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10 and Debtors in Possession

11 **UNITED STATES BANKRUPTCY COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 In re:

14 SOUTH BAY EXPRESSWAY, L.P., and
15 CALIFORNIA TRANSPORTATION
16 VENTURES, INC.,¹

17 Debtors.

Chapter 11

Case No. 10-04516-LA11

(Joint Administration Requested with
Case No. 10-04518)

**DECLARATION OF ANTHONY G. EVANS,
CHIEF FINANCIAL OFFICER OF SOUTH
BAY EXPRESSWAY, L.P., IN SUPPORT OF
THE DEBTORS' CHAPTER 11 PETITIONS
AND FIRST DAY MOTIONS**

Date: TBD

Time: TBD

Place: The Jacob Weinberger U.S. Courthouse
Courtroom 118
325 West F Street
San Diego, California 92101

1 Pursuant to section 342(c)(1) of title 11 of the United States Code, the last four digits of each debtor's federal tax identification number are: South Bay Expressway, L.P. (9083) and California Transportation Ventures, Inc. (5119). The location of the debtors' corporate headquarters and the debtors' service address is: 1129 La Media Road, San Diego, California 91914.

1 **DECLARATION OF ANTHONY G. EVANS,**
2 **CHIEF FINANCIAL OFFICER OF SOUTH BAY EXPRESSWAY, L.P., IN SUPPORT**
3 **OF THE DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS**

4 I, Anthony G. Evans, hereby declare under penalty of perjury:

5 1. I am the Chief Financial Officer of South Bay Expressway, L.P., a limited partnership
6 (“SBX”) organized under the laws of the State of California and one of the above-captioned debtors
7 and debtors in possession (collectively, the “Debtors”). In this capacity, I am familiar with the
8 Debtors’ day-to-day operations, businesses, financial affairs, and books and records.

9 2. On the date hereof (the “Petition Date”), SBX and its general partner, California
10 Transportation Ventures, Inc. (“CTV”), each filed a voluntary petition for relief under chapter 11 of
11 title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their
12 businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and
13 1108 of the Bankruptcy Code. Concurrently herewith, the Debtors filed a motion seeking joint
14 administration of these chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of
15 Bankruptcy Procedure (the “Bankruptcy Rules”).

16 3. I submit this declaration (this “First Day Declaration”) to provide an overview of the
17 Debtors and these chapter 11 cases and to support the Debtors’ chapter 11 petitions, “first day”
18 motions (each, a “First Day Motion,” and collectively, the “First Day Motions”), and “second day”
19 motions (each, a “Second Day Motion,” and collectively, the “Second Day Motions”). Except as
20 otherwise indicated herein, all facts set forth in this First Day Declaration are based upon my
21 personal knowledge of the Debtors’ operations and finances, information learned from my review of
22 relevant documents, information supplied to me by other members of the Debtors’ management and
23 the Debtors’ advisors, or my opinion based on my experience, knowledge, and information
24 concerning the Debtors’ operations and financial condition. I am authorized to submit this First Day
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1 Declaration on behalf of the Debtors, and, if called upon to testify, I could and would testify
2 competently to the facts set forth herein.

3 Preliminary Statement

4 4. As discussed in further detail below, due to market conditions that eviscerated growth
5 and traffic projections and the costs associated with extensive, ongoing litigation with the Debtors'
6 contractors, it has become necessary for the Debtors to seek relief pursuant to chapter 11 of the
7 Bankruptcy Code. The Debtors plan to use the chapter 11 process to address pending litigation and
8 delever their balance sheet.

9
10 5. The Debtors developed and operate a four lane, nine mile express toll road in
11 Southern California commonly referred to as the South Bay Expressway or State Road 125
12 (the "Expressway"). The Expressway extends from Spring Valley to Otay Mesa and provides fast
13 and convenient access to and from Mexico and communities across San Diego County, relieves
14 traffic congestion, and reduces travel time for commuters in the South Bay and Otay Mesa regions.
15 Since opening on November 19, 2007, the Expressway has carried over 21 million vehicle trips with
16 traffic on weekdays averaging over 25,000 vehicle trips and weekend traffic averaging over 16,000
17 vehicle trips.
18



1 6. The Expressway represents a first of its kind public-private collaboration and
2 environmental commitment. The Debtors operate the Expressway pursuant to a 35-year build
3 transfer operate franchise agreement with the State of California Department of Transportation
4 (“Caltrans”) that allows the Debtors to set market rate tolls to recover their investment over the life
5 of the Franchise Agreement (as defined herein). The Debtors financed the construction of the
6 Expressway using an innovative and unique financial structure that includes the first ever loan
7 facility provided to a private toll road operator by the US Department of Transportation under the
8 Transportation Infrastructure Finance and Innovation Act of 1998, a private term loan, private equity
9 capital investment, and private right of way donations facilitated by the City of Chula Vista.
10

11 7. The most significant feature of the Expressway is the Otay River Bridge, one of only
12 two precast segmental bridges in the State of California. The four-lane bridge stretches for three-
13 quarters of a mile and reaches heights of 18 stories. Construction of the bridge began in 2005 and
14 was completed in 2007.
15



23 8. The development of the Expressway also included an unprecedented \$20 million
24 environmental program, involving the purchase of more than 1,000 acres of native habitat as a
25 permanent open space preserve, as well as a comprehensive program to preserve natural wildlife
26 habitat.
27
28

1 9. Unfortunately for the Debtors, the Expressway opened amid the collapse of the
2 subprime housing market, in which the South Bay Area was hit particularly hard. Further, as is now
3 well-documented, the capital markets collapsed in 2008. These factors halted development projects
4 previously planned for the area surrounding the Expressway and led to a significant increase in area
5 unemployment. As a result, the Expressway, which was designed to attract commuters and support
6 new development in the area, has suffered from declining traffic levels.
7

8 10. In addition, the Debtors have expended well over \$40 million over the past three and
9 a half years defending a number of actions commenced by contractors against, among others, the
10 Debtors, which actions are described in more detail below. Despite the extraordinary amounts of
11 money the Debtors have incurred to date in connection with those litigation proceedings, the
12 proceedings remain in the early stages of litigation. Moreover, the Debtors expect to continue to
13 incur similarly significant amounts to continue to defend those actions. The costs associated with
14 such proceedings represent a significant drain on the Debtors' limited assets and resources.
15

16 11. In light of the substantial and ongoing litigation costs and current and expected
17 market conditions—including a still-weakened housing market and lack of new development, which
18 have inhibited both population and employment growth in the corridor surrounding the
19 Expressway—the Debtors commenced these chapter 11 proceedings in order to restructure their
20 financial obligations and delever their balance sheet. In connection therewith, the Debtors have
21 engaged in discussions with their key stakeholders. Unfortunately, due to a lack of resources to fund
22 upcoming litigation and arbitration hearings (let alone pay any judgments that might be entered
23 against the Debtors) and an inability to resolve the proceedings prior to seeking chapter 11 relief, the
24 Debtors will use the chapter 11 process to address the litigation, restructure their obligations, and
25 delever their balance sheet. The Debtors have been and will continue to work with their key
26 stakeholders to develop, negotiate, and implement, to the extent possible, a fully consensual
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1 restructuring to the benefit of the public for the remaining term of the Franchise Agreement, which
2 currently extends to 2042.

3 12. One of the contractors, ORC (as defined below) recently commenced an action
4 allegedly seeking to foreclosure on an alleged first-priority mechanic's liens. The Debtors and their
5 prepetition secured lenders believe that ORC's asserted right to any mechanics lien is unfounded and
6 dispute the merits of ORC's underlying claims. Resolution of the priority dispute is, however, a
7 gating issue for developing a confirmable plan of reorganization and it is an issue that can be
8 resolved prior to considering the merits of the underlying claims. Moreover, it is essential to the
9 preservation of the Debtors resources that the priority dispute be resolved before considering the
10 merits of the underlying claims to avoid wasting estate assets to litigate out-of-the money claims.
11 Thus, the Debtors intend to file an adversary proceeding in the near future to seek a determination
12 from the Court that ORC does not have a mechanic's lien senior to the liens of the secured lenders.
13 Simultaneously, the Debtors will continue their efforts with their various constituencies, to develop
14 and file a consensual plan of reorganization that restructures the Debtors' significant existing
15 indebtedness. Both the commencement of these chapter 11 cases and the restructuring to be effected
16 through a plan of reorganization are intended to have little to no effect on trade creditors who
17 continue to provide goods and services to the Debtors.
18
19

20 13. To familiarize the Court with the Debtors and the relief they will seek on the first day
21 of these chapter 11 cases, this First Day Declaration is organized as follows: Part I describes the
22 Debtors' corporate history, business operations, and prepetition organizational and capital structure.
23 Part II describes the events leading to the commencement of these chapter 11 cases. Finally, Part III
24 sets forth the relevant facts in support of each First Day Motion and Second Day Motion filed
25 contemporaneously herewith.
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I. The Debtors’ Corporate History, Business Operations, and Organizational and Prepetition Capital Structure.

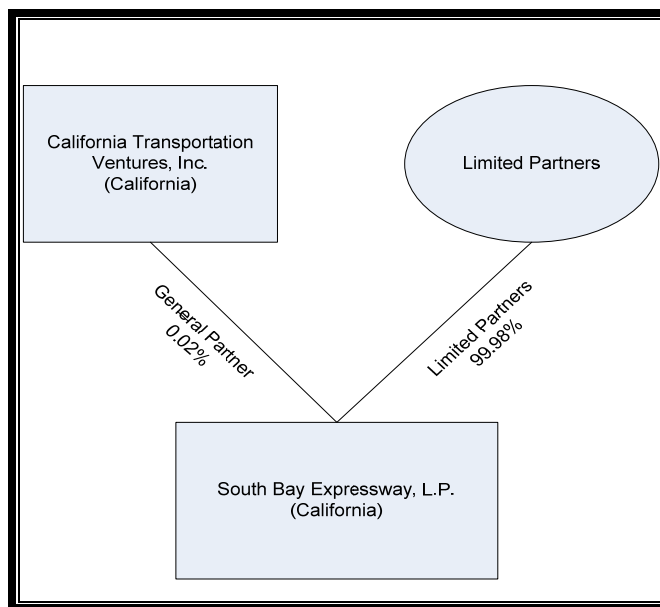
A. Corporate History.

14. CTV is a California corporation formed on January 12, 1990, for the purpose of acting as general partner of SBX. In September 2002, Macquarie 125 Holdings, Inc., a Delaware corporation (“M-125”), acquired all of the outstanding stock of CTV subject to certain conditions that were subsequently met and the purchase closed on May 22, 2003.

15. SBX is a California limited partnership formed on August 17, 1992 (San Diego Expressway, L.P. prior to a name change on January 11, 2006) and managed by CTV, its general partner.

