

**PORT COMMISSION MINUTES  
AUGUST 30, 2010**

Be it remembered that a recess meeting of the Port Commission of the City of Long Beach, Mississippi, was begun and held in the IT Building at the Temporary City Hall Complex, adjacent to the Central Fire Station, 645 Klondyke Road, in said City, on Monday, August 30, 2010, and the same being the time, place, and date fixed by order of the Port Commission recessing the meeting from August 25, 2010.

\*\*\*\*\*

There were present and in attendance on said Commission and at the meeting, the following named persons: Commission President Phil Kies, Vice President James Hancock, Secretary Barbara Reed, Commissioners David Marks, Vernon Ehlers, Charles Purchner, Danny Hansen, Barney Hill, Port Attorney James C. Simpson, Jr., and Deputy City Clerk Stacey Dahl.

Absent the meeting were Commissioner Rod Rishel and Harbormaster Michael White.

There being a quorum present and sufficient to transact the business of the Port Commission, the following proceedings were had and done.

\*\*\*\*\*

The meeting was called to order; whereupon, review and discussion was held regarding the **Amended and Restated Lease Agreement by and among the Long Beach Port Commission and the City of Long Beach, Lessor, and S.Pucheu Holdings, LLC, Sub-Lessee, and DMF Properties, LLC, Lessee**, in the presence of Mr. Steve Pucheu, Mr. David Fayard, and Attorney Hayes Johnson. Said Lease Agreement ordered spread upon the minutes of this meeting in words and figures as follows:

**PORT COMMISSION MINUTES  
AUGUST 30, 2010**

**AMENDED AND RESTATED  
LEASE AGREEMENT**

**THIS AMENDED AND RESTATED LEASE AGREEMENT** (this Lease) is made and entered into effective as of \_\_\_\_\_, 2010 (the "Effective Date") by and among **the Long Beach Port Commission and the City of Long Beach** (hereinafter collectively referred to as "Lessor"); **S. Pucheu Holdings, LLC**, a Mississippi limited liability company (hereinafter referred to as "Assignor/Sub-Lessee"); and **DMF Properties, LLC**, a Mississippi limited liability company (hereinafter referred to as "Lessee").

**WHEREAS**, Assignor/Sub-Lessee is current owner tenant under an original Lease agreement being first entered on or about October 22, 1986, by and between Lessor and James E. Levens, III, Travis Lott and Ronnie Barker; and a sub-lease having been entered on March 31, 1987, by and between James E. Levens, III, Travis Lott and Ronnie Barker and Travron, Inc.; and a sub-lease having been entered on February 8, 2001, by and between Travron, Inc., and S. Pucheu, LLC; and a Lease Assignment, Release and Indemnification Agreement having been entered on June 5, 2007, by and among Lessor, Travron, Inc., S. Pucheu, LLC, and Assignor/Sub-Lessee, and recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_; and

**WHEREAS**, the parties wish to amend and restate the prior lease for the purpose of convenience and clarity, and to modify certain provisions of said lease as contained herein; and

**WHEREAS**, contemporaneously herewith but by separate document, it is understood that Assignor/Sub-Lessee wishes to and has assigned all of its rights and responsibilities under the **AMENDED AND RESTATED LEASE AGREEMENT** to Lessee, and to thereafter enter into a sub-lease with the Lessee; it is now

**FOR AND IN CONSIDERATION** of the mutual covenants herein contained and for other good, lawful and valuable considerations given and received by each of the parties to be bound hereby, agreed between the parties as follows:

**SECTION ONE  
DEMISE AND DESCRIPTION OF PREMISES**

**Section 1.1. Land and Building.** Lessor hereby demises and leases to Lessee, and Lessee hereby takes from Lessor, that certain portion of land owned by Lessor, described fully by the survey and property description attached hereto as Exhibit "A" (hereinafter referred to as the "Leased Premises"). The Leased Premises consists of land area upon which a building is to be constructed as described herein.

# PORT COMMISSION MINUTES

## AUGUST 30, 2010

The southern boundary of the Leased Premises shall be the mean high tide line wherever from time to time that line may be located.

The waterfront area adjoining the Leased Premises shall retain public use benefit and public access specifically for moorage for transient vessels and walkway adjacent to such waterfront moorage which is to be constructed with funds from the Boating Infrastructure Grant Program, as pursuant to a Grant Agreement between the U.S. Fish and Wildlife Service and the State of Mississippi, Department of Marine Resources dated \_\_\_\_\_, of 2009, Agreement Number &-\_\_\_\_-\_\_\_\_, a copy of which is kept on file at the office of the Service, 300 Westgate Center Drive, Hadley, MA 01035-9589 and at the offices of the City of Long Beach

### SECTION TWO RENT AND TERM

Section 2.1. Rent. Lessee shall pay Lessor rent for the Leased Premises as follows:

2.1.1. Base Rent. Lessee shall pay to Lessor base rent of One Thousand Six Hundred Thirty Three and & no/100 Dollars (\$1,633.00) per month (the "Base Rent"), payable in advance on the first day of each month, which amount is calculated on the basis on \$0.80 per square foot per year for the number of square feet contained within in the survey area of the Leased Premises. The base rent shall be increased ten percent (10%) every five years during the term of the Lease; said increases shall take effect on Sept. 1, 2015; Sept. 1, 2020; Sept. 1, 2025; Sept. 1, 2030; Sept. 1, 2035; and Sept. 1, 2040.

