

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Garden Spot Foods, LLC and River Valley Holdings, Inc. (collectively “**Garden Spot**”) and Keep America Safe and Beautiful (“**KASB**”), with Garden Spot and KASB each individually referred to as a “**Party**” and, collectively, the “**Parties.**” KASB is a California-based non-profit organization proceeding in the public interest pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated from consumer products sold in California. Garden Spot is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

1.2 Consumer Product Description

KASB alleges that Garden Spot manufactures, imports, sells, and distributes for sale in California flax seed containing the heavy metal, cadmium (Cd), including, but not limited to, *Pure Living Sprouted Brown Flax Seeds, Net Wt. 15oz, Best By: 02 06 2023, UPC 0 37247 43905 8*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Flax seeds are referred to hereinafter as the “**Products.**” Cadmium (Cd) is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, developmental toxicity, and male reproductive toxicity.

1.3 Notice of Violation

On August 24, 2022, KASB served Garden Spot Foods, LLC, River Valley Holdings, Inc., the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Garden Spot violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to cadmium (Cd). No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

Garden Spot denies the factual and legal allegations contained in the Notice and maintains that all products it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Agreement shall constitute or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by Garden Spot of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Garden Spot's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean July 18, 2023.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

Commencing on the Effective Date, and continuing thereafter, all Products Garden Spot manufactures, packages, imports, sells, ships, or distributes for sale in or into California, directly or through one or more third party retailers, distributors, or e-commerce marketplaces, shall meet one of the Reformulation Standards for Reformulated Products, as defined by Section 2.2, or be accompanied by a clear and reasonable health hazard warning pursuant to Sections 2.3 through 2.6.

2.2 Reformulation Standards


2.2.1 For purposes of this Agreement, "**Reformulated Products**" are defined as Products which contain no more than 4.1 micrograms in a "Single Serving" per day when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization, that employs inductively coupled plasma mass spectrometry ("**ICP-MS**") utilizing scientifically appropriate adherence to the protocols set forth in AOAC Method 2015.01 or 2013.06 (21st Ed., 2019) with a LOD/LOQ of 0.10 ppm or less ("**Accredited Laboratory**"). "**Single Serving**" is defined as sixteen (16) grams, or two and one half (2 ½) teaspoons, of the Product.

2.2.2 For purposes of this Agreement, Products which contain No Detectable Amount of Cadmium may be labeled “**Cadmium Free**”. For purposes of this Agreement “**no detectable amount**” shall mean not detected when analyzed by an Accredited Laboratory.

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, and continuing thereafter, Garden Spot shall provide clear and reasonable health hazard warnings for all Products that are not Reformulated Products Garden Spot manufactures, imports, distributes, sells or offers for sale and which are sold to consumers in California. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.

(a) **Warning.** The Warning shall consist of either the following:

 **WARNING:** Consuming this product can expose you to chemicals, including Cadmium, which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food

(b) **Foreign Language Requirement.** Where a consumer product sign, label or tag used to provide a warning includes “consumer information,” as the term is defined in Title 27 California Code of Regulations § 25600.1(c) (“**Consumer Information**”), in languages other than English, then the accompanying warnings must also be provided in those languages.

2.4 On-Product Warning Requirements

Garden Spot shall include or affix the warning statement in Section 2.3(a) on the Product Label, its packaging or directly on each Product manufactured, packaged, imported, distributed, sold or otherwise provided for sale to consumers in California. “Product Label” is defined as a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall be set off from other surrounding information, enclosed in a box and appear in at least 6-point type, and in no event shall it be

smaller than the largest type size used for other consumer information on the Product. The warning statement must have the word “WARNING:” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “WARNING:” must be a black exclamation point in a yellow equilateral triangle with a black outline, except, if the sign or label for the Products does not use the color yellow, then the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “WARNING:”.

2.5 Internet Product Warning Requirements

For all Products manufactured, packaged, imported, distributed, sold or offered for sale after the Effective Date via the internet to customers located in California, to customers with retail outlets in California, nationwide distribution or e-commerce platforms, Garden Spot shall provide warnings for each Product, both on the Product label, in accordance with Section 2.3, and by prominently displaying the warning, or requiring the warning to be prominently displayed, to customers prior to purchase or during the checkout process such that the consumer does not have to seek out the information being provided. The warning or a clearly marked hyperlink to the warning, using the word “**WARNING**” and given in conjunction with the sale of Products via the internet shall appear on: (a) the same web page on which the Product is displayed; (b) the same web page as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than other consumer information provided for the Product.

