisfies all of the requirements of Section 109(c) of the Bankruptcy Code except subsections 109(c)(1) and (c)(2) arguing that the Association is not a "municipality" for purposes of the Bankruptcy Code or, alternatively, not authorized under South Carolina state law to file a chapter 9 petition. SCDOT is mistaken on both counts.

The Association is a Municipality under the Bankruptcy Code

11. As set forth in the Association's Memorandum in Support of Statement of Qualifications Under 11 U.S.C. § 109(c) filed on June 4, 2010 (Docket. No. 4) (the "Qualifications Brief"), the Association is a "municipality" because, among other things, it

performs a public function and is subject to the control of the State of South Carolina. (Qualifications Brief at 19-20.) For instance:

- SCDOT has the power to approve or disapprove all of the members of the Association's board of directors. Also, SCDOT may remove any director for cause and appoint a successor for the remainder of the removed director's term.
- The formation of the Association was approved by a resolution of SCDOT Commission which also approved the initial members of the Association's board of directors
- SCDOT approved the Association's issuance of up to $250,000,000 in toll road revenue bonds to build the Southern Connector to promote economic development and for the benefit of the people of Greenville County and the State of South Carolina.
- SCDOT sets the toll rates which gives SCDOT control of the financial operations of the Association.
- The Association is obligated to reimburse SCDOT for maintenance on the Southern Connector and pay licensing fees to SCDOT. The inability of the Association to make these payments will have a material effect on SCDOT's budget.
- The Association's financial performance is reported as a component unit in the State's Consolidated Annual Financial Reports ("CAFRs").[3]

(Qualifications Brief at 19-20.) Discovery will uncover additional evidence of the State's control over the Association that will support the inevitable conclusion that the Association is a municipality for purposes of the Bankruptcy Code.

12. In support of its Objection, SCDOT goes to great lengths to distance itself both from the Southern Connector and the Association. For instance, SCDOT cites to some general revenue bond language in the Bonds' offering memoranda and License Agreement, which simply states that the Southern Connector was financed by private bondholder funds for

[3] For the Court's convenience, a copy of the State's 2009 CAFR is attached hereto as Exhibit 4.

which the State of Carolina and its agencies, departments and political subdivisions are not liable to repay as general obligations. (SCDOT Objection at 3-4.) This general non-recourse language is a standard boilerplate provision in municipal revenue bonds.

13. However, SCDOT fails to disclose other unique and specific contractual obligations it undertook to the Bondholders under the License Agreement which were touted in the Official Statement issued in connection with the sale of the Bonds. Specifically, the License Agreement provides that "SCDOT acknowledges and agrees that all toll rates must satisfy the applicable revenue covenants contained in the Association's financing documents . . . 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." (License Agreement § 6.4.). In the event SCDOT breaches the License Agreement (as it has here by failing to adequately raise toll rates), the Association is entitled to pursue remedies and seek damages against SCDOT. (License Agreement § 14.6). The fact that SCDOT was legally responsible for its covenants in the License Agreement was confirmed in a letter from counsel to SCDOT to the Association and Senior Bonds Trustee dated February 11, 1998: "The License Agreement has been duly executed and delivered by the [SCDOT] and constitutes the valid, legal and binding obligation of the Department, enforceable against the [SCDOT] in accordance with its terms."

14. The Association's rights under and to enforce the License Agreement were specifically assigned to the Senior Bonds Trustee. (Master Indenture § 904(3), a copy of which is annexed hereto as Exhibit 5.) Stated simply, SCDOT's suggestion that it has no obligations to Bondholders is not accurate. Although SCDOT is not the named obligor on the Bonds (the Association is), **SCDOT is legally obligated to perform its specific contractual promise and**

maintain toll rates at levels sufficient to pay all interest and principal on the Bonds and, if it fails to do so, be liable for damages.

15. In support of its position that the Association is not a municipality, SCDOT relies heavily on select portions of *In re Las Vegas Monorail Co.*, 429 B.R. 770 (Bankr. D. Nev. 2010). However, *Las Vegas Monorail* actually *supports* the Association's argument that it is a municipality. There, the bankruptcy court concluded that the question of whether an entity is a municipality involves the interpretation of three factors: (i) the function factor which examines the extent to which the entity has traditional governmental attributes or engages in traditional governmental functions, (ii) the control factor which examines the extent to which the State controls the entity's operations and (iii) the characterization factor which examines the extent to which the State itself characterizes the entity as a municipality or instrumentality. *Id.* at 795. SCDOT focuses solely on the control factor to try and disclaim its relationship to the Association. However, all three factors strongly favor respecting the Association's true status as a municipality.