2.1.2. Percentage Rent. In addition to the Base Rent, Lessee shall pay Lessor as additional percentage rent annually an amount equal to two percent (2%) of the annual gross sales of between \$2,000,000.00 and \$3,000,000.00 generated from any commercial operations located on the Leased Premises during the Term; three percent (3%) of the annual gross sales of between \$3,000,000.00 and \$4,000,000.00 generated from any commercial operations located on the Leased Premises during the Term, and an amount equal to four percent (4%) of the annual gross sales of over \$4,000,000 from any commercial operations located on the Leased Premises during the Term (collectively, the "Percentage Rent"). For the purpose of verifying the Percentage Rent, Lessee shall promptly provide to Lessor all sales tax returns of Lessee at the same time such sales tax returns are provided to the Mississippi State Tax Commission.

Lessee shall pay any Percentage Rent due to Lessor as a result of any commercial operations located on the Leased Premises during the Term on a quarterly basis, payable each calendar quarter at the same time such sales taxes and returns are provided to the Mississippi State Tax Commission in such month for monthly sales.

**PORT COMMISSION MINUTES  
AUGUST 30, 2010**

2.1.3. Payments. All Rent shall be payable at Lessor's place of business or at such other place as Lessor may designate in writing.

Section 2.2 Term. This lease shall be for a term of thirty one (31) years from the effective date hereof, being the day of final approval by the Governing Authorities of the City of Long Beach according to its minutes.

Section 2.3 Other Items. It is the intention of Lessor and Lessee that the Rent herein specified shall be net to Lessor in each year during the Term of this Lease, that all costs, expenses, taxes charges and obligations of every kind relating to the Leased Premises, including, but not limited to the costs of maintaining and repairing the Leased Premises, which may arise or become due during the Term of this Lease shall be paid by Lessee, and that Lessor shall be indemnified by Lessee against such costs, taxes, expenses, charges and other obligations.

**SECTION THREE  
WARRANTIES OF TITLE AND QUIET POSSESSION**

Section 3.1. Title Lessee shall satisfy itself as to the state of the title of the Lessor=s premises, and Lessor will not warrant title to the Leased Premises and will lease only such interest that it may have, if any.

Section 3.2. Tidelands. In the event any portion of the Leased Premises constitutes State Trust Lands and leased from the Mississippi Secretary of State or should In Lieu Payments be required to be paid to the Mississippi Secretary of State, all such payments shall be the sole responsibility of the Lessee, and shall not be considered as a set off or reduction in any amount due as Rent hereunder.

**SECTION FOUR  
USES**

Section 4.1 General. While it is contemplated that Lessee will use the leased premises for the purpose of operating a restaurant, including as an incidental part thereof a bar or lounge area, and for purposes related thereto, Lessee may use the property for a restaurant or retail sales of goods or materials or professional services.

Lessee shall not use the Leased Premises in such a manner as to violate any applicable law, rule, ordinance or regulation of any governmental body. It is not the intention of the parties that the Leased Premises be used in connection with a gaming establishment, and no actual gaming activities shall be conducted or permitted south of U.S. Highway 90.

Section 4.2 Uses Prohibited Lessee shall not use, or permit the Leased Premises, or any part thereof, to be used, for any purposes or purposes other than the purpose or purposes authorized under the terms hereof, or commit any act or acts which will cause a cancellation of any insurance policy covering the building located on the premises, or any part thereof, nor shall lessee sell, or permit to be kept, used, or sold, in or

**PORT COMMISSION MINUTES  
AUGUST 30, 2010**

about the demises premises, any article which may be prohibited by the standard form of fire insurance policies. Lessee shall, at its sole costs, comply with all requirements, pertaining to the Leased Premises, of any insurance organization or company, necessary for the maintenance of insurance, as herein provided, covering any building and appurtenances at any time located on the Leased Premises.

**SECTION FIVE  
WASTE AND NUISANCE PROHIBITED**

Section 5.1 The Lessee agrees not to commit, permit or suffer to be committed any waste whatever on the Leased Premises, and that it will allow no nuisance to exist on the Leased Premises. Lessee will, when requested by the property authorities, abate all nuisances at its own expense.

