

**EIGHTH AMENDMENT TO THE SIGNATORY TERMINAL BUILDING LEASE
AGREEMENT BETWEEN BROWARD COUNTY AND DELTA AIR LINES, INC.**

This Eighth Amendment ("Eighth Amendment") to the Signatory Terminal Building Lease Agreement between Broward County, a political subdivision of the State of Florida ("County"), and Delta Air Lines, Inc., a Delaware corporation authorized to do business in the State of Florida ("Airline") (collectively the "Parties"), is entered into effective as of the date this Eighth Amendment is fully executed by the Parties.

RECITALS

A. The Parties entered into a Signatory Terminal Building Lease Agreement, commencing on October 1, 2011, with respect to premises located at Fort Lauderdale-Hollywood International Airport ("Airport"), which has been amended seven times (collectively, as amended, the "Agreement").

B. Airline desires to occupy additional space at the Airport in order to expand the Delta Sky Club located in Terminal 2, and such expansion will require structural modifications to Terminal 2 ("Sky Club Expansion Project").

C. Airline engaged professional consultants to assist in the pre-construction architect and engineering design phase ("Pre-Construction Design") necessary to initiate the tenant improvement process ("TIP") required of all Airport tenants prior to proceeding with Improvements at the Airport.

D. Airline submitted a TIP application for the Sky Club Expansion Project and therein indicated that the estimated cost of the Sky Club Expansion Project was not less than Five Million Dollars (\$5,000,000).

E. At the time of the submittal of the TIP application, Airline was unaware that the Broward County Business Opportunity Act, Section 1-81, Broward County Code of Ordinances, had been amended to expand the inclusion of County Business Enterprise ("CBE") goals to the total cost of the required or permitted construction and improvements ("Contract Value") provided for in ground leases of County property, or amendments thereto.

F. The Sky Club Expansion Project is subject to the applicable requirements of the Broward County Business Opportunity Act; however, Airline has indicated that Pre-Construction Design costs in the amount of Five Hundred Thousand (\$500,000) were spent prior to submittal of the TIP application and prior to Airline becoming aware of the inclusion of CBE goals.

G. Airline is currently leasing the Temporary Premises (as defined in the Agreement) in Terminal 2 for temporary Sky Club seating during the Sky Club Expansion Project.

H. The Parties desire to amend the Agreement to add the Sky Club Expansion Premises (hereinafter defined) to the leased premises, update certain terms and conditions in the Agreement to accommodate the Sky Club Expansion Project, and permit an extension of the

term of the lease for the Temporary Premises in Terminal 2 to allow Airline to continue the use of the temporary Sky Club seating during the Sky Club Expansion Project.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The above Recitals are true and correct and are incorporated herein by reference. All capitalized terms not expressly defined within this Eighth Amendment shall retain the meaning ascribed to such terms in the Agreement.
2. Amendments to the Agreement made pursuant to this Eighth Amendment are indicated herein by use of strikethroughs to indicate deletions and bold/underlining to indicate additions. Except as modified herein, all remaining terms and conditions of the Agreement shall remain in full force and effect.
3. Airline shall comply with each and every requirement and condition imposed by the Aviation Department and contained in the written approval or modification thereof for the Sky Club Expansion Project and referred to as TIP-A-DL-2022-07-27/Delta Sky Club Expansion Deck.
4. Article I of the Agreement is amended as follows:

...

1.28 Terminal Building Lease Agreement or TBLA shall mean Articles 1 through ~~17~~ **19**, inclusive, of this Signatory Terminal Building Lease Agreement together with the exhibits and schedules which are attached to this TBLA and made a part hereof and the other documents that are expressly incorporated herein by reference.

...

1.30 Sky Club Expansion Premises shall mean the additional leased premises reflected on Exhibit A-4.2.

5. Notwithstanding the provisions of Section 3.2 of the Agreement, any fixture, structure, and Improvement permanently affixed to the Sky Club Expansion Premises (except signage, items unique to Airline, and equipment that is not permanently affixed) and any structural modifications or improvements to the Sky Club Expansion Premises or Terminal 2 related to the Sky Club Expansion Project (collectively, "Sky Club Expansion Improvements") are deemed Improvements and ownership thereof shall vest with County upon proper installation as determined by the Aviation Department in its reasonable discretion. Airline shall ensure that the Sky Club Expansion Improvements are and remain free of all liens, claims, and encumbrances.

6. Section 16.5 of the Agreement is amended as follows:

16.5 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision, of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through ~~17~~ 19 of this Agreement shall prevail and be given effect.

