

LEASE AGREEMENT
BETWEEN
MILWAUKEE COUNTY PARKS
AND
BARTOLOTTA RESTAURANT GROUP, LLC

This Lease Agreement (“Lease”) is made and entered into effective _____ (the “Effective Date”), by and between MILWAUKEE COUNTY PARKS (the “County”) and BRG Lotta Burger, LLC (the “Tenant”). Referenced together, the County and the Tenant are the “Parties” to this Agreement.

WITNESSETH:

WHEREAS, in February 2019 the County issued a Requests for Proposal to provide food and beverage concessions at the McKinley Marina Roundhouse (the “RFP”), and the Tenant submitted written proposal responses for food and beverage concessions at the McKinley Marina Roundhouse (the “RFP Response”); and

WHEREAS, pursuant to the RFP and the RFP Response, the Parties wish to enter into a lease agreement governing the operation and management of the concession.

NOW THEREFORE, the Parties do herewith, in consideration of mutual promises and other good and valuable consideration, agree as follows:

PROVISIONS:

1. **Building and Premises:** Tenant shall lease the McKinley Park Marina Roundhouse located at 1750 N. Lincoln Memorial Drive in Milwaukee, WI 53202 (“Roundhouse”) on the shore of Lake Michigan (Exhibit A). The Agreement extends to further include the shack on McKinley Beach located at 1750 North Lincoln Memorial Drive, Milwaukee, WI 53202 and the McKinley Marina North Dock (with the Roundhouse, the “Premises”), please see Exhibit B. The pavilion located on the Marina North Dock is an amenity for the marina tenants and the marina tenants therefore have the first right to reserve the pavilion for the season. Starting May 2 of each year the public and Tenant can reserve any remaining dates for use of the pavilion at the applicable rental rate. Vendor will ensure that no alcoholic beverages are consumed outside of the area set forth in Exhibit C.
2. **Term:** This Agreement shall commence on the Effective Date and terminate three years thereafter (the “Term”).
3. **Renewal:** After the Initial Term of the Agreement, the Parties may mutually agree in writing to extend the term of the Lease for two (2) additional consecutive three (3) year periods (each a “Renewal Term”). Such option shall be exercised by written notice to Landlord given at least six (6) months prior to the expiration of the Initial Term or the applicable Renewal Term and Landlord agreeing to accept such additional Renewal Term, provided however that Tenant continues using the Leased Premises only for the Permitted Use set forth in Section 7 and for no other purposes. The Parties agree that further negotiation regarding the terms and conditions, including rent, may be appropriate at the time each renewal is exercised by Tenant.

4. Payment: Tenant shall pay to County, without demand, offset or delay, when due, the following amounts.
 - (a) **COMMISSION**: Tenant shall pay to County a commission of four percent (4%) of Gross Sales on all alcoholic beverage sales, food, and non-alcoholic beverage sales. "Gross sales" is defined as the revenue received from the sale of all products, less sales tax only, sold within the Leased Premises, as well as any temporary or semi-permanent structures located on the beach or surrounding environs and any "push-carts" authorized by the Parks Executive Director or designee. Payments shall be made no later than the 10th business day after the fiscal month. A detailed sales report, in a format to be agreed upon, shall accompany the commission check. Checks shall be made payable to the Milwaukee County Treasurer and mailed or delivered to: Milwaukee County Parks, 9480 Watertown Plank Road, Wauwatosa, Wisconsin 53226, Attn: Joe Mrozinski.

