

Item # 94

Exhibits 1 & 2

ADDITIONAL MATERIAL

Regular Meeting

June 15, 2021

SUBMITTED AT THE REQUEST OF

AVIATION DEPARTMENT

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

This Second Amendment ("Second Amendment") to the Second Addendum (hereinafter defined) 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 ("Delta") (collectively the "Parties"), is entered into effective as of the date this Second Amendment is fully executed by the Parties.

RECITALS

A. The Parties entered into a Signatory Terminal Building Lease Agreement, dated September 27, 2011 (as the same has been amended, "Lease Agreement").

B. The Parties entered into a Second Addendum to the Lease Agreement effective April 5, 2016, and amended it by a First Amendment effective March 27, 2018 (as amended, the "Second Addendum"), to allow Delta to administer and oversee the Modernization of Terminal Two (as described therein) and to perform certain other Work related to the Terminal Modernization, including work related to the design and construction of the secure connector bridges, and design and construction of related improvements between Terminal 1 and Terminal 2 and Terminal 2 and Terminal 3 (the "Terminal Connectors").

C. The First Amendment, among other things, increased the Contract Price by One Hundred Ten Million Dollars (\$110,000,000) to Two Hundred Twenty Million Dollars (\$220,000,000) in order to perform additional modernization work in Terminal Two. The increase consisted of approximately Twenty Two Million Nine Hundred Eighty Nine Thousand Eight Hundred Fifteen Dollars (\$22,989,815) for additional modernization work and approximately Eighty Seven Million Ten Thousand One Hundred Eighty Five Dollars (\$87,010,185) for the associated terminal bump out (extensions) and two new Terminal Connectors.

D. County's Design Professional modified the Plans to include plans, specifications, and related information for the Terminal Connectors and certain other work related thereto.

E. The Construction Contractor was asked to provide a revised Final Guaranteed Maximum Price ("FGMP") that included all construction and related and necessary work for the Terminal Connectors and related improvements as designed by County's Design Professional.

F. Despite significant and good faith negotiations by Delta and County with the Construction Contractor pursuant to Section 6.3 of the Second Addendum, the FGMP for the Terminal Connectors and related improvements has not been approved by Delta and the County.

G. The Parties now desire to enter into this Second Amendment to: (i) remove certain work from the Project related to the Terminal Connectors in accordance with Section 6.3 of the Second Addendum; (ii) decrease the Contract Price due to the removal of such work related to

the Terminal Connectors and increase the original Contract Price for the modernization work to reflect costs and expenses associated with, among other items, certain unforeseen conditions, certain additional work necessary to support the Terminal Connectors and the Terminal Modernization, certain scope changes, and certain design modifications; and (iii) modify certain other terms and conditions of the Second Addendum as set forth herein.

H. In connection with the removal of the Terminal Connectors and the modifications described in Recital G above, the Contract Price is being reduced by Sixty Seven Million Dollars (\$67,000,000.00).

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

1. The foregoing Recitals are true and correct and are incorporated herein by reference.
2. Unless otherwise noted, amendments made to the Second Addendum by this Second Amendment are indicated by the use of strikethroughs to indicate deletions and underlining (except for headers) to indicate additions.
3. Section 4.16 of the Second Addendum is hereby amended as follows:

4.16 Contract Price shall mean the amount set forth in Section 4 of **Exhibit A** and shall be used to pay the items specifically set forth herein, including the following items: (a) the Final Guaranteed Maximum Price of the Construction Contract; (b) the contract price under the Program Manager Contract; (c) Administrative Costs under this Second Addendum; (d) Owner's Change Order contingency of five (5%) of the FGMP after establishment of the FGMP for changes to the Construction Manager at Risk Work; (e) a Change Order contingency of Two hundred fifty thousand dollars 00/00 (\$250,000) for additional Project Manager services; (f) any costs associated with the construction of the Enabling Projects (to the extent that such sums are not included in the FGMP); (g) other Project-related costs funded in contracts entered between Delta and contractors for the Project (with the prior written approval of the County), other than the Construction Contract and the Program Manager Contract; (h) an Owner's Allowance Account of ~~\$13,500,000~~ \$7,843,288 aggregate to be utilized in accordance with **Exhibit L** hereof, as may be amended by amendment or addendum to this Second Addendum; (i) a not to exceed amount of \$750,000 for The Public Art and Design Program ("Public Art Program") established and codified in Section 1 - 88 of the Broward County Code of Ordinances, as amended, and (j) any other items set forth herein and/or approved by the County and/or the Board, as applicable.

