

**FIRST AMENDMENT TO THE 2004 MEMORANDUM OF AGREEMENT  
AMONG  
THE PORT AUTHORITY OF NEW YORK & NEW JERSEY,  
THE NEW YORK STATE HISTORIC PRESERVATION OFFICE,  
THE FEDERAL AVIATION ADMINISTRATION, AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FOR THE REHABILITATION, RESTORATION, AND  
ADAPTIVE REUSE OF TWA TERMINAL 5 AT  
JOHN F. KENNEDY INTERNATIONAL AIRPORT  
JAMAICA, NEW YORK**

**THIS FIRST AMENDMENT TO THE 2004 MEMORANDUM OF AGREEMENT FOR THE REHABILITATION, RESTORATION, AND ADAPTIVE REUSE OF TWA TERMINAL 5 AT JOHN F. KENNEDY INTERNATIONAL AIRPORT, JAMAICA, NEW YORK** (this "**First Amendment to the 2004 MOA**") is entered into as of \_\_\_\_\_ 2016 by and among the Federal Aviation Administration of the United States of America (the "**FAA**"), the New York State Historic Preservation Office (the "**SHPO**"), the Advisory Council on Historic Preservation (the "**ACHP**"), and the Port Authority of New York and New Jersey (the "**Port Authority**") (collectively, the "**Signatories**").

**WHEREAS**, the Signatories have entered into a certain Memorandum of Agreement [dated August 20, 2004 and transmitted by the FAA on November 1, 2004 to the ACHP] regarding the "Rehabilitation, Restoration, and Adaptive Reuse of TWA Terminal 5" (the "**2004 MOA**"), which sets forth certain agreements and understandings relating to the TWA Terminal (also known as the TWA Flight Center and as Building 60) at John F. Kennedy International Airport (the "**Airport**"); and

**WHEREAS**, over ten years have elapsed since the date of the 2004 MOA, during which many of the conditions provided therein have been accomplished or are no longer required; and

**WHEREAS**, at the date of the 2004 MOA, the TWA Terminal site included the TWA Main Terminal Building, the West Tube and the East Tube (both as defined in the 2004 MOA; and defined collectively in the 2004 MOA as the "Connecting Flight Tubes"), and Flight Wings 1 and 2; and

**WHEREAS**, the requirements set forth in Stipulations 7 & 8 of the 2004 MOA have been completed. Specifically, the TWA building was listed in the National Register of Historic Places in 2005 (#05000994) and a copy of such listing is attached as Attachment E; and the TWA Terminal has been recorded according to HABS/HAER Level 1; and

**WHEREAS**, the 2004 MOA provided, in Stipulation 1, that the Port Authority would seek, through a Request for Proposals (RFP) process, to execute an agreement with an adaptive reuse developer providing for the appropriate design, construction, restoration, rehabilitation, operation and maintenance of the historic portions of the TWA Terminal; and

**WHEREAS**, pursuant to Stipulation 11 of the 2004 MOA, the Port Authority has committed over \$20 million in resources for a structure needing considerable attention, so that the TWA Main Terminal Building and the Connecting Flight Tubes have been properly maintained and cared for, and necessary repairs/maintenance identified through inspections have been performed, and the Port Authority has continued to make inspections of and perform repairs/maintenance on the TWA Main Terminal Building and Connecting Flight Tubes as needed until these responsibilities are delegated to the adaptive reuse developer; and

**WHEREAS**, pursuant to Stipulation 12 of the 2004 MOA, the Port Authority, through consultation with the SHPO, has restored and rehabilitated portions of the TWA Main Terminal Building and the East Tube in accordance with the Secretary's Standards (as defined in the 2004 MOA), and all other historic areas not restored or rehabilitated by the Port Authority are intended to be restored or rehabilitated by the adaptive reuse developer in accordance with the Secretary's Standards; and