B. The Debtors’ Prepetition Organizational Structure.

16. The following chart generally depicts the Debtors’ prepetition organizational structure:



17. As shown in the corporate organizational chart above, CTV is the general partner of SBX. As of the Petition Date, CTV had issued one class of stock, which are held by the following entities: M-125 (50%); MIP U.S. SR125 Holdings LLC (22%); MIP Canada SR125 Holdings LLC

1 (5%); and MIP International SR125 Holdings LLC (23%) (together, the “CTV Equity Holders”).
2 CTV and the CTV Equity Holders are parties to a Shareholders Agreement, dated as of July 31,
3 2008.

4 18. As of the Petition Date, SBX had issued one class of general partnership units, which
5 are held by CTV, and one class of limited partnership units, which are held by the following entities:
6 M-125 (50%); MIP U.S. SR125 Holdings LLC (22%); MIP Canada SR125 Holdings LLC (5%); and
7 MIP International SR125 Holdings LLC (23%) (collectively, the “SBX Partnership Holders” and,
8 together with the CTV Equity Interests, the “Existing Equity Holders”).
9

10 **C. The Debtors’ Prepetition Capital Structure.**

11 19. As of the Petition Date, the Debtors had outstanding funded debt of \$510 million,
12 comprised of a \$340 million first-priority secured construction and term loan and a \$170 million
13 (including capitalized interest of \$30 million) *pari passu* first-priority secured Transportation
14 Infrastructure Finance and Innovation (“TIFIA”) loan from the United States Department of
15 Transportation, which, together with, among other documents, a security agreement, an intercreditor
16 agreement, a deed of trust, and a collateral agency and account agreement, were executed
17 simultaneously on May 22, 2003 (collectively, the “Secured Loan Agreements”). Additionally, the
18 Debtors are party to three interest rate swap agreements and eight outstanding letters of credit.
19

20 20. The contractors have also asserted various claims against the Debtors in excess of
21 \$600 million, which claims are heavily disputed by the Debtors and are the subject of the litigation
22 and arbitration proceedings mentioned above and described in more detail below.
23

24 **1. Senior Loan.**

25 **a. Senior Loan Agreement.**

26 21. SBX, as borrower, and Banco Bilbao Vizcaya Argenteria, S.A. (“BBVA”), as
27 Administrative Agent and Joint Lead Arranger (the “Administrative Agent”), DEPFA Bank plc, as
28

1 Technical Bank and Joint Lead Arranger (“Depfa”), and the lenders from time-to-time party thereto
2 (collectively, the “Senior Lenders”) are parties to that certain Construction and Term Loan
3 Agreement, dated as of May 22, 2003 (as amended, the “Senior Loan Agreement”). Under the
4 Senior Loan Agreement, SBX drew \$400 million of construction loans (collectively, the
5 “Construction Loan”) to finance the development, engineering, construction, and operation of the
6 Expressway. On April 21, 2008, the Construction Loan was converted to a term loan (the “Senior
7 Loan”). As part of this conversion, the Senior Loan was paid down to \$340 million. As of the
8 Petition Date, the outstanding amount of the Senior Loan is \$340 million. The Senior Loan matures
9 on November 25, 2021. Pursuant to the Senior Loan Agreement, the Debtors will be subject to cash
10 sweeps beginning in December 2010 from available cash flow to repay principal.
11

12 **b. Interest Rate Swap Agreements.**

13 22. As provided in the Secured Loan Agreement, SBX is party to certain interest rate
14 swap agreements (each, a “Swap Agreement”), which it entered into to manage exposure to
15 changing interest rates with respect to the Senior Loan. Specifically, on May 22, 2003, SBX entered
16 into two interest rate swaps with BBVA and Depfa, which fix the interest payments on the Senior
17 Loan at a rate of 3.8225% through December 30, 2011. As of the Petition Date, the notional
18 amounts of those two swap agreements through December 30, 2011 range from approximately
19 \$312 million to approximately \$319 million. Due to interest rates being lower than the swap rate of
20 3.8225% through to December 2011 the swap has a negative value of approximately \$17.8 million.
21

22 23. In addition, on April 17, 2008, SBX entered into an interest rate swap contract with
23 HSN Nordbank (together with BBVA and Depfa, the “Hedging Banks”) with a fixed rate of
24 4.2975% and a final maturity of June 29, 2012. As of the Petition Date, this swap has a notional
25 value ranging from approximately \$20,024,000 to approximately \$340,000,000. Due to interest
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27
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1 rates being lower than the swap rate of 4.2975% through to June 2012, this Swap Agreement has a
2 negative value of approximately \$3.6 million.

3 **2. TIFIA Loan.**

4 24. SBX, as borrower, and the United States Department of Transportation, acting by and
5 through the Federal Highway Administrator, as lender (the "TIFIA Lender" and, together with the
6 Senior Lenders, the "Secured Lenders"), are parties to that certain Transportation Infrastructure
7 Finance and Innovation Act Loan Agreement (as amended, the "TIFIA Loan Agreement"), dated as
8 of May 22, 2003. Under the TIFIA Loan Agreement, SBX drew \$140 million to finance eligible
9 project costs related to the Expressway (the "TIFIA Loan"). The TIFIA Loan matures on December
10 31, 2041, and has a fixed all-in interest rate of 4.46%. Mandatory interest payments commence on
11 June 30, 2012, and repayment of principal commences in 2021. The TIFIA Loan Agreement
12 contains events of default common in large construction projects, including a cross-default provision
13 upon an acceleration of the Senior Loan. As of the Petition Date, the outstanding amount of the
14 TIFIA Loan is approximately \$170 million, including \$30 million of capitalized interest.
15
16

17 **3. Agreements Applicable to Both the Senior Loan and the TIFIA Loan.**

18 25. SBX, as borrower, the TIFIA Lender, the Administrative Agent, and the Collateral
19 Agent (as defined below) are parties to an Agreement of Common Definitions, in addition to certain
20 other related agreements that also are applicable to both the Senior Loan Agreement and the TIFIA
21 Loan Agreement. These related agreements include a Security Agreement (as defined below), a
22 Collateral Agency Agreement (as defined below), and an Intercreditor Agreement (as defined
23 below).
24

25 **a. Security Agreement.**

26 26. SBX, as borrower, and Wells Fargo Bank, National Association ("Wells Fargo"), as
27 collateral agent (the "Collateral Agent") for the Secured Lenders, the Hedging Banks, the
28

1 Administrative Agent, and Depfa, as Modelling Bank and Technical Advisor under the Senior Loan
2 (collectively, the “Secured Parties”), are parties to that certain Security Agreement (as amended, the
3 “Security Agreement”), dated as of May 22, 2003. Under the Security Agreement, SBX provided
4 the Collateral Agent with a security interest in substantially all of its assets, including its bank
5 accounts (and all money and other property held therein), the Franchise Agreement, and all other
6 real and personal property whether then existing or thereafter acquired. Additionally, CTV, as
7 general partner, and each of SBX’s limited partners pledged their partnership interest in SBX to the
8 Collateral Agent on behalf of the Secured Parties. Each of the holders of CTV Equity Interests
9 (defined below) have pledged their partnership interest in SBX to the Collateral Agent on behalf of
10 the Secured Parties.
11

12 **b. Deeds of Trust.**

13 27. SBX and Chicago Title Company, as trustee for the benefit of the Collateral Agent,
14 are parties to that certain Construction and Term Loan Deed of Trust, Assignment of Leases and
15 Revenues and Fixtures Filing (the “Original Deed of Trust”), dated May 22, 2003, pursuant to which
16 SBX granted a lien on all existing and thereafter acquired property of SBX, including certain real
17 property, which was more fully described in the schedules and exhibits to the Original Deed of
18 Trust. Upon conversion of the Construction Loan, SBX entered into a lease with Caltrans and,
19 pursuant to that certain Leasehold Deed of Trust, Assignment of Leases and Revenues and Fixture
20 Filing, dated as of November 16, 2007 (the “Leasehold Deed of Trust”), granted a leasehold deed of
21 trust in favor of the Chicago Title Company, as trustee for the benefit of the Collateral Agent.
22
23

24 **c. Collateral Agency and Account Agreement.**

25 28. SBX, the Administrative Agent, the TIFIA Lender, and Wells Fargo are parties to that
26 certain Collateral Agency and Account Agreement, dated as of May 22, 2003 (the “Collateral
27 Agency Agreement”), pursuant to which Wells Fargo is appointed as (a) Collateral Agent and
28

1 Securities Intermediary under the Collateral Agency Agreement and (b) Collateral Agent under the
2 Security Agreement and the Intercreditor Agreement, on behalf of the Secured Lenders.

3 **d. Intercreditor Agreement.**

4 29. SBX, the Administrative Agent, the TIFIA Lender, and the Collateral Agent also are
5 parties to that certain Intercreditor Agreement (the “Intercreditor Agreement”), dated as of May 22,
6 2003, pursuant to which the TIFIA Lender subordinated the obligations under the TIFIA Loan
7 Agreement to the obligations under the Senior Loan Agreement. In certain circumstances—
8 including a bankruptcy filing by SBX—the TIFIA Loan becomes *pari passu* with the Senior Loan.²
9

10 **D. The Debtors’ Business Operations.**

11 30. The Debtors’ corporate headquarters are located in San Diego, California, where they
12 employ 53 people. For the fiscal year ending June 30, 2009, the Debtors had total revenues of
13 approximately \$21 million and adjusted EBITDA of approximately \$3 million. As of the Petition
14 Date, the Debtors’ had approximately \$640 million in book value of total assets and approximately
15 \$570 million in book value of total liabilities.
16

17 **1. Construction of the Expressway.**

18 31. The Debtors constructed the Expressway pursuant to that certain Development
19 Franchise Agreement For A Privatized Transportation Project (as amended and further conformed,
20 the “Franchise Agreement”), dated January 6, 1991, between CTV and Caltrans. CTV assigned the
21 Franchise Agreement to SBX pursuant to that certain letter agreement, dated August 18, 1992.
22 Caltrans acknowledged the assignment by letter on September 9, 1992. The Franchise Agreement
23 provides SBX the exclusive right to develop and construct the Expressway and, pursuant to a
24 lease-back agreement with Caltrans, operate the Expressway, including imposing and collecting
25 tolls, for a period of up to 35 years.
26

27 _____
28 ² The Debtors reserve all rights with respect to the relative priorities of the Senior Loan and the TIFIA Loan.

1 32. The construction of the Expressway was part of a two-phase construction project
2 extending SR-125 (the "Project"). The first phase of the Project (the "Gap/Connector") included an
3 interchange between SR-125 and SR-54 and an extension of SR-125 from SR-54 to the Expressway,
4 at a cost of approximately \$184 million. The second phase of the Project consisted of the toll
5 portion of the SR-125 extension—i.e., the Expressway,—which began at San Miguel Ranch Road.
6 To date, the San Diego Association of Governments ("SANDAG") has financed or has right of way
7 commitments for approximately \$151 million of a \$160 million contractual funding commitment
8 pursuant to the DFA and Invoice and Disbursement Agreement ("IDA") relating to the
9 Gap/Connector.³ The Debtors is owed as a minimum the remaining amount due under these
10 agreements but such funding to the Debtors has been prevented by a stop notice order that the
11 Debtors are contesting. Further the Debtors are contesting with Caltrans and SANDAG whether
12 further costs recoverable under the DFA and IDA were incurred beyond the Debtors' control. The
13 remaining costs of the Gap/Connector were financed through senior loans provided by the Senior
14 Lenders and contributions by the Existing Equity Holders.