4. Section 4.36 of the Second Addendum is hereby amended as follows:

4.36 Project shall mean the modernization of Terminal Two of the Airport, including but not limited to the construction of new ceilings, new terrazzo flooring,

the relocation of the passenger security screening checkpoint, demolition of existing concession space, construction of new concession retail shell space, supply of utilities to concession shell space (but excluding distribution of utilities within), relocation of concession support spaces, design and construction of an interim Delta Sky Club at Terminal Two, restroom renovations, expansion of and related improvements and modifications to holdrooms, other terminal building improvements, ~~design and construction of the secure connector bridges, and design and construction of related improvements between Terminal 1 and Terminal 2 and Terminal 2 and Terminal 3 (the "Terminal Connectors")~~, construction of certain components set forth in the Plans commonly known as "Work Package 4" (including, without limitation, the emergency back-up generator, fire pump, electrical panels, and other improvements agreed by County and Delta, which may include, without limitation, installing terrazzo flooring, certain wainscoting and certain painting) (collectively, the "Additional Airside and Landside Work"), any environmental remediation required due to the Project, Enabling Projects related thereto, and such other improvements agreed to in writing by the County and Delta, all in accordance with **Exhibit A**, the Contract Documents, and all applicable federal, state, and County laws, rules, regulations, ordinances and requirements; provided, however, that County shall be responsible for the design of the Project unless otherwise agreed by Delta and the County in writing. The Project is more particularly described on the narrative attached hereto as **Exhibit B-1**, which was prepared by GS&P; provided, however, that (a) if there is a conflict between **Exhibit B-1** and the drawings prepared by GS&P dated September 1, 2015, as the same have been or may be amended, or the drawings, if applicable, provided by any other ~~design professional~~ Design Professional, such drawings shall control, (b) if **Exhibit B-1** provides for something that is not contained in the aforementioned drawings, such item shall not be constructed unless and until the drawings are revised to reflect it, (c) if **Exhibit B-1** does not provide for something that is in the aforementioned drawings, such item shall be constructed unless and until the drawings are revised to exclude it, and (d) if there is a conflict between **Exhibit B-1** and the other terms this Second Addendum (i.e. other than **Exhibit B-1**), the terms of this Second Addendum (excluding **Exhibit B-1**) shall control.

5. Section 6.1 of the Second Addendum is hereby amended as follows:

6.1 County has provided or will provide ~~within five (5) business days after the date hereof~~ the current draft of the Plans for the Project (other than the Enabling Projects and the Terminal Connectors) to Delta for its use in negotiating with or procuring the Construction Contractor. County shall engage Design Professional, or others, and cause the preparation of Plans for the Enabling Projects, if applicable, as well as engage a Design Professional for the Terminal Connectors. The Parties acknowledge and agree that the Plans for the Project will be modified by the County to exclude the Work related to the Terminal Connectors. The

following shall not be considered Work related to the Terminal Connectors: (i) the Additional Airside and Landside Work and (ii) such other work as may be approved by County.