Upon written demand by the County, Tenant agrees to compile and provide County with a detailed summary report of all sales activities, a financial reconciliation of all commissions owed and paid, and remit to County any additional amounts as may be required. Tenant shall submit such reports within ten (10) days of each written request by the County.
 - (b) **UTILITIES**: Tenant shall reimburse the County for all electrical utilities from May 1st through October 31st of each year. Utility reimbursement payments shall be made within thirty (30) days after receipt of the invoice. The County shall pay for utilities from November 1st through April 30th of each year. The County shall pay all water and sewer charges at no cost to the Tenant.
 - (c) **MAINTENANCE FUND**: Tenant shall establish a Park Improvement Fund of one percent (1%) of Gross Sales for the purposes of maintaining and enhancing the Premises or any area having a direct positive impact on the operation of the Marina and/or its environs. The fund shall be jointly controlled by the Tenant and the County. Deposits to the fund shall be made by the Tenant no later than the 10th business day after the fiscal month. All withdrawals from the fund for maintenance and/or improvements shall require joint signatures of the Parks Executive Director and the Tenant. All interest generated by the fund shall accumulate to the fund total and shall not offset against the minimum monthly required deposit. Upon termination of the Agreement for any reason, all funds in the account, including all accumulated interest, shall become the sole property of the County.
5. Rights Reserved to County: County reserves the right to award a contract with one (1) or more additional Concessionaires to provide other concessionable items in the environs surrounding the Premises and to operate its own concession in the environs surrounding the Premises, which will not directly compete with Tenant.
6. Permitted Use: Consistent with County ordinances and other applicable laws, Tenant shall have the use of the Premises for its continuing business and administrative activities as specified:
 - a. **FOOD AND BEVERAGE SALES**: Tenant is permitted to sell food and beverages, including alcoholic beverages served under a Class B tavern license, at the Premises and surrounding environs. The concession is a fair-weather operation and the Parties agree to negotiate the hours of operation, days of service, and length of the operating season, which approvals shall not be unreasonably conditioned or delayed. If Tenant dispenses alcohol, the Tenant shall not dispense or distribute alcohol after 10:00 pm. The times of operation may be modified upon the written approval of the Parks Executive Director or his/her designee.

It is the responsibility of Tenant to manage the distribution of alcohol, and Tenant is solely responsible for any incidents involving alcohol sold by Tenant at the Premises. Tenant shall monitor the service of alcoholic beverages, make sure no one under the age of twenty-one (21) is drinking alcohol, and refuse service to people who appear to be intoxicated or using poor judgment in their drinking.

- b. **PUBLIC ACCESS AND USE OF THE PREMISES:** The Parties recognize that during the Term of this Agreement the Premises is operating as a business entity and that public use of the Premises is mutually desirable. The Premises shall remain open and available to the public during regular hours the building remains open.
- c. **COUNTY APPROVAL OF ITEMS TO BE SOLD:** Tenant shall provide County with a list and pricing information for the products it intends to sell to the public for approval. The Parks Director or his/her designee maintains the right to prohibit the sale or rental of any item that he/she deems to be inappropriate or otherwise within the Milwaukee County Parks System. Tenant agrees to comply with the County's prohibitions including the sale of gum and glass bottles. County has an exclusive contract for non-alcoholic beverages and certain food in the County Parks. Tenant must purchase these products from the local distributor and sell the products from the exclusive parks' provider. Additionally, tenant understands that County has the exclusive right to provide ATM services to the Building and Premises
- d. **PARKING:** Tenant and Tenant's employees, customers and invitees shall have the non-exclusive right to use the parking spaces located within the parking area, subject to any exclusive parking rights granted to any other owner or Tenant. Landlord reserves the right to regulate parking within the parking area, including the right to preclude Tenant from parking in certain parking spaces or requiring Tenant and its employees to park their cars only in areas specifically designated from time to time by Landlord for that purpose. Automobile license numbers of Tenant's employees' cars shall be furnished to County upon County's request. Tenant shall not permit vehicles to be abandoned or stored in the parking areas.
- e. **COMMON AREAS:** Tenant and its employees, customers and invitees shall have the reasonable non-exclusive right to use, in common with Landlord, customers, and invitees and all others to whom Landlord has or may hereafter grant rights to use the same, the public portion of the Common Areas. Landlord shall have the right to close any or all portions of the Common Areas to an extent as may, in Landlord's opinion, be necessary to prevent a dedication thereof or the accrual of any rights to any person or the public therein. Landlord shall at all times have full control, management and direction of the Common Areas. Tenant shall not cause or allow any storage of materials or equipment outside of the Premises on any of the Common Areas. Landlord reserves the right at any time and from time to time to reduce, increase, enclose or otherwise change the size, number, location, layout and nature of the Leased Premises and its Common Areas; to create additional rentable areas through use and/or enclosure of Common Areas of the Leased Premises; to close portions of the Common Areas of the Leased Premises for security reasons, to perform maintenance, repairs, replacement and alterations; to place signs in the Common Areas and on the Leased Premises; to change the name of the Leased Premises; and to perform any other acts as Landlord in the exercise of its good business judgment shall determine to be necessary or appropriate for the Leased Premises.