15
16
17 **a. The Design Build Agreements.**

18 33. SBX, as developer of the Expressway, is party to two separate design build
19 agreements (each, a "DBA"), one for the Gap/Connector, signed on June 6, 2002, with final notice to
20 proceed on August 15, 2002 (as amended, the "Gap/Connector DBA"), and one for the Expressway,
21 signed on May 22, 2003, with notice to proceed on the same date (as amended, the "Expressway
22 DBA"), with Otay River Contractors ("ORC"), the contractor selected for construction of the
23 Gap/Connector and the Expressway. On May 22, 2003, SBX and ORC also executed that certain
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³ Under the Senior Loan Agreement, SANDAG, among other things, consented to SBX's assignment to the Collateral Agent of its interest in the funding agreement with SANDAG.

1 Coordination Agreement (the “Coordination Agreement”), which governs and enables the
2 coordinated execution of the two DBAs.

3 34. Each DBA specified a fixed, lump-sum contract price—\$85 million for the
4 Gap/Connector DBA and \$254.4 million for the Expressway DBA (without adjustments on account
5 of change orders).

6 35. Pursuant to the Gap/Connector DBA, the term to construct the Gap/Connector was
7 1,156 days from the notice to proceed issued on August 15, 2002. Due to an unresolved
8 environmental lawsuit that inhibited geotechnical surveys and other works during the period from
9 February 1, 2003, to September 1, 2003, ORC was granted a 240-day extension. As a result, the
10 scheduled construction completion date was June 10, 2006. In June 2009, ORC abandoned the
11 Gap/Connector DBA. In order to comply with the Franchise Agreement, the Debtors subsequently
12 employed other contractors to complete the work on the Gap/Connector.
13

14 36. Pursuant to the Expressway DBA, the term to construct the Expressway (i.e., the
15 scheduled construction completion date) was 1,246 days from the notice to proceed issued on May
16 22, 2003 (October 19, 2006). On November 16, 2007, Caltrans issued a Notice of Acceptance that
17 the Expressway was safe for vehicular access. At that time, certain work that did not impact public
18 safety, such as landscaping and construction of sound barrier walls, remained outstanding (the
19 “Outstanding Work”). The Debtors and Caltrans entered into an amendment to the Franchise
20 Agreement that authorized the Debtors to open the Expressway to the public, notwithstanding the
21 Outstanding Work, and provided deadlines for completion of the Outstanding Work.
22
23

24 **b. Environmental Impact Mitigation**
25 **and Community Development Projects.**

26 37. The construction of the Expressway also included approximately \$20 million of
27 environmental impact mitigation, including mitigation specific to certain plants, birds, insects, and
28 butterflies, and the development of a habitat training and awareness program. In addition, the

1 Debtors funded approximately \$18 million worth of community development projects, including an
2 \$8 million state-of-the art athletic complex for the Sweetwater Valley Little League, park
3 improvements, and new hiking and equestrian trails throughout the South Bay area.

4 **2. Operation of the Expressway.**

5 38. Upon completion of the Expressway, the Debtors, as developer, and Caltrans entered
6 into that certain Lease Agreement (the "Lease"), which was executed and recorded, with an effective
7 date of November 16, 2007, and the date the Expressway opened to the public three days later, on
8 November 19, 2007.

9 **a. Toll Collection.**

10 39. Pursuant to the Franchise Agreement, the Lease provides the Debtors the exclusive
11 right to establish and collect tolls on the Expressway. The Debtors established toll amounts through
12 local market research regarding appropriate toll levels and a financial model to repay construction,
13 operation, and maintenance costs over the 35-year life of the Lease and Franchise Agreement. Toll
14 amounts vary based on how far a vehicle is travelling, the vehicle's number of axles, and whether
15 the toll is paid in cash or electronically using the FasTrak[®] electronic toll collection system. For
16 example, cash toll rates for two-axle vehicles range from \$2.50 to \$4.50. FasTrak[®] toll rates for
17 two-axle vehicles range from \$0.75 to \$3.85. The Debtors offer special accounts and toll bonuses
18 for commercial fleet operators, business groups, and clubs that open multiple South Bay Expressway
19 FasTrak[®] accounts.
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22 40. Approximately 75% of tolls on the Expressway are paid electronically, through the
23 FasTrak[®]. FasTrak[®] consists of a small electronic device called a transponder, which is placed on
24 the middle of a vehicle's windshield. The transponders work together with electronic readers
25 installed over the Expressway. When travelling in the FasTrak[®] lane, an overhead antenna reads the
26 data stored in the FasTrak[®] transponder and the toll is automatically deducted from the account
27
28

1 owner's prepaid FasTrak[®] account. FasTrak[®] can also be used on other toll roads in California,
2 including the I-15 Express Lanes, Orange County toll roads, and the Golden Gate Bridge.

3 41. Since the Expressway's opening, the Debtors have distributed more than 44,000
4 FasTrak[®] transponders to their customers. Customers are provided a FasTrak[®] transponder after
5 establishing and funding a FasTrak[®] account, which may be registered to one or more vehicles.
6 Upon opening a customer's FasTrak[®] account, the Debtors charge \$40 per transponder to the
7 customer's credit or debit card as a prepayment of tolls. The Debtors deduct toll charges as the
8 customer uses the Expressway. Once the prepaid balance dips below a minimum threshold
9 (generally \$10), the account is replenished with another \$40 charge, per transponder, to the
10 customer's credit or debit card.
11

12 42. The Debtors have a \$7 per account minimum monthly toll policy in force. Those
13 FasTrak[®] customers who use a minimum of \$7 per month in prepaid tolls incur no additional
14 charges. Those customers who use less than \$7 per account (regardless of number of transponders
15 issued to that account) in any calendar month will incur a fee amounting to the difference between
16 actual prepaid tolls used and \$7. Additionally, the Debtors collect a transponder deposit of \$35 for
17 any customer who does not provide such deposit with a credit card. Those customers who do not
18 provide a credit card must replenish their FasTrak[®] accounts with either cash or check when their
19 prepaid balance falls below \$25 per transponder.
20

21 **b. Service Agreements.**

22 43. The Debtors contract with Caltrans for road maintenance and with the California
23 Highway Patrol to provide routine patrol services and incident management. The Debtors contract
24 with InTranS Group, Inc. ("IntranS") for electronic tolling equipment and traffic management
25 services.
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1 **II. Events Leading to These Chapter 11 Cases.**

2 44. As discussed above, the Debtors have approximately \$510 million of indebtedness
3 with annual debt service of approximately \$19 million on account of the Senior Loan and Swap
4 Agreements. A series of unforeseen events placed significant strain on the Debtors' ability to
5 maintain sufficient liquidity to meet their debt service obligations and ultimately led to the Debtors'
6 filing of these chapter 11 cases. Those events include (A) delays and increased construction costs,
7 which resulted in increased indebtedness; (B) expensive and ongoing contractor litigation; (C) the
8 collapse of the housing and credit markets; (D) the resulting deterioration in the Debtors' financial
9 performance; and (E) the Debtors' unsuccessful out-of-court restructuring efforts.
10

11 **A. Delays and Increased Construction Costs.**

12 45. As discussed above, the Expressway did not open to traffic until November 19,
13 2007—13 months after the scheduled completion date of October 19, 2006. During that time, the
14 Debtors incurred costs of approximately \$143,000 per day. These time-related costs included
15 interest incurred on the Debtors' secured loans, construction management fees, Caltrans oversight
16 costs, insurance premiums, and management costs and related overhead expenses. Liquidated
17 damages deducted from ORC of \$80,000/day partially offset these costs. The remaining costs of
18 \$63,000/day required the Debtors to borrow an additional \$20 million to complete the construction
19 of the Expressway. During the completion of the Outstanding Work, the Debtors has continued to
20 incur costs from November 19, 2007 to date, including construction management fees, Caltrans
21 oversight costs, insurance premiums, and management costs and related overhead expenses.
22
23

24 46. In addition, the Expressway's electronic tolling system was not sufficiently functional
25 to commence electronic tolling until January 14, 2008, which resulted in an estimated revenue loss
26 of at least \$6 million.
27
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1 **B. Contractor Litigation.**

2 47. The Debtors have been engaged in costly and time-consuming litigation with their
3 two primary contractors on the Expressway: ORC and InTranS. As discussed in detail below, the
4 Debtors' continued prosecution and defense of the contractor litigation severely strained the
5 Debtors' financial wherewithal.

6 **1. ORC Litigation**

7 48. The Debtors and ORC have been engaged in litigation (collectively, the "ORC
8 Litigation") to determine the validity of the more than 120 claims asserted by ORC relating to the
9 Expressway DBA, the GAP/Connector DBA, and the Coordination Agreement, which range in value
10 from less than \$100,000 to more than \$100 million and total approximately \$745 million.⁴ A
11 significant amount of the claims asserted by ORC relate to costs and delays that ORC alleges were
12 caused by third parties other than the Debtors, including Caltrans, the City of Chula Vista, and the
13 County of San Diego. The Debtors have asserted counterclaims against ORC under both the
14 Expressway DBA and the Gap/Connector DBA.

15 49. The Debtors estimate that, as of the Petition Date, the below-described ORC
16 Litigation has cost the Debtors approximately \$40 million in legal fees, arbitration costs, and other
17 related expenses. Yet, the ORC Litigation remains in the early stages of litigation. ORC's
18 unwillingness to engage in serious settlement negotiations as well as the Debtors' lack of assets and
19 resources with which to continue funding substantial litigation (or to pay any judgment that might be
20 awarded to ORC), were key factors in the Debtors' decision to seek relief under chapter 11 of the
21 Bankruptcy Code. Through an adversary proceeding, the Debtors expect to resolve the most
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⁴ Recent rulings by the arbitration panel in the Debtors' favor have effectively reduced ORC's claims to
28 approximately \$408 million, although ORC has appealed the rulings to the Superior Court in San Diego, a process
which the Debtors expect will take a year or longer.

1 pressing priority issues in the Mechanic's Lien Litigation (as defined herein) and, if necessary,
2 develop a strategy to pay any substantive claims through a plan of reorganization.

