

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this "**Agreement**") is entered into and effective as of the _____ day of _____, 2019 (the "**Effective Date**"), by and between _____, a _____ ("**Recipient Party**") and a consortium ("**Disclosing Party**") comprised of Vantage Airport Group Ltd., a British Columbia corporation ("**Vantage**"), RXR Real Estate Value Added Fund – Fund III LP, a Delaware limited partnership ("**RXR**") and JetBlue Airways Corporation, a Delaware corporation ("**JetBlue**").

WHEREAS, Recipient Party is interested in submitting pricing, a proposal and/or other information related to prospective work and/or services to be provided by Recipient Party to Disclosing Party with respect to the development by Disclosing Party of Terminals 6 and 7 at John F. Kennedy International Airport in Queens, New York (the "**Work**");

WHEREAS, Recipient Party may seek or be furnished with certain Information (as defined below) from Disclosing Party (including its representatives and advisors) in connection with the Work; and

WHEREAS, Disclosing Party desires that any such Information it furnishes to Recipient Party remain Disclosing Party's confidential and proprietary and/or trade secrets material.

NOW, THEREFORE, for good and valuable consideration, the parties hereby agree as follows:

1. The term "**Information**" shall mean all information that Disclosing Party has furnished or will furnish to Recipient Party, whether furnished before or after the Effective Date, whether tangible or intangible and in whatever form or medium provided, whether or not marked or identified as confidential, sensitive, or proprietary, if a reasonable implication is that such material is intended to be confidential, sensitive and/or proprietary, as well as all information generated by Recipient Party or by its Representatives, as defined below, that contains, reflects or is derived from the furnished information pertaining to the Work. Without limiting the foregoing, it includes: (1) all work product (including extracts, compilations, notes, studies, or other documents) incorporating any such information, as well as information relating to trade secrets, studies, sketches, calculations, estimates, pricing, costs or expenses, schedules, CADD and design formatted documents, plans, specifications, finances, systems, processes, personnel data, technical data, techniques, models, know-how, trade secrets, timing and other strategic information, vendor and customer information and lists, contracting and financial information generally, and information received from others (including information provided to Disclosing Party by The Port Authority of New York and New Jersey (the "**Port Authority**")) that Disclosing Party is obligated to treat as confidential and (2) all documents, data, reports, notes, studies, projections, records, manuals, graphs, electronic files, computer generated data or information, drawings, charts, tables, diagrams, photographs, and other media or renderings containing or otherwise incorporating any such information that may be provided, made accessible, or generated at any time, whether in writing, orally, visually, photographically, electronically or in any other form or medium, including, without limitation, any and all copies, duplicates or extracts of the foregoing.
2. The Information is being made available and shall be reviewed by Recipient Party in accordance with the following conditions: (a) it shall keep the Information strictly confidential, and the Information shall not be used by it, directly or indirectly for any purpose, except as reasonably required to assess its willingness to propose or enter into a transaction(s) with Disclosing Party with regard to the Work, or to perform any work required of Recipient Party pursuant to an engagement entered into with Disclosing Party with respect to the Work; and (b) Recipient Party shall only disclose the Information to those of its directors, officers, partners, affiliates, agents, auditors, attorneys, contractors, consultants, advisors, accountants, and employees (collectively, "**Representatives**") who need to know the Information for the purposes of Recipient Party assessing a transaction with Disclosing Party or performing work pursuant to any such transaction, and who have agreed to comply with Recipient Party's obligations under this Agreement. For purposes of clarification and not limitation, any disclosure by Recipient Party or any of its Representatives to another of such Recipient Party's Representatives who are not participating in the Work is strictly prohibited, and such disclosure shall constitute a breach of this Agreement.

Recipient Party shall be responsible for the compliance with any requirements set forth in this Agreement by Recipient Party and any Representative to whom the Information is disclosed by Recipient Party, directly or indirectly, intentionally or inadvertently, and Recipient Party shall be responsible for any breach thereof by Recipient Party or any of its Representatives who receives the Information from Recipient Party.