**WHEREAS**, as contemplated by the 2004 MOA, a new Terminal 5 has been built, which, along with the surrounding roadway network, now physically separates the TWA Terminal site from the Airport's airside areas; and

**WHEREAS**, due to construction of the new Terminal 5 and in accordance with Stipulations 13 & 14 of the 2004 MOA, the original satellite Flight Wings 1 and 2 have been removed; and the remaining Connecting Flight Tubes provide direct access to the new Terminal 5 over the surrounding roadway network; and

**WHEREAS**, the FAA, the SHPO, the ACHP and the Port Authority consulted pursuant to 36 C.F.R. Part 800, regulations implementing Section 106 of the National Historic Preservation Act, as amended (54 U.S.C. 306108) (the "**Section 106 Process**") in connection with the 2004 MOA; and

**WHEREAS**, certain interested parties were invited by the FAA to participate in the Section 106 Process and to concur in the 2004 MOA (such interested parties, collectively, the "**Consulting Parties**"); and

**WHEREAS**, the Consulting Parties in 2016 presently consist of The National Trust for Historic Preservation, The Municipal Art Society of New York, the New York City Partnership, Docomomo US/New York Tri-State, the Finnish Consulate General, New York Landmarks Conservancy, and the New York Building Congress, which have been invited to concur on this First Amendment to the 2004 MOA; and

**WHEREAS**, pursuant to Stipulation 3 of the 2004 MOA, a Redevelopment Advisory Committee, or the RAC (as defined in the 2004 MOA), comprised of the SHPO, the Port Authority and the Consulting Parties, was formed pursuant to the 2004 MOA, and has operated in accordance with the Guidelines set forth in Attachment D to the 2004 MOA, and the RAC has met since August 2004 to review various proposals for the redevelopment of the TWA Terminal; and

**WHEREAS**, consistent with the 2004 MOA, the Port Authority proposed a plan, put forth by a joint venture of MCR Development LLC and JetBlue Airways Corporation (collectively, the "**Developer**"), whereby in connection with its rehabilitation, the TWA Terminal would be redeveloped as a hotel to serve the needs of the Airport and the traveling public (the "**TWA Flight Center Hotel**"); and the RAC met in May and June 2015 to review and discuss the TWA Flight Center Hotel proposal; and

**WHEREAS**, the evolving plans for the TWA Flight Center Hotel, as developed and revised by the Developer and reviewed and commented on by the RAC during the RAC meetings in May and June 2015, as further refined, are shown in the "Revised Concept Master Plan" - consisting of the Conceptual Design dated December 1 2015, a copy of which is attached as Attachment F; and

**WHEREAS**, some of the RAC members do not fully support the proposed design of the TWA Flight Center Hotel, but these RAC members have been actively engaged in consultation to develop this First Amendment and have stated their interest in continuing to be involved in the design review process after this First Amendment has been executed; and

**WHEREAS**, the plan for the TWA Flight Center Hotel requires a change to the Airport's Airport Layout Plan, which requires the approval of the FAA, and in connection therewith the FAA is required to conduct an environmental review and render a final Federal environmental determination, pursuant to the National Environmental Policy Act (NEPA), as well as other requisite Federal actions and approvals; and

**WHEREAS**, the 2004 MOA is herein amended to reflect the role of the Developer in the adaptive reuse of the TWA Main Terminal; and

**WHEREAS**, this First Amendment to the 2004 MOA includes Flight Center Hotel LLC, a joint venture of MCR Development LLC and JetBlue Airways Corporation, which has been invited to concur on this First Amendment to the 2004 MOA.