3 **a. The JAMS Proceeding.**

4 50. The arbitration to resolve claims under the Toll Road DBA and the Coordination
5 Agreement includes six sets of hearings (the "JAMS Proceedings") to address groups of claims in
6 turn. The first set of hearings is scheduled to commence on March 29, 2010, and the final set of
7 hearings is scheduled to be complete by September 2, 2011. The arbitration panel has also notified
8 the Debtors of the possibility of expediting the hearing schedule. ORC has indicated that if it
9 prevails in the arbitration proceedings and is awarded a judgment amount, it would attempt to
10 enforce its alleged entitlement to a mechanic's lien against the Debtors' interests in the Expressway
11 to enforce payment of a portion of such judgment.
12

13 **b. The Gap/Connector Litigation.**

14 51. On or about July 19, 2006, ORC commenced an action against SBX in San Diego,
15 California (Otay River Constructors v. South Bay Expressway, L.P., et al., Case No. GIC 869386)
16 (the "Gap/Connector Litigation") with respect to the Gap/Connector, alleging that SBX altered and
17 increased ORC's scope of work, delayed the planned work of ORC, and required changes to the
18 basic configuration that increased the time and cost of ORC's performance in connection with the
19 Gap/Connector project. Thereafter, on or about March 3, 2008, SBX filed its amended
20 cross-complaint against ORC, and its parent companies, asserting that ORC had breached the
21 Gap/Connector DBA by, among other things, (a) failing to complete design and construction within
22 contracted time limits, (b) failing to mitigate delays, (c) failing to comply with applicable
23 environmental laws, (d) failing to obtain and maintain necessary governmental approvals, and
24 (e) failing to meet the contractual requirements regarding the scope of work.
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1 52. On or about December 27, 2007, ORC also commenced litigation in San Diego,
2 California against Caltrans, (Otay River Constructors v. Caltrans, Case No. 37-2007-0084653-CU-
3 MC-CTL), in which it alleged that the Gap/Connector portion of the Project is a “public project” for
4 which SBX is the “original contractor” and therefore the State should have required SBX to post a
5 public works payment bond. This suit was subsequently consolidated with the Gap/Connector
6 Litigation.

7
8 53. On or about March 14, 2008, ORC filed a demurrer to SBX’s cross-complaint which
9 sought to have SBX’s claims dismissed on the ground that the contracts at issue were invalid and
10 unenforceable because SBX needed a general contractor’s license under California law in order to
11 contract with ORC to build the Project. On July 2, 2008, the court denied ORC’s demurrer. On
12 July 25, 2008, ORC filed a petition for a writ of mandate with respect to the denial. ORC’s petition
13 for a writ of mandate was denied on October 28, 2008. The Gap/Connector Lawsuit remains
14 pending.

15
16 **c. The Stop Notice Litigation.**

17 54. Starting on or about May 20, 2008, ORC began improperly issuing Stop Notices to
18 prevent Caltrans and the local transportation authority from paying down the public portion of the
19 funding for the Gap/Connector project. On or about November 24, 2008, ORC filed a complaint in
20 San Diego, California seeking approximately \$24 million in respect of its Sixth Supplemental Stop
21 Notice (Otay River Contractors v. State of California, Department of Transportation,
22 Case No. 37-2008-00096773-CU-MC-CTL) (the “Stop Notice Litigation”). In the Stop Notice
23 Litigation, ORC asserts that SBX is an original contractor, not an owner, of the Gap/Connector
24 portion of the Project. SBX subsequently intervened in the Stop Notice Litigation with Caltrans and
25 SANDAG to oppose ORC’s claims. The Stop Notice Litigation is ongoing.
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1 **d. Inverse Condemnation Litigation.**

2 55. On July 14, 2008, ORC filed a complaint in San Diego, California seeking damages
3 from the Caltrans for Caltrans' acquisition of privately-held property which ORC alleges constituted
4 an inverse condemnation of ORC's mechanic's and materialmen's lien on the privately-held real
5 property (Otay River Constructors v. State of California, Department of Transportation,
6 Case No. 37-2008-00087644-CU-EI-CTL) (the "Inverse Condemnation Litigation"). On March 25,
7 2009, Caltrans filed a cross-complaint against SBX for breach of contract and failure to prevent the
8 alleged loss and damages asserted by ORC. The Inverse Condemnation Litigation is ongoing.
9

10 **e. The New York Litigation.**

11 56. On June 5, 2008, SBX filed a complaint in the Supreme Court of the State of New
12 York, (South Bay Expressway, L.P. v. Otay River Constructors, Case No. 601703/2008) (the "New
13 York Litigation") alleging several claims against ORC and its joint venturers for breach of contract
14 and breach of representations and warranties, focusing on ORC's breach of the Gap/Connector DBA
15 by asserting its demurrer defenses in the California Gap/Connector Litigation. The parties are
16 presently awaiting a ruling on ORC's motion to dismiss. The New York Litigation is ongoing.
17

18 **f. The Mechanic's Lien Litigation.**

19 57. On September 24, 2009, ORC filed a complaint in San Diego, California, (Otay River
20 Constructors v. South Bay Expressway, Case No. 37-2009-00098972-CU-OR-CTL) (the
21 "Mechanic's Lien Litigation") alleging that the current unpaid amount due ORC from SBX for the
22 toll road work is \$233,110,946 after deducting credits and offsets. ORC alleges this amount is owed
23 as a result of SBX's breach of its obligations under the Expressway DBA by failing to pay ORC for
24 labor, services, equipment, and materials used and consumed in the work of improvement, and that
25 ORC would be entitled to a mechanic's lien against the Expressway in the approximate amount of
26 \$145,000,000.
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1 58. As noted above, the Debtors and the Secured Lenders adamantly oppose ORC's
2 asserted right to a mechanic's lien, including any lien having priority over the Secured Lenders. The
3 Debtors and the Secured Lenders believe ORC's allegations are unfounded and dispute the merits of
4 the underlying claims. The Mechanic's Lien Litigation is ongoing, but the Debtors intend to initiate
5 an adversary proceeding with the Court to expedite a resolution of the lien priority issue.
6

7 **2. InTranS Litigation.**

8 59. On October 22, 2009, SBX filed an action in San Diego, California against InTranS,
9 the contractor who designed and installed the tolling equipment for the Expressway, for breach of
10 contract (South Bay Expressway, L.P. v. InTranS, Case No. 37-2009-00100909-CU-BC-CTL) (the
11 "FOE Contract Litigation"). InTranS has raised counterclaims and the litigation is ongoing.
12

13 60. On March 12, 2010, InTranS filed a mechanic's lien against SBX's interests in the
14 Expressway on account of amounts allegedly owed to InTranS by SBX. In addition, InTranS also
15 commenced a foreclosure action in San Diego, California against SBX, CTV, Caltrans, Chicago
16 Title Company, the Administrative Agent, the Collateral Agent, and the TIFIA Lender (InTranS v.
17 South Bay Expressway, L.P., et al., Case No. 37-2010-00087362-CU-OR-CTL). This litigation
18 remains pending.

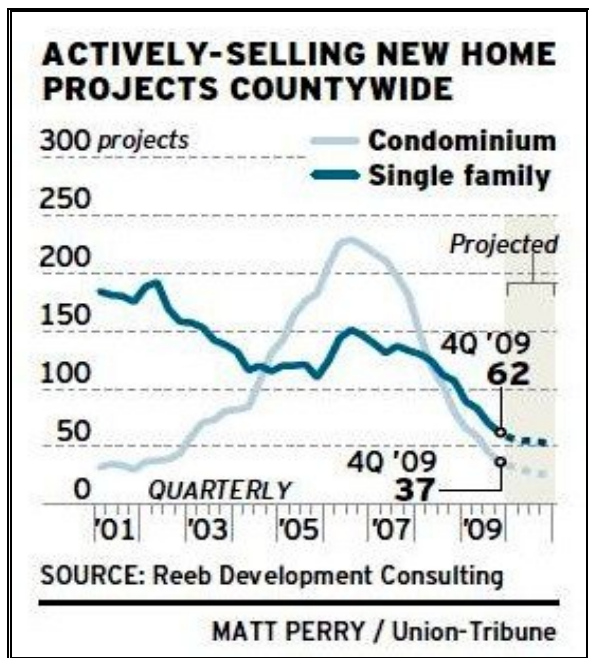
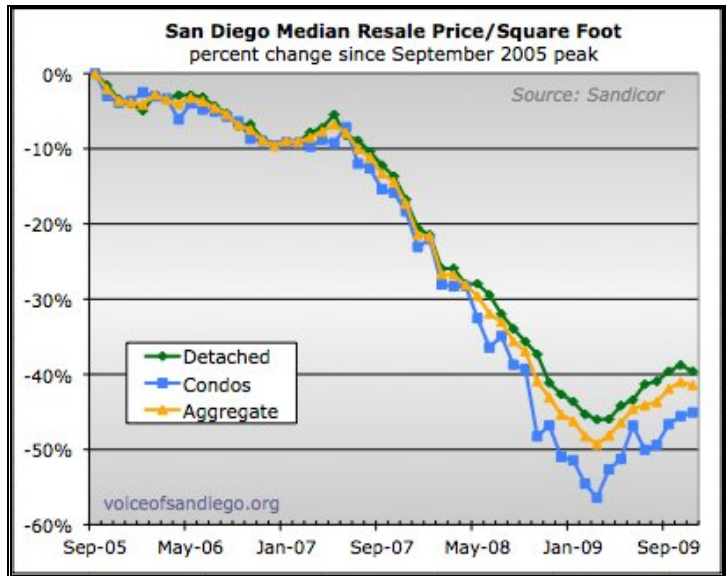
19 **C. Collapse of Housing and Credit Markets.**

20 61. The planning and financing of the Expressway project were based upon certain
21 projections of population and employment growth and traffic volume in the South Bay region that
22 depended upon the strength of the residential real estate market and the availability of financing for
23 both home builders and home buyers. As a consequence of the now well-documented economic
24 downturn, including the collapse of the sub-prime housing market and the nationwide credit crisis,
25 the projected growth underlying the development and funding of the Expressway failed to
26 materialize. In addition, recent traffic flow has been further weakened by a decline in cross-border
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1 commercial traffic and a rise in unemployment in the South Bay area. As a result, commercial
2 traffic and commuters—the Debtors’ target customer base—increasingly choose to travel via free
3 routes that are now seldom congested.