3. Recipient Party acknowledges that it may be provided with certain information that is subject to one or more of the following agreements: (a) the Mutual Non-Disclosure and Confidentiality Agreement dated January 22, 2018 between JetBlue and the Port Authority that is attached hereto as Schedule A (the "**JetBlue NDA**"); and (b) the Non-Disclosure and Confidentiality Agreements between each of Vantage, JetBlue and RXR and the Port Authority (the "**Port Authority NDA**"), the form of which is attached hereto as Schedule B. In addition to, and without in any way compromising Recipient Party's obligations to comply with, the terms and conditions of this Agreement, Recipient Party agrees to be bound by and comply with the terms of the attached Schedule A and Schedule B, as applicable. Pursuant to the terms of the Port Authority NDA, prior to receiving any Protected Information (as defined in the Port Authority NDA), Recipient Party shall (i) execute the acknowledgment attached as Exhibit B to the Port Authority NDA; (ii) cause each of Recipient Party's employees that will receive Protected Information (as defined in the Port Authority NDA) to execute the acknowledgement attached as Exhibit A-Sub to the Port Authority NDA; and (iii) cause each of Recipient Party's Related Parties (as defined in the Port Authority NDA) and their employees that will receive Protected Information (as defined in the Port Authority NDA) to execute, as applicable, the acknowledgements attached as Exhibit B and Exhibit A-Sub to the Port Authority NDA. In the event of a conflict between the provisions of the JetBlue NDA, the Port Authority NDA and the provisions of this Agreement, then the terms of the JetBlue NDA or the Port Authority NDA, as the case maybe, shall prevail, provided that if there is any conflict between the JetBlue NDA and the Port Authority NDA, the provisions of the Port Authority NDA shall prevail in all cases.
4. Notwithstanding any provision contained herein to the contrary, Information shall in no event include materials that (a) were in the public domain at the time of disclosure other than by reason of breach of this Agreement by Receiving Party or any of its Representatives; (b) were known to Recipient Party at the time of disclosure to Recipient Party by Disclosing Party without obligation of confidentiality prior to receipt pursuant to this Agreement or was received by Recipient Party from a third party who Recipient Party had no reason to believe had any confidentiality or fiduciary obligation to Disclosing Party with respect to such information; and (c) were disclosed with the prior approval of Disclosing Party.
5. Upon written request of Disclosing Party, Recipient Party shall, and shall cause its Representatives to, promptly destroy all copies of the Information in its or their possession that are disclosed to it or them by or on behalf of Disclosing Party. Notwithstanding the foregoing, Recipient Party may, in accordance with legal, disaster recovery and records retention requirements, store copies of Confidential Information in an archival format (e.g., tape backups) which cannot be returned to Disclosing Party or destroyed upon request of Disclosing Party. All archival copies of Information shall remain subject to the confidentiality and non-disclosure obligations under this Agreement. Recipient Party's and its Representatives' obligations of confidentiality and non-disclosure under this Agreement shall continue despite termination of its investigation of a possible transaction or relationship in connection with the Work and despite completion of work in connection with any such transaction.
6. Recipient Party and its Representatives shall not be prohibited from disclosing such portions of the Information as may be required pursuant to law, regulation, judicial or governmental order, or in a judicial or governmental proceeding; provided, however, that Recipient Party, unless prohibited by law, shall, prior to its or any Representative's compliance with such law, court order or regulation or legal or regulatory proceeding, (i) give Disclosing Party written notice of such anticipated disclosure promptly after Recipient Party discovers the need therefore, including a description of the documents or information requested thereby, (ii) consult with Disclosing Party on the advisability of, and cooperate with Disclosing Party, at Disclosing Party's expense, in connection with, taking legally available steps to resist or narrow such request, and (iii) to the extent that Disclosing Party determines that the requested documents or information contain trade secrets or other proprietary

