
PREPARED BY:

**Don A. McGraw, Jr. - MSBN 2621
Montgomery McGraw, PLLC
P. O. Box 1039
Canton, MS 39046
601-859-3616**

RETURN TO:

**Don A. McGraw, Jr.
Montgomery McGraw, PLLC
P. O. Box 1039
Canton, MS 39046
601-859-3616**

**INDEXING: SW1/4 Section 21, Township 8 North, Range 2 East, Madison County,
Mississippi.**

**STATE OF MISSISSIPPI
COUNTY OF MADISON**

SPECIAL WARRANTY DEED

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

GRANTOR:

**MADISON COUNTY, MISSISSIPPI, A Body Politic
P.O. Box 404
Canton, MS 39046
Phone: 601-859-1171**

does hereby sell, convey and warrant specially unto:

GRANTEE:

**DEREK A. HENDERSON, in his capacity as Chapter 7 Trustee for VCR I, LLC
1765 A Lelia Drive, Suite 103
Jackson, MS 39216-4820
Phone: 601-948-0109**

the following described property lying and being situated in Madison County, Mississippi, to-wit:

SEE EXHIBIT "A", PAGES 1 and 2 ATTACHED HERETO.

WARRANTY OF THIS CONVEYANCE is subject to the following exceptions, to wit:

1. Madison County, Mississippi, ad valorem taxes.
2. Madison County, Mississippi, Zoning and Subdivision Regulations and Ordinances, as amended.
3. Reservations, conveyances and/or leases of record in regard to the oil, gas and other minerals lying in, on and under the subject property.
4. Rights-of-way and easements for roads, power lines and other utilities and restrictive covenants of record.

This deed is being executed pursuant to Order Approving Compromise and Settlement - Madison County, Mississippi, dated December 20, 2017 and filed as Document No. 666 in Case No. 12-02009 EE in The United States Bankruptcy Court for the Southern District of Mississippi. A copy of the Order is attached hereto as Exhibit "B".

WITNESS OUR SIGNATURES on this the _____ day of _____, 2018.

ATTEST:

**MADISON COUNTY MISSISSIPPI,
a Body Politic of the State of Mississippi**

**Ronny Lott
Chancery Clerk, Madison County,
Mississippi**

By: _____
**Sheila Jones, President of Madison
County, MS Board of Supervisors**

**STATE OF MISSISSIPPI
COUNTY OF MADISON**

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the said county and state, on this ____ day of _____, 2018, within my jurisdiction, the within named **Sheila Jones and Ronny Lott**, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed in the above and foregoing instrument and acknowledged that they executed the same in their representative capacities, and that by their signatures on the instrument and as the act and deed of the persons or entities upon behalf of which of which they acted, executed the above and foregoing instrument, after first having been duly authorized so to do.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

(SEAL)

EXHIBIT "A"