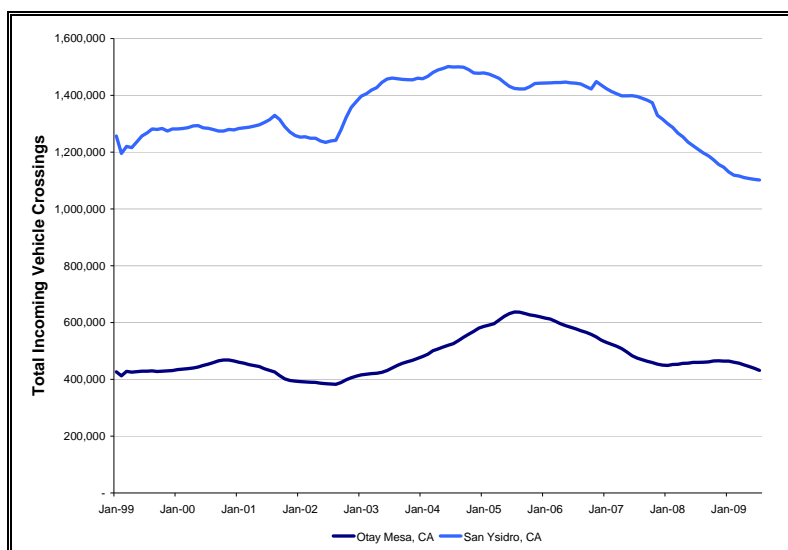
4 62. At the time the Expressway project was approved, the South Bay area was, and had
5 been for many years, identified by state and local authorities as a high-growth area in need of
6 additional transportation routes to ease congestion. Indeed, plans for a southbound extension of SR-
7 125 had been included in state and local transportation plans since 1959. During the construction
8 phases of the Expressway, population and development in the South Bay area grew, as families
9 flocked to affordable new housing developments. The Expressway was intended not only to reduce
10 traffic congestion on interstates I-5 and I-805, Otay Mesa Road, and local streets in Chula Vista and
11 Bonita, but also was expected to propel development of the localities along the route.

12
13 63. Unfortunately, the nationwide housing market collapse hit the South Bay area
14 particularly hard, resulting in population and employment growth far below projections. In the year
15 preceding the opening of the Expressway, foreclosures were reportedly up 247% in San Diego
16 County, with Chula Vista zip codes consistently ranked among the highest foreclosure rates in the
17 county. As a result of the credit crunch that followed, new residential development projects
18 plummeted. The graphs below illustrate the decline in San Diego residential real estate values over
19 the last five years and the decline in residential developments between 2001 and 2009.
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64. Further, cross-border traffic from both ports of entry is significantly down from its peak in 2005. The following chart shows that there has been a 30% decrease in incoming traffic since 2005 at the San Ysidro port of entry and the Otay Mesa port of entry (less than one mile from the Expressway). This has relieved previously-congested alternate routes. As a result, traffic

1 entering the Toll Road at the southern end, particularly truck traffic, has declined significantly below
2 initial projections.



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65. The adverse market conditions and resulting decline in traffic flow have taken a toll on the Debtors' financial position. Projections underlying the Senior Loan and the Franchise Agreement estimated that traffic flow on the Expressway in 2009 would be approximately 60,000 vehicles per day. Actual traffic flow on the Expressway in 2009 averaged approximately 23,000 vehicles per day.

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66. In 2009, the Debtors' revenue totaled \$21 million compared to \$21.7 million for 2008. Original projections estimated revenue of \$42 million for 2009 and \$31 million for 2008. Actual revenues compared to original projections were 70% and 53% respectively for 2008 and 2009, with revenue growth from 2008 to 2009 of only 4%, compared to 36% in the original projections. Moreover, the Debtors' adjusted EBITDA for 2009 on a cash flow basis was only \$3.4 million compared to \$3.1 million in 2008. As a result, the Debtors are unable to maintain sufficient liquidity to meet their debt service obligations and are having to use reserves for such obligations.

1 67. Typically, in the private toll road industry, a new toll road operator will experience
2 significantly increased traffic flow and revenues in its first two years of operation, but the severity of
3 the economic recession prevented the Debtors from growing as originally projected.

4 **D. The Debtors' Attempts to Negotiate a Prearranged Chapter 11 Plan.**

5 68. For more than three months, the Debtors have been negotiating with their key
6 stakeholders— including the Secured Lenders, the Collateral Agent, and certain of the Debtors'
7 Existing Equity Holders (the "Equity Holders")—to avoid a chapter 11 filing. The Debtors engaged
8 in negotiations with the Secured Lenders, ORC, and Caltrans regarding a global settlement that
9 would resolve the ORC Litigation and provide the terms of a comprehensive balance sheet
10 restructuring. Despite diligent and extensive negotiations, in which the Debtors and the Senior Loan
11 Lenders provided ORC with a settlement offer, the Debtors were unable to achieve a settlement.

12 69. Given the Debtors' position with regard to ORC's claims and assertions regarding
13 priority status and the costly, time-consuming and lengthy process ahead in the ORC Litigation, the
14 Debtors determined that it was not in the best interest of their estates or creditors to either (a)
15 continue to incur legal and other expenses arbitrating or litigating the ORC Litigation or (b) allow a
16 judgment to be entered in ORC's favor prior to the resolution of the priority dispute. Accordingly,
17 after failing to reach a settlement before the commencement of the first set of arbitration hearings in
18 the JAMS Proceeding, the Debtors filed these chapter 11 cases to stay the proceedings.
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21 **E. The Debtors Filed These Chapter 11 Cases.**

22 70. The Debtors filed these chapter 11 cases to obtain a breathing spell. To facilitate a
23 soft landing into chapter 11, the Debtors have filed certain First Day Motions and Second Day
24 Motions seeking relief, as described below, designed to minimize disruption to the Debtors'
25 business. The Debtors will utilize their breathing spell to continue negotiations with the Secured
26 Lenders and ORC to work toward a resolution of the priority dispute. The Debtors intend to file an
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1 adversary proceeding addressing the priority dispute while simultaneously working with the Secured
2 Lenders to propose a plan of reorganization that will restructure and reduce the Debtors' existing
3 indebtedness and enable them to expeditiously emerge from bankruptcy.

4 **III. Evidentiary Support for First Day Motions and Second Day Motions.**

5 71. As discussed above, the Debtors have entered into the chapter 11 process with the
6 goal of implementing a simple balance sheet restructuring with minimal disruption to their
7 operations. To that end, concurrently with the filing of their chapter 11 petitions, the Debtors have
8 filed a number of First Day Motions seeking relief that the Debtors believe is necessary to enable
9 them to operate with minimal disruption and loss of productivity. The Debtors request that the relief
10 requested in each of the First Day Motions be granted as critical elements in ensuring a smooth
11 transition into, and stabilizing and facilitating the Debtors' operations during the pendency of these
12 chapter 11 cases. I have reviewed each of the First Day Motions and Second Day Motions discussed
13 below and the facts set forth in each First Day Motion and Second Day Motions are true and correct
14 to the best of my knowledge and belief with appropriate reliance on corporate officers and advisors.⁵

15 **A. First Day Motions**

16 **1. First Day Motion for Entry of an Order Directing Joint Administration 17 of Related Chapter 11 Cases (the "Joint Administration Motion").**

18 72. The Debtors request entry of an order directing joint administration of these
19 chapter 11 cases for procedural purposes only pursuant to Bankruptcy Rule 1015(b). Specifically,
20 the Debtors request that the Court maintain one file and one docket for these chapter 11 cases under
21 the lead case of SBX, and that these chapter 11 cases be administered under the caption described in
22 the Joint Administration Motion.
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27 ⁵ All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the relevant First
28 Day Motion or Second Day Motion.

1 73. The Debtors also request that an entry be made on the docket of CTV to reflect the
2 joint administration of these chapter 11 cases, that is substantially similar to the following:

3 An order has been entered in accordance with Rule 1015(b) of the
4 Federal Rules of Bankruptcy Procedure and Rule 1015-1 of the Local
5 Bankruptcy Rules of the United States Bankruptcy Court for the
6 Southern District of California Directing joint administration of the
7 chapter 11 cases of: California Transportation Ventures, Inc. and
8 South Bay Expressway, L.P. All further pleadings, motions, operating
9 reports, and other papers shall be filed in, and all further docket entries
10 shall be made in, Case No. 10-_____ (___).

11 74. Finally, the Debtors request that combined service lists be used for these chapter 11
12 cases, combined notices be sent to the creditors of the Debtors' estates, a single claim register be
13 maintained, and that any deviation from these procedures will be by an order of the Court.

14 75. Joint administration of these chapter 11 cases will provide significant administrative
15 convenience without harming the substantive rights of any party in interest. Many of the motions,
16 hearings, and orders that will arise in these chapter 11 cases will affect each Debtor entity. The entry
17 of an order directing joint administration of these chapter 11 cases will reduce fees and costs by
18 avoiding duplicative filings and objections. Joint administration also will allow the U.S. Trustee and
19 all parties in interest to monitor these chapter 11 cases with greater ease and efficiency.

20 76. I believe that the relief requested in the Joint Administration Motion is in the best
21 interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the
22 Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on
23 behalf of the Debtors, I respectfully submit that the Joint Administration Motion should be approved.

24 **2. First Day Motion of the Debtors for Order Limiting Scope of Notice (the**
25 **"Motion Limiting Scope of Notice")**.

26 77. The Debtors request that the Court enter an order authorizing the Debtors to limit the
27 scope and manner of all pleadings, notices, motions, or applications for the matters listed below to:

28 (a) the U.S. Trustee; (b) the entities listed on the Consolidated List of Creditors Holding the 20

1 Largest Unsecured Claims; (c) counsel to the agent for the Debtors' prepetition Senior Loan
2 Agreement; (d) counsel to the lender under the Debtors' prepetition TIFIA Loan Agreement; (e) the
3 United States Internal Revenue Service; (f) the United States Securities and Exchange Commission;
4 (g) the United States Attorney for the Southern District of California; (h) the United States
5 Department of Transportation; (i) Caltrans; and (j) any party with a specific pecuniary interest in the
6 particular motion:
7

- 8 a) any proposed use, sale, or lease of property of the estate other than in the ordinary
9 course of business pursuant to section 363 of the Bankruptcy Code and Bankruptcy
10 Rules 2002(a)(2), 4001(b), and 6004; provided, however, that, except as otherwise
11 provided herein, the Debtors shall provide notice to all creditors and equity holders of
12 a sale of all or substantially all of their assets;
- 13 b) any proposed assumption, rejection, or assumption and assignment of an executory
14 contract or unexpired lease pursuant to section 365 of the Bankruptcy Code or
15 Bankruptcy Rule 6006(a) or (c);
- 16 c) any proposed extension of the Debtors' exclusive time to file a plan of reorganization
17 and solicit acceptance thereof (including, without limitation, the time to file a
18 disclosure statement) pursuant to section 1121 of the Bankruptcy Code or Bankruptcy
19 Rule 3016;
- 20 d) any proposed approval or compromise or settlement of a controversy pursuant to
21 Bankruptcy Rules 2002(a)(3) and 9019;
- 22 e) any proposed abandonment or disposition of property of the estate and the hearing, if
23 any, thereon, pursuant to section 554 of the Bankruptcy Code or Bankruptcy Rule
24 6007(a) or (c);
- 25 f) any proposed modification of the automatic stay pursuant to section 362 of the
26 Bankruptcy Code or Bankruptcy Rules 4001(a) or 9014;
- 27 g) any proposal to prohibit or condition the use, sale, or lease of property pursuant to
28 section 363 of the Bankruptcy Code or Bankruptcy Rule 4001(a);
- h) any proposal to obtain credit on a secured basis or out of the ordinary course of
business or grant a lien pursuant to section 364 of the Bankruptcy Code or
Bankruptcy Rule 4001(b) or (c);
- i) any proposed agreement relating to relief from the automatic stay, prohibiting or
conditioning the use, sale, or lease of property, providing adequate protection, use of
cash collateral, and obtaining credit pursuant to sections 361, 362, 363, or 364 of the
Bankruptcy Code or Bankruptcy Rule 4001(d);

