

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("**Agreement**") is made by and between **SAN BERNARDINO COUNTY**, a political subdivision of the State of California ("**County**"), and **R & R PROPERTIES I**, a Delaware Limited Liability Company ("**Tenant**"). County and Tenant are also referred to herein each as a "**Party**" and collectively as the "**Parties**."

### RECITALS

A. County and Tenant entered into that certain Lease Agreement No. CNO-1128 dated March 13, 2013 ("**Lease**") whereby County leases to Tenant and Tenant leases from County those certain premises consisting of approximately 145.8 acres (or 6,351,048 square feet) of vacant unimproved land known as Agriculture Parcels 20, 21, and 22 ("**Premises**") at Chino Airport in Chino, CA, as the premises are more particularly described in the Lease for a term that originally commenced on May 1, 2013 and expired on April 30, 2018, and is currently on a month-to-month holdover.

B. A dispute has arisen between the Parties due to the Tenant's claims that the County's actions breached the Lease and resulted in the Tenant's loss of use of portions of the Premises, comprising approximately 83,143 square feet on or about November 25, 2020 and approximately 133,102 square feet on or about January 27, 2021, damage to Tenant's commercial sod crops growing thereon, inability to harvest said crops and/or plant replacement crops, loss of profits and goodwill, and other damages arising from an alleged breach of the Lease (collectively, "**Lease Dispute**").

C. The Parties have agreed that it is in their respective best interests to enter into this Agreement to settle and resolve all outstanding claims, and all other claims, known or unknown, that may exist among them arising out of or in connection with the Lease Dispute, by way of compromise, without any admission of liability, fault, or negligence by any Party. The Parties desire to settle the Lease Dispute on the terms and conditions set forth in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and conditions hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Tenant hereby agree as follows:

1. Consideration. In compromise of a disputed claim and to avoid the uncertainty and expense of potential litigation regarding the Lease Dispute, but without the admission of any liability whatsoever by either Party, County agrees to pay Tenant a one-time total amount of One Hundred Seventy Five Thousand Nine Hundred Sixty Seven and 95/100 Dollars (\$175,967.92) as full and final payment in settlement of the Lease Dispute, which shall be paid within (60) sixty-days after the date the last of the Parties executes this Agreement. Such payment shall be sent via Federal Express and payable to the Tenant at 17821 E. 17th. St., Suite 165 Tustin, CA 92780.

2. Release of Liability. Except as otherwise provided in Paragraph 3 hereof,

(a) Tenant, respectively, for itself, its partners, affiliates, subsidiaries, officials, officers, directors, employees, associates, principals, agents, attorneys, predecessors, successors, assigns, departments, managers, and any other person or entity that may make a claim through them, hereby absolutely and forever release and discharge County, and County's partners, affiliates, subsidiaries, officials, officers, directors, employees, associates, principals, agents, attorneys, predecessors, successors, assigns, departments, managers, and any other person or entity, of and from any and all claims, rights, damages, demands, liabilities, costs, actions and causes of action of every kind or nature whatsoever whether now known or unknown, which Tenant now has, owns, or holds against County, or at any time heretofore had, owned, or held against County, or could, shall or may hereinafter have, own or hold against County, arising out of or related to the Lease or the allegations in the Lease Dispute. This release and discharge do not apply, however, to any claims, rights, damages, demands, debts, liabilities, accounts, reckonings, obligations, costs, expenses, liens, actions, and causes of action arising out of this Agreement, or to any action brought by an unrelated third party.

(b) In consideration of the mutual covenants and conditions contained herein and subject to the full and complete performance thereof, Tenant and County for itself and its respective legal representatives, successors, and assigns, hereby fully and permanently release and forever discharge one another from any and all claims, demands, causes of action, rights, damages, costs, and liabilities of any nature whatsoever, whether now known or unknown, latent or patent, arising now or in the future, suspected or claimed, whether anticipatory or real, which they ever had, now have, or claim to have had against one another arising out of or related in any way to the Lease Dispute.