A PARCEL OF LAND CONTAINING 0.45 ACRES (19,759.82 SQUARE FEET), MORE OR LESS, BEING SITUATED IN THE SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 8 NORTH, RANGE 2 EAST, MADISON COUNTY, MISSISSIPPI, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCE AT A FOUND NAIL MARKING THE NORTHWEST CORNER OF SAID SECTION 21; RUN THENCE SOUTH FOR A DISTANCE OF 3957.51 FEET; THENCE EAST FOR A DISTANCE OF 1227.88 FEET TO A POINT ON THE NORTH LINE OF THE VCR I, LLC PROPERTY AS DESCRIBED IN BOOK 1874 AT PAGE 30 OF THE MADISON COUNTY LAND RECORDS; RUN THENCE N89°42'20"E FOR A DISTANCE OF 106.62 FEET; THENCE RUN 743.01 FEET ALONG THE ARC OF A 812.00 FOOT RADIUS CURVE TO THE LEFT, SAID ARC HAVING A 717.36 FOOT CHORD BEARING S44°52'09"W; THENCE S71°04'59"W FOR A DISTANCE OF 348.46 FEET; THENCE RUN 576.32 FEET ALONG THE ARC OF A 712.00 FOOT RADIUS CURVE TO THE LEFT, SAID ARC HAVING A 560.72 FOOT CHORD BEARING S47°53'39"W; THENCE RUN 143.04 FEET ALONG THE ARC OF A 758.00 FOOT RADIUS CURVE TO THE LEFT, SAID ARC HAVING A 142.83 FOOT CHORD BEARING S14°55'40"W; THENCE S47°22'42"E FOR A DISTANCE OF 225.03 FEET; THENCE S81°49'12"E FOR A DISTANCE OF 107.47 FEET; THENCE N89°36'05"E FOR A DISTANCE OF 97.78 FEET; THENCE S00°01'00"W FOR A DISTANCE OF 15.00 FEET TO THE NORTHERN RIGHT OF WAY LINE OF GLUCKSTADT ROAD; THENCE RUN ALONG SAID RIGHT OF WAY S89°36'05"W FOR A DISTANCE OF 419.90 FEET TO THE EASTERN LINE OF CHURCH ROAD; THENCE ALONG SAID EASTERN LINE N00°18'41"W FOR A DISTANCE OF 368.82 FEET TO THE POINT OF BEGINNING FOR THE PARCEL HEREIN DESCRIBED; FROM SAID POINT OF BEGINNING, THENCE LEAVE SAID EASTERN LINE AND RUN 264.09 FEET ALONG THE ARC OF A 812.00 FOOT RADIUS CURVE TO THE RIGHT, SAID ARC HAVING A 262.93 FOOT CHORD BEARING N34°20'30"E; THENCE N01°23'38"E FOR A DISTANCE OF 36.48 FEET; THENCE N41°45'12"W FOR A DISTANCE OF 23.22 FEET; THENCE RUN 92.50 FEET ALONG THE ARC OF A 110.00 FOOT RADIUS CURVE TO THE LEFT, SAID ARC HAVING A 89.80 FOOT CHORD BEARING N65°50'41"W; THENCE N89°56'10"W FOR A DISTANCE OF 39.81 FEET; THENCE S45°03'50"W FOR A DISTANCE OF 7.07 FEET; THENCE S00°03'50"W FOR A DISTANCE OF 11.67 FEET; THENCE RUN 35.50 FEET ALONG THE ARC OF A 30.00 FOOT RADIUS CURVE TO THE LEFT, SAID ARC HAVING A 33.47 FOOT CHORD BEARING S33°50'17"E; THENCE RUN 168.88 FEET ALONG THE ARC OF A 60.00 FOOT RADIUS CURVE TO THE RIGHT, SAID ARC HAVING A 118.40 FOOT CHORD BEARING S12°53'37"W TO THE EASTERN LINE OF CHURCH ROAD; THENCE ALONG SAID RIGHT OF WAY S00°18'41"E FOR A DISTANCE OF 147.81 FEET TO THE POINT OF BEGINNING.

EXHIBIT "A"

All of that part of Church Road which lies East of the following described center line, to-wit:

The following description is based on the Mississippi State Plane Coordinate System, West Zone, NAD 83/93, NAVD88, grid values, using a combined scale factor of 0.9999453563 and a ground to grid angle of N 00°07'19"W developed at the Point of Commencement, being derived using the University of Southern Mississippi's RTK/VRS network, said point having a value of N:1102730.36, E:2366567.11 and Z:302 on said coordinate system.

Commencing at the corner common to Sections 16, 17, 20 and 21 of Township 8 North, Range 2 East, Madison County, Mississippi, said point being represented by a "PK" nail found in the asphalt road (see survey of 16th School Section in the plat cabinets of Madison County's Chancery Clerk's office for more details concerning this corner), thence run South 00°00'22" West a distance of 4498.70 feet to a point for reference, said point being North 89°59'38" West, 20.8 feet from a concrete right of way marker found at the northern most point of intersection of the original Church Road with its recent extension which turns easterly to Calhoun Parkway, (see description of 5.35 acre right of way tract found in Deed Book 2619, Page 147); thence continue South 00°00'22" West a distance of 100.82 feet to a point in the center of the old Church Road at its intersection with an extension of the south right of way line of the recent extension easterly, bearing South 89°58'20" West, 75.0 feet from a ½" rebar (N:1098130.76, E:2366641.86, Z:287) found at its point of tangency to a curve to the southeast and being the Point of Beginning of the herein described parcel:

From the Point of Beginning, parcel shall lie left and right of the following course and extend easterly and westerly from said course to include any area by which Madison County may have acquired an interest in, during its long time maintenance and improvement of said original Church Road (pre December 2010), said course being along the center of said road as it exists this day (April, 2018) and an extension thereof, South 00°00'22" West a distance of 356.45 feet to the westerly right of way of Calhoun Parkway, being the Point of Terminus of said parcel, said point witnessed by a concrete right of way marker (N:1097823.16, N:2866590.28, Z:278) bearing North 25°55'03" East for 54.23 feet, and a ½" rebar (N:1097721.36, E:2366540.81, Z:276) bearing South 25°55'03" West for 58.96 feet, found at the northern most corner of that certain right of way tract acquired from the St. Joseph Catholic Church as found in Deed Book 2399, Page 182, said parcel situated in the Southeast Quarter of the Southeast Quarter of Section 20, and the Southwest Quarter of the Southwest Quarter of Section 21, Township 8 North, Range 2 East, Madison County in the Great State of Mississippi.



SO ORDERED,

A handwritten signature in black ink that reads "Edward Ellington".

Judge Edward Ellington
United States Bankruptcy Judge
Date Signed: December 20, 2017

The Order of the Court is set forth below. The docket reflects the date entered.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

BANKRUPTCY PROCEEDING

VCR I, LLC

CASE NUMBER: 12-02009 EE

ORDER APPROVING COMPROMISE AND SETTLEMENT -
MADISON COUNTY, MISSISSIPPI

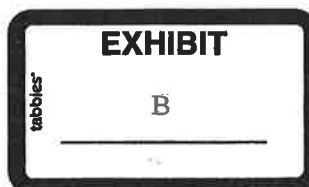
THIS MATTER COMES before the Court upon Motion to Approve Compromise and Settlement - Madison County, Mississippi filed Derek A. Henderson, Trustee (Docket No. 653). After notice to creditors and parties-in-interest, no objections have been filed. The Court finds that the Motion is well taken and should be granted. The Trustee asserts as follows:

1.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334, 28 U.S.C. §157, 11 U.S.C. §105, and Rule 9019 of the Federal Rules of Bankruptcy Procedure and related code sections and rules.

2.

On June 21, 2012, VCR I, LLC ("VCR" or "Debtor") filed its petition under Chapter 11 of the United States Bankruptcy Code before the United States Bankruptcy Court for the Southern District of Mississippi. On October 18, 2013, the case was converted to Chapter 7. Derek A. Henderson has been appointed the Chapter 7 Trustee.



3.

Prior to the filing of the bankruptcy petition, the Debtor owned undeveloped real property in Gluckstadt, Madison County, Mississippi. This property is located at the northwest corner of intersection of Gluckstadt, Mississippi and Interstate 55 ("VCR Property").

4.

In the year 2010, Madison County was in the process of constructing a roadway known as the Calhoun Parkway ("Parkway"). A part of the Parkway was to go through the VCR Property. VCR and Madison County began negotiating an agreement for the construction of the Parkway on the VCR property. As a result of negotiations, on April 19, 2010, Tim Johnson, the President of the Madison County Supervisors made two (2) written offers to VCR for the purchase of VCR Property. The first offer was \$711,500.00 for 5.35 acres and the second offer was \$45,000.00 for .45 acres.

5.

On September 7, 2010, the Debtor and the County executed a Lease Agreement with Option for Sale and Purchase of Real Property (hereinafter "September 7th Lease").

6.

The September 7th Lease included the lease and option to purchase 5.8 acres. This 5.8 acres consists of two parcels - 5.35 acre tract and .45 acre tract. The total price was \$756,500.00. This is the same amount of the two offers made by the County of \$711,500.00 and \$45,000.00.

7.

It is important to note that the .45 acre tract is included in the September 7th Lease.

8.