6. Exhibit A of the Second Addendum is hereby amended in part as follows:

a. Paragraph 3.1 of **Exhibit A** is hereby amended as follows:

3.1 Subject to (i) Force Majeure, (ii) the County's revision of the Plans to remove the Terminal Connectors and related improvements, and (iii) the County's release of Plans and timely approval of pricing for all Work, Substantial Completion shall occur within ~~One Thousand Eight Hundred Twenty Five (1,825)~~ One Thousand Six Hundred Thirteen (1,613) calendar days from the later of (a) award and execution of the Construction Contract or (b) determination of the FGMP.

b. Paragraph 4 of **Exhibit A** is hereby amended as follows:

4. Contract Price. The estimated not-to-exceed budget for the Project is ~~Two Hundred Twenty Million Dollars (\$220,000,000)~~ One Hundred Fifty Three Million Dollars (\$153,000,000), subject to adjustment as provided in the Second Addendum, and the Contract Price shall be used to pay components listed herein including those set forth in Section 4.16. The Contract Price does not include any amount that County agrees to pay Delta for the value of the existing Delta Sky Club, which amount shall be determined and paid pursuant to a separate agreement.

7. Exhibit B to the Second Addendum, depicting the Project Area, is hereby deleted in its entirety and replaced with **Exhibit B**, attached hereto and made a part hereof. As of the Effective Date, every reference in the Second Addendum to Exhibit B shall be deemed to refer to **Exhibit B** attached hereto; provided, however, that the Parties acknowledge and agree that certain Work will be performed outside the Project Area, including, without limitation, the replacement of carpet in the security checkpoint area.

8. Delta shall negotiate, subject to approval by County, appropriate modifications to the Construction Contract and the Program Manager Contract reflecting modifications to the Project as contemplated herein.

9. Pursuant to this Second Amendment the Parties have agreed to remove from the Project the design and construction of the Terminal Connectors; however, the Parties acknowledge and agree that construction of the Additional Airside and Landside Work shall be included as part of the Project. No portion of the Terminal Connectors will be performed by the Construction Contractor without the express written agreement of the County and Delta and without specific Plans from the Design Professional for such component of the Terminal Connectors scope.

10. In accordance with Section 6.3 of the Second Addendum and notwithstanding anything to the contrary in the Second Addendum, Delta shall negotiate, subject to approval by County, (a) any revisions to the FGMP, which may be via change order, and Construction Contract, including change orders, necessary for the Services and Work performed by the Construction Contractor, including, without limitation, the Work related to the Additional Airside and Landside Work being performed by Construction Contractor, and (b) any revisions to the Program Manager Contract and contract price therein necessary for the Services and Work performed by the Program Manager, including, without limitation, Work and Services related to the Additional Airside and Landside Work. Notwithstanding anything to the contrary in the Second Addendum, as amended hereby, for the avoidance of doubt, County acknowledges and agrees that the following shall be included as Work and Services permitted under, and included as part of, the Project, costs of the Construction Contractor and Program Manager associated with: (a) negotiating the proposed FGMP for the Terminal Connectors (including, without limitation, with respect to the deleted scope of Work); (b) the work on the Terminal Connectors, if any, and Additional Airside and Landside Work shown on the Plans and performed as part of the Project; and, (c) work and services in order to remove certain of the scope related to the Terminal Connectors and such other scope as County and Delta agree to modify and/or remove from the Project.

11. Except as otherwise expressly provided for in this Second Amendment, neither Delta nor County shall be deemed to have waived any or all of its rights or remedies with respect to any claim or breach existing on the date hereof or arising hereafter. No failure by either party to exercise, and no delay by any party in exercising, any right, remedy, power, or privilege under the Second Addendum shall operate as a waiver thereof.

12. Except as expressly modified herein, all remaining terms and conditions of the Second Addendum shall remain in full force and effect.

13. In the event of any conflict or ambiguity between this Second Amendment and the Lease Agreement, Addendum, Addendum Modification, or Second Addendum, the Parties agree that this Second Amendment shall prevail.

14. Capitalized terms not otherwise defined herein will have the meanings set forth in the Second Addendum.

15. This Second Amendment incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and there are no commitments, agreements, or understandings concerning the subject matter of this document that are not contained in this document. Accordingly, no deviation from the terms hereof will be predicated upon any prior representations or agreements, whether oral or written.