or confidential information, then Disclosing Party shall provide to Recipient Party within ten (10) business days of notification a letter setting forth which documents or information it seeks to have withheld and the basis for its determination. If, after reviewing such request to withhold documents or information, Recipient Party determines that it must disclose or cause or allow any of its Representatives to disclose any such requested documents or information, it shall (unless prohibited by law) promptly notify Disclosing Party of such determination. Neither Recipient Party nor any of its Representatives shall release or share such documents or information until after said ten (10)-business day period, except to the extent required by law as advised by Recipient Party's counsel, and shall furnish only such portion of the Information as, in the written opinion of counsel satisfactory to Disclosing Party, it is legally compelled to disclose and shall exercise its best efforts to obtain an order or other reliable assurance that confidential treatment will be afforded to the disclosed Information.

7. The terms and conditions of this Agreement shall continue through the last date on which the Receiving Party and its Representatives are involved in any activity related to the Work, and Receiving Party's obligations with respect to Information disclosed prior to the termination or expiration of this Agreement will survive for a period of three years following the date of such termination or expiration.
8. This Agreement may not be amended or terminated in any manner except by an instrument in writing executed by the parties.
9. This Agreement shall be governed and construed in accordance with the laws of the State of New York, without regard to its conflict of laws principles. Further that any action or claim arising from this Agreement shall be subject to a competent court of jurisdiction in the City of New York, Queens County, in the State of New York, including its federal district court. In connection with any legal action arising out of or related to this Agreement or the Information, Recipient Party hereby irrevocably and unconditionally consents to the jurisdiction of any such court and hereby irrevocably and unconditionally waives any defense of an inconvenient forum to the maintenance of any action or proceeding in any such court, any objection to venue with respect to any such action or proceeding, and any right of jurisdiction on account of the place of residence or domicile of any party thereto. **Recipient Party hereby irrevocably and unconditionally waives the right to a jury trial in connection with any claim arising out of or related to this Agreement or the Information.**
10. This Agreement shall inure to the benefit of and shall be binding upon the heirs, legal representatives, successors and assigns of the parties hereto, but shall not be assigned without the prior written consent of the parties hereto.
11. It is agreed that money damages would be an inadequate remedy for the breach of this Agreement because of the difficulty of ascertaining the amount of damages that would be suffered by Disclosing Party or other parties that are the subject of the Information in the event of such breach. Therefore, Recipient Party agrees that in addition to any other rights and remedies available at law or in equity, Disclosing Party shall be entitled to equitable relief, including without limitation specific performance of this Agreement and injunctive relief against any breach of this Agreement (without posting bond or other security, without having to show irreparable harm, and without proving that money damages would be an inadequate remedy) to enforce this Agreement and that neither Recipient Party nor its Representatives will oppose the granting of such relief.
12. Recipient Party agrees to defend, indemnify and hold harmless Disclosing Party and its respective direct and indirect equity holders for any and all damages, losses (including economic loss), claims, demands, causes of action, obligations, liabilities, injuries, judgments, fines, penalties, interest, costs and expenses arising out of any breach or failure to comply with any of the terms of this Agreement by Recipient Party, its Representatives and any other person to whom Recipient Party or its Representatives disclose Information without the written consent of Disclosing Party. Without limiting the generality of the foregoing, Recipient Party agrees to reimburse Disclosing Party for all costs and expenses, including reasonable attorney's fees, incurred by Disclosing Party in attempting to enforce the obligations of Recipient Party or its Representatives hereunder.