The September 7th Lease speaks for itself and contains a number of key provisions including but not limited to the following:

8.1

VCR is defined as Lessor and the County is defined as Lessee (opening paragraph).

8.2

There is an attached Exhibit A describing property involved in the Lease (2nd paragraph).

8.3

Lessee granted two (2) temporary construction easements described as Exhibit B (Paragraph No. 2).

8.4

County to work in good faith with VCR for zoning (Paragraph No. 2).

8.5

Lease term is September 7, 2010 to automatically terminating on September 7, 2011 (Paragraph No. 3).

8.6

Rental Payment -
within 15 days of lease (1st and last month) \$126,083.33

Monthly (\$63,041.67) -
October 20, 2010 to July 20, 2011
(10 months x \$63,041.67) \$630,416.70

Total: \$756,500.00

(Paragraph No. 4)

8.7

Late fees are 5% of amount overdue (Paragraph No. 5).

8.8

The .45 acre tract is rendered unmarketable (Paragraph No. 6).

8.9

Lessee to provide insurance. Lessee liable for property taxes (Paragraph No. 7).

8.10

Lessee indemnifies Lessor and hold Lessor harmless for claims (Paragraph No. 10).

8.11

Event of Defaults are defined -

- (1) Lessee's failure and/or refused to pay rents, assessments, or any other amounts due; or
- (2) Lessee's failure to perform non-monetary conditions which continue for thirty (30) days
(Paragraph No. 11 A).

8.12

Upon event of default, Lessor shall have all remedies at law or equity and shall have the right to: (1) re-enter and repossess the property and remove all persons, (2) re-let the property, (3) terminate the lease or Lessee's occupancy of the property without notice, (4) accelerate payments, (5) enforce performance, or (6) other right or remedy (Paragraph No. 11).

8.13

Failure of Lessor to declare any default is not a waiver and Lessor shall have the right to declare any default at any time and take such action as might be lawful (Paragraph No. 13).

8.14

Lessee granted option to purchase property and simultaneous with execution of lease, exercises said option, contingent, however upon Lessee's complete performance of all terms and provisions without limitation including payment (Paragraph No. 15) (emphasis added).

8.15

Upon full performance of the terms and provisions of the Lease, purchase price shall be deemed to have been paid in full (Paragraph No. 15 A).

8.16

Closing shall be September 15, 2011. Closing at Lessee's expense. Lessor shall execute warranty deed (Paragraph No. 15 B).

8.17

Lessee shall provide certificate of title for title insurance. Upon request, Lessee shall furnish copy of "as built plans" in lieu of survey (Paragraph No. 15 C).

8.18

All rights and remedies of the Lessor are cumulative and none shall exclude any other rights or remedies (Paragraph No. 16 A).

8.19

Lease is governed by Mississippi law (Paragraph No. 16 C).

9.

The September 7th Lease was recorded in the land records of Madison County, Mississippi on December 10, 2010 in Book 2619 at Page 147 as Instrument No. 636966. At the time of the Lease, Eric Hamer was the County Attorney for Madison County. Hamer was involved in the negotiations and drafts of the Lease. It is confirmed from the record that Hamer caused the September 7th Lease to be filed and recorded.

10.

A second lease exists. This second lease is dated September 30, 2010 and is between VCR I, LLC and Madison County, Mississippi (hereinafter "September 30th Lease").

11.

There are many similarities between the September 7th Lease and the September 30th Lease.

Both are set up to be a lease purchase for the Calhoun Parkway Property. However, the September 30th Lease has only one parcel being 5.35 acres. This is the same 5.35 acres included in the September 7th Lease. The September 30th Lease does not include the .45 acre tract that is included in the September 7th Lease.

12.

The main provisions of the September 30th Lease that are different than the September 7th Lease are as follows:

12.1

The lease term is September 30, 2010 to September 30, 2011 (Paragraph No. 3).

12.2

Rental Payments -
within 15 days of lease (1st and last month) \$118,583.33

Monthly (\$59,291.67) -
October 20, 2010 to July 20, 2011
(10 months x \$59,291.67) \$592,916.70

Total: \$711,500.00

(Paragraph No. 4)

12.3

The September 30th Lease does not acknowledge the .45 acre tract being unmarketable.