16. This Second Amendment may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

17. In the event any provision of this Second Amendment is found by a court of competent jurisdiction to be invalid, that provision shall be deemed severed from this Second Amendment, and the remaining provisions of this Second Amendment shall continue to be in full force and effect.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Second Amendment: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 2021, and Delta Air Lines, Inc., signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

Mayor
____ day of _____, 2021

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Aviation Office
320 Terminal Drive, Suite 200
Fort Lauderdale, Florida 33315
Telephone: (954) 359-6100
Telecopier: (954) 359-1292

Digitally signed by William Bucciero
Bucciero
Date: 2021.06.08 11:29:22 -04'00'
By William Bucciero
William J. Bucciero (Date)
Assistant County Attorney

Digitally signed by Alexander J. Williams, Senior Assistant County Atty
Williams, Senior Assistant County Atty
Date: 2021.06.08 11:37:35 -04'00'
By Alexander J. Williams
Alexander J. Williams (Date)
Senior Assistant County Attorney

AW/ch
Delta 2nd Amd. to Addendum
06/04/2021
80071.0027

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

DELTA

ATTEST:

Delta Air Lines, Inc.

DocuSigned by:
Alan T. Rosselot
Corporate Secretary or other person
authorized to attest

DocuSigned by:
By: HOLDEN SHANNON
Authorized Signor

(CORPORATE SEAL OR NOTARY)

Holden Shannon – Sr. Vice President
Print Name and Title

8th day of June, 2021

WITNESSES:

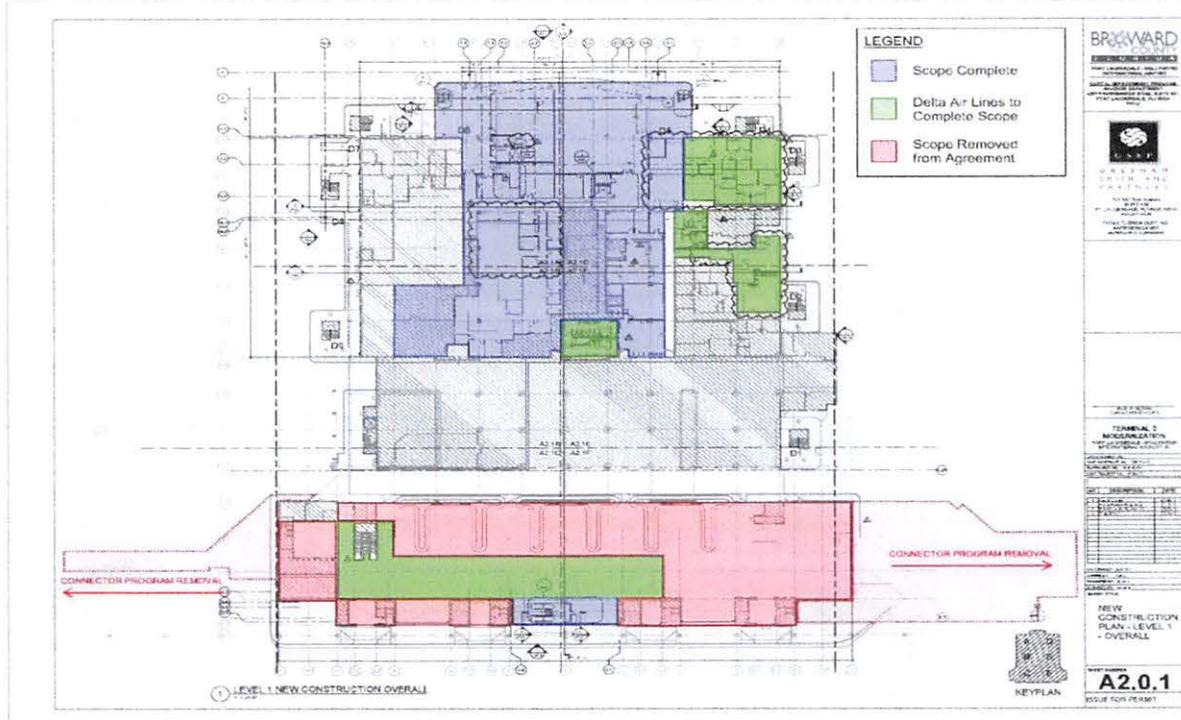
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Brian Miller
Signature