2.6 Customer Notification

No later than the Effective Date, Garden Spot shall send a letter, electronic or otherwise (“**Notification Letter**”) to: (1) each customer in California to which it supplied Products between May 9, 2021 and May 9, 2022; and (2) any other customer that is a retailer or distributor that has any inventory of Products, which Garden Spot supplied between May 9, 2019 and May 9, 2022, for sale to consumers in California. The Notification Letter shall advise the recipient

that the Products contain cadmium (Cd), a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. The Notification letter shall inform the recipient that all Products must either (1) be returned to Garden Spot for a full refund or (2) have a label, attached to the packaging of each Product before it is sold in the California market or to a customer in California, expressly referring to the Product with the warning statement in Section 2.3(a). The warning must print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline. The entire warning shall appear in at least 6-point type and no smaller than the largest type size used for other consumer information on the Products. The Notification Letter shall enclose a shipping label with the return address and postage paid by Garden Spot. If the customer is a retailer or distributor of the Products, the Notification Letter shall include a sheet of white background, adhesive stickers with the warning statements in Section 2.3(a).

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Garden Spot agrees to pay a civil penalty of \$1,000 within five (5) business days of the Effective Date. Garden Spot’s civil penalty payment will be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment (“**OEHHA**”), and the remaining twenty-five percent (25%) retained by KASB. Garden Spot shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$750; and (b) “**Seven Hills in trust for Keep America Safe and Beautiful**” in the amount of \$250. KASB’s counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment.

3.2 Reimbursement of Attorneys’ Fees and Costs

KASB and its counsel offered to resolve the allegations in the Notice without reaching terms on the amount of reimbursement of attorneys’ fees and costs. Shortly after the Parties

finalized the other material settlement terms, they negotiated and reached an accord on the amount of reimbursement to be paid to KASB's counsel, under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution and reporting of this Agreement to the Office of the California Attorney General. Within five (5) days of the Effective Date, Garden Spot agrees to issue a check in the amount of \$21,500 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Garden Spot's attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

3.3 Payments

All payments payable and due under this Agreement shall be delivered to KASB's counsel at following address:

Seven Hills LLP
Attn: Kimberly Gates Johnson
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Garden Spot

KASB, as an individual and *not* on behalf of the public, releases Garden Spot, its past and present directors, officers, employees, attorneys, and each entity to whom Garden Spot directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on exposure to Cadmium in the Products as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to Cadmium from the Products as set forth in the Notice except for any downstream Releasees who has been instructed by Garden Spot pursuant to Sections 2.3 through 2.6 to provide a warning and fails to do so.

KASB, in its individual capacity only and not in its representative capacity, also hereby provides a release to Garden Spot and the Releasees which shall be effective as a full and final

accord and satisfaction, as a bar to all actions, causes of actions, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of KASB of any nature, character, or kind arising out of alleged or actual exposures to Cadmium in Products imported, shipped, sold or distributed for sale by Garden Spot and sold to a consumer in the State of California, prior to the Effective Date, as alleged in the Notice.

The Parties understand and agree this Section 4.1 release below shall not extend upstream to any entities that sold, supplied, or manufactured the Products or any ingredient thereof, or any distributors or suppliers who sold the Products or any ingredient thereof to Garden Spot.

4.2 Garden Spot's Release of KASB

Garden Spot, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against KASB and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by KASB and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Agreement, any provision of this Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Garden Spot may provide KASB with written notice of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Agreement, with respect to, and to the extent that, the Products are so affected. Nothing in this Agreement shall be interpreted to relieve Garden Spot from its obligation to comply with any pertinent state or federal law or regulation.

7. NOTICE

Unless specified herein, all correspondence and notice required by this Agreement shall be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or (ii) a recognized overnight courier to any Party by the other at the following addresses:

For Garden Spot:

Gerard Redmond, President
Garden Spot Foods, LLC
191 Commerce Drive
New Holland, PA, 17557

For KASB:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

With a copy to:

Corrie L. Plant, Partner
Bicklaw LLP
520 Newport Center Drive, Suite 750
Newport Beach, CA 92660

Any Party may, from time to time, specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

This Agreement may be executed in counterparts and by portable document format (pdf) signature, each of which shall be deemed an original and, all of which, when taken together, shall constitute one and the same document.

9. COMPLIANCE WITH REPORTING REQUIREMENTS

KASB and its counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

10. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other

agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

11. MODIFICATION


This Agreement may be modified only by a written agreement of the Parties.

12. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions herein.

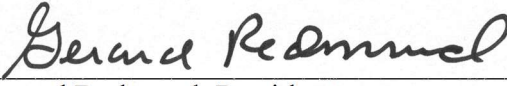
AGREED TO:

Date: 07/20/2023

By: 
My Nguyen, CFO
Keep America Safe and Beautiful

AGREED TO:

Date: 7/18/2023

By: 
Gerard Redmond, President
Garden Spot Foods, LLC