12.4

In Paragraph No. 15, the September 7th Lease includes a statement that “contingent, however, upon Lessee’s complete performance.” The September 30th Lease provides “complete upon Lessee’s full performance.”

13.

The Debtor/VCR contends that it approved the September 7th Lease but never approved the September 30th Lease. Thus, the Trustee has asserted that the September 7th Lease controls. Upon information and belief, the Manger/Member of VCR, Pradeep Rai did not approve or sign the September 30th Lease. Close examination between the two Leases confirms that it is the same signature on both Leases. In other words, the same signature sheet was used on both leases.

14.

The County claims that neither the September 7th Lease nor the September 30th Lease have been approved by the Madison County Board of Supervisors. There is nothing in the official minutes approving either lease.

15.

The County did make payments under the September 30th Lease.

16.

The County did complete the Parkway through the VCR Property. An update survey of the VCR Property and the Parkway is attached hereto and marked as Exhibit "1".

17.

On December 20, 2011, VCR notified Madison County by letter that the September 7th Lease had expired and the County was in default ("Default Notice").

18.

According to the Default Notice, Madison County was in default as to payments and late fees in the amount of \$98,478.21. On December 21, 2011, VCR sent an invoice to the County for payment. It appears the invoice was received on December 27, 2011.

19.

By letter dated January 5, 2012, Arthur Johnson, the Chancery Clerk of Madison County, Mississippi as County Treasurer, responded to the Default Notice. According to the Chancery Clerk, payments had been made pursuant to the September 30th Lease. There is no comment regarding the September 7th Lease, there is no comment regarding why the September 30th Lease was in place and not the September 7th Lease, and there is no request for a deed from VCR for the Parkway property.

20.

Thus, it appears that Mr. Johnson (Chancery Clerk/County Treasurer) was working from the September 30th Lease while actually the September 7th Lease was the lease recorded in his office. Further, the Chancery Clerk was making payments on a lease in which the County claims was never approved.

21.

On May 9, 2017, the Trustee filed his Complaint against Madison County, Mississippi in the Bankruptcy Court styled *Derek A. Henderson, the duly appointed Chapter 7 Trustee for the bankruptcy estate of VCR I, LLC v. Madison County, Mississippi, by and through the Madison County Board of Supervisors* (AP Case No. 17-00024). As part of the Complaint, the Trustee asserted as follows:

21.1

VCR was reasonably relying upon the September 7th Lease due to the facts that the County made offers consistent with the Lease, that the Lease was signed by the President of the Board of Supervisors and the Lease was recorded in the land records of Madison County by the County attorney.

21.2

VCR clearly complied with the requirements of the September 7th Lease by placing the County on notice of defaults and advised the County of VCR's rights and remedies. Since the lease was in

default, the County never executed its rights to purchase the property. VCR remains the record title owner of the property included in the lease.

21.3

On June 21, 2012, VCR filed its Chapter 11 bankruptcy petition. The case converted to Chapter 7 on October 18, 2013. Pursuant to 11 U.S.C. §541, any legal and equitable interests of VCR become property of the bankruptcy estate including the VCR Property. Derek A. Henderson was appointed the Chapter 7 Trustee.

21.4

On April 21, 2014, the Trustee appeared before the Madison County Board of Supervisors to discuss the issues of VCR Property and the Calhoun Parkway. As a result of the appearance before the Board, the supervisors approved an indemnity to the Trustee and the bankruptcy estate. The indemnity was reduced to a written Indemnity Agreement. The County now asserts the Indemnity Agreement is not valid and is unenforceable.

21.5

Madison County was a lessee under the September 7th Lease. Madison County has continued use of the property. Being a lease dispute, the County is and continues to be a holdover tenant. Since this is a contract dispute with the County, there is no immunity to protect the County from suit. *Cig Contractors v. Mississippi State Building Commission*, 399 So.2d 1352 (Miss. 1982).

