[Lease Amendment - DFS Group, L.P. - The International Terminal Duty Free and Luxury Lease - Modify Reduced Rent Structure]

Resolution approving Amendment No. 5 to the International Terminal Duty Free and Luxury Store Lease No. 17-0303 between DFS Group, L.P. and the City and County of San Francisco, acting by and through its Airport Commission, modifying the reduced rent structure from May 1, 2023, through December 31, 2023, contingent upon Tenant's construction of its location in Harvey Milk Terminal 1 by December 31, 2024, and its other location in Terminal 2 by March 31, 2025, with no change to the 14-year term of April 1, 2020, through March 31, 2034, to be effective upon approval of this Resolution by the Board of Supervisors.

WHEREAS, On December 5, 2017, by Resolution No. 17-0303, the Airport Commission (Commission) awarded the International Terminal Duty Free and Luxury Lease (Lease) to DFS Group, L.P. (Tenant); and

WHEREAS, On March 20, 2018, by Resolution No. 66-18, the Board of Supervisors approved the Lease, a copy of which is on file with the Clerk of the Board in File No. 180079; and

WHEREAS, On March 17, 2020, by Resolution No. 20-0051, the Commission approved Amendment No. 1 to the Lease establishing the Base Rent as 33% of gross revenues for Lease Year 1 which ends December 31, 2020; and

WHEREAS, On July 3, 2020, by Resolution No. 280-20, the Board of Supervisors approved Amendment No. 1, a copy of which is on file with the Clerk of the Board in File No. 200542; and

WHEREAS, On December 1, 2020, by Resolution No. 20-0222, the Commission approved Amendment No. 2 to the Lease which continued the Percentage Rent structure of 33% of gross revenues due to the prolonged recovery from the COVID-19 pandemic; and

WHEREAS, On February 2, 2021, by Resolution No. 35-21, the Board of Supervisors approved Amendment No. 2, a copy of which is on file with the Clerk of the Board in File No. 201348; and

WHEREAS, On October 6, 2020, by Resolution No. 20-0180, the Commission approved Amendment No. 3 to the Lease when it adopted the COVID-19 Emergency Rent Relief Program which provided Minimum Annual Guarantee (MAG) rent relief to most Airport concession tenants for April and May 2020; and

WHEREAS, On January 5, 2021, by Ordinance No. 5-21, the Board of Supervisors approved Amendment No. 3, a copy of which is on file with the Clerk of the Board in File No. 201278; and

WHEREAS, On October 17, 2023, by Resolution No. 23-0256, the Commission approved Amendment No. 4 to the Lease, providing for the temporary reduction in Percentage Rent and the MAG for Lease Year 5 (calendar year 2024), Lease Year 6 (calendar year 2025) and Lease Year 7 (calendar year 2026), contingent upon the construction of two of its facilities in Harvey Milk Terminal 1 by December 31, 2024; and

WHEREAS, On April 16, 2024, by Resolution No. 180-24, the Board of Supervisors approved Amendment No. 4, a copy of which is on file with the Clerk of the Board in File No. 231153; and

WHEREAS, Pursuant to Amendment No. 2, the MAG was reinstated on May 1, 2023, which also had the unintended effect of reinstating the original Percentage Rent structure, which resulted in the Tenant's rent as a percentage of sales being 41% for calendar year 2023; and

WHEREAS, When Amendment No. 2 was originally entered into in 2020, Airport staff anticipated that when enplanements reached the level of recovery that enabled the MAG to be reinstated, duty free sales would have recovered proportionately and rent relief of any form would no longer be appropriate; duty free 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, but accounted for nearly 50% of all duty free sales activity; in 2023, the Chinese traveler represented less than 5% of total international passenger enplanement; and

WHEREAS, Staff did not intend that the approved rent relief (Percentage Rent of 33% for 2020, 2021 and 2022) and further rent relief in Lease Amendment No. 4 (Percentage Rent of 36% for calendar years 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, and further Airport staff did not anticipate this result when it drafted and brought Amendment No. 4 to the Commission in October of 2023; and

WHEREAS, The Lease originally provided for Tenant to develop 3,714 square feet in Harvey Milk Terminal 1; and

WHEREAS, As part of a Premises Change initiated by Airport staff pursuant to the Lease, in exchange for Tenant relinquishing one of its two facilities in Harvey Milk Terminal 1, Tenant will develop the second 1,009 square foot location in Terminal 2 to serve international traffic departing from that terminal; and

WHEREAS, The rent relief in Amendment No. 5 will be contingent upon Tenant's construction of its location in Harvey Milk Terminal 1 no later than December 31, 2024, and its location in Terminal 2 no later than March 31, 2025; and

WHEREAS, On May 21, 2024, by Resolution No. 24-0110, the Commission approved

Amendment No. 5 to the Lease which provided for a Percentage Rent of 33% for the entirety of calendar year 2023, notwithstanding any reinstatement of MAG, and making such rent relief contingent upon Tenant's construction of its location in Harvey Milk Terminal 1 no later than December 31, 2024, and its other location in Terminal 2 no later than March 31, 2025; now, therefore, be it

RESOLVED, That the Board of Supervisors approves Amendment No. 5 to the Lease, a copy of which is on file with the Clerk of the Board of Supervisors in File No. 240673; and, be it

FURTHER RESOLVED, That within thirty (30) days of the amendment being fully executed by all parties, the Airport Commission shall provide the final amendment to the Clerk of the Board for inclusion into the official file.

City and County of San Francisco
Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 240673 **Date Passed:** July 23, 2024

Resolution approving Amendment No. 5 to the International Terminal Duty Free and Luxury Store Lease No. 17-0303 between DFS Group, L.P. and the City and County of San Francisco, acting by and through its Airport Commission, modifying the reduced rent structure from May 1, 2023, through December 31, 2023, contingent upon Tenant's construction of its location in Harvey Milk Terminal 1 by December 31, 2024, and its other location in Terminal 2 by March 31, 2025, with no change to the 14-year term of April 1, 2020, through March 31, 2034, to be effective upon approval of this Resolution by the Board of Supervisors.

July 17, 2024 Budget and Finance Committee - RECOMMENDED

July 23, 2024 Board of Supervisors - ADOPTED

Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 240673

I hereby certify that the foregoing Resolution was ADOPTED on 7/23/2024 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

8/1/24
Date Approved