

**AGREEMENT TO DEFER
RENT PAYMENTS and
REPAYMENT
AGREEMENT**

This Agreement to Defer Rent Payments ("Agreement") is entered into by and between San Bernardino County ("County") and LandD INC ("Concessionaire"). The County and Concessionaire are collectively referred to herein as the Parties.

RECITALS

- A. On June 24, 2007, the County entered into an agreement ("Agreement No. 08-622") with Concessionaire to grant the concession rights to use **Calico House Restaurant** (Premises) for the term of the Lease.
- B. The Premises is comprised of approximately 4,387 square feet of floor space, located at Calico Ghost Town Regional Park ("Park").
- C. The County's lease with Concessionaire was amended several times with the third amendment extending it until June 30, 2023. Since no further extensions are available for this lease, Concessionaire's lease of the Premises will cease on June 30, 2023. A Request for Proposals was issued for the Premises.
- D. This Agreement to Defer Rent Payments is not contingent on the Concessionaire being awarded another contract for the Premises and if the Premises are awarded to another entity, the Concessionaire will still remain responsible for all monies due under this Agreement.
- E. Concessionaire owes outstanding rent monies in the amount of \$35,400 to the County under Agreement No. 08-622 for the period of March 2020 to January 2022 during the COVID-19 pandemic.
- F. Concessionaire contends that its operations at the Premises were impacted by the COVID-19 pandemic and, therefore, requests that the outstanding amounts due to the County be paid on a six year payment plan consisting of two biannual payments of \$2,950.00: the first payment will be due on or before June 30th and the second due on or before December 31st of each year. The final payment of the outstanding balance will be due on or before December 31, 2028.

The Parties now agree as follows:

AGREEMENT

1. Concessionaire agrees to pay \$35,400 to the County for its outstanding payments due under Agreement No. 08-622 for the period of March 2020 to January 2022, and Concessionaire shall pay said amount as follows:
 - i. \$2,950.00 on or before June 30th of each year; and,
 - ii. \$2,950.00 on or before December 31st of each year; and
 - iii. The outstanding balance shall be paid by December 31, 2028.

If the Concessionaire should fail to make any of the payments or defaults under any of the terms of this Agreement, the Concessionaire shall owe the County the remaining outstanding balance including the interest due to the County for the period of March 2020 to January 2022 and it shall be due within five (5) business days of the default.

2. If Concessionaire pays the outstanding amount of \$35,400 on or before December 31, 2028, County agrees to waive all associated penalties and interest due to the County by the Concessionaire for the period of March 2020 to January 2022.

GENERAL PROVISIONS

3. Each party shall bear their own costs and attorneys' fees associated with this Agreement.
4. The Parties agree that this Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, and shall be construed as if drafted by all Parties jointly.
5. Time is of the essence with respect to each and every provision of this Agreement.
6. The Parties represent and warrant that they have the power and authority to take the actions contemplated in this Agreement.
7. The Parties have entered into this Agreement freely and voluntarily and after having consulted with counsel and having had the terms contained in this Agreement explained to each of them by counsel. The Parties have read, appreciate, and understand the terms contained in this Agreement and are fully satisfied with those terms set forth herein.
8. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective agents, representatives, subsidiaries, successors, heirs, and assigns.
9. The Parties, and each of them, shall promptly execute and deliver such further instruments as may reasonably be necessary to effectuate any of the provisions of this Agreement.
10. Each of the Parties acknowledges that no person has made any promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce the execution of this Agreement, and each signatory hereby acknowledges that said signatory has not executed this Agreement in reliance upon any such promise, representation or warranty. This Agreement constitutes the entire understanding between the Parties and supersedes all prior negotiations, representations, or agreements between the Parties, either written or oral, on the subject hereof. This Agreement may be amended only by written instrument

designated as an amendment to this Agreement and executed by the Parties or their respective successors, heirs, or assigns.

11. If any section of this Agreement is found by competent authority to be invalid, illegal, or unenforceable in any respect and for any reason, the validity, legality, and enforceability of the unaffected remainder of such section in every other respect, and the remainder of the Agreement shall continue in effect.
12. Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to any Party upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a Party of any breach of any term, covenant, or condition herein stated shall not be deemed to be a waiver of any other term, covenant, or condition.

Any partial or late payment is not allowed and shall place the Concessionaire in default.

13. Each respective Party represents and warrant that the respective individual signing below on its behalf has full authority to execute this Agreement for and on behalf of that Party and that, once executed, this Agreement will be binding and enforceable according to its terms.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF, or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

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IN WITNESS WHEREOF, the Parties hereto have caused their respective names to be subscribed by their respective proper officers hereto duly authorized.

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SAN BERNARDINO COUNTY

►

Dawn Rowe, Chair, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By _____
Deputy

LandD INC

(Print or type name of corporation, company, contractor, etc.)

By ► _____
(Authorized signature - sign in blue ink)

Name Daryl Schendel

(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address 27522 Windy Pass

Barstow, CA 92311

FOR COUNTY USE ONLY

Approved as to Legal Form
►
Suzanne Bryant, Deputy County Counsel

Date _____

Reviewed for Contract Compliance
►
Trevor Leja, Deputy Executive Officer

Date _____

Reviewed/Approved by Department
►
Beahta R. Davis, Director, Regional Parks
Department

Date _____