

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

3 **Resolution approving Amendment No. 5 to the International Terminal Duty Free and**
4 **Luxury Store Lease No. 17-0303 between DFS Group, L.P. and the City and County of**
5 **San Francisco, acting by and through its Airport Commission, modifying the**
6 **reduced rent structure from May 1, 2023, through December 31, 2023, contingent**
7 **upon Tenant’s construction of its location in Harvey Milk Terminal 1 by December 31,**
8 **2024, and its other location in Terminal 2 by March 31, 2025, with no change to the**
9 **14-year term of April 1, 2020, through March 31, 2034, to be effective upon approval**
10 **of this Resolution by the Board of Supervisors.**

11
12 WHEREAS, On December 5, 2017, by Resolution No. 17-0303, the Airport
13 Commission (Commission) awarded the International Terminal Duty Free and Luxury Lease
14 (Lease) to DFS Group, L.P. (Tenant); and

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

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

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

1 WHEREAS, On December 1, 2020, by Resolution No. 20-0222, the Commission
2 approved Amendment No. 2 to the Lease which continued the Percentage Rent structure of
3 33% of gross revenues due to the prolonged recovery from the COVID-19 pandemic; and

4 WHEREAS, On February 2, 2021, by Resolution No. 35-21, the Board of Supervisors
5 approved Amendment No. 2, a copy of which is on file with the Clerk of the Board in File No.
6 201348; and

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

11 WHEREAS, On January 5, 2021, by Ordinance No. 5-21, the Board of Supervisors
12 approved Amendment No. 3, a copy of which is on file with the Clerk of the Board in File No.
13 201278; and

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

19 WHEREAS, On April 16, 2024, by Resolution No. 180-24, the Board of Supervisors
20 approved Amendment No. 4, a copy of which is on file with the Clerk of the Board in File No.
21 231153; and

22 WHEREAS, Pursuant to Amendment No. 2, the MAG was reinstated on May 1, 2023,
23 which also had the unintended effect of reinstating the original Percentage Rent structure,
24 which resulted in the Tenant's rent as a percentage of sales being 41% for calendar year
25 2023; and

1 WHEREAS, When Amendment No. 2 was originally entered into in 2020, Airport staff
2 anticipated that when enplanements reached the level of recovery that enabled the MAG to be
3 reinstated, duty free sales would have recovered proportionately and rent relief of any form
4 would no longer be appropriate; duty free sales have not recovered proportionately to
5 enplanements primarily due to the changing demographic of the international passenger; prior
6 to the pandemic, the Chinese passenger was 15% of total international passengers, but
7 accounted for nearly 50% of all duty free sales activity; in 2023, the Chinese traveler
8 represented less than 5% of total international passenger enplanement; and

9 WHEREAS, Staff did not intend that the approved rent relief (Percentage Rent of 33%
10 for 2020, 2021 and 2022) and further rent relief in Lease Amendment No. 4 (Percentage Rent
11 of 36% for calendar years 2024, 2025 and 2026) would be interrupted by a year (calendar
12 year 2023) in which effective Percentage Rent grew to 41% because four months of the year
13 fell under a relief program and eight months did not, and further Airport staff did not anticipate
14 this result when it drafted and brought Amendment No. 4 to the Commission in October of
15 2023; and

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

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

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

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

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

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

9 FURTHER RESOLVED, That within thirty (30) days of the amendment being fully
10 executed by all parties, the Airport Commission shall provide the final amendment to the Clerk
11 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.

Handwritten signature of Angela Calvillo
Angela Calvillo
Clerk of the Board

Handwritten signature of London N. Breed
London N. Breed
Mayor

8/1/24
Date Approved