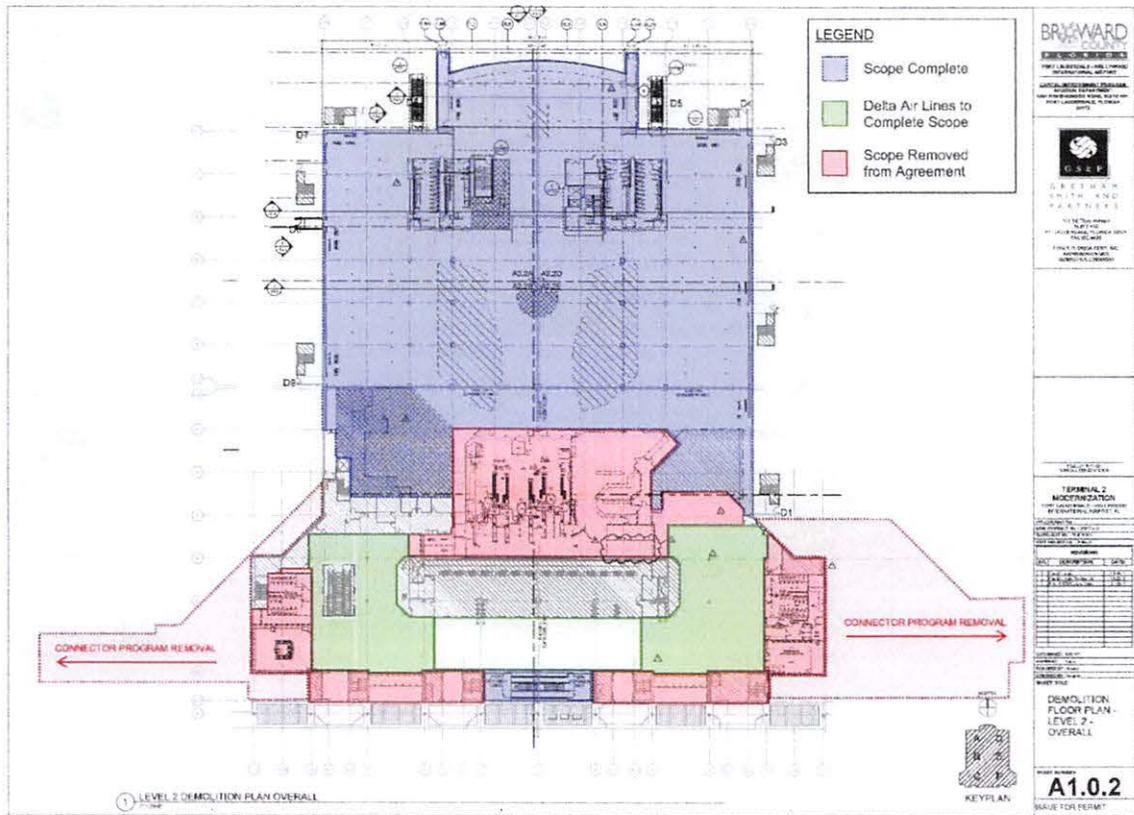
Brian Miller
Print Name of Witness above

DocuSigned by:
MATTHEW WINKLER
Signature

Matthew Winkler
Print Name of Witness above

EXHIBIT B





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

This Third Amendment ("Third Amendment") to the Second Addendum (hereinafter defined) 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 ("Delta") (collectively the "Parties"), is entered into effective as of the date this Third Amendment is fully executed by the Parties.

RECITALS

A. The Parties entered into a Signatory Terminal Building Lease Agreement, dated September 27, 2011 (as the same has been amended, "Lease"), pursuant to which Delta leases from County certain premises located at Fort Lauderdale-Hollywood International Airport (the "Airport"), including a previously existing Delta customer lounge (the "Former Delta Sky Club").

B. The Parties, as part of the modernization of Terminal Two at the Airport ("Terminal Two Modernization"), entered into a Second Addendum to the Lease effective April 5, 2016, amended by a First Amendment effective March 27, 2018, and Second Amendment effective on or about the date of this Third Amendment (as amended, the "Second Addendum").