**SECTION SIX  
ENCUMBRANCE OF LESSEE'S LEASEHOLD INTEREST**

Section 6.1. General. Lessee may encumber by mortgage, deed of trust or other proper instrument, its leasehold interest and estate in the Leased Premises, together with all buildings, fixtures and improvements placed by Lessee thereon as security for any indebtedness of Lessee incurred for the sole and exclusive purpose of providing or constructing improvements to or operations on the Leased Premises. No other debt of Lessee or any other person or entity shall be secured by mortgage, deed of trust, pledge, lien or otherwise against the Leased Premises except as first approved in writing by Lessor, and in no case shall the leasehold interest and estate in the Leased Premises, or any building, improvements or fixtures placed or located by Lessee thereon be pledged, lien or secured for any debt not incurred for the sole and exclusive purpose of construction of improvements to or operations on the Leased Premises. The execution of any such mortgage, or deed of trust, or other instrument, or the foreclosure thereof, or any sale thereunder, either by judicial proceedings or by virtue of any power reserved in such mortgage or deed of trust, or conveyance by Lessee to the holder of such indebtedness, or the exercise of any right, of power, or privilege reserved in the mortgage or deed of trust, shall not be held as a violation of any of the terms or conditions hereof provided the indebtedness owed by Lessee which is to be satisfied or reduced by any such mortgage, or deed of trust, or other instrument, or the foreclosure thereof, or any sale or the exercise of any right, of power, or privilege reserved thereunder was approved in advance by Lessor, and incurred and used by Lessor exclusively on the Leased Premises as provided above. However, such event shall be deemed as an assumption by the holder of such indebtedness personally of the obligations hereof. No such encumbrance, foreclosure, conveyance, or exercise of right shall relieve the Lessee from its liability hereunder. If Lessee shall encumber its leasehold interest or estate in the Leased Premises and if Lessee or the holder of the indebtedness secured by such encumbrance shall give notice to Lessor of the existence thereof and the address of such holder, than Lessor will mail or deliver to such holder, at such address, a duplicate copy of all notices in writing to which Lessor may, from time to time, give to or serve on Lessee under and pursuant to the terms and provisions hereof; such copies shall be mailed or delivered to such holder, at the same time such notices are given to or served on Lessee. Such holder may, at its option, at any

**PORT COMMISSION MINUTES  
AUGUST 30, 2010**

time before the rights of Lessee shall be terminated as provided herein, pay any of the rents due hereunder, or do any other act or thing required of Lessee by the terms hereof, or do any act or thing that may be necessary and proper to be done in the observance of the covenants and conditions hereof, or to prevent the termination hereof; all payments so made, and all things done and performed by such holder shall have the same effect in force as though the same had been done and performed by Lessee, (e.g., Any transfer or assignment of the Lessee's interest herein to any security holder is not a default of this Lease and said transfer need not be consented to by Lessor for validity if such security interest was properly approved in advance as required herein above). Notwithstanding anything contained in this lease, no lien or encumbrance placed on the Leased Premises for whatever reason shall survive termination or cancellation of this Lease.

No such encumbrance, foreclosure, conveyance, or exercise of right shall relieve Lessee from its liability hereunder.

**SECTION SEVEN  
SUBLETTING AND ASSIGNMENT**

SECTION 7.1. Lessee may sublet or assign its leasehold interest in whole or in part provided that it first obtain Lessor's prior written consent, which will not be unreasonably delayed or withheld. Any such proposed subletting and assignment shall be made only upon such conditions as determined by Lessor. Any subletting, assignment or transfer pursuant to this Section shall not release Lessee of liability under this lease.

**SECTION EIGHT  
NOTICES**

Section 8.1. All notices, demand, or other writings in this lease provided to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States will return receipt requested and postage prepaid, and addressed as follows:

TO LESSOR:

LONG BEACH PORT COMMISSION  
POST OFFICE BOX 929  
LONG BEACH, MS 39560

WITH COPY TO:  
JAMES C. SIMPSON, JR.  
Wise, Carter, Child & Caraway, P. A.  
2781 C. T. Switzer, Sr. Drive  
Suite 307  
Biloxi, Ms 39531

**PORT COMMISSION MINUTES  
AUGUST 30, 2010**

TO LESSEE:

DMF Properties, LLC  
David M. Fayard  
700 Old Savannah Drive  
Long Beach MS 39560

The address to which any notice, demand or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

**SECTION NINE  
CONSTRUCTION, ALTERATIONS AND EQUIPMENT**

Section 9.1 Approval of concept and design. Lessee shall, at its sole cost and expense, construct a building on the Leased Premises for operation of a restaurant on the subject premises, and also for any of the additional uses described in Section 4 above having a minimum total investment including the development of plans, specifications, surveys and construction of not less than \$500,000.00, and total area under roof of not less total of 3,000 square feet heated and cooled area.

All such construction shall be done in good workmanlike manner and shall be in compliance with all applicable laws, codes, ordinances, rules, regulations and orders of federal, state and local governmental and public bodies and agencies having jurisdiction over the performance of such construction work. Lessor shall cooperate with Lessee's efforts in obtaining all governmental consents, approvals and permits, provided all costs thereof shall be paid by Lessee.

Section 9.2 Plan Approval; Initial Construction. Prior to initial construction, final building plans and specifications shall be submitted to Lessor for approval prior to submission of same to the municipal building official or office with any application for a permit to begin construction. Lessee shall submit such final building plans and specifications for approval to Lessor within thirty (30) days from Lessor's approval of the rendering of the proposed building. Provided such plans and specifications are in substantial conformance with the drawings, renderings and/or plans furnished by Lessee as set forth in Section 4.1, such approval shall not be unreasonably withheld or delayed.