(c) The Parties do hereby further acknowledge and agree as follows:

There is a risk that, subsequent to the execution of this Agreement, one or more Parties will incur or suffer loss, damage or injury that is or might be directly or indirectly related to, connected with, or arising out of the matters hereby released, but which are unknown and unanticipated at the time this Agreement is signed; and

The Parties do hereby assume the above-mentioned risks and understand that the Release of Liability shall apply to all such unknown or unanticipated loss, damage or injury, as well as those known and anticipated, and, upon advice of legal counsel, the Parties do hereby expressly waive in relation to the claims released herein any and all rights or benefits under California Civil Code § 1542, and/or any similar local, state or federal law, which section has been duly explained and reads as follows:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED**

**PARTY."**

The Parties certify that each has read Section 1542 of the Civil Code set out above. In addition, Tenant and County agree to waive all rights arising out of any law similar to California Civil Code § 1542 whether it is a local, state or federal law.

Each party understands that the facts or law set forth hereinabove in respect of which the foregoing release is given may hereafter turn out to be other than or different from the facts or law in that connection now known or believed to be true, and hereby accepts and assumes the risk of the facts or law turning out to be different and agrees that the foregoing release shall be, and will remain, in all respects effective and not subject to termination or rescission by virtue of any such mistake of fact or law.

The provisions of Section 1542 of the California Civil Code as well as the provisions of all comparable, equivalent, or similar statutes and principles in common law of the United States and of any and all of the states in the United States, if any way applicable, ARE HEREBY KNOWINGLY AND VOLUNTARILY WAIVED AND RELINQUISHED BY EACH PARTY. The parties each acknowledge that these waivers are essential and material terms of this Agreement, without which the consideration set forth herein and relating hereto would not have been delivered.

Each party acknowledges that it has received the advice of legal counsel with respect to the aforementioned waiver and understands the terms thereof.

3. Representation of Tenant. Tenant represents and warrants to County that: (a) Tenant has the full right, legal power and actual authority to enter into this Agreement without the consent of any other person, firm or entity; (b) Tenant's signatory has the full right, legal power and actual authority to bind Tenant to the terms and conditions hereof; and (c) Tenant relies wholly on its own judgement, belief, and knowledge of the nature, extent, and duration of the Lease Dispute. Notwithstanding Paragraph 2, the representations and warranties set forth in this Paragraph 3 shall survive this Agreement.

4. Lease Obligations. Notwithstanding anything to the contrary herein, this Agreement shall not affect the Lease, which shall continue in full force and effect on its terms and conditions, except that Tenant waives all rights to pursue any remedies available to it under the Lease as a result of the Lease Dispute.

5. Modification. This Agreement may not be modified or amended except by a writing signed by all Parties.

6. Full Integration. This written Agreement constitutes the complete and entire understanding and agreement between the Parties regarding the matters set forth herein. Each of the Parties acknowledges that the recitals and promises contained herein were and are a material inducement to the others entering into this Agreement. Except as set forth herein, no representations, warranties, or promises have been made by any of the Parties or their representatives to any of the others as an inducement to enter into this Agreement.

7. Attorney's Fees. The Parties shall be fully responsible for the payment of any attorney's fees and/or costs they may have each incurred on their own, or will incur in the future, in connection with the claims and disputes settled by this Agreement. Should any dispute arise between the parties hereto or their legal representatives, successors and assigns concerning any provision of this Agreement or the rights and duties of any person in relation thereto, each party, including the prevailing party, must bear its own attorneys' fees and costs.

8. Governing Law. This Agreement shall be governed and construed under the laws of the State of California. Any action to enforce this Agreement must be brought in the Superior Court of California, County of San Bernardino, San Bernardino District.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement. The Parties agree that fax or electronically transmitted signatures will have the same force and effect as original signatures.

10. Binding Effect. The Parties agree that this Agreement is a binding contract and not merely a recital. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective legal representatives, successors, and assigns.