7. Legal Compliance: Tenant shall, at Tenant's expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over Tenant's use of the Concession, including all local health code requirements. Tenant shall obtain and pay for all necessary permits and licensing for the operation of the Concession, including, if applicable, permits and licensing for a food and beverage concession in the City of Milwaukee. Tenant shall comply with all applicable federal, state and municipal laws and regulations. Tenant shall pay all fees and taxes required to carry out the provisions of this Agreement.
8. Signage: All proposed banners, signage and advertising on or within the Premises and environs, whether temporary or permanent, must be pre-approved in writing by the Parks Executive Director or his/her designee.
9. Permits, Licenses, and other Costs: Tenant shall procure, maintain, and pay the fee for the liquor license as well as all appropriate Federal, State, and local licenses and permits required for the operation of all activities. Tenant shall be responsible for all costs related to the sales of sundries, and food and beverages.
10. Marketing; Logo: Tenant is responsible for all marketing and advertising to promote its activities; provided, however, that the Parks Executive Director or his/her designee maintains the right to prohibit any advertisement or marketing that he/she deems to be inappropriate, inaccurate or otherwise. Tenant shall acknowledge the Department and include the Department's logo in all local promotional materials, whether print or digital, directly related to its activities pursuant to this Agreement. Tenant shall notify the Department's Marketing Manager or his/her designee as soon as it is aware of any television, radio, print, electronic or other media interviews or reports to be prepared regarding, at or concerning the Premises. Tenant shall not enter into any sponsorships or other promotional arrangements with outside contractors at the Premises without prior written consent of the Parks Executive Director or his/her designee, which consent will not be unreasonably withheld.
11. Staff; Customer Service: Tenant shall conduct its operation in a first-class manner, and all service shall be prompt, clean, and efficient. Tenant shall maintain customer service as a top priority. Tenant shall employ a sufficient number of qualified staff to properly operate the Concession. Tenant shall provide employees who are professional, friendly, and courteous to customers and the general public. Employees shall maintain a neat appearance, exercise good public relations skills, respond to customer complaints and questions, and conduct themselves in a high standard acceptable to County. Tenant and staff shall wear appropriate attire which, in the sole determination of County, clearly distinguishes Concession staff from County staff. The Parks Executive Director or his/her designee shall have the right, at all times, to notify Tenant, in writing, of any reasonable objections to the quality of services rendered at the Concession, and to require that his/her objections be responded to within a reasonable period of time.
12. Maintenance of Equipment; Garbage: Vendor shall equip the Concession and Premises with any equipment necessary to conduct business that has not been provided by the County. The County shall not maintain any equipment. Vendor shall, at all times and at its own expense, keep and maintain the equipment in good repair and in a clean, sanitary and orderly condition and appearance. No equipment provided by County shall be removed or replaced by Vendor without the prior written consent of the Parks Executive Director, and if consent is secured, removal and/or replacement shall be at Vendor's expense. Vendor must maintain County equipment in good repair to permit safe use and prevent injuries or

damages. Vendor will need to create storage for its equipment. Milwaukee County will need to approve any storage prior to it being built. Vendor is responsible for maintaining the Concession and surrounding areas in a state of cleanliness and repair to prevent injury to the public. While open to the public, Tenant, at its expense, shall see that all garbage or refuse is collected as often as necessary and in no case less than once a day and disposed of in the County receptacles.

13. Cleaning: During the season in which the Tenant is open to the public, Tenant shall collect and dispose of trash, litter and garbage associated with its activities and maintain the dining room, outdoor seating, food storage, and food preparation areas in a state of cleanliness and repair to prevent injury to the public and shall ensure those areas are clean, orderly, and inviting at all times, to the reasonable satisfaction of the Parks Executive Director or his/her designee. The Tenant is responsible for maintaining the walk-in cooler and display refrigerator. Tenant shall not be responsible for graffiti removal or the removal of trash and litter from all parts of the building. Tenant is not responsible for maintaining the public restrooms.
14. Site Restoration: Both Tenant and County shall together participate in a pre-season and post-season inspection of the Premises. Tenant shall be responsible for any actual documented physical damage to the Premises caused by Tenant, its employees, agents, representatives, and guests, as well as all Premises maintenance, including any necessary site restoration. Within five (5) days of the discovery of any such damage, the Premises shall be restored to the satisfaction of the Parks Director or his/her designee. If damage is not restored by the Tenant after five (5) days of the discovery and the County elects to restore such damage, then the County shall have the right to restore the damage with its own staff or contract with a private company to restore the damage, and charge all reasonable costs directly associated with performing the restoration work, to the Tenant (including salary and benefits if done with the County's own staff).
15. Improvements:
 - a. PREREQUISITES: A Right-of-Entry Permit ("ROE") is required by the County for any improvement, alteration, or addition that is not part of routine maintenance. Routine instances of maintenance, painting, repair and like-kind replacement of materials needing repair or replacement do not constitute alterations or additions requiring such approval, providing they do not individually exceed Five Thousand Dollars (\$5,000) in cost per year. Tenant's plans to renovate, improve and alter the Premises hereunder are contingent upon Tenant obtaining an amount of not less than one hundred percent (100%) of the estimated cost of the construction and renovation to the Premises. All costs associated with the construction and renovation of the Premises, including disconnection and/or hookup of Utilities in conjunction with such construction or renovation, shall be the responsibility of the Tenant. The County will not incur any costs, pay any expenses or issue any debt associated with the Premises, improvements and renovations to the Premises or equipment used on the Premises during the Term.
 - b. COUNTY APPROVAL: Prior to the start of any construction or renovation of the Premises, including any subsequent alterations or renovations, Tenant shall submit detailed construction plans and specifications to the State Historical Preservation Office (if applicable), to County and to the Architecture and Engineering Section of the Milwaukee County Department of Administrative Services, together with the name of