16. The Association here performs functions that are, without question, governmental in nature, unlike the debtor in *Las Vegas Monorail,* Las Vegas Monorail Company ("LVMC"). Indeed, SCDOT recognizes that the Association was formed for the sole purpose of constructing and operating a South Carolina public interstate highway in order to drive economic development and growth in the southern portion of Greenville County. (SCDOT Objection at 2.) The Association's Articles of Incorporation confirm this fact. They state that "the purpose of the [Association] is to assist the SCDOT in the financing, acquisition, construction and operation of turnpikes, highway projects and other transportation facilities . . . in order to promote the health, safety and general welfare of the residents of the State . . ." (Articles of Incorporation, Article 8,

as amended, a copy of which is attached hereto as Exhibit 6.) The construction, operation, maintenance and repair of state and national public highways are clearly governmental functions. This is confirmed by South Carolina State statutes and applicable federal statutes and regulations since the Southern Connector is part of the federal interstate highway system and for which the State received federal funding.[4]

17. The Association's role in the construction, operation and maintenance of an interstate highway on behalf of SCDOT is entirely different from the LVMC's operation of an elevated monorail that connects nine privately-owned casinos. The former certainly serves a central public function. The latter, according to the Bankruptcy Court in Nevada, does not. Notably, the *Las Vegas Monorail* noted that Nevada state statutes regarding monorails and their operations specifically exclude governmental units from owning and operating monorails. 429 B.R. at 799. That is not the case here where numerous State and federal statutes provide that the functions performed by the Association are in fact State functions. *See* fn.4. For that reason alone, the decision in *Las Vegas Monorail* has no direct bearing on the outcome of this case.

18. Moreover, the first day affidavit filed in support of LVMC's chapter 11 petition states that the Las Vegas Monorail "is the first **privately-owned** public transportation in the nation to be funded solely by fares and advertising" and that "LVMC receives no governmental financial support or subsidies." *See In re Las Vegas Monorail Co.*, Case No. 10-

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[4] *See, e.g.*, S.C. Code. § 57-1-30(A) ("The [SCDOT] shall have as its functions and purposes the systematic planning, construction, maintenance and operation of the state highway system and the development of a statewide mass transit system that is consistent with the needs and desires of the public."); S.C. Code § 57-3-110(1) (SCDOT shall have the duty and power to "lay out, build, and maintain public highways and bridges, including the exclusive authority to establish design criteria, construction specifications, and standards required to construct and maintain highways and bridges"); 23 U.S.C. § 114 (construction of highways to be undertaken by State transportation departments); 23 U.S.C. § 116 (maintenance of highways are obligation of State transportation department); 23 U.S.C. § 135 (requiring states to develop surface transportation plans); 23 C.F.R. § 1.27 (State can agree to provide highway maintenance through an instrumentality but remains ultimately responsible); 23 C.F.R. § 633.208 (same).

10464, (Bankr. D. Nev.) (Docket No. 7 at ¶ 12) (emphasis added), a copy of which is annexed hereto as Exhibit 7. Here, in contrast, SCDOT owns and is legally and financially responsible for maintaining the Southern Connector. *See* fn.4. Because the Association performs a public function, the *Las Vegas Monorail's* function factor indicates that the Association is a municipality.