Section 9.3 Failure to Submit Plans, Commence Construction or Complete Construction. Lessee shall obtain a building permit from the City of Long Beach and commence actual construction of such building and permitted structure within sixty (60) days of final approval by Lessor of such plans and specifications. Lessee shall thereafter proceed with commercially reasonable diligence to complete such construction. This sixty (60) day commencement date is subject to any delay that may be caused due to the failure of permitting by any other governmental agency, State or Federal, which may be required prior to commencement of construction in accordance with the approved plans and specifications.

# **PORT COMMISSION MINUTES**

## **AUGUST 30, 2010**

Notwithstanding anything in this paragraph to the contrary, construction shall be completed and the facility operating not later than 365 days from the effective date. Failure to have such facility operating by said date shall be considered an act of default.

Section 9.4 Mechanics or Workman's Liens. Lessee shall (1) keep the Leased Premises at all times during the Term hereof free from mechanics' liens and other liens of like nature created or claimed by reason of transactions made by Lessee, and (2) at all times fully protect and indemnify Lessor against all such liens or claims which may ripen into such liens and all expenses arising from such liens or claims. If Lessee shall elect to contest any such claim or lien, it shall, within thirty (30) days after written notice of such claim or lien, furnish Lessor a bond of a responsible corporate surety, in the amount claimed, conditioned on the discharge of said claim or lien. If a final judgment establishing the validity of said lien or claim for any amount is entered, Lessee shall pay and satisfy same at once. As to the mechanics' liens or other liens of like nature created or claimed by reason of transactions made by Lessor, Lessor shall keep the Leased Premises free of same, indemnify Lessee, furnish Lessee with a bond and pay and satisfy valid liens, all in accordance with the same requirements as are imposed upon Lessee aforesaid.

### **SECTION TEN TAXES AND ASSESSMENTS**

Section 10.1 Real Property Taxes. Lessee shall pay, prior to any delinquency, all real property taxes assessed and levied against the Leased Premises.

Section 10.2 Personal Property Taxes. Lessee shall pay, prior to delinquency, any and all personal property taxes levied against Lessee's leasehold improvements, fixtures, equipment, furniture and other personal property located upon the Premises.

Section 10.3 Contests. Lessee shall have the right to contest the validity or amount of any taxes, as permitted by law, and may delay payment of the real estate and/or personal property taxes pending the resolution of a contest made in good faith and diligently pursued to completion.

### **SECTION ELEVEN MAINTENANCE**

Section 11.1 General. Lessee shall at all times during the Term of this Lease and at its own expense keep the Leased Premises, the air-conditioning and heating system, electrical systems and all other systems and fixtures and all equipment thereon used in connection with the Leased Premises in good order, condition and repair, and shall make all repairs thereto, ordinary and extraordinary, that may be required during the Term hereof, and return the Leased Premises at the end of the term with all of same in good working order. Lessee shall indemnify and save harmless Lessor against and from any loss, costs, damage and reasonable expenses arising out of or in connection with Lessee's use of the Leased Premises, or any part thereof.

# PORT COMMISSION MINUTES

## AUGUST 30, 2010

Section 11.2 Lessor's Obligation. Lessor shall have no obligation to maintain the building on the Leased Premises.

Section 11.3 Lessee's Obligation. Lessee shall, as its sole cost and expense and as required by this Lease, maintain, repair and replace the items comprising the building on the Leased Premises, including but not limited to, foundation, roof, structure, gutters and downspouts, exterior walls, interior walls and structural portions of the building to be constructed upon the Leased Premises, and all wiring, plumbing, sprinkler system, pipes, conduits and other utilities which service the building and all other systems and fixtures and all equipment thereon used in connection with the Leased Premises. Lessee shall deliver the Leased Premises to Lessor on the expiration or termination of this Lease in good repair and condition, reasonable wear and tear excepted and free and clear of any and all material liens or encumbrances created or claimed by reason of transactions made by Lessee.

Section 11.4 Repair and Maintenance. Lessee shall, as its own expense, make all repairs and replacements to all improvements constructed by Lessee on the Leased Premises which may be from time to time become necessary, including but not limited to repairs to the pipes, heating ventilation and air conditioning system, plumbing system, window glass, fixtures, and all appliances, appurtenances and equipment used by Lessee in connection with the occupancy of the Leased Premises. All such repairs and replacements shall be made promptly, as and when necessary. All repairs and replacements shall be of equal quality to the work and materials existing after the initial construction of such improvements. In the event of the failure of Lessee to make such repairs or replacements, Lessor may, but shall not be required to, make such repairs and replacements for Lessee's account, and the expense thereof shall constitute and be collectable as additional Rent; provided, however, Lessor must first give notice to Lessee to cure such default (i.e., make the repair) within a reasonable amount of time.