Tenant's proposed contractor(s), for review and approval. Submittals shall include, but not limited to, shop drawings containing product information and materials and products shall be approved by County. Tenant shall reimburse County for the cost of a Milwaukee County Project Manager (including salary and benefits) during the construction phases of the project, including any subsequent construction, alterations or improvements, in an amount not to exceed Two Hundred Fifty Dollars (\$250.00) per hour, or Seven Thousand Five Hundred Dollars (\$7,500) total for the project. All costs for the Milwaukee County Project Manager work provided over this amount shall be charged to the County's Parks, Recreation, and Cultural Department's operating budget. Conditions for approval shall include, but not be limited to provision that Tenant shall obtain and comply with, prior to commencing any alterations, additions and improvements, all necessary permits and licenses from the appropriate governmental authorities.

- c. **CONSTRUCTION STANDARDS:** All development and landscaping shall be completed in a first-class manner and consistent with the standards established for other work in Milwaukee County Parks. Any alterations, additions, and improvements shall be made in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Premises. Tenant shall also indemnify and hold County harmless from and against all statutory liens or claims of liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alteration, addition or improvement to the Premises undertaken by or on behalf of Tenant. Any structures, alterations, additions or improvements installed on the Premises by Tenant (including generic signage permanently affixed to the Premises) shall become the property of County upon the expiration or termination of this Agreement. In no event shall Tenant make any alterations or additions to the Premises without the prior written consent of County, except in the event of an emergency, when such consent shall not be required, provided that notice shall be given as soon as reasonably possible thereafter. Routine instances of maintenance, painting, repair and like-kind replacement of materials needing repair or replacement do not constitute alterations or additions requiring such approval, providing they do not individually exceed \$5,000 in cost per year.
- d. **BUILDER'S RISKS:** Tenant or its general contractor shall provide Builder's Risk insurance coverage on a completed value form insuring for special perils, with Milwaukee County as additional insured and loss payee on the insurance certificate. Coverage is during construction period and is intended to terminate when the work has been completed and the Premises are ready for occupancy. Prior to construction, Tenant shall supply Parks Executive Parks Executive Director with written evidence of Builder's Risk insurance. Tenant shall not commence construction activities without written approval from the Parks Executive Director and his/her designee. The Parks Executive Director shall provide a written response to the Tenant within thirty (30) days of receiving written evidence of the Tenant's Builder's Risk insurance documents.
- e. **CONSTRUCTION ESCROW:** Tenant agrees to provide evidence satisfactory to the County that the total amount of funds necessary to construct the proposed renovations to the Premises are immediately available and dedicated to such purpose and documentation is in place to provide for the orderly disbursement of such funds during the course of construction to pay for all permits, material, labor, supplies, and any other miscellaneous items used or necessary for the construction of the renovations. Tenant shall deliver to County evidence reasonably acceptable to the

County that the total amount of such funds are immediately available and dedicated for the above purpose prior to any construction activities taking place on the Premises. Any such evidence of the Tenant's financial capacity shall also include a letter from the Tenant's banking institution stating that the Tenant has secured a line of credit that is immediately available to Tenant for such purposes in an amount sufficient to cover 100% the costs thereof.