21.6

The County is a holdover tenant. The damage claims are substantial and the County does not have ownership of the Parkway property. Pursuant to MCA §89-7-25, the rent is double for all the time the County has continued possession. That would be about 5 ½ years (66 months) at this point with a monthly rate of \$126,082.54 based on the September 7th Lease as recorded. This creates a damage

amount of \$8,321,447.64. VCR's letter dated December 20, 2011 is sufficient to provide the County a one week notice required on a month to month tenant. (MCA §89-7-23). However it is noted that notice is only required when the term of lease is not to expire at a fixed time. In this case, the lease did expire at a fixed time. No notice was required. This holdover tenant claim continues to increase each month.

21.7

On March 20, 2017, the Trustee sent a final letter to the President of the Madison County Board of Supervisors, Madison County Administrator and the Madison County Attorney. This letter left no doubt to place the County on notice that VCR was the record title owner and requested holdover rent payments. The County was requested to send payments and vacate the property no later than March 31, 2017.

21.8

Pursuant to 11 U.S.C. §544, as of the date of the commencement of the bankruptcy case, the Trustee is considered a judicial lien holder of all property of VCR and a bona fide purchaser of the real property of VCR. Thus, not only is the VCR Property property of the estate but the Trustee is a bona fide purchaser of the VCR Property by statute. The Trustee is entitled to a turnover of property of the estate (11 U.S.C. §542).

21.9

The County has no interest in the VCR Property. The County has refused to turnover possession of the Parkway property to VCR.

21.10

Since the County refuses to turnover the property, there is a "taking" and the VCR bankruptcy estate can recover damages. There are two (2) ways to pursue inverse condemnation: (i) federal - U.S

Constitution under the Fifth Amendment (private property not taken without just compensation) and (ii) state - Mississippi Constitution under Art. 3 §17 (private property not taken or damaged without due compensation). Currently the property taken by the County has a value of approximately \$4.00/sq. ft. Roughly the Parkway project has taken about 5.8 acres (or 252,648 sq. ft.) indicating a total value of \$1,010,592.00. Also, if inverse condemnation is determined in favor of VCR, then pursuant to MCA §43-37-9, VCR is allowed to receive costs, expenses and legal fees.

21.11

The County now takes the position that no indemnity granted by the County to VCR through any lease or to the Trustee through the Indemnity Agreement is enforceable. By the County breaching the Indemnity Agreement, the Trustee and the bankruptcy estate are left with no protection. The County made misrepresentations to the Trustee regarding an indemnity that the Trustee relied upon. The misrepresentations caused the Trustee to not close and block the Parkway property and instead remain open while the County supposedly reviewed and considered the lease issues.

21.12

The County has unlawfully and wrongfully entered upon VCR/bankruptcy estate property. The County has trespassed upon the VCR Property. Based upon the County's actions, the trespass is a permanent invasion and is continuing trespass. The County's trespass actions have been done on consecutive days, are of the same nature and are renewed and continued from day to day so that the County's acts in the aggregate form one indivisible harm. Thus, not only is the County continuing to trespass but its actions arise to a permanent trespass.

21.13

Further, since the County's entry on the VCR Property began with a privilege, the County's actions may be deemed a trespass ab initio from the beginning because the County abused the privilege.

22.

The Trustee's Complaint asserts causes of action as follows:

Count One - Injunction

Count Two - Declaratory Relief

Count Three - Holdover Tenant

Count Four - Inverse Condemnation

Count Five - Trespass

23.

On September 19, 2017, Madison County has filed its Answer and Affirmative Defenses to the Trustee's Complaint (AP Docket No. 28) and the County's defenses and claims include but are not limited to the following:

23.1

Madison County denies the September 7th Lease is a valid or enforceable lease agreement.

23.2

The proximate cause of alleged damages are the result of VCR's own conduct.

23.3

The estate has sustained no damages as payment has been made in full.

23.4

VCR is in breach of the agreements with Madison County.

23.5

There can be no claim for inverse condemnation because VCR gave Madison County permission to construct the Parkway.

23.6

In 2010, the Madison County Board of Supervisors (“MCBOS”) entered into negotiations with the Rai family regarding the purchase of two parcels of land related to the construction of a Calhoun Parkway.