**NOW, THEREFORE**, the FAA, the SHPO, the ACHP and the Port Authority agree that the 2004 MOA is hereby amended as follows:

### **AMENDMENTS TO THE 2004 MOA**

1. Amendments to 2004 MOA Stipulations.

(a) There shall be inserted following Stipulation 1 of the 2004 MOA, a new Stipulation 1A as follows:

"1A. The signatories agree that Flight Center Hotel LLC (the "Developer"), a joint venture of MCR Development LLC and JetBlue Airways, has been selected by the Port Authority through the RFP process as the adaptive reuse developer, and that the Developer has agreed to adhere to the terms and conditions of this MOA, as amended; the Port Authority agrees that such agreement by the Developer shall be contained in the long-term lease to be entered into between the Port Authority and the Developer for the TWA Terminal site, which shall provide for the adaptive reuse of the TWA Terminal as a hotel (the "TWA Flight Center Hotel")."

(b) There shall be inserted in place of Stipulation 5 of the 2004 MOA, new Stipulations 5A, 5B and 5C that address the adaptive reuse as follows:

"5A. The preliminary and pre-final design plans for the TWA Flight Center Hotel, which shall include the preliminary and pre-final design plans for the restoration, rehabilitation and adaptive reuse of the TWA Main Terminal and the Connecting Flight Tubes, shall be submitted by the Port Authority to the consulting parties and the RAC for comment as to whether those plans conform to the conditions set forth in Stipulation 12 governing the standards for performance of the restoration and rehabilitation work. The preliminary and pre-final design plans (which shall show the entire approximately six-acre site, as shown in Attachment G) will be posted on a web-based FTP site, and the Port Authority will send a

notice to the consulting parties, and the RAC, of the availability of such plans, with instructions as to how to access the web-based FTP site; comments shall be submitted by the consulting parties within 14 calendar days following the date of such notice.

5B. The design plans for the TWA Flight Center Hotel shall provide for the Developer to build two new structures comprising integral components of the hotel; they will contain guest rooms, conference facilities, and other uses located within the existing and proposed structures, as shown conceptually in Attachment F. The TWA Flight Center Hotel will also include, pursuant to Stipulation 6 of this MOA, an interpretative display illustrating the history and significance of the TWA Terminal site and its relationship to the overall development of the Airport (to be provided by the adaptive reuse developer), the information desk and the restored Solari Flight Information Display (as provided in Stipulation 15 below); and, pursuant to Stipulation 4 of this MOA, updated approach roadways and a covered pedestrian walkway and associated improvements from the AirTrain station (to be constructed at the cost of the Port Authority); as well as associated landscaping.

5C. The Port Authority and the SHPO shall notify all signatories, all consulting parties and all members of the RAC of its approval of the final design plans for the restoration, rehabilitation and adaptive reuse of the TWA Terminal and Connecting Flight Tubes. If the final Tenant Construction Application (*i.e.*, the design and construction documents submitted for the Port Authority's review and approval in connection with all construction to be undertaken on property within the jurisdiction of the Port Authority) shows that the TWA Flight Center Hotel design differs substantially from that shown in the pre-final designs referred to in Stipulation 5A above, the consulting parties and the RAC shall be reconvened to review and comment on the design changes. "Differs substantially", as used in the preceding sentence, shall be defined as: Any changes from the pre-final design plans impacting the footprint or height of the proposed new construction; any proposed changes to the historic exterior façade of the TWA building including the concrete shell, window walls, skylights or tubes;

or any interior changes to the Character-Defining Features."

(c) There shall be inserted following Stipulation 15 of the 2004 MOA, new Stipulations 15A, 15B and 15C as follows:

"15A. Unanticipated Discovery Of Archaeological Properties During Rehabilitation Of TWA Terminal.

Should previously unidentified archaeological properties be discovered during the rehabilitation of the TWA Terminal, rehabilitation activities in the area of the previously unidentified archaeological properties shall immediately cease. The person or persons encountering such properties shall immediately notify the Port Authority. The Port Authority shall notify the FAA and the SHPO within 24 hours and provide documentation regarding the discovery and comply with the requirements of 36 CFR Section 800.13(b). Work activities in the immediate area of the discovery(ies) that are not the subject of the review shall resume immediately.