- f. **LICENSED TRADESPERSONS:** Tenant agrees that all renovations and improvements shall be performed by fully licensed contractors and subcontractors who shall utilize industry standard supplies, equipment, and construction methods in the performance of their duties. Tenant shall require its contractors and subcontractors to obtain and maintain adequate insurance coverages with liability limits not less than that required of Tenant by County. Tenant shall have responsibility to enforce compliance with these insurance requirements and provide evidence of insurance for any contractor or subcontractor as acceptable to the County.
- g. **CONSTRUCTION DOCUMENTS:** Tenant agrees that within sixty (60) days after the conclusion of each construction project, renovation or improvement project, Tenant shall provide to County a complete set of construction documents to be included as a minimum: (a) as-built drawings; (b) a copy of all work orders and change orders; (c) a copy of all lien-waivers; (d) operation manuals or cut sheet drawings of any mechanical fixtures or equipment which was installed; (e) manufacturer's warranties or extended warranties; (f) a copy of all construction permits and signed drawings; (g) City of Milwaukee final occupancy permits, if applicable.
- h. **REMOVAL OF EQUIPMENT AND SUPPLIES:** Upon expiration or termination of this Agreement for any reason or no reason, Tenant shall remove, at its costs, all of its supplies, displays, and related items from the Premises within three (3) days of the expiration or termination date, and shall restore the Premises to its prior condition, satisfactory to the Parks Executive Parks Executive Director his/her designee. Damage caused to the Premises by any removal of personal property or improvements to the Premises will be repaired by the Tenant. If for any reason Tenant does not comply in a timely manner with its obligations under this paragraph (which shall mean completion within sixty (60) days unless otherwise authorized in writing by Parks Executive Parks Executive Director, then the County may make such repairs or remove, dispose of, or retain such property as the County sees fit. It is mutually agreed that the County may recover from the Tenant any and all reasonable costs, related to this Section. The Tenant agrees to surrender the Premises in broom-clean condition, subject to ordinary wear and tear and casualty.

16. Disposal of Fats, Oils and Grease:

- a. **PREVENTION OF FOG BUILDUP:** Tenant shall keep leftover grease and food scraps from going down the drains. Fats, oils, and grease ("FOG") poured down drains can build up in pipes and sewers and cause sewage backups, which can lead to raw sewage overflows. Large amounts of FOG should be collected and stored in drums or barrels for recycling. Small amounts can be poured into a sealed container and thrown away. Tenant should scrape or wipe FOG from dishware and cookware and put it in the trash.
- b. **GCD INSTALLATION:** Tenant shall have a grease control device ("GCD") meeting all applicable requirements of Wisconsin Administrative Code NR 113 and

State of Wisconsin Department of Commerce 82.34 standards. The GCD shall be installed by a plumber licensed in the State of Wisconsin prior to the Tenant's occupancy of the Premises. The GCD shall be installed and connected so that it may be readily accessible for inspection, cleaning and removal of FOG at any time.

- c. **MAINTENANCE:** The GCD shall be maintained at the Tenant's sole expense. Maintenance shall include the complete removal of all contents, including floating material, wastewater and settled solids. The GCD shall be cleaned no less frequently than once every six (6) months. Grease interceptors shall be pumped out completely when the total accumulation of FOG, including floating solids and settled solids, reaches twenty-five percent (25%) of the overall liquid volume. Frequency of cleaning will depend upon the type of food prepared and how well grease is managed in the kitchen.
- d. **WASTE DISPOSAL:** FOG removed from a grease interceptor shall be disposed of in a solid waste disposal system or by a certified grease hauler. FOG removed from a grease interceptor shall be disposed of at a facility permitted to receive such wastes. No FOG shall be returned, decanted or discharged to any grease interceptor or into any portion of any private or County sanitary sewer system or water treatment facility.