### SECTION TWELVE DAMAGE OR DESTRUCTION OF IMPROVEMENTS

Section 12.1 Substantial Destruction. If the Leased Premises is substantially destroyed (50% or more of replacement cost) by fire or other casualty, or if said damage is to such extent that it reasonably appears rebuilding or repair cannot be completed within one hundred eighty (180) days of said casualty, Lessee shall have the right to either (a) repair and restore the Leased Premises to substantially the same or better condition as prior to such casualty, or (b) cancel this Lease effective as of the date of such casualty and return the Leased Premises to Lessor. Lessee shall give written notice of its election to Lessor within a reasonable time, not to exceed one hundred and eighty days (180) days of the date of such casualty. Should Lessee exercise its right to rebuild, this Lease shall remain in full force and effect and Lessee shall proceed with due diligence to repair and restore the Leased Premises to substantially the same or better condition as prior to such casualty. Lessee shall promptly commence repair and restoration of the building and structures on the Leased Premises to substantially the same or better condition as prior to such casualty and complete such repair or restoration within 365 days of the date of casualty, or as quickly as is commercially reasonable to do. In the event of substantial

**PORT COMMISSION MINUTES  
AUGUST 30, 2010**

destruction as provided herein such insurance proceeds as may be payable due to such destruction shall be first paid to any secured lien holders holding liens for funds advanced and used exclusively for the construction of the improvements located on the Leased Premises, and only to the extent of such advances. After such payment to said secured lien holders the balance of insurance proceeds shall be paid in into an escrow account to be used only for repairs of the subject premises. If Lessee elects to repair and restore the Leased Premises to substantially the same or better condition as prior to such casualty, Lessee shall be entitled to draw funds directly for Lessee's construction costs of such repair or restoration up to the amount of same or the amount of insurance payment. Lessee shall be solely responsible for any shortfall in the insurance proceeds available to complete such repairs. Lessee shall be entitled to receive and retain any excess of such insurance proceeds available in the escrow account should it perform said repairs, and funds be remaining.

Section 12.2 Partial Destruction. In the event the Leased Premises should be damaged or destroyed by fire or other casualty, Lessee shall give written notice thereof to Lessor within a reasonable time, not to exceed seventy-two (72) hours. If the Leased Premises shall be damaged by fire or other casualty, but (1) not to such extent as to be substantially destroyed (50% or more of replacement cost) or (2) to such extent that rebuilding or repair can be completed within one hundred eighty (180) days of the casualty, Lessee shall proceed with reasonable diligence to rebuild and repair the Leased Premises to substantially the condition, or better, in which it existed prior to such casualty, subject, however, to any unusual delay in the issuance of any required building permits and other required governmental and third party approvals, that all infrastructure for required utilities remains available to the Leased Premises, and that all insurance that may be necessary and otherwise prudent to maintain is available on a commercially reasonable basis. If any required building permits and other required governmental and third party approvals cannot be obtained within said time or if all infrastructure for required utilities remains unavailable to the Leased Premises for such time, or if all insurance that may be necessary and otherwise prudent to maintain is un available on a commercially reasonable basis, such event or such casualty shall be considered to be Substantial Destruction.

**SECTION THIRTEEN  
UTILITIES**

Section 13.1. Lessee shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and other public utilities of every kind furnished to the premises throughout the term hereof, and all other costs and expenses of every kind whatsoever of or in the connection with the use, operation, and maintenance of the premises and all activities conducted thereon, and any and all taxes of any kind assessed against the Leased Premises and any personal property located thereon and Lessor shall have no responsibility of any kind thereof.

**PORT COMMISSION MINUTES  
AUGUST 30, 2010**

**SECTION FOURTEEN  
ATTORNEYS= FEES**

Section 14.1. If any action at law or in equity shall be brought to recover any rent under this lease, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this lease, or for the recovery of the possession of the Leased Premises, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

**SECTION FIFTEEN  
INSURANCE AND INDEMNITY**

Section 15.1 Indemnification Lessor shall not be liable to Lessee or Lessee's employees, agents or visitors, or to any other person whosoever, for any injury to person or damage to property in or occurring upon the Leased Premises or of any other person entering the Leased Premises under express or implied invitation of Lessee, or caused by the Leased Premises becoming out of repair, or caused by leakage of gas, oil, water or steam or by electricity emanating from the Leased Premises, or due to any other cause whatsoever (except to the extent that any of the foregoing are due to Lessor's negligence or misconduct or breach of its obligations hereunder) and Lessee agrees to carry property damage and general liability insurance as set forth in Section 9.2 below for the purpose of saving Lessor harmless to the extent of such coverage.

Section 15.2. Property Damage Insurance. Throughout the Term of this Lease, Lessee shall maintain insurance coverage on the Premises, including fire, windstorm and flood insurance, naming Lessor as additional insured, in the full amount of the replacement value of the improvements, including building code requirements endorsement once such improvements are complete and appropriate builder's risk insurance during the period of construction of improvements. Such insurance value shall be increased (but never decreased) periodically to always reflect the fair market replacement value of Premises. In the event the rate of the insurance on the said Premises is increased for any reason, Lessee shall pay the increased cost of the insurance at the time the premium notice is presented to Lessee.