7. New Sections 17.31, 17.32, and 17.33 are added to the Agreement as follows (bold/underlining omitted):

17.31 Annual Ownership Disclosure Form. By January 1 of each year, Airline must submit, and cause each contractor and subcontractor to submit, an Ownership Disclosure Form (or such other form or information designated by County), available at <https://www.broward.org/econdev/Pages/forms.aspx>, identifying the ownership of the entity and indicating whether the entity is majority-owned by persons fitting specified classifications.

17.32 Verification of Employment Eligibility. Airline represents that Airline complies with the applicable requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If Airline violates this section, County may exercise any applicable rights or remedies granted to it in such statute.

17.33 Prohibited Telecommunications Equipment. In connection with its operations at the Airport, Airline represents and certifies that Airline does not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. Airline represents and certifies that Airline will require all contractors and all subcontractors to similarly represent and verify that each shall not provide or use such covered telecommunications equipment, system, or services during the term of this Agreement.

8. Article 19 is added to the Agreement as follows (bold/underlining omitted):

ARTICLE XIX - CBE COMPLIANCE

19.1 Airline shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances, in the development, construction, modification, or Improvements related to the Sky Club Expansion Project on the leased premises. Failure by Airline to carry out any of the requirements of this article shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or exercise any other remedy provided under this Agreement, the Broward County Code of Ordinances, the Broward County Administrative Code, or Applicable Laws, all such remedies being cumulative. Airline must submit Letter(s) of Intent during the TIP for the

Improvements related to the Sky Club Expansion Project to satisfy the CBE goal established in this Article XIX.

19.2 Airline must use Good Faith Efforts, as defined in Section 1-18, Broward County Code of Ordinances, to meet or exceed the required CBE goal by utilizing the CBE firms submitted as part of its obligations before construction as required in this Agreement for the Sky Club Expansion Project (or a CBE firm substituted for a listed firm, if permitted) for twenty-five percent (25%) of all of the Sky Club Expansion Project construction and improvements required in this Agreement, including, but not limited to, engineering, design, and consulting services related to, construction, fixtures, furniture, and equipment in Improvements, but excluding any costs for pre-construction architect and engineering design necessary to initiate the tenant improvement process that were incurred prior to the effective date of the Eighth Amendment to the Agreement (the "Commitment"), for the scope of work and the percentage of work amounts identified on each Letter of Intent. Airline shall enter into, or cause its construction manager at risk to enter into, formal contracts with the CBE firms, submitted as required in this article prior to its commencement of the construction, installation, or refurbishment of the Sky Club Expansion Project improvements, and upon request shall provide copies of the contracts to the Broward County Office of Economic and Small Business Development ("OESBD").

19.3 Each CBE firm utilized by Airline to meet the CBE goal must be certified by OESBD. Airline shall inform County immediately when a CBE firm is not able to perform or if Airline believes the CBE firm should be replaced for any other reason, so that OESBD may review and verify the Good Faith Efforts of Airline to substitute the CBE firm with another CBE firm, as applicable. Whenever a CBE firm is terminated for any reason, Airline shall provide written notice to OESBD and, upon written approval of the Director of OESBD, shall substitute another CBE firm in order to meet the CBE goal, unless otherwise provided in this Agreement or agreed in writing by the Parties. Such substitution shall not be required if the termination results from modification of the Sky Club Expansion Project and no CBE firm is available to perform the work under the modified Sky Club Expansion Project; in which event, Airline shall notify County, and OESBD may adjust the CBE goal by written notice to Airline. Airline shall not terminate a CBE firm for convenience without County's prior written consent, which consent shall not be unreasonably withheld.

19.4 The Parties stipulate that if Airline fails to meet the Commitment, the damages to County arising from such failure are not readily ascertainable at the time of contracting. If Airline fails to meet the Commitment and County determines, in the sole discretion of the OESBD Program Director, that Airline failed to make Good Faith Efforts (as defined in Section 1-81, Broward County Code of Ordinances) to meet the Commitment, Airline shall pay County liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Airline failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total Contract Value (as defined in Section 1-81, Broward County Code of Ordinances). An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by County, such

liquidated damages amount shall be either credited against any amounts due from County, or must be paid to County within thirty (30) days after written demand. These liquidated damages shall be County's sole contractual remedy for Airline's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81, Broward County Code of Ordinances. Airline acknowledges and agrees that the liquidated damages provided in this section are proportionate to an amount that might reasonably be expected to flow from a breach of the Commitment and are not a penalty. Any failure to meet the Commitment attributable solely to force majeure, changes to the Sky Club Expansion Project by County, or inability to substitute a CBE subcontractor where the OESBD Program Director has determined that such inability is due to no fault of Airline, shall not be deemed a failure by Airline to meet the Commitment.