- 17. **Removal of Equipment and Supplies:** Upon expiration or termination of this Agreement, Tenant shall remove, at its costs, all of its supplies, displays, and related items from the Premises within thirty (30) days of the expiration or termination date, and shall restore the Premises to its prior condition, satisfactory to the Parks Executive Director or his/her designee. Damage caused to the Premises by any removal of personal property or improvements to the Premises will be repaired by the Tenant. If for any reason Tenant does not comply in a timely manner with its obligations under this paragraph, and after providing Tenant with fifteen (15) days notice to cure, then the County may make such repairs or remove, dispose of, or retain such property as the County sees fit. It is mutually agreed that the County may recover from the Tenant any and all reasonable costs related to this Section. The Tenant agrees to surrender the Premises in broom-clean condition, subject to ordinary wear and tear and casualty.
- 18. **Continuity of Operations:** In the event that Tenant shall be prevented for any reason from furnishing merchandise to the public during the Term, County shall have the right to enter immediately upon the Premises with agents, employees, and contractors retained by it and to use Tenant's furnishings, and equipment and render service during the period of Tenant's inability, it being understood that none of Tenant's stock shall be used by County except with consent of Tenant and that Tenant shall not be liable under its several insurance obligations required by this Agreement for injury or damage resulting from such operation by County.
- 19. **Amplified Noise Restriction:** Amplified noise shall be limited to acoustic and vocal reinforcement to provide background music throughout the Premises and environs, [with the exception of a speaker system playing music at a low level as well as the ability to announce when food tickets are completed]. Events or performances with concert style amplification must be approved in writing by the Parks Executive Director or his/her designee. All amplified noise approved by the Parks Executive Director or his/her designee, as well as ambient music, shall comply with the appropriate City of Milwaukee and Milwaukee County noise ordinances.
- 20. **Inspection by County:** County shall at all reasonable times have the right to enter into and upon the Premises to examine and inspect the condition thereof; provided, however, such

entry shall be done in such a manner that it does not unreasonably interfere with the conduct of Tenant's use of the Premises.

21. Interest: Unless waived by County Board of Supervisors, Tenant shall be responsible for payment of interest on amounts not remitted in accordance with this Agreement. The rate of interest shall be the statutory rate in effect for delinquent County property taxes (one-percent (1%) per month or fraction of a month) as described in Wisconsin statutes section 74.47(1). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.
- a. **PENALTY**: In addition to the interest described above, Tenant may be responsible for payment of penalty on amounts not remitted in accordance with this Agreement, as may be determined by County. The penalty shall be the statutory rate in effect for delinquent County property taxes (.5% per month, or fraction of a month) as described in Milwaukee County ordinance section 6.06(1) and Wisconsin statutes section 74.47(2). The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.
 - b. **AUDIT RESULTS**: If, as a result of a requested audit under Section 4 of this agreement, additional amounts are disclosed to be due and owing to the County, interest and penalty shall be calculated thereon in accordance with the above method. Tenant shall remit to the County any additional amounts identified due and owing for the audit including interest and penalty thereon within thirty (30) days following receipt of the audit report by the County.
 - c. **NON-EXCLUSIVITY**: This provision permitting collection of interest and penalty by the County on delinquent payments is not to be considered the County's exclusive remedy for Tenant's default or breach with respect to delinquent payment. The exercise of this remedy is not a waiver by the County of any other remedy permitted under this Agreement, including but not limited to termination of this Agreement.
22. Audit: The Contractor, Lessee, or other party to the contract, its officers, Parks Executive Directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Lessee, or other party to the contract, related to the terms and performance of the Contract for a period of up to three years following the date of last payment, the end date of this contract, or activity under this contract, whichever is later. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances.
23. Insurance: Tenant shall strictly comply with the insurance requirements set forth on Exhibit D.
24. Indemnification: To the fullest extent permitted by law, Tenant shall indemnify the County for, and hold it harmless from, all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims,

which arise out of or are in any manner connected to the Premises or Concession, based on any injury, damage or loss being caused by any acts or omissions of the Tenant or its agents, guests, or employees. Tenant shall, at its own expense, investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon and pay all reasonable charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand or action.

25. Environmental Indemnification: Tenant shall, to the fullest extent provided for under any environmental laws, rules and regulations, be responsible for any required repair, clean-up, remediation or detoxification arising out of: (a) any Hazardous Materials brought onto or introduced into the Premises or surrounding areas by Tenant or its agents, or (b) Hazardous Materials located in the Premises or environs, that are discovered or disturbed as a result of the Tenant's activities on, at or near the Premises or environs. Tenant shall indemnify, defend and hold the County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) arising therefrom. Moreover, Tenant shall remediate and restore any affected area to at least the minimum standards as required by the WDNR or other applicable regulatory agencies. "Hazardous Materials" as the term is used herein shall mean any substance: (i) the presence of which requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Federal, State or local statute, regulation, ordinance, or amendments thereto.
26. Assignment, Subletting and Subcontracting: Tenant may not assign this Agreement, in whole or in part, or sublease or rent any part of the Premises to unrelated parties without the prior written approval of the Parks Executive Director. Assignment of any portion of the work by subcontract must have the prior written approval of County.
27. Holdover: If the Tenant remains in possession of the Leased Premises after the expiration of this lease, and without any renewal or extension hereof having been agreed to in writing, the Tenant shall be deemed to be occupying the Leased Premises on a month-to-month basis. All obligations contained herein shall continue to be applicable to such month-to-month tenancy until renewed or terminated.
28. Termination: County may terminate this Agreement if: (a) Tenant fails to comply with any provision in this Agreement, and such failure continues for thirty (30) days after a written notice from County setting forth in reasonable detail the nature of such default; (b) County, upon twelve (12) months' prior written notice to Tenant, elects to close or otherwise repurpose the Premises from its use as a concession during the Term; or (c) Tenant ceases to do business as a going concern, ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Tenant's assets or interest in this Agreement.
29. Independent Contractor: Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Tenant or its successors or assigns. In entering into this Agreement, and in acting in compliance herewith, Tenant is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder.
30. Prohibited Practices:

- a. Tenant during the period of this Agreement shall not hire, retain or utilize for compensation any member, officer, or employee of County or any person who, to the knowledge of Tenant, has a conflict of interest.
- b. Tenant hereby attests that it is familiar with Milwaukee County's Code of Ethics which states, in part, "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family, may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgment would be influenced thereby."

31. Public Records: Both Parties understand that the County is bound by the public records law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. Tenant hereby agrees that it shall be obligated to assist the County in retaining and timely producing records that are subject to the Wisconsin Public Records Law upon any statutory request having been made, and that any failure to do so shall constitute a material breach of this agreement, whereupon the Tenant shall then and in such event be obligated to indemnify, defend and hold the County harmless from liability under the Wisconsin Public Records Law occasioned by such breach. Except as otherwise authorized by the County in writing, records that are subject to the Wisconsin Public Records Law shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.
32. Casualty: If the Premises or the Building is damaged or destroyed by fire or other casualty covered by insurance, then this Lease shall continue in full force and effect and County may proceed to repair or restore the Premises to the condition which County furnished to Tenant upon the commencement of the Term. County shall be under no obligation to restore any Alterations to the Premises made by Tenant unless the same is covered by County's insurance, but nothing herein shall be construed to require County to insure such property. In no event shall County be obligated to expend an amount in excess of the insurance proceeds available to County for such repair or restoration. In the event the Premises are repaired as provided herein, then Tenant shall repair and restore its merchandise, furnishings, furniture, equipment and all alterations, additions and leasehold improvements made by or for Tenant to at least a condition equal to that before its damage. If the Premises or any part of it shall be rendered un-tenantable by any destruction or damage, then a pro rata portion of the Rent based upon the number of square feet of area in the Premises which are un-tenantable shall be abated until the Premises or such part thereof shall have been put in tenantable condition. Despite the foregoing, if any destruction or damage to the Premises or to the Building (whether or not the Premises are affected) is so extensive that County, in its sole discretion, elects not to repair or restore the Premises or Building or the proceeds of insurance are not sufficient or available to fully pay the cost of the repair or restoration, then County may terminate this Lease effective as of the date of the damage by written notice to Tenant, with notice to be given within ninety (90) days after the occurrence of the damage or destruction.
33. Notices: All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the party addressed as follows:

To Tenant:
BRG Lotta Burger LLC
530 W. McKinley Ave
Director
Milwaukee, WI 53212
Keithtrafton@bartolottas.com

To County:
Milwaukee County Parks
Attn: Parks Executive Parks Executive
9480 W Watertown Plan Rd.
Wauwatosa, WI 53226

Either party may designate a new address for purposes of this Agreement by written notice to the other party.