Lessee shall deliver to Lessor copies of the certificates of insurance evidencing the existence in force of the policies of insurance described in this Paragraph 9. All of the policies of insurance required to be maintained hereunder shall be issued by an insurer licensed to do business within the state in which the Leased Premises are located. Each certificate shall provide that the insurance shall not be canceled or materially amended unless thirty (30) days' prior written notice of cancellation or amendment is given to the other party. Failure to have Lessor included and named as a co insured on any such policy shall be considered an act of default.

**PORT COMMISSION MINUTES  
AUGUST 30, 2010**

Section 15.3. General Liability Insurance. Lessee agrees to indemnify and save Lessor harmless from all claims for damages, to goods, merchandise, persons and other property in or upon the Leased Premises, and any platforms of Lessee, arising out of or occasioned by Lessee's use or occupancy, except such damages resultant from the negligence of Lessor, its agents, servants or employees, or caused by Lessor's failure to perform any of its obligations hereunder. Lessee shall, during the term hereof, carry a single limit policy of general liability insurance in an amount of not less than ONE MILLION AND NO/100 (\$1,000,000.00) DOLLARS for injury to persons and/or damage to property (combined single limit bodily injury and property damage), occurring in or upon the Leased Premises, insuring Lessor, Lessor's beneficiaries and agents and the holders of any notes secured by a first mortgage or trust deed on the Leased Premises. Such insurance may be carried under a blanket policy covering the Leased Premises as well as other locations in which Lessee or any of its affiliated or subsidiary corporations or other entities may be interested. Lessee will promptly furnish Lessor with a certificate of said coverage, and all renewals thereof.

Section 15.4. Additional Named Insured; Act of Default. All policies of insurance required hereby shall include Lessor as an additional named insured.

15.4.1 Failure to have Lessor included and named as an additional named insured on any such policy shall be considered an act of default.

15.4.2. Notwithstanding the provisions of Section 16 of this lease agreement, should such default continue for a period of ten days after notice of same by Lessor to Lessee, Lessor may but is under no obligation to purchase insurance coverage to protect Lessor's interests only in the Leased Premises and its improvements, in which case the cost of such insurance shall be considered as additional rent due immediately from Lessee.

15.4.3 This lease shall terminate upon the expiration of thirty days from the date of such Notice of Default should Lessee fail to correct such omission or exclusion and have Lessor added as an additional named insured under all such policies.

15.4.4 Should any loss occur at a time when Lessor is not included as an additional named insured under Lessee's insurance policy Lessor shall have and be entitled to an equitable lien on such insurance policy and any payments to be made under the terms of same for the loss.

Section 15.5. Hazardous Use. Lessee will not permit the Leased Premises to be used for any purpose which would render the insurance thereon void or the insurance risk materially more hazardous, it being understood and agreed that the use of the Leased Premises in the proper and ordinary conduct of Lessee's business for the purposes set forth above shall not be considered in violation of this Section.

**PORT COMMISSION MINUTES  
AUGUST 30, 2010**

Section 15.6. Waiver of Subrogation. Recognizing that Lessor is a governmental subdivision of the State of Mississippi, and thus to the extent but only to the extent allowed under law, Lessor and Lessee hereby waive any rights each may have against the other on account of any loss or damage occasioned to Lessor and Lessee, as the case may be, their respective property, or to the Leased Premises or its contents, arising from any risk covered or required to be covered hereunder by fire and extended coverage insurance, but to the extent of payment or compensation by such coverage only; and Lessor and Lessee, each on behalf of their respective insurance companies insuring the foregoing against any such loss or damage, waive any right of subrogation that they may have against the other. Lessor and Lessee shall provide written notice to their respective insurers of the provisions of this waiver and release and have their insurance policies endorsed to prevent invalidation of insurance coverage by reason of this waiver and release. Should the insurer of either party require an additional premium or cost in consideration of inclusion of the endorsement, it will be the responsibility of the party benefitting therefrom to pay such additional costs and, if not paid, such benefitting party will lose the benefit of this Section.

Section 15.7. Indemnification for Host Liquor Liability. Lessee will defend, indemnify, save free and hold harmless the Lessor for any action or damages, including attorney's fees and costs, resulting from a claim relating to host liquor liability.

**SECTION SIXTEEN  
DEFAULT**

Section 16.1 Events of Default. In addition to any event identified elsewhere herein, the following events shall also be deemed to be events of default by Lessee under the Lease:

16.1.1 Lessee shall fail to pay any installment of the Rent and such failure shall continue for a period of ten (10) days after the due date of such installment.

16.1.2 Lessee shall fail to comply with any term, provision, or covenant of this Lease, other than the payment of Rent or insurance, and such failure shall continue for a period of thirty (30) days after Lessor's written notice thereof to Lessee.

16.1.3 Lessee shall file a petition under any section or chapter of the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof; or Lessee shall be adjudged bankrupt or insolvent in proceedings filed against Lessee thereunder.

16.1.4 A receiver or trustee shall be appointed for all or substantially all of the assets of Lessee, provided, however, that no default shall occur under this Section 16.1.4 so long as Lessee continues to pay the Rent and is not otherwise in default under any other provision of this Lease).