13. No failure or delay by Disclosing Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof.
14. Should any provision or clause of this Agreement be determined by a court or arbitrator to be unenforceable, such a determination shall not affect the validity and enforceability of any other provision or clause hereof which shall remain operative and binding, and this Agreement, generally, shall, to the fullest extent permitted by law be interpreted to meet the intent of the parties.
15. This Agreement may be executed in any number of counterparts, each of which shall constitute an original agreement, and all of which taken together shall constitute one and the same agreement and shall become effective (unless otherwise therein provided) when one or more counterparts have been signed by each party and delivered to the other party. Any photographic, photocopy or similar reproduction copy of this Agreement, or any PDF file of this Agreement, or any copy of this Agreement sent by facsimile transmission, in each case with all signatures reproduced on one or more sets of signature pages, will be considered for all purposes as if it were a manually-executed counterpart of this Agreement.

[Signature page follows]

RECIPIENT PARTY:

Name: _____

Title: _____

Signature: _____

DISCLOSING PARTY:

VANTAGE AIRPORT GROUP LTD.

By: _____

Name: _____

Title: _____

RXR REAL ESTATE VALUE ADDED FUND – FUND III LP

By: _____

Name: _____

Title: _____

JETBLUE AIRWAYS CORPORATION

By: _____

Name: _____

Title: _____

**Schedule A
JetBlue NDA**

See attached.

**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT
BETWEEN**

JETBLUE AIRWAYS CORPORATION

AND

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (this “**Agreement**”) is made as of this 20th day of March 2019, by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (the “**Port Authority**”) a body corporate and politic created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States, and having an office and place of business at 4 World Trade Center, 150 Greenwich Street, New York, New York, 10007, and **JETBLUE AIRWAYS CORPORATION** having an office and place of business at 27-01 Queens Plaza North, Long Island City, NY 11101 (“**Recipient**”).

WHEREAS, the Port Authority desires, subject to the terms and conditions set forth below, to disclose to Recipient Protected Information (as defined below) in connection with the JFK Terminal 6/7 (collectively, the “**Project(s)**”, or “**Proposed Project(s)**”); and

WHEREAS, the Recipient acknowledges that the Port Authority, in furtherance of its performance of essential and critical governmental functions relating to the Project, has existing and significant interests and obligations in establishing, maintaining and protecting the security and safety of the Project site and surrounding areas and related public welfare matters; and

WHEREAS, in furtherance of critical governmental interests regarding public welfare, safety and security at the Project site, the Port Authority has collected information and undertaken the development of certain plans and recommendations regarding the security, safety and protection of the Project site, including the physical construction and current and future operations; and

WHEREAS, the Port Authority and Recipient (collectively, the “**Parties**”) acknowledge that in order for Recipient to undertake its duties and/or obligations with regard to its involvement in the Project, the Port Authority may provide Recipient or certain of its Related Parties (as defined below) certain information in the possession of the Port Authority, which may contain or include protected, confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, relating to the Project or its occupants or other matters, the unauthorized disclosure of which could result in significant public safety, financial and other damage to the Port Authority, the Project, its occupants, and the surrounding communities; and

WHEREAS, Recipient recognizes and acknowledges that providing unauthorized access to, or disclosing such information to third parties in violation of the terms of this Agreement could compromise or undermine the existing or future guidelines, techniques and procedures

implemented for the protection against terrorist acts or for law enforcement, investigation and prosecutorial purposes, and accordingly could result in significant irreparable harm and injury; and

WHEREAS, in order to protect and preserve the privilege attaching to and the confidentiality of the aforementioned information as well as to limit access to such information to a strict need to know basis, the Port Authority requires, as a condition of its sharing or providing access to such protected, confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, that the Recipient enter into this Agreement and that its Related Parties thereafter acknowledge and agree that they will be required to treat as strictly confidential and/or privileged any of such information so provided, as well as the work product and conclusions of any assessments and evaluations or any recommendations relating thereto, and to also fully comply with applicable federal rules and regulations with respect thereto; and

WHEREAS, as a condition to the provision of such information to Recipient and certain Related Parties, the Recipient has agreed to enter into this Agreement with respect to the handling and use of such information and to cause Related Parties to join in and be bound by the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the provision by Port Authority of Information for Project Purposes (as each such term is defined below) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Recipient and each Related Party that receives such Information, the Recipient and each such Related Party agrees, as follows:

1. **Defined Terms.** In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:

(a) **“Authorized Disclosure”** means the disclosure of Protected Information strictly in accordance with the Confidentiality Control Procedures applicable thereto: (i) as to all Protected Information, only to a Related Party that has a need to know such Protected Information strictly for Project Purposes and that has agreed in writing to be bound by the terms of this Agreement by executing a form of Acknowledgment as set forth in Exhibit A or Exhibit B, as applicable; and (ii) as to Confidential Privileged Information, only to the extent expressly approved in writing and in advance by the Port Authority, and then only the particular Confidential Privileged Information that is required to accomplish an essential element of the Project; and (iii) to the extent required as described in Section 3 hereof.

(b) **“Information”** means, collectively, all information, documents, data, reports, notes, studies, projections, records, manuals, graphs, electronic files, computer generated data or information, drawings, charts, tables, diagrams, photographs, and other media or renderings containing or otherwise incorporating information that may be provided or made accessible at any time, whether in writing, orally, visually, photographically, electronically or in any other form or medium, including, without limitation, any and all copies, duplicates or extracts of the foregoing.

(c) **“Protected Information”** means and includes collectively, Confidential Information, Confidential Privileged Information, Sensitive Security Information (SSI), Critical

Infrastructure Information (CII) or Health Insurance Portability and Accountability Act (HIPPA) Information and Information that is labeled, marked or otherwise identified by or on behalf of the Port Authority so as to reasonably connote that such information is confidential, privileged, sensitive or proprietary in nature. The term Protected Information shall also include all work product that contains any of the foregoing, whether in whole or in part, regardless of whether prepared by the Recipient, the Port Authority or others, or when the Port Authority receives such information from others and agrees to treat such information as Protected. The following Information shall not constitute Protected Information for the purpose of this Agreement:

- (i) Particular Information, other than Confidential Privileged Information, that is provided to the Recipient by a source other than the Port Authority, provided that such source is not subject to a confidentiality agreement, or similar obligation, or understanding with or for the benefit of the Port Authority, with respect to such Information and that the identity of such source is not itself part of such Protected Information.
- (ii) Information that is or becomes generally available to the public other than as a result of a disclosure by the Recipient or a Related Party in violation of this Agreement.
- (iii) Information that is known to or was in the possession of the Recipient or a Related Party on a non-confidential basis prior to the disclosure of such Information by the Port Authority.
- (iv) Information that is furnished to the Recipient by a third party who is not subject to a confidentiality agreement or similar obligation or understanding with or for the benefit of the Port Authority with respect to such Information.
- (v) Information that is independently developed by the Recipient and is not derived by the Recipient from the Protected Information of the Port Authority.

(d) “**Confidential Information**” means and includes collectively, any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law. and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York and/or New Jersey state laws or Federal laws. It also includes information that contains sensitive financial, commercial or other proprietary business information concerning or relating to the Port Authority, its projects, operations or facilities that would be exempt from release under the Port Authority Freedom of Information Code.

(e) “**Confidential Privileged Information**” means and includes collectively, (i) Information that reveals security risks, threats, vulnerabilities, documentation that identifies specific physical security vulnerabilities or revealing specific security vulnerabilities details related to emergency response protocols, egress plans, flow paths, egress capacities, (diagrams, codes, standards) etc., which is not publicly available, and (ii) any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as

may be deemed to be afforded or entitled to the protection of any other privilege recognized under New York and/or New Jersey state laws or Federal laws, and (ii) certain Critical Infrastructure Information.

(f) **“Confidentiality Control Procedures”** means procedures, safeguards and requirements for the identification, processing, protection, handling, care, tracking and storage of Protected Information that are required under applicable federal or state law, the Port Authority Handbook, or by the terms of this Agreement.

