

**THIRD AMENDMENT TO INDENTURE**

**Between**

**SPECIALTY RESTAURANTS OF WISCONSIN, INC.**

**and**

**BOARD OF HARBOR COMMISSIONERS  
of the  
CITY OF MILWAUKEE**

**For renewal of lease of Port Property  
located at 550 North Harbor Drive**

**Term of Lease: February 1, 2008 through January 31, 2018**

### **THIRD AMENDMENT TO INDENTURE**

Amendment to Indenture made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Specialty Restaurants of Wisconsin, Inc., a Wisconsin corporation (hereinafter referred to as the “Tenant”), and the City of Milwaukee, a Wisconsin municipal corporation, acting by and through its Board of Harbor Commissioners (hereinafter collectively referred to as the “City”).

Whereas, the City and the Tenant entered into an Indenture dated December 28, 1966, whereby Tenant leased certain property comprising a portion of the Municipal Passenger Pier, adjacent to the North Harbor Tract, from the City, as more fully described in that document (hereinafter referred to as the “Indenture”), and

Whereas, the Indenture provided that the initial term of the lease would expire on the last day of January 1988, but further provided that the Tenant was granted three (3) options to continue the lease for additional periods of ten (10) years each; and

Whereas, the Tenant exercised its first option under the Indenture and notified the City of its intention to renew the lease for the period February 1, 1988 through January 31, 1998 (hereinafter referred to as the “First Renewal Term”) resulting in the negotiation and execution of an Amendment to Indenture between the city and the Tenant covering the period comprising the First Renewal Term; and

Whereas, the Tenant has also exercised its second option under the Indenture for the period February 1, 1998 through January 31, 2008 (hereinafter referred to as the “second Renewal Term”); and

Whereas, the Tenant has exercised its third option under the Indenture and has notified the City of its intention to renew the lease for the period February 1, 2008 through January 31, 2018 (hereinafter referred to as the “Third Renewal Term”);

NOW, THEREFORE,

The City and the Tenant agree to the following terms and conditions for this Third Amendment to Indenture:

1(A). The Tenant shall pay to the City as and for annual minimum rent during the period from February 1, 2008 through January 31, 2013 inclusive, a sum to be not less than Eighty Five Thousand Fifty Seven and 78/100th Dollars (\$85,057.78) per year, due and payable at the rate of Seven Thousand Eighty Eight and 15/100<sup>th</sup> Dollars (\$7,088.15) per month, in advance, on the first business day of each calendar month. Payment shall be made promptly by the Tenant to the City without demand therefor.

(B). On February 1, 2013 the annual rent for the Property shall be adjusted to the amount determined by applying the percentage increase, if any, of the "Consumer Price Indexes" published by the United States Bureau of Labor Statistics (or its successor organization) (1982=100) for the past five-year period to the rental figure payable during the previous five year period of this Amendment provided, however, that in no event shall the new base rental, as adjusted by the foregoing method, be decreased to an amount below that for the rental during the previous period. All other terms and conditions including Clause 11 (Arbitration) of Indenture shall apply.

2. The Tenant and the City agree that, other than the method of payment of rents as set forth in paragraph one (1) above, all other provisions regarding rents and gross receipts set forth in the Indenture and in the First and Second Amendments to Indenture dated April 8, 1988 and February 26, 2004, including without limitation the definition of "gross receipts," Tenant's obligations to document gross receipts, the City's ability to inspect books and records regarding gross receipts, and Tenant's annual obligation to make settlement of any additional sums due the City as rent, shall remain in full force and effect.

3. The Tenant and the City agree that the City's right to timely receipt of the payments identified in paragraphs one (1) and two (2) of this document is an express condition of this Lease Agreement and Tenant's failure to make timely rental payments shall constitute a default hereunder.

4. All of the other terms and conditions in the Indenture and in the First and Second Amendments to Indenture dated April 8, 1988 and February 26, 2004 as well as all Licenses, Easements, and other Agreements shall remain in full force and effect as therein expressed, except as and where specifically modified by the terms of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to Indenture to be executed by their proper respective offices and their corporate seals to be affixed hereto as of the day and year first written above.

In the Presence of:

**CITY OF MILWAUKEE**

\_\_\_\_\_

\_\_\_\_\_  
Tom Barrett, Mayor

\_\_\_\_\_

\_\_\_\_\_  
Ronald D. Leonhardt, City Clerk

**COUNTERSIGNED:**

\_\_\_\_\_

\_\_\_\_\_  
W. Martin Morics, City Comptroller

In the Presence of:

**BOARD OF HARBOR COMMISSIONERS**

\_\_\_\_\_

\_\_\_\_\_  
Daniel J. Steininger, President

\_\_\_\_\_

\_\_\_\_\_  
Donna Luty, Secretary

In the Presence of:

**SPECIALITY RESTAURANTS OF  
WISCONSIN, INC.**

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
  
\_\_\_\_\_

**STATE OF WISCONSIN  
MILWAUKEE COUNTY**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Tom Barrett, Mayor of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My Commission expires:\_\_\_\_\_

**STATE OF WISCONSIN  
MILWAUKEE COUNTY**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, City Clerk of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My Commission expires:\_\_\_\_\_

**STATE OF WISCONSIN  
MILWAUKEE COUNTY**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ Comptroller of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My Commission expires:\_\_\_\_\_

**STATE OF WISCONSIN  
MILWAUKEE COUNTY**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
\_\_\_\_\_, President, and \_\_\_\_\_, Secretary of the Board of  
Harbor Commissioners, who by its authority and on its behalf executed the foregoing instrument  
and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My Commission expires: \_\_\_\_\_

**STATE OF \_\_\_\_\_  
\_\_\_\_\_ COUNTY**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
\_\_\_\_\_, the \_\_\_\_\_, and \_\_\_\_\_, the  
\_\_\_\_\_ of Specialty Restaurants of Wisconsin, Inc who by its authority and on its  
behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

APPROVED as to Form and Execution this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Assistant City Attorney