19.5 Airline acknowledges that the Board, acting through OESBD, may make minor administrative modifications to Section 1-81, Broward County Code of Ordinances, which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Airline and shall include a deadline for Airline to notify County in writing if Airline concludes that the modification exceeds the authority under this section. Failure of Airline to timely notify County of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Airline.

19.6 County may modify the required participation of CBE firms in connection with any amendment, extension, modification, or other change to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, and changes, increases the initial Contract Value for the Sky Club Expansion Project by ten percent (10%) or more. Airline shall make a Good Faith Effort to include CBE firms in work resulting from any such amendment, extension, modification, or other change, and shall report such efforts, along with evidence thereof, to OESBD.

19.7 Airline shall provide written monthly reports to OESBD attesting to Airline's compliance with the Commitment. In addition, Airline shall allow County to engage in onsite reviews to monitor Airline's progress in achieving and maintaining the Commitment. OESBD or designee shall perform such review and monitoring.

19.8 Airline shall demonstrate timely payments of sums due to all contractors and suppliers of the construction and improvements for the Sky Club Expansion Project provided for in the Agreement. The presence of a "pay when paid" provision in an Airline's contract with a CBE firm shall not preclude County or its representatives from inquiring into claims of nonpayment.

9. Paragraph 4 of the Seventh Amendment is amended as follows:

4. The term of the lease of the Temporary Premises shall commence on the Effective Date, and shall continue on a month-to-month basis ~~for a period not to exceed six (6)~~

~~months~~ until the date that a certificate of occupancy is issued for the Sky Club Expansion Premises, or until the Director of Aviation provides written notice of intent not to further extend, whichever occurs first. If the Director of Aviation provides written notice of intent not to further extend, the lease of the Temporary Premises shall terminate fifteen (15) calendar days following the date of such notice, unless otherwise agreed in writing by the Parties. Airline shall vacate and surrender the Temporary Premises upon expiration or earlier termination of the lease of the Temporary Premises.

10. **Exhibit A-4** of the Agreement is hereby amended by adding **Exhibit A-4.2** to reflect the addition of the Sky Club Expansion Premises. Rent associated with the Airline's lease of the Sky Club Expansion Premises reflected on **Exhibit A-4.2** shall commence on the date that a certificate of occupancy is issued for the Sky Club Expansion Premises and be due in accordance with the Agreement.

11. In the event of any conflict or ambiguity between this Eighth Amendment and the Agreement, the Parties agree that this Eighth Amendment shall control. The Agreement, as amended herein by this Eighth Amendment, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter hereof that are not contained in the Agreement as amended in this Eighth Amendment. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

12. Preparation of this Eighth Amendment has been a joint effort of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.

13. Airline acknowledges that through the date this Eighth Amendment is executed by Airline, Airline has no claims or disputes against County with respect to any of the matters covered by the Agreement.

14. The effective date of this Eighth Amendment shall be the date of complete execution by the Parties.

15. This Eighth Amendment may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Eighth Amendment: BROWARD COUNTY, by its Board of County Commissioners, signing by and through its Director of Aviation, authorized to execute same by Board action, and Delta Air Lines, Inc., signing by and through its _____, duly authorized to execute same.

COUNTY

BROWARD COUNTY, by and through
its Director of Aviation

By: _____
Mark E. Gale, A.A.E.
Director of Aviation

____ day of _____, 2022

Approved as to form by
Andrew J. Meyers
Broward County Attorney
320 Terminal Drive, Suite 200
Fort Lauderdale, Florida 33315
Telephone: (954) 359-6100

By _____
Yesenia Alfonso (Date)
Assistant County Attorney

By _____
Sharon V. Thorsen (Date)
Senior Assistant County Attorney

SVT/YA/ch
Delta 8th amend
10/03/2022
80071.0027

**EIGHTH AMENDMENT TO THE SIGNATORY TERMINAL BUILDING LEASE
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AIRLINE

DELTA AIR LINES, INC.

By: _____
Authorized Signer

Print Name and Title

_____ day of _____, 2022

WITNESS/ATTEST:

Corporate Secretary or other witness

EXHIBIT A-4.2 – SKY CLUB EXPANSION PREMISES

- 2,420 square feet of Sky Club Expansion Premises (Type 2 space) in Terminal 2, Mezzanine Level.