**PORT COMMISSION MINUTES  
AUGUST 30, 2010**

16.1.5 Should Lessee abandon any substantial portion of the Leased Premises and cease to pay the Rent. Assignment or subletting by Lessee shall be an act of default unless such assignment or subletting is first approved in writing by Lessor or unless otherwise permitted under this Lease under Section 15 hereof.

16.1.6 Lessee shall fail to have in effect or maintain insurance herein required on Leased Premises which includes Lessor as a named insured along with Lessee in which case the provisions of Article 9 shall apply.

Section 16.2 Remedies of Lessor. Except as otherwise provided herein, upon the occurrence of any act of default, Lessor shall provide written notice of such default to Lessee. In addition to any other remedies allowed hereunder or by law, and unless otherwise provided herein, Lessee shall have thirty days from the date of such notice to cure any default under the lease. Should Lessee fail to cure any default hereunder, Lessor shall have the option to pursue any one or more of the following remedies after giving written notice to Lessee of the event of default as required herein and after the passing of the appropriate time to cure such default as provided herein:

16.2.1 Terminate this Lease, in which event Lessee shall immediately surrender the Leased Premises to Lessor, and if Lessee fails so to do, Lessor may, without prejudice to any other remedy which it may have for possession or arrearage in Rent, enter upon and take possession of the Leased Premises and expel or remove Lessee and any other person who may be occupying said Leased Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and Lessee agrees to pay to Lessor on demand the amount of all loss and damage which Lessor may suffer by reason of such termination, whether through inability to re-let the Leased Premises on satisfactory terms or otherwise.

16.2.2 Enter upon and take possession of the Leased Premises and expel or remove Lessee and any other person who may be occupying the Leased Premises or any part thereof, by force if necessary; and Lessee agrees to pay to Lessor on demand any deficiency that may arise by reason of such re-letting.

16.2.3 Any Notice of Default provided to Lessee shall also be provided to any approved mortgage holder or other creditor who has an approved security interest pursuant to Article 15 herein. Any such approved creditor will have the right to cure the Lessee's default within the same time period allowed for Lessee to cure any item contained in of the Notice of Default.

Section 16.3 Operations of Lessee. It shall be considered an act of default if after the initial construction is complete and the restaurant to be located upon the Leased

**PORT COMMISSION MINUTES  
AUGUST 30, 2010**

Premises opens, the restaurant or any replacement fails to operate for a period of 90 days consecutively, or for less than 180 days during any calendar year for any reason other than Substantial or Partial Destruction as described above. A notice of default shall consist of a written notice of the acts or omissions of lessee which constitutes the default and the action required by lessee to cure the default. The notice of default shall be mailed by United States mail, postage prepaid, return receipt requested, to Lessee's mailing address given in Section Eight herein.

**SECTION SEVENTEEN  
EXERCISE OF LESSOR'S RIGHTS**

Section 17.1 Lessee shall exercise any of its rights and remedies contained herein, or terminate this Lease Agreement for any reason whatsoever, except upon the following conditions:

- (1) Lessor has sent Lessee a notice of default in Section Fifteen herein and;
- (2) The necessary time period as allowed herein has elapsed, and;
- (3) Lessee has failed to cure the default within the said time period as allowed herein;
- (4) Provided, however, notwithstanding any provision contained herein to the contrary, in the event Lessee fails to pay the monthly rental as required herein in Section Two within fifteen (15) days after notice of default has been sent to Lessee as required in Section Fifteen, Lessee shall be deemed to be in default.

**SECTION EIGHTEEN  
LESSOR'S RIGHT TO PERFORM**

Section 18.1 In the event that lessee by failing or neglecting to do or perform any act or thing herein provided by it to be done or performed, shall be in default hereunder, than Lessor may, but shall not be required to, do or perform or cause to be done or performed such act or thing (entering on the Leased Premises for such purposes, if Lessor shall so elect), and Lessor shall not be or be held liable or in any way responsible for any loss, inconvenience, annoyance, or damage resulting to lessee on account thereof, and lessee shall repay to Lessor on demand the entire expense thereof, including compensation to the agents and employees of Lessor. Any act or thing done by Lessor pursuant to the provisions of this section shall be a waiver of any such default by lessee.

# PORT COMMISSION MINUTES

## AUGUST 30, 2010

### SECTION NINETEEN LESSEE'S OPTION TO TERMINATE

Section 19.1 Lessee shall have the right, by written notice to Lessor given at least fifty (50) days prior to, a) the expiration of the first five (5) year period of the term hereof, or , b) the expiration of any two (2) year period of the term hereof thereafter, to terminate this lease and surrender its leasehold interest hereunder to Lessor, effective on the expiration of such five (5) year or two (2) year period, and on such effective date lessee shall be relieved from all further liability hereunder, and shall deliver possession of the Leased Premises to Lessor.

### SECTION TWENTY EFFECT OF EMINENT DOMAIN

Section 20.1.1 Effect of total condemnation. In the event the entire Leased Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this lease shall terminate and expire as of the date of such taking, and lessee shall thereupon be released from any liability thereafter accruing hereunder.

