



**AMENDMENT NO. 5 TO
LEASE AGREEMENT FOR THE INTERNATIONAL TERMINAL
DUTY FREE AND LUXURY STORES LEASE
AT SAN FRANCISCO INTERNATIONAL AIRPORT
LEASE NO. 17-0303**

THIS AMENDMENT NO. 5 TO LEASE AGREEMENT FOR THE INTERNATIONAL TERMINAL DUTY FREE AND LUXURY STORES LEASE AT SAN FRANCISCO INTERNATIONAL AIRPORT LEASE NO. 17-0303 (this **Amendment**), dated as of the Effective Date (as defined below), is entered by and between the CITY AND COUNTY OF SAN FRANCISCO, acting by and through its AIRPORT COMMISSION, as Landlord (**City**) and DFS Group, L.P., as Tenant (**Tenant**).

RECITALS

A. On December 5, 2017, by Resolution No. 17-0303, the Airport Commission (**Commission**) awarded to Tenant that certain Lease Agreement for the International Terminal Duty Free and Luxury Stores Lease at San Francisco International Airport Lease No. 17-0303 (**Original Lease**, and as amended, the **Lease**), for certain duty free and luxury stores at the Airport (as further described in the Lease, the **Premises**). On March 20, 2018, by Resolution No. 66-18, the San Francisco Board of Supervisors (**Board of Supervisors**) approved the Lease under Charter §9.118.

B. On March 17, 2020, by Resolution No. 20-0051, the Commission authorized Amendment No. 1 to the Lease, lowering the Base Rent to 33% of Gross Revenues for Lease Year 1, which was the period from April 1, 2020 through December 31, 2020 (**Amendment No. 1**). On June 23, 2020, by Resolution No. 280-20, the Board of Supervisors approved Amendment No. 1.

C. On December 1, 2020, by Resolution No. 20-0222, the Commission authorized Amendment No. 2 to the Lease which continued the lower Percentage Rent structure implemented in Amendment No. 1 until the earlier to occur of (i) the reinstatement of the Minimum Annual Guarantee (**MAG**) under the Lease and (ii) December 31, 2023 (**Amendment No. 2**). On February 12, 2021, by Resolution No. 35-21, the Board of Supervisors approved Amendment No. 2.

D. On October 6, 2020, by Resolution No. 20-0180, the Commission authorized Amendment No. 3 to the Lease when it adopted the COVID-19 Emergency Rent Relief Program (**Amendment No. 3**). On January 5, 2021, by Ordinance No. 5-21, the Board of Supervisors approved the COVID-19 Emergency Rent Relief Program.

E. On October 17, 2023, by Resolution No. 23-0256, the Commission authorized Amendment No. 4 to the Lease which provided for a modified Base Rent for the period commencing with Lease Year 5 (January 1, 2024) and continuing through the end of Lease Year 7 (December 31, 2026) equal to the greater of (i) Percentage Rent in the amount of 36% of Gross Revenues and (ii) a MAG of \$30,000,000.00, as adjusted annually per the terms of the Lease (the **Base Rent Reduction**). Under Amendment No. 4, the Base Rent Reduction is contingent upon Tenant's completion of its two facilities in Harvey Milk Terminal One no later than December 31, 2024. On April 16, 2024, by Resolution No. 180-24, the Board of Supervisors approved Amendment No. 4.

F. Pursuant to Amendment No. 2, the MAG under the Lease was reinstated on May 1, 2023, which also reinstated the original Percentage Rent structure. This Percentage Rent reinstatement resulted in the Tenant's rent as a percentage of sales being 41% for calendar year 2023.