11. Time of the Essence. Time is of the essence of this Agreement and the provisions contained herein.

12. Further Assurances. County and Tenant hereby agree to execute such further documents or instruments as may be necessary or appropriate to carry out the intention of this Agreement.

13. Voluntary Agreement. The parties have read this Agreement and mutual release as contained herein, and on the advice of counsel they have freely and voluntarily entered into this Agreement, with full knowledge of its significance, and with the express intention of effecting the legal consequences provided by *California Civil Code* § 1541—i.e., the extinguishment of obligations.

14. Mutual Participation. All Parties have participated in the drafting of this Agreement; therefore, should a court or arbitrator be called upon to construe, interpret or enforce this Agreement, the doctrine of *contra proferentum* shall have no application.

15. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination will not affect the validity and enforceability of any other provision of this Agreement, or of the Agreement as a whole, and the provision in question shall be modified by a court of competent jurisdiction so as to be rendered enforceable.

[Signature Page to Follow]

IN WITNESS WHEREOF, County and Tenant have executed this Agreement as of the day and year first above written.

**COUNTY:**

**SAN BERNARDINO COUNTY**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Dawn Rowe, Chair  
Board of Supervisors

**Approved for Legal Form**

Dated: \_\_\_\_\_

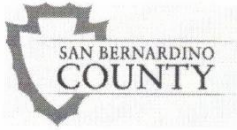
By: \_\_\_\_\_  
John Tubbs II  
Deputy County Counsel

**TENANT:**

**R & R PROPERTIES I, LLC**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_



## Levine Act Campaign Contribution Disclosure (formerly referred to as Senate Bill 1439)

The following is a list of items that are not covered by the Levine Act. A Campaign Contribution Disclosure Form will not be required for the following:

- Contracts that are competitively bid and awarded as required by law or County policy
- Contracts with labor unions regarding employee salaries and benefits
- Personal employment contracts
- Contracts under \$50,000
- Contracts where no party receives financial compensation
- Contracts between two or more public agencies
- The review or renewal of development agreements unless there is a material modification or amendment to the agreement
- The review or renewal of competitively bid contracts unless there is a material modification or amendment to the agreement that is worth more than 10% of the value of the contract or \$50,000, whichever is less
- Any modification or amendment to a matter listed above, except for competitively bid contracts.

### **DEFINITIONS**

**Actively supporting the matter:** (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

**Agent:** A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

**Otherwise related entity:** An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources, or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

**Parent-Subsidiary Relationship:** A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

**Tenant must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.**

1. Name of Tenant: R&R Properties I, LLC

2. Is the entity listed in Question No. 1 a non-profit organization under Internal Revenue Code section 501(c)(3)?

Yes ☐ If yes, skip Question Nos. 3 - 4 and go to Question No. 5.

No ☒

3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: ROBERT A. NEWMASTER

4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):  
ROBERT A. NEWMASTER, RICHARD H. CONSIDINE

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship
<u>SUPERIOR SOD I, LP</u>	<u>RELATED ENTITY</u>
<u>CALIFORNIA SOD CENTER</u>	<u>RELATED ENTITY</u>

6. Name of agent(s) of Tenant: N/A

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district:

Company Name	Subcontractor(s):	Principal and/or Agent(s):
<u>N/A</u>		

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
<u>N/A</u>	



9. Was a campaign contribution, of more than \$500, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No ☒ If **no**, please skip Question No. 10.

Yes ☐ If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: \_\_\_\_\_

Name of Contributor: \_\_\_\_\_

Date(s) of Contribution(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing below, Tenant certifies that the statements made herein are true and correct. Tenant understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer while this matter is pending and for 12 months after a final decision is made by the County.

  
\_\_\_\_\_  
Signature

ROBERT A. NEWMASTER  
Print Name

4/3/25  
\_\_\_\_\_  
Date

RAR PROPERTIES I, LLC  
Print Entity Name, if applicable