C. In connection with the Terminal Two Modernization, the Former Delta Sky Club was required to be demolished and relocated.

D. Section 2.6 of the Lease provides that County would reimburse Delta for costs associated with relocating the Former Delta Sky Club. Article 4 of Exhibit A of the Second Addendum provides that the value of the existing Delta Sky Club will be determined and paid by a separate agreement between the Parties.

E. This Third Amendment sets forth the agreement reached between the parties to reimburse Delta for the Former Delta Sky Club in accordance with the Lease and Second Addendum.

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

1. The foregoing Recitals are true and correct and are incorporated herein by reference.
2. County shall pay to Delta the sum of Two Million Nine Hundred Thousand Dollars (\$2,900,000) on or before October 31, 2021.
3. In exchange for the consideration, Delta hereby irrevocably and unconditionally waives, releases, and discharges County from any and all claims, demands, actions, damages, judgments, rights, fees, debts, obligations, liabilities, expenses, costs, and losses of every

kind and nature, whether known or unknown, including under Section 2.6 of the Lease, Article 4 of Exhibit A of the Second Addendum, or otherwise (collectively, "Claims"), that Delta may have or has ever had against County arising out of, under, or in any way related to the Former Delta Sky Club, but, for the avoidance of doubt, specifically excludes (a) all Project costs related to the demolition of the Former Delta Sky Club, and (b) all Project costs related to the design and construction of an interim Delta Sky Club and shell space for a permanent Delta Sky Club which Project costs, if approved by County, were, or will be, reimbursed through the Project. Also excluded from this release is any rental reconciliation amounts related to the Former Delta Sky Club which shall be addressed separately pursuant to the Lease.

4. Except as expressly modified herein, all remaining terms and conditions of the Lease and Second Addendum shall remain in full force and effect.
5. In the event of any conflict or ambiguity between this Third Amendment and the Lease or Second Addendum with regard to the payment by County to Delta related to the Former Delta Sky Club, the Parties agree that this Third Amendment shall prevail.
6. This Third Amendment incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and there are no commitments, agreements, or understandings concerning the subject matter of this document that are not contained in this document. Accordingly, no deviation from the terms hereof will be predicated upon any prior representations or agreements, whether oral or written.
7. This Third Amendment may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
8. In the event any provision of this Third Amendment is found by a court of competent jurisdiction to be invalid, that provision shall be deemed severed from this Third Amendment, and the remaining provisions of this Third Amendment shall continue to be in full force and effect.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Third Amendment: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 2021, and Delta Air Lines, Inc., signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

Broward County Administrator, as ex officio Clerk of the Broward County Board of County Commissioners

By _____
Mayor
____ day of _____, 2021

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Aviation Office
320 Terminal Drive, Suite 200
Fort Lauderdale, Florida 33315
Telephone: (954) 359-6100
Telecopier: (954) 359-1292

By William Bucciero Digitally signed by William Bucciero
Date: 2021.06.08 11:28:53 -04'00'
William J. Bucciero (Date)
Assistant County Attorney

By Alexander J. Williams, Senior Assistant County Atty Digitally signed by Alexander J. Williams, Senior Assistant County Atty
Date: 2021.06.08 11:36:17 -04'00'
Alexander J. Williams (Date)
Senior Assistant County Attorney

AW/ch
Delta 3rd Amd. to Addendum
06/04/2021
80071.0027

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

DELTA

ATTEST:

DocuSigned by:
Alan T. Rosselot
Corporate Secretary or other person
authorized to attest

(CORPORATE SEAL OR NOTARY)

Delta Air Lines, Inc.

DocuSigned by:
By: HOLDEN SHANNON
Authorized Signor

Holden Shannon – Sr. Vice President
Print Name and Title

8th day of June, 2021

WITNESSES:

DocuSigned by:
Brian Miller
Signature
Brian Miller
Print Name of Witness above

DocuSigned by:
MATTHEW WINKLER
Signature
Matthew Winkler
Print Name of Witness above