Section 20.1.2 Effect of partial condemnation. In the event a portion of the Leased Premises shall be so appropriated or taken and the remainder of the property shall not be suitable for the use then being made of the property by lessee, or if the remainder of the property is not one undivided parcel of property, lessee shall have the right to terminate this lease as of the date of such taking on giving to Lessor written notice of such termination within sixty (60) days after Lessor has notified lessee in writing that the property has been so appropriated or taken. In the event of such partial taking and lessee does not so terminate this lease, then this lease shall continue in full force and effect as to the part not taken and the monthly installment of rent shall be reduced proportionately.

Section 20.1.3 Condemnation award. In the event of the termination of this lease by reason of the total or partial taking of the premises by eminent domain, then in any such proceedings Lessor and Lessee shall be free to make claim against the condemning or taking authority for the amount of any damage done to them respectively, as a result thereof.

In the event of a partial taking of the premises and this lease is not terminated then Lessee shall have the right to make claim against the condemning or taking authority for the amount of any damage to lessee as a result thereof.

**PORT COMMISSION MINUTES  
AUGUST 30, 2010**

**SECTION TWENTY ONE  
DISPOSITION OF IMPROVEMENTS ON TERMINATION OF LEASE**

Section 21.1 On termination of this lease for any cause, except upon total condemnation, the Leased Premises and all improvements thereon shall return to the sole and exclusive possession of the Lessor. Lessee shall remove all items of personal property not later than the termination date hereof, and shall return the Leased Premises in clean, habitable condition, with only normal wear and tear excepted.

**TWENTY TWO  
PARTIES BOUND**

The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties hereto and successive government authorities having control and authority over the Long Beach Harbor and all of the parties hereto shall be jointly and severally liable hereunder.

**SECTION TWENTY THREE**

Should Lessee fail to pay any amounts due hereunder when due after such amounts become ten (10) days delinquent, Lessor shall charge as late fees an additional one and one half percent (1.50%) as late charges of the outstanding balance due, commencing as of the date such amounts were originally due.

**SECTION TWENTY FOUR**

The captions appearing under the section number designations of this lease are for the convenience only and are not a part of this lease and do not in any way limit or amplify the terms and provisions of this lease.

IN WITNESS WHEREOF, the parties have executed this lease at:

**LONG BEACH PORT COMMISSION**

**CITY OF LONG BEACH**

By: \_\_\_\_\_  
Phil Kies, President  
Date of Execution \_\_\_\_\_

by: \_\_\_\_\_  
William J. Skellie, Jr., Mayor  
Date of Execution \_\_\_\_\_

**DMF PROPERTIES, LLC, Lessee**

**S. PUCHEU HOLDINGS, LLC, Assignor**

By: \_\_\_\_\_  
Its: Duly Authorized Director/Officer

By: \_\_\_\_\_  
Its: Duly Authorized Director/Officer

**PORT COMMISSION MINUTES  
AUGUST 30, 2010**

STATE OF MISSISSIPPI  
COUNTY OF HARRISON

PERSONALLY came and appeared before, the undersigned authority for said state and county, \_\_\_\_\_ Managing Member of **S. Pucheu Holdings, LLC**, who acknowledged to me that he executed the foregoing instrument on the day and year therein stated, for and on behalf of said limited liability company, as its act and deed, after first being duly authorized so to do.

GIVEN under my hand and official seal of office on this the \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF MISSISSIPPI  
COUNTY OF HARRISON

PERSONALLY came and appeared before, the undersigned authority for said state and county, \_\_\_\_\_ Managing Member of **DMF Properties, LLC**, who acknowledged to me that he executed the foregoing instrument on the day and year therein stated, for and on behalf of said limited liability company, as its act and deed, after first being duly authorized so to do.

GIVEN under my hand and official seal of office on this the \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



**PORT COMMISSION MINUTES  
AUGUST 30, 2010**

Alderman Marks	voted	Aye
Alderman Ehlers	voted	Aye
Alderman Reed	voted	Aye
Alderman Rishel	voted	Absent, not voting
Alderman Kies	voted	Aye
Alderman Purchner	voted	Aye
Alderman Hansen	voted	Aye
Alderman Hancock	voted	Aye
Alderman Hill	voted	Aye

The question having received the affirmative vote of all the commissioners present and voting, the President declared the **motion carried**.

\*\*\*\*\*

The commission recognized Mr. Justin Roland, Bait Shop/Fuel Lessee. Mr. Roland requested permission to rent a berthing slip for his live bait catch boat. After brief discussion, Commissioner Kies made motion seconded by Commissioner Purchner and unanimously carried to approve Mr. Roland's request to berth his live bait catch boat at the standard rental rate.

\*\*\*\*\*

There being no further business to come before the Port Commission at this time, Commissioner Reed made motion seconded by Commissioner Ehlers and unanimously carried to adjourn until the next regular meeting in due course.

\*\*\*\*\*

APPROVED:

\_\_\_\_\_  
PHIL KIES, PRESIDENT

\_\_\_\_\_  
DATE

ATTEST:

\_\_\_\_\_  
STACEY DAHL, DEPUTY CITY CLERK