19. SCDOT also ignores the characterization factor of the *Las Vegas Monorail* analysis, which focuses on the extent to which the State itself categorizes the debtor entity as a municipality or instrumentality. 429 B.R. at 798-99. Indeed, as stated above, the Association is reported as a major component unit of State government in the State's CAFRs, along with the State Port Authority, the Public Service Authority (Santee-Cooper), and the State Lottery Commission. (*See, e.g.*, Exhibit 4 (2009 CAFR) at 21, 38, 64-67, 73, 75, 96-97, 100, 125, 141.) SCDOT suggests that the Association's financial performance is included in those reports "solely for purposes of complying with GAAP and for no other reason." (SCDOT Objection at 15.) But that is not what the CAFRs state. The 2009 CAFR explains that "[c]omponent units are legally separate organizations *for which the State is financially accountable*." (Ex. 4 (2009 CAFR) at 71.) The CAFRs explain that the State's identification of the Association as a "major component" was based on the nature and significance of the Association to the primary government. (*Id.* at 75.) The 2009 CAFR further acknowledges that the Association's financial information is included therein because the Association "function[s], in essence, as part of State Government." (*Id.* at 7.) The CAFRs further state that the "State's elected officials are financially accountable" for the Southern Connector. (*Id.* at 21.) Accordingly, the State itself categorizes the Association as an instrumentality of the government (*i.e.,* a major component unit

of the State of South Carolina). This *Las Vegas Monorail* factor alone dictates the conclusion that the Association is a municipality.

20. Rather than addressing the function and characterization factors analyzed in *Las Vegas Monorail*, SCDOT focuses solely on the control factor. But that factor also favors a finding that the Association is a municipality. While the *Las Vegas Monorail* court concluded that the State did not have sufficient control over LVMC, the State of South Carolina does have significant control over the Association. Here, it has the ultimate control – it has control of the Association's finances as reflected in its exclusive authority to fix and modify toll rates on the Southern Connector in the first and only instance. (License Agreement § 6.4.) The Association has no rights to require tolls to be increased or decreased other than through legal action against SCDOT for breach of the License Agreement. That level of control was not present in *Las Vegas Monorail*, where LVMC itself was responsible for setting fares which would take effect unless specifically vetoed by the Governor. 429 B.R. at 797.

21. When put into its factual context, the *Las Vegas Monorail* court's refusal to dismiss LVMC's chapter 11 case is not surprising. Indeed, there is no dispute that LVMC is significantly struggling financially and that it desperately needs to restructure nearly $650 million in bond debt. *Las Vegas Monorail*, 429 B.R. at 773-74. However, if the LVMC is deemed a "municipality," it cannot restructure that debt because Nevada state law, unlike South Carolina law, denies its governmental departments and agencies any access to chapter 9. *Id.* at *80-81. In other words, for LVCM it was chapter 11 or no bankruptcy restructuring at all. The *Las Vegas Monorail* court's reluctance to deprive an issuer of $650 million of debt any ability to restructure that debt under the Bankruptcy Code at the request of the issuer's bond insurer comes as no real surprise from both a policy and economic reality perspective.

22. In sum, while the *Las Vegas Monorail* case is not controlling law in this district, its reasoning supports a finding that the Association is a municipality. The evidence at trial will further confirm that the Association is a municipality for purposes of the Bankruptcy Code.[5] *See In re Westport Transit Dist.*, 165 B.R. 93, 95-96 (Bankr. D. Conn. 1994) (transit district which provided public transportation services was "municipality"); *In re Greene County Hosp.*, 59 B.R. 388, 389-90 (Bankr. S.D. Miss. 1986) (hospital subject to control by public authoirity was "municipality").

The Association is Authorized to File a Chapter 9 Petition under Applicable State Law

23. SCDOT argues, in the alternative, that the Association's petition must be dismissed because it is not specifically authorized by state law to be a chapter 9 debtor. SCDOT is again mistaken. As set forth in the Qualifications Brief, Section 6-1-10 of the South Carolina Code specifically authorizes the Association to file a chapter 9 petition because it is a "governmental unit." (Qualifications Brief at 20-21.) That section is entitled "Power of political subdivisions to proceed under legislation dealing with bankruptcy or composition of indebtedness" and provides that:

> 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

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[5] SCDOT's reliance on *In re Ellicott School Building Authority*, 150 B.R. 261 (Bankr. D. Colo. 1992) is similarly misplaced. There, the bankruptcy court concluded that a school building authority did not qualify as a "municipality" under Section 109 of the Bankruptcy Code because, among other things, the court concluded that "[n]o governmental entity exercises any right of control over" the authority. *Id.* at 264. The *Ellicott* court further explained that "[n]either Colorado statutes nor the articles of incorporation accord any governmental entity the ability to control it." *Id.* That is a far cry from the situation here where SCDOT retains the exclusive authority (i) to set the toll rates charged on the Southern Connector and (ii) to appoint, remove and replace the Association's directors.