- 1
- 2 j) any proposed application for employment of professionals pursuant to sections 327,
- 3 1103, and/or 1104 of the Bankruptcy Code or Bankruptcy Rule 2014; provided,
- 4 however, that, except as otherwise provided herein, the Debtors shall provide notice
- 5 to all creditors and equity holders of such applications where the application seeks
- 6 *nunc pro tunc* relief more than 30 days after the professional has been providing
- 7 services to the applicant;
- 8
- 9 k) any proposed application for compensation or reimbursement of expenses of
- 10 professionals, pursuant to sections 328, 329, 330, or 331 of the Bankruptcy Code or
- 11 Bankruptcy Rules 2002(a)(6), 2016, 2017, and 6005 and compensation to the
- 12 Debtors' insiders pursuant to Local Bankruptcy Rule 4002-2;
- 13
- 14 l) any verified statement filed by any entity or committee (other than those appointed
- 15 pursuant to section 1102 and 1104 of the Bankruptcy Code) representing more than
- 16 one creditor pursuant to Bankruptcy Rule 2019(a) and any motion filed in respect
- 17 thereof pursuant to Bankruptcy Rule 2019(b) ;
- 18
- 19 m) any proposed objections to claims pursuant to section 502 of the Bankruptcy Code or
- 20 Bankruptcy Rule 3012;
- 21
- 22 n) any proposed reconsideration of claims pursuant to Bankruptcy Rule 3008;
- 23
- 24 o) any proposed valuation of security pursuant to section 506 of the Bankruptcy Code or
- 25 Bankruptcy Rule 3012;
- 26
- 27 p) any proposed redemption of property from lien or sale pursuant to Bankruptcy Rule
- 28 6008; and
- q) any hearing on any contested matter in this case that requires notice to creditors pursuant to the Bankruptcy Code, Bankruptcy Rule 9014, or the Local Bankruptcy Rules.

78. As required by Bankruptcy Rule 2002, the Debtors are prepared to provide notice to all creditors, except those creditors whose claims the Debtors are authorized to satisfy pursuant to the relief requested in the *First Day Motion of the Debtors for Entry of an Order Authorizing, But Not Directing, the Debtors to Maintain and Administer Customer Programs and Honor Prepetition Obligations Related Thereto*, with respect to any hearings on their proposed disclosure statement and confirmation of their plan of reorganization, and any other actions requiring notice that are described in Bankruptcy Rules 2002(a)(4), (5), and (7). With respect to creditors whose claims the Debtors are authorized to satisfy pursuant to the Customer Program Motion, the Debtors will post notice with

1 respect to any hearings on their proposed disclosure statement and confirmation of their plan of
2 reorganization, and any other actions requiring notice that are described in Bankruptcy Rules
3 2002(a)(4), (5), and (7), on their restructuring website at <http://chapter11.epiqsystems.com/sbx>, and
4 their company website at <http://www.southbayexpressway.com>.

5 79. The Debtors believe that limiting the scope of notice will avoid the unnecessary
6 administrative burdens and costs of serving notice of all pleadings, notices, motions, or applications,
7 while assuring that the interested parties in this case receive proper and sufficient notice of all
8 matters.

9 80. I believe that the relief requested in the Motion Limiting Scope of Notice is in the
10 best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable
11 the Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on
12 behalf of the Debtors, I respectfully submit that the Motion Limiting Scope of Notice should be
13 approved.

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16 **3. First Day Motion of the Debtors for Entry of an Order Authorizing the**
17 **Debtors to (a) Prepare a List of Creditors In Lieu of Submitting a**
18 **Formatted Mailing Matrix, (b) File a Consolidated List of the Debtors' 20**
19 **Largest Unsecured Creditors, and (c) Mail Initial Notices (the**
20 **"Creditor Matrix Motion").**

21 81. The Debtors seek entry of an order authorizing them to (a) prepare a list of creditors
22 in lieu of submitting a formatted mailing matrix, (b) file a consolidated list of the Debtors' 20 largest
23 unsecured creditors, and (c) mail initial notices.

24 82. Although Bankruptcy Rule 1007 and Local Bankruptcy Rule 1007-1 require debtors
25 to file a formatted mailing matrix with the Court, the circumstances of these chapter 11 cases
26 warrant permitting the Debtors to maintain a consolidated list of creditors in electronic format only,
27 in lieu of filing a creditor matrix. Specifically, converting the Debtors' computerized information to
28 a format compatible with the matrix requirements would be costly and time consuming and would

1 increase the risk and recurrence of error with respect to information already intact on computer
2 systems maintained by the Debtors or their agents.

3 83. In addition, the Debtors have filed an application seeking to appoint Epiq Bankruptcy
4 Solutions, LLC. (“Epiq”) as their notice and claims agent in these chapter 11 cases. If such
5 application is granted, Epiq will, among other things, (a) assist with the consolidation of the Debtors’
6 computer records into a creditor database and (b) complete the mailing of notices to the entities in
7 such database. After consultation with Epiq, the Debtors believe that preparing the consolidated list
8 in the format or formats currently maintained in the ordinary course of business will be sufficient to
9 permit Epiq to promptly provide notices to all applicable entities.
10

11 84. The Debtors, working together with Epiq, already have prepared a single,
12 consolidated list of the Debtors’ creditors in electronic format. The Debtors are prepared to make
13 that list available in electronic form to any party in interest who so requests (or in non-electronic
14 form at such requesting entity’s sole cost and expense) in lieu of submitting a mailing matrix to the
15 clerk of this Court.
16

17 85. I believe that the relief requested in the Creditor Matrix Motion is in the best interests
18 of the Debtors’ estates, their creditors, and all other parties in interest, and will enable the Debtors to
19 continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the
20 Debtors, I respectfully submit that the Creditor Matrix Motion should be approved.
21

22 **4. First Day Motion of the Debtors for Entry of an Order Granting an**
23 **Extension of Time to File Schedules of Assets and Liabilities, Schedules of**
24 **Executory Contracts and Unexpired Leases, and Statements of Financial**
25 **Affairs (the “SOFAS and Schedules Motion”).**

26 86. The Debtors request entry of an order extending the deadline by which the Debtors
27 must file the Schedules and Statements for an additional 16 days (for a total of 30 days), without
28 prejudice to the Debtors’ ability to request additional time for cause shown.

1 87. The Debtors ordinarily would be required to file the Schedules and Statements within
2 14 days after the Petition Date. Because the Debtors have a significant number of creditors, the
3 Debtors believe that they will need additional time beyond 14 days to complete the Schedules and
4 Statements.

5 88. I believe that the relief requested in the SOFAS and Schedules Motion is in the best
6 interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the
7 Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on
8 behalf of the Debtors, I respectfully submit that the SOFAS and Schedules Motion should be
9 approved.
10

11 **5. First Day Motion of the Debtors for Entry of Interim Order**
12 **(A) Authorizing Use of Cash Collateral; (B) Granting Adequate**
13 **Protection to Certain Prepetition Secured Parties; (C) Granting Related**
14 **Relief; and (D) Scheduling Final Hearing Thereon (the**
 "Cash Collateral Motion").

15 89. The Debtors request entry of interim and final orders: (a) authorizing the Debtors to
16 use Cash Collateral on an interim basis pending a final hearing on the Cash Collateral Motion,
17 (b) granting adequate protection to certain secured, with respect to, *inter alia*, such use of Cash
18 Collateral and any diminution in the value of the secured lenders' interests in the Prepetition
19 Collateral (as defined in the Interim Cash Collateral Order), including Cash Collateral,
20 (c) prescribing the form and manner of notice and setting the time for the Final Hearing, and
21 (d) granting related relief.
22

23 90. I believe that the proposed adequate protection for certain secured lenders is
24 necessary and appropriate to ensure that the Debtors can continue to use the Cash Collateral.
25 Without use of the Cash Collateral, the Debtors will have little or no cash to pay trade creditors and,
26 therefore, the Debtors' trade creditors may cease to provide goods and services to the Debtors on
27 credit, and the Debtors will not be able to pay their payroll and other direct operating expenses or
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1 obtain goods and services needed to run their businesses and meet customer demands in a manner
2 that will avoid immediate and irreparable harm to the Debtors' estates. The Debtors' ability to
3 finance their operations and the availability to the Debtors of sufficient working capital and liquidity
4 through the use of cash collateral is vital to the confidence of the Debtors' employees, major
5 suppliers, and to the preservation and maintenance of the going-concern values and other values of
6 the Debtors' estates. Moreover, the secured lenders with interests in the cash collateral have
7 consented to the use of the Cash Collateral on the terms described in the Cash Collateral Motion.
8

9 91. I believe that the relief requested in the Cash Collateral Motion is in the best interests
10 of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to
11 continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the
12 Debtors, I respectfully submit that the Cash Collateral Motion should be approved.
13

14 **6. First Day Motion of the Debtors for Entry of an Order Under 11 U.S.C.**
15 **§§ 363, 364, 1107, and 1108 Authorizing, but Not Directing,**
16 **(A) Continued Use of Existing Cash Management System,**
17 **(B) Maintenance of Existing Bank Accounts, (C) Continued Use of**
18 **Existing Business Forms, and (D) Continued Use of Existing Investment**
19 **Guidelines (the "Cash Management Motion").**

20 92. The Debtors request the authority to: (a) continue to use, with the same account
21 numbers, all of the Bank Accounts in their Cash Management System (each as defined in the Cash
22 Management Motion); (b) treat the Bank Accounts for all purposes as accounts of the Debtors as
23 debtors in possession; (c) open new debtor-in-possession accounts, if needed; (d) use, in their present
24 form, all correspondence and business forms (including, without limitation, letterhead, purchase
25 orders, Tolling Forms, and invoices) and other documents related to the Bank Accounts existing
26 immediately before the Petition Date, without reference to their status as debtors in possession until
27 existing stock is depleted; and (e) maintain their existing Investment Practices (as defined in the
28 Cash Management Motion).