23.7

On August 2, 2010, the MCBOS approved the Lease Purchase Agreement with VCR I, LLC, subject to any changes the Board Attorney, Eric Hamer, found to be in the best interest of the County and authorized the Board President to execute the final agreement.

23.8

The MCBOS miscellaneous appendix to the August 2, 2010 Board minutes include both the September 7, 2010 lease, which included both parcels, and the September 30, 2010 lease, which only included the 5.35 acre parcel.

23.9

Sometime in September 2010, the Rai family notified MCBOS and/or its attorney that they did not intend to sell the .45 acre parcel to Madison County and that they would, instead, continue to negotiate with St. Joseph Catholic Church who had expressed interest in purchasing the parcel.

23.10

In a memo dated September 29, 2010, to the Madison County Board of Supervisors written by Woody Sample, the Acquisition Administrator for the land sale, Mr. Sample states “The Church wanted the un-economic remnant the County offered to acquire from VCR. VCR had decided not to sell the remnant to the County, so this is a moot point.” This is consistent with Mr. Sample’s recollection that VCR did not sell the .45 acre parcel to Madison County.

23.11

Since VCR decided to retain the .45 acre parcel, Madison County executed and relied on the September 30, 2010 lease which is signed by Pradeep Rai and recorded in the Miscellaneous Appendix to the MCBOS minutes.

23.12

On September 30, 2010, Eric Hamer, the attorney for MCBOS, emailed the September 30, 2010 lease to the Chancery Clerk and instructed her to have the MCBOS president sign the lease and record it in the land records.

23.13

On October 4, 2010, the MCBOS approved the payment of \$177,875.00 consistent with the September 30, 2010 lease.

23.14

Believing the September 30, 2010 lease to be only valid agreement between the parties, the MCBOS paid pursuant to the terms of that lease.

23.15

The Rai family continued to receive payments pursuant to the terms of the September 30, 2010 lease without objection until after Madison County paid the full amount of the lease-purchase, a total of \$711,500.03.

23.16

The Rai family and/or VCR never deeded the 5.35 acres to Madison County despite having been paid in full.

23.17

From 2010 through 2012, Raj Rai continued to negotiate with St. Joseph Catholic Church for

the sale of the .45 acre parcel.

23.18

Three months after Madison County had paid in full pursuant to the September 30, 2010 lease, Rajeeve Rai notified Madison County by letter that the September 7, 2010 lease had expired and the County was allegedly in default of that lease.

23.19

In other words, the Rai family attempted to argue that Madison County owed the value of the .45 acre parcel. If the Rai family truly believed the September 7, 2010 lease controlled, Raj Rai could not have sold a parcel of land Madison County allegedly leased to purchase.

23.20

In January 2012, Raj Rai offered to sell the .45 acre parcel to the St. Joseph Catholic Church for \$156,000.00. At the same time, Mr. Rai attempted to also collect from Madison County for this same parcel of land.

23.21

Madison County never agreed to purchase and VCR never agreed to sell to Madison County the .45 acre parcel that is the subject of this dispute.

23.22

Madison County did, however, timely pay \$711,500.03 pursuant to the terms of the September 30, 2010 and has never received a deed to the 5.35 acre parcel despite having paid for the property in full.

23.23

If the Rai family and/or VCR believed the September 7, 2010 lease controlled and that Madison County defaulted pursuant to the terms of that lease, they never provided Madison County any notice

during the construction of Calhoun Parkway.

23.24

Madison County constructed a public roadway on the 5.35 acre parcel believing the County had paid for the property in full pursuant to the terms of the parties' agreement.

23.25

VCR does not dispute that Madison County paid the full purchase price for the 5.35 acre parcel.

23.26

VCR also does not dispute that it had never deeded the 5.35 acre parcel to Madison County despite having been paid in full for that land.

23.27

VCR either owes Madison County a deed to the 5.35 acre parcel or reimbursement of the \$711,500.03 the County paid for the property.

23.28

Madison County contends that any indemnification from the County to VCR and/or the Chapter 7 Trustee may not be valid or enforceable.

24.