(g) **“Critical Infrastructure Information”** (CII) has the meaning set forth in the Homeland Security Act of 2002, under the subtitle Critical Infrastructure Information Act of 2002 (6 U.S.C. §131-134), and any rules or regulations enacted pursuant thereto, including, without limitation, the Office of the Secretary, Department of Homeland Security Rules and Regulations, 6 C.F.R. Part 29 and any amendments thereto. CII may also be referred to as “Protected Critical Infrastructure Information” or “PCII”, as provided for in the referenced rules and regulations and any amendments thereto.

(h) **“Sensitive Security Information”** (SSI) has the definition and requirements set forth in the Transportation Security Administrative Rules & Regulations, 49 CFR 1520, (49 U.S.C. §114) and in the Office of the Secretary of Transportation Rules & Regulations, 49 CFR 15, (49 U.S.C. §40119).

(i) **“Health Insurance Portability and Accountability Act”** (HIPAA) Information Employees, associates or other contract personnel who have access to Protected Health Information (PHI) must refer to, and comply with, the Privacy Policies and Procedures to Protect Personal Health Information. Privacy regulations issued under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA” or “Privacy Laws”) place restrictions on the Group Health Plans of the Port Authority and PATH (the “Plans”) ability to use and disclose Protected Health Information (“PHI”).

(j) **“Port Authority Handbook”** means The Port Authority of New York and New Jersey. Information Security Handbook, as may be amended by the Port Authority, from time to time.

(k) **“Project Purposes”** means the use of Protected Information strictly and only for purposes related to Recipient’s and its Related Parties’ participation and involvement in the Project, and only for such period of time during which Recipient and its Related Parties are involved in Project related activities.

(l) **“Related Party”** and **“Related Parties”** means the directors, employees, officers, partners or members of the Recipient, as applicable, and the Recipient’s outside consultants, attorneys, advisors, accountants, architects, engineers or subcontractors or sub-consultants (and their respective directors, employees, officers, partners or members) to whom any Protected Information is disclosed or made available.

2. **Use of Protected Information.** All Protected Information shall be used by the Recipient in accordance with the following requirements:

(a) All Protected Information shall be held in confidence and shall be processed, treated, disclosed and used by the Recipient and its Related Parties only for Project Purposes and in accordance with the Confidentiality Control Procedures established pursuant to Paragraph 2(c), below, including, without limitation, the Port Authority Handbook, receipt of which is acknowledged by Recipient and shall be acknowledged in writing by each Related Party by signing the Acknowledgment attached hereto as Exhibit A or Exhibit B, as applicable, and applicable legal requirements. Protected Information may be disclosed, only if and to the extent that such disclosure is an Authorized Disclosure.

(b) Recipient and each Related Party acknowledge and agree that (i) any violation by the Recipient or any of its Related Parties of the terms, conditions or restrictions of this Agreement relating to Protected Information may result in penalties and other enforcement or corrective action as set forth in such statutes and regulations, including, without limitation, the issuance of orders requiring retrieval of Sensitive Security Information and Critical Infrastructure Information to remedy unauthorized disclosure and to cease future unauthorized disclosure and (ii) pursuant to the aforementioned Federal Regulations, including, without limitation, 49 C.F.R. §§ 15.17 and 1520.17, any such violation thereof or mishandling of information therein defined may constitute grounds for a civil penalty and other enforcement or corrective action by the United States Department of Transportation and the United States Department of Homeland Security, and appropriate personnel actions for Federal employees.

(c) Recipient and each Related Party covenants to the Port Authority that it has established, promulgated and implemented Confidentiality Control Procedures for identification, handling, receipt, care, and storage of Protected Information to control and safeguard against any violation of the requirements of this Agreement and against any unauthorized access, disclosure, modification, loss or misuse of Protected Information. Recipient and each Related Party shall undertake reasonable steps consistent with such Confidentiality Control Procedures to assure that disclosure of Protected Information is compartmentalized, such that all Protected Information shall be disclosed only to those persons and entities authorized to receive such Information as an Authorized Disclosure under this Agreement and applicable Confidentiality Control Procedures. The Confidentiality Control Procedures shall, at a minimum, adhere to, and shall not be inconsistent with, the procedures and practices established in the Port Authority Handbook.