34. Waiver: No delay or omission by a party in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by a party on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.
35. Severability: The Parties agree that if any provision of this Agreement is determined to be unenforceable for any reason, such provision shall be deemed separate and severable and the unenforceability of any such provision shall not invalidate or render unenforceable any of the remaining provisions hereof.
36. Paragraph Headings: The paragraph headings contained herein are for convenience in reference and are not intended to specifically define or limit the scope of any provision of this Agreement.
37. Miscellaneous: This Agreement shall be construed, interpreted and enforced under the laws and jurisdiction of the State of Wisconsin without effect to its conflicts of law provisions. This Agreement constitutes the entire understanding between the Parties and is not subject to amendment unless agreed upon in writing by both Parties hereto. The Tenant acknowledges and agrees that it will perform its obligations hereunder in compliance with all applicable state, local or federal law, rules and regulations and orders. The Parties expressly consent to personal jurisdiction and venue of the state and federal courts located in Milwaukee County, Wisconsin for any lawsuit that arises from or relates to this Agreement.
38. Order of Precedence: The Parties understand and agree that the RFP and RFP Response are incorporated into and made a part of this Agreement by this specific reference. In the event of a conflict or disagreement among the documents, the following order of precedence shall govern:
 - (i) Written amendments to the Agreement;
 - (ii) The Agreement;
 - (iii) The RFP;
 - (iv) The RFP Response.
39. Affirmative Action, Nondiscrimination and Equal Opportunity: Tenant hereby certifies that it is in compliance with the equal opportunity policy and standards of Milwaukee County, and Federal rules and regulations regarding nondiscrimination in employment and service delivery. Tenant certifies that in the performance of work or execution of this agreement, it shall not discriminate against any employee or applicant for employment because of race, color, national origin, or ancestry, age, sex, sexual orientation, gender identity and gender expression, disability, marital status, family status, lawful source of income, or status as a victim of domestic abuse, sexual assault or stalking, which shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeships. Tenant will post in conspicuous places, available to its employees and applicants for employment, notices to be provided by the County setting forth the provisions of the non-discriminatory clause. A violation of these provisions shall be sufficient cause for the County to terminate the agreement without liability for the uncompleted portion or for any materials or services purchased or paid for by the Tenant for use in completing the agreement. Tenant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

- a. Affirmative Action Program (41 CFR 60-1.40): Tenant certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program (and will so certify prior to the award of the agreement), which shall have as its objective to increase the utilization of women, minorities, and disabled persons and other protected groups, at all levels of employment in all divisions of the Tenant's work force, where these groups may have been previously under-utilized and under-represented. Tenant also agrees that in the event of any dispute as to compliance with the preceding requirements, it shall be its responsibility to show that all requirements are met.
- b. Non-Segregated Facilities (41 CFR 60-1.8): Tenant certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location under its control, where segregated facilities are maintained.
- c. Subcontractors: Tenant certifies that it has obtained or will obtain certifications regarding non-discrimination, an affirmative action program and non-segregated facilities from proposed subcontractors that are directly related to any agreements with Milwaukee County before the award of any subcontracts, and that it will retain such certifications in its files.
- d. Reporting Requirement: Where applicable, Tenant certifies that it will comply with all reporting requirements and procedures established in 41 CFR 60.
- e. Affirmative Action Plan: Tenant certifies that, if it has 50 or more employees, that it will develop and/or update and submit (within 120 days of contract award) an Affirmative Action Plan to: Mr. Paul Grant, Audit Compliance Manager, Milwaukee County Department of Audit, 633 W. Wisconsin Ave., Milwaukee, WI 53203, Telephone No.: (414) 278-4292, or other appropriate government agency. Tenant will also require its subcontractors that have 50 or more employees to establish similar written affirmative action plans.

40. Targeted Business Enterprises:

While this Agreement does not have a specific participation goal established by Community Business Development Partners, Tenant is directed to use active and aggressive efforts to assist County in participation of Targeted Business Enterprise (TBE) firms on County contracts. The Parks Executive Directory of certified firms, and further assistance with this initiative, can be obtained by contacting the Community Business Development Partners Department of Milwaukee County (CBDP) at (414) 278-4747, or cbdp@milwaukeecountywi.gov. The Parks Executive Directory of TBE firms currently

certified in the State of Wisconsin can be found at: <http://wisconsin.gov/Pages/doing-business/civil-rights/dbe/certified-firms.aspx>

41. Special Event Permits: All special events to be held on the Premises shall require the Tenant to obtain and pay for a special event permit at the standard fee in effect at the time of the special event.
42. Security: Security personnel are permitted within the Premises for the purposes of checking identification and general observation.

Signature page follows

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date and year first above written.

MILWAUKEE COUNTY PARKS

BRG Lotta Burger, LLC

By: _____

By: _____

Guy Smith, Executive Parks Executive Director

Approved with regards to County Ordinance Chapter 42:

By: _____ Date: _____
Community Business Development Partners

Reviewed by:

Approved for execution:

By: _____ Date: _____
Risk Management

By: _____ Date: _____
Corporation Counsel

Approved:

Approved:

By: _____ Date: _____
Comptroller

By: _____ Date: _____
County Executive

The County has executed this Agreement pursuant to Wis. Stats. § 59.52(31)(b).

By: _____ Date: _____
Corporation Counsel

Leased Premises



Leased Premises

Beverage Service Area



Beverage Service Area