The Trustee and Madison County have reached a compromise and settlement. The terms of the settlement are as follows:

A) The amount of \$711,500.03 paid by Madison County, Mississippi is in complete satisfaction of the purchase price for the 5.35 acres (now the Calhoun Parkway);

B) The Trustee shall execute a Deed to Madison County, Mississippi for the 5.35 acres which is the VCR property used to construct the Parkway. The actual legal description will be

confirmed by survey;

C) The County shall release any and all claims to the .45 acre tract and shall execute a Deed to the VCR bankruptcy estate for the .45 acres and the road directly west of the .45 acres including the most southern part of Church Road including the turnaround cul-de-sac. The actual legal description will be confirmed by survey;

D) The Parties shall execute a mutual release as to all claims; and

E) Upon approval of the settlement by the Bankruptcy Court and the Madison County Board of Supervisors, and upon the delivery of Deeds and releases, the Adversary Proceeding shall be dismissed with prejudice.

25.

The settlement is fair and reasonable and in the best interest of the estate.

26.

The settlement complies with the 5th Circuit standards for approving compromise and settlements.

27.

A basic policy in bankruptcy cases is that compromise is favored. Courts have built on this policy by adopting the standards set forth in the U.S. Supreme Court decision, *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). In *TMT*, the Supreme Court held that a compromise would be approved by the bankruptcy court only after it

apprise[s itself] of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties in collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

Id. at 424.

28.

The Fifth Circuit standard has been stated in *Official Comm. of Unsecured Creditors v. Cajun Electric Power Coop., Inc.*:

- (1) [t]he probability of success in the litigation, with due consideration for the uncertainty in fact and law,
- (2) [t]he complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and
- (3) [a]ll other factors bearing on the wisdom of the compromise.

119 F.3d 349 (5th Cir. 1997). *Id.* at 356. These factors have been summarized as requiring the compromise to be “fair and equitable” and “in the best interests of the estate.” *TMT*, 390 U.S. at 424; *Cajun Elec.*, 119 F.3d at 355.

29.

The resolution of this dispute with the County brings the litigation to an end with certainty as to the owner of the tracts of property. Regardless of which lease purchase agreement may be enforceable, the fact remains that VCR received \$711,500.03 from the County for the 5.35 acre tract. Further, without spending any additional funds for litigation expenses, the matter is concluded and property is conveyed for which the estate shall no longer have continuing liability. The parcel retained by the estate is expanded to include the surrounding road area. With the unusual circumstances involved in this dispute, the matter could be litigated for years with appeals. This settlement grants the Trustee the opportunity to conclude the dispute and continue with the liquidation of assets and closing of the bankruptcy estate.

30.

On November 13, 2017, the Trustee filed his Motion to Approve Compromise and Settlement - Madison County, Mississippi. After notice to creditors and parties-in-interest, no Objections have been

filed.

THEREFORE, IT IS ORDERED that the Trustee's Motion to Approve Compromise and Settlement - Madison County, Mississippi is hereby approved and granted. The settlement is fair and reasonable and in the best interest of the estate. The terms of the settlement are approved as follows:

A) The amount of \$711,500.03 paid by Madison County, Mississippi is in complete satisfaction of the purchase price for the 5.35 acres (now the Calhoun Parkway);

B) The Trustee shall execute a Deed to Madison County, Mississippi for the 5.35 acres which is the VCR property used to construct the Parkway. The actual legal description will be confirmed by survey;

C) The County shall release any and all claims to the .45 acre tract and shall execute a Deed to the VCR bankruptcy estate for the .45 acres and the road directly west of the .45 acres including the most southern part of Church Road including the turnaround cul-de-sac. The actual legal description will be confirmed by survey;

D) The Parties shall execute a mutual release as to all claims; and

E) Upon approval of the settlement by the Bankruptcy Court and the Madison County Board of Supervisors, and upon the delivery of Deeds and releases, the Adversary Proceeding shall be dismissed with prejudice.

IT IS FURTHER ORDERED that the Trustee is authorized to execute the appropriate documents necessary to consummate the settlement.

IT IS FURTHER ORDERED that a separate final judgment shall be entered.

END OF ORDER

Approved by:

s/Derek A. Henderson

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