15B. Unanticipated Adverse Effects During Rehabilitation Of TWA Terminal.

Should unanticipated adverse effects occur during the rehabilitation of the TWA Terminal, the person or persons encountering such effects shall immediately notify the Port Authority. The Port Authority shall notify the FAA and the NY SHPO within 24 hours and provide documentation regarding the discovery and comply with the requirements of 36 CFR Section 800.13(b).

15C. Monitoring and Reporting.

The FAA and the Port Authority shall provide a status report to all consulting parties and the RAC 12 months following the execution of the First Amendment to this MOA. Subsequently, annual reports are required by January 30th of each year until this MOA, as amended, expires or is terminated. The reports shall include a summary detailing work undertaken pursuant to the terms of this MOA, as amended; scheduling changes proposed; problems encountered in project implementation and the resolution that was implemented; and any disputes and objections received and the manner in which FAA and the Port Authority resolved them. Should any of the consulting parties or the RAC request a meeting following their review of

the annual report, the party shall submit a written request to the FAA and the Port Authority, and shall provide copies to the other signatories and all the consulting parties. The FAA may arrange a meeting among the consulting parties, the RAC and the signatories, as needed."

(d) There shall be inserted following Stipulation 17 of the 2004 MOA, a new Stipulation 17A as follows:

"17A. The Port Authority shall require the Developer to prepare maintenance and preservation guidelines for the treatment of the TWA Main Terminal Building and East Tube. The guidelines shall be submitted to the Port Authority and the SHPO for review and approval following completion of the TWA Terminal rehabilitation/restoration work."

(e) The following shall be inserted after Stipulation 21 of the 2004 MOA:

#### **"DURATION**

This MOA, as amended by the First Amendment hereto, shall remain in effect until (x) the completion of the TWA Terminal rehabilitation/restoration work and the procedures set forth in Stipulation 16 hereof, or (y) January 31, 2023, whichever occurs first.

#### **AMENDMENT**

If the TWA Flight Center Hotel has not been fully constructed and completed and the terms of this MOA, as amended by the First Amendment hereto, have not been implemented by January 31, 2023, the signatories shall discuss whether the terms of this MOA, as so amended, need to be extended, amended, or terminated, as appropriate."

#### 2. Addition of New Attachments.

There shall be added to the 2004 MOA a new Attachment E, "National Register of Historic Places Listing", and a new Attachment F, "Revised Concept Master Plan - TWA Flight Center Hotel", both as attached to this First Amendment to the 2004 MOA.

#### 3. Effect of Amendments.

Except as expressly amended by this First Amendment to the 2004 MOA, all of the terms, covenants, provisions, conditions and agreements of the 2004 MOA shall remain in full force and effect.

**EXECUTION**

Execution of this First Amendment to the 2004 MOA by the FAA, the SHPO, the ACHP, and the Port Authority, and implementation of its terms, will be evidence that the FAA has afforded the Consulting Parties an opportunity to comment on the undertaking and its effects on the historic property, and that the FAA has taken into account the effect of the undertakings on the historic property, and has completed all processes in accordance with Section 106 of the National Historic Preservation Act.

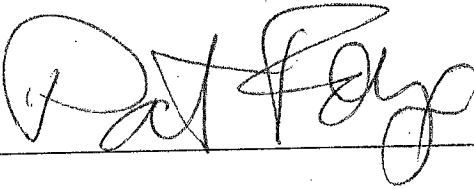
***IN WITNESS WHEREOF***, the Parties hereby set their hand as of the date set forth above.



6/20/16

SIGNATORY PAGES (PAGE 1 OF 4)

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

BY:  DATE: 6/28/16

Print/Type Name: Patrick J. Foye

Print/Type Title: Executive Director

\* A separate signature page is being executed by each signatory to this First Amendment to the 2004 MOA.