1 93. In addition, the Debtors further request that the Court authorize the Banks to:
2 (a) continue to maintain, service, and administer the Bank Accounts and (b) debit the Bank Accounts
3 in the ordinary course of business on account of (i) checks, drafts, wires, or ACH payments (as
4 defined in the Cash Management Motion) drawn on the Bank Accounts that are presented for
5 payment at the Banks whether such checks, drafts, wires, or ACH payments are dated prior to or
6 subsequent to the Petition Date; (ii) checks or other items deposited in the Bank Accounts prior to
7 the Petition Date that have been dishonored or returned unpaid for any reason (including associated
8 fees and costs), to the same extent the Debtors were responsible for such items prior to the Petition
9 Date; and (iii) undisputed, outstanding service charges owed to the Banks as of the Petition Date on
10 account of the maintenance of the Debtors' Cash Management System, if any.
11

12 94. In the ordinary course of business, the Debtors utilize an integrated cash management
13 system to collect, transfer, and disburse funds generated by their operations and maintains current
14 and accurate accounting records of all daily cash transactions. If the Debtors were required to
15 comply with the U.S. Trustee Guidelines, the burden of opening new accounts, revising cash
16 management procedures, instructing customers to redirect payments, and the immediate ordering of
17 new checks with a "Debtor in Possession" legend, would disrupt the Debtors' business at this critical
18 time. The Debtors respectfully submit that parties in interest will not be harmed by their
19 maintenance of the existing Cash Management System, including their Bank Accounts, because the
20 Debtors have implemented appropriate mechanisms to ensure that unauthorized payments will not be
21 made on account of obligations incurred prior to the Petition Date.
22
23

24 95. The Debtors also adhere to certain Investment Practices, which the Debtors believe
25 will provide the protection contemplated by section 345(b) of the Bankruptcy Code, while providing
26 additional interest income. All investments are designed to comply with the strict investment
27 limitations specified in the Collateral Agency Account Agreement, pursuant to the Senior Loan
28

1 Agreement and TIFIA Loan Agreement, which provides that the Debtors may invest and reinvest
2 funds in the Bank Accounts only in permitted investments. Under the Investment Requirements, the
3 Debtors are obligated to invest only in government obligations, such as certificates of deposit are
4 collaterally secured by government-obligated securities, repurchase agreements collateralized by
5 government-obligated securities, and certain other funds that invest solely in government
6 obligations. Therefore, the Debtors seek a waiver of strict compliance with the requirements of
7 section 345(b) of the Bankruptcy Code.
8

9 96. I believe that the relief requested in the Cash Management Motion is vital to ensuring
10 the Debtors' seamless transition into chapter 11. Authorizing the Debtors to maintain their Cash
11 Management System will avoid many of the possible disruptions and distractions that could divert
12 their attention from more critical matters during the initial days of these chapter 11 cases.
13

14 97. I believe that the relief requested in the Cash Management Motion is in the best
15 interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the
16 Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on
17 behalf of the Debtors, I respectfully submit that the Cash Management Motion should be approved.
18

19 **7. First Day Motion of the Debtors for Entry of an Order Authorizing, but**
20 **Not Directing, the Debtors to Maintain and Administer Customer**
21 **Programs and Honor Prepetition Obligations Related Thereto (the**
22 **“Customer Program Motion”).**

23 98. The Debtors seek entry of an order authorizing, but not directing, the Debtors to
24 honor outstanding obligations and, where applicable, make payments to customers, in connection
25 with the Customer Programs (as defined in the Customer Program Motion, including, without
26 limitation, obligations related to the Prepaid Tolls, Interoperability Agreements, the Chula Vista Toll
27 Credit Program, Fee Waivers, and Miscellaneous Toll credits) (collectively, the “Customer Program
28 Obligations”).

1 99. I believe that the Debtors' ability to honor their Customer Program Obligations is
2 necessary to retain their customer base and ensure a smooth transition into chapter 11. The crux of
3 the Debtors' revenue—electronically paid tolls—relies on customer confidence that travelling on the
4 Expressway will provide time and cost savings. Maintaining and honoring the Customer Programs
5 will be even more important as the Debtors embark on their chapter 11 restructuring initiatives.

6
7 100. I believe that the relief requested in the Customer Program Motion is in the best
8 interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the
9 Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on
10 behalf of the Debtors, I respectfully submit that the Customer Program Motion should be approved.

11 **8. First Day Motion of the Debtors for Entry of Interim and Final Orders**
12 **Authorizing, but Not Directing, the Debtors to Honor Prepetition**
13 **Obligations on Account of (A) Wages, Salaries, and Other Compensation;**
14 **(B) Reimbursable Employee Expenses; and (C) Employee Medical and**
15 **Similar Benefits (the "Wages and Benefits Motion").**

16 101. The Debtors request entry of interim and final orders authorizing, but not directing,
17 the Debtors, in their sole discretion, to pay prepetition claims, honor obligations, and to continue
18 programs, in the ordinary course of business and consistent with past practice, relating to:
19 (a) Unpaid Compensation, Deductions, Withheld Amounts, and Payroll Taxes; (b) Reimbursable
20 Expenses; and (c) Employee Benefits (each as defined in the Wages and Benefits Motion, and
21 collectively, the "Employee Obligations"). As of the Petition Date, the Debtors estimate that a total
22 of approximately \$238,000 has accrued and remains unpaid on account of prepetition Employee
23 Obligations.

24 102. The majority of the Debtors' Employees rely exclusively on their compensation,
25 benefits, and reimbursement of expenses to satisfy their daily living expenses. Consequently, these
26 Employees will be exposed to significant financial difficulties if the Debtors are not permitted to
27 honor obligations for unpaid compensation, benefits, and reimbursable expenses. Moreover, if the
28

1 Debtors are unable to satisfy such obligations, Employee morale and loyalty will be jeopardized at a
2 time when Employee support is critical. Furthermore, if the Court does not authorize the Debtors to
3 honor their various obligations under the insurance programs, the Employees will not receive health
4 coverage and, thus, may become obligated to pay certain health care claims in cases where the
5 Debtors have not paid the respective insurance providers. The loss of health care coverage will
6 result in considerable anxiety for Employees (and likely attrition) at a time when the Debtors need
7 such Employees to perform their jobs at peak efficiency.
8

9 103. I believe that the relief requested in the Wages and Benefits Motion is in the best
10 interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the
11 Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on
12 behalf of the Debtors, I respectfully submit that the Wages and Benefits Motion should be approved.
13

14 **9. First Day Motion of the Debtors for Entry of An Order Authorizing, but**
15 **Not Directing, the Debtors to (a) Maintain Their Prepetition Insurance**
16 **Policies and Enter Into New Policies, (b) Revise, Extend, Renew,**
17 **Supplement, or Change Insurance Coverage, As Needed, and**
18 **(c) Maintain Their Prepetition Premium Financing Agreement (the**
19 **“Insurance Motion”).**

20 104. The Debtors request entry of an order authorizing, but not directing, the Debtors to
21 (a) maintain their prepetition insurance policies and enter into new policies, (b) revise, extend,
22 renew, supplement, or change insurance coverage, as needed, and (c) maintain their prepetition
23 premium financing agreement.
24

25 105. The Debtors currently maintain 15 insurance policies (collectively, the “Policies”)
26 relating to operations in the ordinary course of business, 12 of which are financed pursuant to a
27 secured premium financing agreement (the “PFA”). Collectively, these Policies provide coverage
28 for, among other things, general liability, property, earthquake, automobile, workers compensation,
pollution, directors and officers liability, umbrella coverage, excess umbrella coverage, and
commercial crime.

1 106. The Policies are essential to the preservation of the value of the Debtors' business,
2 properties, and assets. In many cases, insurance coverage such as that provided by the Policies is
3 required by the diverse regulations, laws, and contracts that govern the Debtors' commercial
4 activities.

5 107. By financing the premiums of certain of their insurance Policies pursuant to the PFA,
6 the Debtors are able to spread out those premiums and fees over the applicable coverage periods and
7 better manage their cash flow. Generally, lenders are unwilling to finance insurance premiums on an
8 unsecured basis. Any non-payment of the installments outstanding under the PFA could result in the
9 termination of Policies financed under the PFA and could have an adverse impact on the Debtors'
10 ability to finance premiums for such replacement policies and for future insurance policies.

11 108. In addition, the Debtors purchased through the American International Specialty
12 Lines Insurance Company coverage for directors and officers liability (the "American International
13 D&O Policy"). The Debtors also purchased through the Zurich coverage for excess directors and
14 officers liability (the "Zurich D&O Policy"). Within 21 days of the Petition Date, the American
15 International D&O Policy and the Zurich D&O Policy (together, the "D&O Policies") will expire.

16 109. In order to maintain uninterrupted directors and officers liability insurance coverage,
17 the Debtors plan to renew or replace the D&O Policies in the ordinary course of business and, as
18 such, will incur premiums that will need to be paid in full upon inception of such new policies.
19 Because renewal or replacement of the D&O Policies is an ordinary course business transaction, the
20 Debtors do not believe that they are required to seek authority to renew or replace the D&O Policies
21 and to pay premiums on account of such policies that will be purchased postpetition. Out of an
22 abundance of caution, however, the Debtors request authority, but not direction, to renew or replace
23 the D&O Policies and pay any premiums or other amounts related thereto in the ordinary course of
24 business, within 21 days of the Petition Date.
25
26
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1 110. I believe that the relief requested in the Insurance Motion is in the best interests of the
2 Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to
3 continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the
4 Debtors, I respectfully submit that the Insurance Motion should be approved.

5 **10. First Day Motion of the Debtors for Entry of an Order Authorizing, but**
6 **Not Directing, the Debtors to Pay Interim Compensation to Insiders (the**
7 **“Insider Compensation Motion”).**

8 111. The Debtors request entry of an order authorizing, but not directing, the Debtors to
9 pay interim compensation to the SBX management team, which is comprised of Greg Hulsizer, the
10 Chief Executive Officer of SBX, myself, the Chief Financial Officer of SBX, Theresa Weekes, the
11 Chief Accounting Officer of SBX, and Shane Savgur, the Chief Technology Officer of SBX
12 (collectively, the “SBX Insiders”). Each of the SBX Insiders are employees of SBX pursuant to an
13 employment agreement. Only Mr. Hulsizer and myself are an officer of the Debtors

14 112. The continued employment of each of the SBX Executives is not only critical to the
15 success of the Debtors' reorganization efforts, it is also critical to the continued operation of the
16 Debtors' business operations and oversight. If the Debtors are not permitted to compensate the SBX
17 Insiders in the ordinary course of business, then the SBX Insiders will be forced to seek employment
18 elsewhere, resulting in a significant negative impact on the Debtors' ability to maintain business
19 operations during a critical point in their reorganization process. Without the Debtors' management
20 team who fully know and understand the Debtors' business, the Debtors will be unable to
21 accomplish a smooth transition into chapter 11 and will risk significant harm to their businesses, to
22 the detriment of all parties in interest.

23 113. I believe that the relief requested in the Insider Compensation Motion is in the best
24 interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the
25 Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on
26
27
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1 behalf of the Debtors, I respectfully submit that the Insider Compensation Motion should be
2 approved.

