

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this “Agreement”) is made effective April 21, 2014 by and between Madison County, Mississippi (hereinafter “County”), by and through the Board of Supervisors of Madison County, Mississippi and Derek A. Henderson, Trustee for the bankruptcy estate of VCR I, LLC, Bankruptcy Case No. 12-02009 EE pending in the United States Bankruptcy Court for the Southern District of Mississippi on behalf of the bankruptcy estate (hereinafter “Trustee”) and collectively referred to as the “Parties.”

WHEREAS, the Trustee appeared before the Board of Supervisors of Madison County, Mississippi on April 21, 2014 and requested an indemnity from the County related to any claims and/or litigation claims arising out of Madison County Calhoun Station Roadway Project and/or Lease Agreement dated September 7, 2010 between VCR I, LLC and Madison County, Mississippi and/or Lease Agreement dated September 30, 2010 between VCR I, LLC and Madison County, Mississippi. There are two (2) Lease Agreements consisting of approximately 5.35 acres to 5.8 acres located in Section 21, Township 8 North, Range 2 East in Madison County, Mississippi. The Madison County Calhoun Station Roadway Project and the two (2) Lease Agreements are collectively referred to herein as the “Roadway Property”.

WHEREAS, the County has agreed to indemnify the Trustee and the bankruptcy estate from any claims and/or litigation arising out of any third party’s actions in connection with the Roadway Property.

WHEREAS, the Parties acknowledge there is an ongoing dispute between the Parties regarding the Roadway Property. This Agreement is for protection of the Trustee and the bankruptcy estate until the dispute can be resolved. This Agreement is not and shall not be construed to be a waiver of any claims or defenses of any kind by the Parties. The Parties specifically reserve all of their rights, claims and defenses against each other.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the County and the Trustee hereby agree as follows:

1) **Indemnification.** The County shall fully defend, indemnify, and hold harmless the Trustee and the bankruptcy estate and their successors and assigns from any and all claims, lawsuits, demands, causes of action, liability, loss, damage and/or injury, of any kind whatsoever (including without limitation all claims for monetary loss, property damage, equitable relief, personal injury, and/or wrongful death), whether brought by an individual or other entity, or imposed by a court of law or by administrative action of any federal, state, or local government body or agency, arising out of, in any way whatsoever, the Roadway Property being used by a third party or the County. This indemnification applies to and includes, but is not limited to, the payment of all penalties, fines, judgments, awards, decrees, attorney’s fees, and related costs or expenses, and any reimbursements to the Trustee and the bankruptcy estate and their successors and assigns for all legal fees, expenses, and costs incurred by it.

2) **Authority to Enter Agreement.** Each Party warrants that the individuals who have signed this Agreement have the actual legal power, right and authority to make this Agreement and bind each respective Party.

3) **Amendment; Modification.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

4) **Waiver.** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

5) **Attorneys' Fees and Costs.** If any legal action or other proceeding is brought in connection with this Agreement, the successful or prevailing Party, if any, shall be entitled to recover reasonable attorneys' fees and other related costs, in addition to any other relief to which that Party is entitled. In the event that it is the subject of dispute, the court or trier of fact who presides over such legal action or proceeding is empowered to determine which Party, if any, is the prevailing party in accordance with this provision and as to which Party is to pay fees and expenses.

6) **Notice of Claim.** In the event of any asserted claim, the Trustee shall provide the County reasonably timely written notice of same, and thereafter the County shall at its own expense defend, protect and save harmless the Trustee and the bankruptcy estate against said claim or any loss or liability thereunder.

7) **Right to Defend.** In the further event the County shall fail to so defend and/or indemnify and save harmless, then in such instance the Trustee and the bankruptcy estate shall have full rights to defend, pay or settle said claim on their behalf without notice to the undersigned and with full rights to recourse against the undersigned for all fees, costs, expenses and payments made or agreed to be paid to discharge said claim.

8) **Amount and Duration.** This Agreement shall be unlimited as to amount or duration.

9) **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, assigns and personal representatives.

10) **Entire Agreement.** This Agreement contains the entire agreement between the Parties related to the matters specified herein, and supersedes any prior oral or written statements or agreements between the Parties related to such matters. This Agreement has no affect on the Lease Agreements.

11) **Enforceability, Severability, and Reformation.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or

unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited. The intent of the Parties is to provide as broad an indemnification as possible under Mississippi law. In the event that any aspect of this Agreement is deemed unenforceable, the court is empowered to modify this Agreement to give the broadest possible interpretation permitted under Mississippi law.

12) **Applicable Law.** This Agreement shall be governed exclusively by the laws of Mississippi, without regard to conflict of law provisions.

13) **Exclusive Venue and Jurisdiction.** Any lawsuit or legal proceeding arising out of or relating to this Agreement in any way whatsoever shall be exclusively brought and litigated in the federal and state courts of Mississippi. Each Party expressly consents and submits to this exclusive jurisdiction and exclusive venue. Each Party expressly waives the right to challenge this jurisdiction and/or venue as improper or inconvenient. Each Party consents to the dismissal of any lawsuit that they bring in any other jurisdiction or venue.

14) **Signatories.** This Agreement shall be signed on behalf of the County by Karl Banks, President of Board of Supervisors, and on behalf of the Trustee and the bankruptcy estate by Derek A. Henderson, and effective as of the date first written above.

Agreed to and Approved by:

Madison County, Mississippi

Karl Banks
President of Board of Supervisors
Madison County, Mississippi

Derek A. Henderson
Trustee for the bankruptcy estate of VCR I, LLC

STATE OF MISSISSIPPI
COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, the within named Karl Banks, who acknowledged that he/she is President of Madison County Board of Supervisors, and that for and on behalf of the said institution, and as its act and deed executed the above and foregoing instrument, after first having been duly authorized by said institution so to do.

Witness my signature and official seal of office, this the ____ day of _____, 2014.

NOTARY PUBLIC

My Commission Expires:

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me, the undersigned authority in and for said county and state, the within named Derek A. Henderson, who acknowledged that he is the Chapter 7 Trustee of VCR I, LLC, and that for and on its behalf and as its act and deed he signed, the day and year therein mentioned.

Witness my signature and official seal of office, this the ____ day of _____, 2014.

Notary Public

My Commission Expires:

Approved by:

Mike Espy
Attorney for Madison County Board of Supervisors
Mike Espy, PLLC
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Derek A. Henderson
Trustee and Attorney for the Trustee
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