When Amendment No. 2 was originally conceived in 2020, it was believed that when enplanements reached the level of recovery that restarted payments of MAG, sales would have recovered proportionately and rent relief of any form would no longer be appropriate. Sales have not recovered proportionately to enplanements primarily due to the changing demographic of the international passenger. Prior to the pandemic, the Chinese passenger was 15% of total international passengers, yet accounted for nearly 50% of all duty free sales activity. In 2023, the Chinese traveler represented less than 5% of total international passenger enplanements. It was not intended that the approved rent relief (Percentage Rent of 33% for 2020, 2021 and 2022) and further rent relief in Amendment No. 4 (Percentage Rent of 36% for 2024, 2025 and 2026) would be interrupted by a year (Calendar Year 2023) in which effective Percentage Rent grew to 41% because four months of the year fell under a relief program and eight months did not. Airport staff did not anticipate this result when it drafted and sought approval of Amendment No. 4 from the Commission and Board of Supervisors, and now seeks to correct this interruption in intended relief, on the terms and conditions in this Amendment. Further, this Amendment will make the terms of the rent relief conditioned upon Tenant's timely completion of its facilities in Harvey Milk Terminal 1 and Terminal 2, on the terms and conditions in this Amendment.

G. All capitalized terms not otherwise defined herein shall have the same meaning given to them in the Lease.

NOW, THEREFORE, in consideration of the foregoing and for valuable consideration the sufficiency of which is hereby acknowledged, City and Tenant hereby agree to amend the Lease as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
2. **Effective Date.** The "Effective Date" shall be the date upon which this Amendment shall be fully approved pursuant to §9.118 of the Charter of the City:

Effective Date (to be inserted by City): _____

3. **2023 Base Rent Reduction.** Subject to the provisions of Section 4 below, and notwithstanding any prior amendments of the Lease, Percentage Rent for Lease Year 4 (January 1, 2023 – December 31, 2023) will be equal to thirty-three percent (33%) of Gross Revenues, regardless of any suspensions or reinstatements of MAG in accordance with the terms of the Lease (**2023 Base Rent Reduction**).
4. **Completion of Duty-Free Renovation in Harvey Milk Terminal 1 and Terminal 2.** Both the 2023 Base Rent Reduction set forth in Section 3 of this Amendment and the Base Rent Reductions as defined and provided for in Section 3 of Amendment No. 4 are made expressly contingent upon the completion of Tenant's construction of its Initial Improvements as required under the Lease in its facility in Harvey Milk Terminal 1 no later than December 31, 2024, and its facility in Terminal 2 no later than March 31, 2025. In the event Tenant shall fail to complete such construction by such date, subject to any construction delay caused solely by City, in the sole and absolute discretion of Director, the 2023 Base Rent Reduction and the Base Rent Reductions set

forth in Section 3 of Amendment No. 4 shall be void and of no further force or effect, and Tenant shall pay to City payments of Base Rent equal to the amount set forth in the Original Lease retroactive to January 1, 2023, inclusive of any Minimum Annual Guarantee for periods when it would have been applicable under the terms of the Original Lease. This Section 4 supersedes and replaces in its entirety Section 4 of Amendment No. 4.

5. **Entire Agreement.** This Amendment contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Amendment. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Amendment are superseded in their entirety by this Amendment. No prior drafts of this Amendment or changes between those drafts and the executed version of this Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Amendment.

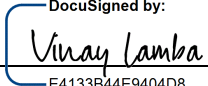
6. **Miscellaneous.** This Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and City, and no other person shall have any rights hereunder or by reason hereof as a third-party beneficiary of otherwise. Each party hereto shall execute, acknowledge and deliver to each other party all documents, and shall take all actions, reasonably requested by such other party from time to time to confirm or effect the matters set forth herein, or otherwise to carry out the purposes of this Amendment. This Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable.

7. **Full Force and Effect.** Except as specifically amended herein, the terms and conditions of the Lease shall remain unmodified and in full force and effect.

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

TENANT: DFS GROUP, L.P.
a Delaware limited partnership

By: 
Name: Vinay Lamba

Title: President, Store Operations US&Asia Pacific

CITY: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation,
acting by and through its Airport Commission

Ivar C. Satero
Airport Director

AUTHORIZED BY AIRPORT
COMMISSION

Resolution:
Adopted:

Attest: _____
Secretary
Airport Commission

APPROVED AS TO FORM:
DAVID CHIU,
City Attorney

By: _____
Deputy City Attorney