3 **11. First Day Motion of the Debtors for Entry of Interim and Final Orders**
4 **Determining Adequate Assurance of Payment for Future Utility Services**
5 **(the “Utility Motion”).**

6 114. The Debtors request the entry of interim and final orders (a) determining that the
7 Utility Providers (as defined in the Utility Motion) have been provided with adequate assurance of
8 payment within the meaning of section 366 of the Bankruptcy Code; (b) approving Debtors’
9 proposed offer of adequate assurance and procedures governing the Utility Providers’ requests for
10 additional or different adequate assurance; (c) prohibiting the Utility Providers from altering,
11 refusing, or discontinuing services on account of prepetition amounts outstanding and on account of
12 any perceived inadequacy of the Debtors’ proposed adequate assurance pending entry of the Final
13 Order; (d) determining the Debtors are not required to provide any additional adequate assurance
14 beyond what is proposed by the Utility Motion, pending entry of the Final Order; and (e) setting a
15 final hearing (the “Final Hearing”) on the Debtors’ proposed adequate assurance.
16

17 115. In the ordinary course of business, the Debtors incur expenses for gas, water, sewer,
18 electric, telecommunications, and other similar utility services provided by approximately eight
19 utility providers (the “Utility Providers”). Uninterrupted utility services are essential to the Debtors’
20 ongoing operations and, therefore, to the success of their reorganization. Indeed, any interruption of
21 utility services, even for a brief period of time, would negatively affect the Debtors’ operations,
22 customer relationships, revenues, and profits, seriously jeopardizing the Debtors’ reorganization
23 efforts and, ultimately, value and creditor recoveries. It is, therefore, critical that utility services
24 continue uninterrupted during these chapter 11 cases.
25

26 116. I believe and am advised that the proposed procedures are necessary in these chapter
27 11 cases, because if such procedures were not approved, the Debtors could be forced to address
28

1 requests by the Utility Providers in a disorganized manner during the critical first weeks of these
2 chapter 11 cases. Moreover, a Utility Provider could blindside the Debtors by unilaterally
3 deciding—on or after the 30th day following the Petition Date—that it is not adequately assured of
4 future performance and discontinuing service or making an exorbitant demand for payment to
5 continue service. Discontinuation of utility service could shut down operations, and any significant
6 disruption of operations could jeopardize a successful reorganization in these chapter 11 cases.
7

8 117. I believe that the relief requested in the Utility Motion is in the best interests of the
9 Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to
10 continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the
11 Debtors, I respectfully submit that the Utility Motion should be approved.

12 **12. Motion of the Debtors for Entry of an Order Authorizing the**
13 **Employment and Retention of Epiq Bankruptcy Solutions, LLC as Notice**
14 **and Claims Agent (the "Epiq Retention Application").**

15 118. The Debtors seek entry of an order pursuant to section 156(c) of title 28 of the United
16 States Code, section 503(b) of the Bankruptcy Code, and Local Bankruptcy Rule 2002-1(f)
17 authorizing the employment and retention of Epiq, effective as of the Petition Date as the notice and
18 claims agent in accordance with the terms and conditions set forth in the Services Agreement.

19 119. In deciding to retain Epiq, the Debtors considered proposals from four reputable
20 notice and claims agents. Based upon their review of those proposals, the Debtors determined that
21 the compensation provided for in the Epiq proposal, including the fees, expenses, and
22 indemnification and limitation on liability provisions, is reasonable and consistent with proposals of
23 similarly qualified notice and claims agent service providers.
24

25 120. I believe that the relief requested in the Epiq Retention Application is in the best
26 interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the
27
28

1 Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on
2 behalf of the Debtors, I respectfully submit that the Epiq Retention Application should be approved.

3 **13. Motion of the Debtors for Entry of an Order Authorizing the Debtors to**
4 **Pay Certain Prepetition Taxes and Fees (the “Taxes Motion”).**

5 121. The Debtors request entry of an order, authorizing, but not directing, the Debtors to
6 pay prepetition Taxes and Fees in the ordinary course of business to the extent any such Taxes and
7 Fees come due and owing on or after the Petition Date (each as defined in the Taxes Motion).
8 Payment of the Taxes and Fees in the ordinary course of business is justified because, among other
9 things: (a) certain of the Taxes and Fees are not property of the estate pursuant to section 541(d) of
10 the Bankruptcy Code; (b) payment of the Taxes and Fees will avoid unnecessary distractions in these
11 chapter 11 cases; (c) certain of the Taxes and Fees may constitute secured or priority claims entitled
12 to special treatment under the Bankruptcy Code; and (d) the Debtors have authority to remit payment
13 on account of such Taxes and Fees in the ordinary course of business.

14
15 122. I believe that the relief requested in the Taxes Motion is in the best interests of the
16 Debtors’ estates, their creditors, and all other parties in interest, and will enable the Debtors to
17 continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the
18 Debtors, I respectfully submit that the Taxes Motion should be approved.

19
20 **B. Second Day Motions**

21 **1. Application for Entry of an Order Authorizing the Employment and**
22 **Retention of Kirkland & Ellis LLP as Attorneys for the Debtors as of the**
23 **Petition Date (the “K&E Retention Application”).**

24 123. The Debtors request entry of an order authorizing the employment and retention of
25 Kirkland & Ellis LLP (“K&E”) as their attorneys as of the Petition Date, in accordance with the
26 terms and conditions set forth in that certain Engagement Letter (as defined in the K&E Retention
27 Application), by and between the Debtors and K&E dated as of November 3, 2009.

1 124. I believe that the relief requested in the K&E Retention Application is in the best
2 interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the
3 Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on
4 behalf of the Debtors, I respectfully submit that the K&E Retention Application should be approved.
5

6 **2. Application for Entry of an Order Authorizing the Employment and**
7 **Retention of Imperial Capital, LLC as Financial Advisor to the Debtors**
8 **as of the Petition Date (the "Imperial Capital Retention Application").**

9 125. The Debtors seek entry of an order authorizing the employment and retention of
10 Imperial Capital, LLC ("Imperial Capital") as their financial advisor as of the Petition Date, in
11 accordance with the terms and conditions set forth in that certain Engagement Letter (as defined in
12 the Imperial Capital Retention Application), dated as of March 1, 2010 by and between the Debtors
13 and Imperial Capital.

14 126. I believe that the relief requested in the Imperial Capital Retention Application is in
15 the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will
16 enable the Debtors to continue to operate their businesses in chapter 11 without disruption.
17 Accordingly, on behalf of the Debtors, I respectfully submit that the Imperial Capital Retention
18 Application should be approved.

19 **3. Application for the Entry of an Order Authorizing the Employment and**
20 **Retention of PricewaterhouseCoopers LLP as Tax Advisor and Auditor**
21 **to the Debtors as of the Petition Date (the "PwC Retention Application").**

22 127. The Debtors seek entry of an order authorizing the employment and retention of
23 PricewaterhouseCoopers LLP ("PwC") as their tax advisor and auditor as of the Petition Date, in
24 accordance with the terms and conditions set forth in two engagement letters: (a) the tax services
25 engagement letter, dated as of March 15, 2009, by and between the Debtors and PwC and (b) the
26 audit engagement letter, dated as of March 16, 2010, by and between the Debtors and PwC.
27
28

1 128. I believe that the relief requested in the PwC Retention Application is in the best
2 interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the
3 Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on
4 behalf of the Debtors, I respectfully submit that the PwC Retention Application should be approved.
5

6 **4. Motion of the Debtors for Entry of an Order Establishing Procedures for**
7 **Interim Compensation and Reimbursement of Expenses for Professionals**
8 **and Official Committee Members (the "Interim Compensation Motion").**

9 129. The Debtors request entry of an order establishing an orderly and regular process for
10 the retention and employment of various professionals, including: (a) K&E, as the Debtors'
11 restructuring counsel; (b) Imperial, as financial advisor; and (c) PwC, as tax advisor and auditor
12 (collectively, the "Debtor Professionals"). The Debtors anticipate that they also may retain other
13 professionals during the course of these chapter 11 cases as the need arises. Moreover, an official
14 committee may be appointed in these chapter 11 cases and, if so appointed, likely will retain counsel
15 and other professionals in connection with these chapter 11 cases (together with the Debtor
16 Professionals, the "Professionals").

17 130. I am advised and believe that the compensation procedures proposed in the Interim
18 Compensation Motion comply with the practice in this district and are necessary to ensure that the
19 Professionals are fairly and timely compensated for their services in these chapter 11 cases and are
20 not forced to bear undue financial burden or risk caused by delays in payment. I believe that the
21 efficient administration of these chapter 11 cases will be significantly aided by establishing the
22 foregoing procedures.
23

24 131. I believe that the relief requested in the Interim Compensation Motion is in the best
25 interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the
26 Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on
27
28

1 behalf of the Debtors, I respectfully submit that the Interim Compensation Motion should be
2 approved.

3 **5. Motion of the Debtors for Entry of an Order Authorizing the Debtors to**
4 **Employ and Compensate Certain Professionals Utilized in the Ordinary**
5 **Course of Business (the “OCP Motion”).**

6 132. The Debtors request entry of an order authorizing the Debtors to employ and
7 compensate certain professionals employed in the ordinary course of business (each, an “OCP”),
8 pursuant to the procedures set forth in the OCP Motion.

9 133. The Debtors believe that the retention of the OCPs is necessary for the day-to-day
10 operations of the Debtors’ businesses. The OCP Procedures will allow for monitoring of the fees
11 and expenses of OCPs, and no OCP will perform substantial bankruptcy-related services without
12 filing an application with the Court for separate retention as a non-ordinary course professional.

13 134. I believe that the relief requested in the OCP Motion is in the best interests of the
14 Debtors’ estates, their creditors, and all other parties in interest, and will enable the Debtors to
15 continue to operate their businesses in chapter 11 without disruption. Accordingly, on behalf of the
16 Debtors, I respectfully submit that the OCP Motion should be approved.

17 **6. Motion of the Debtors for Entry of an Order Authorizing, But Not**
18 **Directing, the Debtors to (A) Pay, In the Ordinary Course of Business,**
19 **Claims for Prepetition Goods and Services Related to Park Betterments**
20 **Project and (B) Continue to Honor Park Betterments Obligations (the**
21 **“Park Betterments Motion”).**

22 135. The Debtors request authority, but not direction, to (a) pay and discharge, on a case-
23 by-case basis and in their sole discretion, amounts incurred prepetition only in respect of the Park
24 Betterments (as defined in the Park Betterments Motion) and covered under the Park Betterments
25 Letter of Credit, in the ordinary course of business, and in accordance with prepetition practice and
26 the terms of applicable contracts and agreements and (b) to continue to honor, perform, and exercise
27
28

1 their rights and obligations (whether arising prepetition or postpetition) in respect of the Park
2 Betterments.


3 136. I believe that the relief requested in the Park Betterments Motion is in the best
4 interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the
5 Debtors to continue to operate their businesses in chapter 11 without disruption. Accordingly, on
6 behalf of the Debtors, I respectfully submit that the Park Betterments Motion should be approved.
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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements
are true correct.

San Diego, California
Dated: March 22, 2010

By: 

Anthony G. Evans
Chief Financial Officer
South Bay Expressway, L.P.