(d) The Port Authority reserves the right to audit Recipient's Confidentiality Control Procedures, and those of each Related Party, as applicable, to ensure that it is in compliance with the terms of this Agreement.

(e) The Port Authority may request in writing that the Recipient or any Related Parties apply different or more stringent controls on the handling, care, storage and disclosure of particular items of Protected Information as a precondition for its disclosure. The Port Authority may decline any request by the Recipient or any of its Related Parties to provide such item of Protected Information if the Recipient or any of the Related Parties do not agree in writing to apply such controls.

(f) Nothing in this Agreement shall require the Port Authority to tender or provide access to or possession of any Protected Information to the Recipient or its Related Parties, whether or not the requirements of this Agreement are otherwise satisfied. However, if such Protected

Information is provided and accepted, the Recipient and its Related Parties shall abide by the terms, conditions and requirements of this Agreement.

(g) The Recipient and each Related Party agrees to be responsible for enforcing the provisions of this Agreement with respect to its Related Parties, in accordance with the Confidentiality Control Procedures. Except as required by law pursuant to written advice of competent legal counsel, or with the Port Authority's prior written consent, neither the Recipient, nor any of the Related Parties shall disclose to any third party, person or entity: (i) any Protected Information under circumstances where the Recipient is not fully satisfied that the person or entity to whom such disclosure is about to be made shall act in accordance with the Confidentiality Control Procedures whether or not such person or entity has agreed in writing to be bound by the terms of this Agreement or any "Acknowledgement" of its terms or (ii) the fact that Protected Information has been made available to the Recipient or such Related Parties, or the content or import of such Protected Information. The Recipient is responsible for collecting and managing the Acknowledgments signed by Related Parties pursuant to this Agreement. Recipient shall, at the Port Authority's request, provide the Port Authority a list of all Related Parties who have signed an Acknowledgment, and copies of such Acknowledgments.

(h) As to all Protected Information provided by or on behalf of the Port Authority, nothing in this Agreement shall constitute or be construed as a waiver of any public interest privilege or other protections established under applicable state or federal law.

3. **Disclosures and Discovery Requests.** If a subpoena, discovery request, Court Order, Freedom of Information Request, or any other request or demand authorized by law seeking disclosure of the Protected Information is received by the Recipient or any Related Party, Recipient shall notify the Port Authority thereof, to the extent permitted by law, with sufficient promptness so as to enable the Port Authority to investigate the circumstances, prepare any appropriate documentation and seek to quash the subpoena, to seek a protective order, or to take such other action regarding the request as it deems appropriate. In the absence of a protective order, disclosure shall be made, in consultation with the Port Authority, of only that part of the Protected Information as is legally required to be disclosed. If at any time Protected Information is disclosed in violation of this Agreement, the Recipient shall immediately give the Port Authority written notice of that fact and a detailed account of the circumstances regarding such disclosure to the Port Authority.

4. **Retention Limitations; Return of Protected Information.** Upon the Port Authority's written request, such Protected Information, all writings and material describing, analyzing or containing any part of such Protected Information, including any and all portions of Protected Information that may be stored, depicted or contained in electronic or other media and all copies of the foregoing shall be promptly delivered to the Port Authority at Recipient's expense. In addition, as to Protected Information that may be stored in electronic or similar form, such Protected Information shall be deleted and completely removed so that such Protected Information is incapable of being recovered from all computer databases of the Recipient and all Related Parties, if requested by the Port Authority. The Recipient may request in writing that the Port Authority consent to destruction of Protected Information, writings and materials in lieu of delivery thereof to the Port Authority. The Port Authority shall not unreasonably withhold its consent to such request. If the Port Authority consents to such destruction, the Recipient and each