> relating to bankruptcy of 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.

S.C. Code 6-1-10 (emphasis added). SCDOT offers three arguments as to why the Association is not specifically authorized to file a chapter 9 petition under state law, none of which has any merit.

24. First, SCDOT ignores the actual substance of the State authorization statute itself and argues, based solely on the title of the statute, that only "political subdivisions" can seek chapter 9 relief. (SCDOT Objection at 20.) SCDOT reasons that, because the Association is not a "political subdivision," it is not authorized to file for chapter 9 relief. SCDOT's argument completely ignores Section 2-13-175 of the South Carolina Code, which provides that Code headings are immaterial, stating:

> The catch line heading or caption which immediately follows the section number of any section of the Code of Laws must not be deemed to be part of the section and must not be used to construe the section more broadly or narrowly than the text of the section would indicate. The catch line or caption is not part of the law and is merely inserted for purposes of convenience to the person using the Code.

See also Johnson v. Paraplane Corp., 319 S.C. 247, 250 (S.C. App. 1995) ("[E]ven though the title and headings are part of a statute, they may not be construed to limit the plain meaning of the text."), *vacated on other grounds by* 321 S.C. 316 (1996). Accordingly, the Association need not qualify as a "political subdivision" to be authorized to file a chapter 9 petition under State law. It need only be a governmental unit, which it clearly is.

25. Second, SCDOT argues that the Association is not a "governmental unit" under State law but ignores the numerous instances cited by the Association in which the phrase "governmental unit" is defined elsewhere in the South Carolina statutes in a manner that clearly encompasses the Association. (Qualifications Brief at 21 n.5.) For instance, Section 36-9-102 of

the South Carolina Code defines "governmental unit" to include "an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States." Instead, SCDOT contends that the Association is not a "governmental unit" because it is not an instrumentality or a municipality for purposes of the Bankruptcy Code. (SCDOT Objection at 21.) However, as set forth above, the Association is a municipality or instrumentality thereof for purposes of the Bankruptcy Code. Indeed, the state authorization factor under Section 109(c)(2) is only relevant if the Court concludes that the debtor is a municipality or instrumentality thereof under the Bankruptcy Code in the first place.

26. Finally, SCDOT argues that the corporate resolutions authorizing the Association to file its chapter 9 petition are insufficient to satisfy Section 109(c)(2)'s requirement that the filing be authorized by a "governmental officer or organization empowered by State law." (SCDOT Objection at 21.) Once again, SCDOT ignores the actual language of Section 109(c)(2) which is disjunctive and requires that the debtor is an entity that **either** is:

> 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.

The Association is specifically authorized to file a chapter 9 petition by State law – specifically Section 6-1-10 of the South Carolina Code. It need not also be authorized by a governmental officer as argued by SCDOT. Accordingly, the Association satisfies Section 109(c)(2) of the Bankruptcy Code.

CONCLUSION

27. The Senior Bonds Trustee has worked extensively with the Association through good faith negotiations to produce the Debt Adjustment Plan, which the Senior Bonds

Trustee believes will have the support of the necessary majorities of Bondholders, even though it will require significant concessions on the part of the Bondholders. The only impediment to a consensual restructuring of the Association's obligations has been SCDOT, whose repeated refusal to meaningfully engage in constructive negotiations with the Bondholders is regrettable and whose breaches of the SCDOT Rate Covenant is an unfortunate and primary cause of this chapter 9 filing. SCDOT has failed to recognize that its purposefully subordinated claims are out of the money in this case or own up to the fact that it is statutorily and contractually obligated to maintain and repair the Southern Connector. SCDOT fails to appreciate the significance of its and the Association's defaults and the effect that those defaults could have on the State's standing in the municipal financing community. Rather than work cooperatively to address the Association's financial problems in the bankruptcy forum designed to do just that, SCDOT now seeks to have the case dismissed for no apparent reason other its inability or unwillingness to deal with the problem which it created in the first place.

28. The evidence that will be produced in discovery and submitted at trial will further demonstrate that the Association is eligible to maintain a chapter 9 petition. SCDOT's objection should be overruled and its motion to dismiss the case denied.

Dated: August 10, 2010

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