6/20/16

SIGNATORY PAGES (PAGE 2 OF 4)

FEDERAL AVIATION ADMINISTRATION

BY: Carmine W. Gallo DATE: 07-05-2016

Print/Type Name: CARMINE W. GALLO

Print/Type Title: REGIONAL ADMINISTRATOR - EASTERN REGION AEA-1

\* A separate signature page is being executed by each signatory to this First Amendment to the 2004 MOA.

6/20/16

SIGNATORY PAGES (PAGE 3 OF 4)

NEW YORK STATE HISTORIC PRESERVATION OFFICE

BY: Ruth L. Pierpont DATE: 6/29/16

Print/Type Name: Ruth L. Pierpont

Print/Type Title: DSHPO

\* A separate signature page is being executed by each signatory to this First Amendment to the 2004 MOA.

SIGNATORY PAGES (PAGE 4 OF 4)

ADVISORY COUNCIL FOR HISTORIC PRESERVATION

BY: John M. Fowler DATE: 7/12/16

Print/Type Name: JOHN M. FOWLER

Print/Type Title: EXECUTIVE DIRECTOR

\* A separate signature page is being executed by each signatory to this First Amendment to the 2004 MOA.

6/20/16

CONSULTING PARTIES CONCURRENCE (PAGE 1 of 7)

THE NATIONAL TRUST FOR HISTORIC PRESERVATION

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_

Print/Type Title: \_\_\_\_\_

\* A separate signature page is being offered for execution by each concurring party to this First Amendment to the 2004 MOA.

6/20/16

CONSULTING PARTIES CONCURRENCE (PAGE 2 of 7)

THE MUNICIPAL ART SOCIETY OF NEW YORK

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_

Print/Type Title: \_\_\_\_\_

\* A separate signature page is being offered for execution by each concurring party to this First Amendment to the 2004 MOA.

CONSULTING PARTIES CONCURRENCE (PAGE 3 of 7)

THE NEW YORK CITY PARTNERSHIP

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_

Print/Type Title: \_\_\_\_\_

\* A separate signature page is being offered for execution by each concurring party to this First Amendment to the 2004 MOA.

CONSULTING PARTIES CONCURRENCE (PAGE 4 of 7)

DOCOMOMO US/NEW YORK TRI-STATE

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_

Print/Type Title: \_\_\_\_\_

\* A separate signature page is being offered for execution by each concurring party to this First Amendment to the 2004 MOA.



6/20/16

CONSULTING PARTIES CONCURRENCE (PAGE 5 of 7)

THE CONSULATE GENERAL OF FINLAND, NEW YORK

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_

Print/Type Title: \_\_\_\_\_

\* A separate signature page is being offered for execution by each concurring party to this First Amendment to the 2004 MOA.

CONSULTING PARTIES CONCURRENCE (PAGE 6 of 7)

NEW YORK LANDMARKS CONSERVANCY

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_

Print/Type Title: \_\_\_\_\_

\* A separate signature page is being offered for execution by each concurring party to this First Amendment to the 2004 MOA.

CONSULTING PARTIES CONCURRENCE (PAGE 7 of 7)

THE NEW YORK BUILDING CONGRESS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_

Print/Type Title: \_\_\_\_\_

\* A separate signature page is being offered for execution by each concurring party to this First Amendment to the 2004 MOA.

6/20/16

DEVELOPER CONCURRENCE (PAGE 1 of 1)

FLIGHT CENTER HOTEL LLC

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_

Print/Type Title: \_\_\_\_\_

\* A separate signature page is being offered for execution by each concurring party to this First Amendment to the 2004 MOA.

**ATTACHMENT E**

**NATIONAL REGISTER OF HISTORIC PLACES LISTING**

6/20/16

**ATTACHMENT F**

**REVISED CONCEPT MASTER PLAN**

**TWA FLIGHT CENTER HOTEL**

**ATTACHMENT G**

**ENTIRE SITE**