Related Party shall deliver to the Port Authority a written certification by Recipient and such Related Party that such Protected Information, writings and materials have been so destroyed within such period as may be imposed by the Port Authority. Notwithstanding the foregoing, to the extent required for legal or compliance purposes, the Recipient may retain copies of Protected Information (in any format), provided that (a) the Port Authority is notified in writing of such retention, and (b) Recipient continues to abide by the requirements of this Agreement with respect to the protection of such Protected Information.

5. **Duration and Survival of Confidentiality Obligations.** The obligations under this Agreement shall be perpetual otherwise remain in effect until the parties agree that some or all of the Protected Information does not require further protection or until such time as the Protected Information is no longer considered protected, confidential and/or privileged by the Port Authority.

6. **Severability.** Each provision of this Agreement is severable and if a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.

7. **Injunctive and Other Relief.** Recipient and each Related Party acknowledge that the unauthorized disclosure and handling of Protected Information is likely to have a material adverse and detrimental impact on public safety and security and could significantly endanger the Port Authority, its facilities (including, without limitation, the Project site), its patrons and the general public and that damages at law are an inadequate remedy for any breach, or threatened breach, of this Agreement by Recipient or its Related Parties. The Port Authority shall be entitled, in addition to all other rights or remedies, to seek such restraining orders and injunctions as it may deem appropriate for any breach of this Agreement, without being required to show any actual damage or to post any bond or other security.

8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles. The Port Authority (subject to the terms of the Port Authority Legislation (as defined below)) and the Recipient specifically and irrevocably consent to the exclusive jurisdiction of any federal or state court in the County of New York and State of New York with respect to all matters concerning this Agreement and its enforcement. The Port Authority (subject to the terms of the Port Authority Legislation (as defined below)) and the Recipient agree that the execution and performance of this Agreement shall have a New York situs and, accordingly, they each consent (and solely with respect to the Port Authority, subject to the terms of the Port Authority Legislation (as defined below)) to personal jurisdiction in the State of New York for all purposes and proceedings arising from this Agreement. “**Port Authority Legislation**” shall mean the concurrent legislation of the State of New York and State of New Jersey set forth at Chapter 301 of the Laws of New York of 1950, as amended by Chapter 938 of the Laws of New York of 1974 (McKinney’s Unconsolidated Laws §§7101-7112) and Chapter 204 of the Laws of New Jersey of 1951 (N.J.S.A. 32:1-157 to 32:1-168).

9. **Notices.** Any notice, demand or other communication (each, a “**notice**”) that is given or rendered pursuant to this Agreement by either party to the other party, shall be: (i) given or rendered, in writing, (ii) addressed to the other party at its required address(es) for notices delivered to it as set forth below, and (iii) delivered by either (x) hand delivery, or (y) nationally recognized

courier service (e.g., Federal Express, Express Mail). Any such notice shall be deemed given or rendered, and effective for purposes of this Agreement, as of the date actually delivered to the other party at such address(es) (whether or not the same is then received by other party due to a change of address of which no notice was given, or any rejection or refusal to accept delivery). Notices from either party (to the other) may be given by its counsel.

The required address(es) of each party for notices delivered to it is (are) as set forth below. Each party, however, may, from time to time, designate an additional or substitute required address(es) for notices delivered to it, provided that such designation must be made by notice given in accordance with this Paragraph 9.

Original to the Port Authority: Jim Steven
The Port Authority of New York and New Jersey
JFK Building 14, 3rd Floor - Redevelopment
Jamaica NY 11430

with a copy to: The Port Authority of New York and New Jersey
4 World Trade Center
150 Greenwich Street, 24th Floor
New York, NY 10007
Attn: General Counsel's Office c/o Caroline Ioannou, Law
DISO

If to the Recipient: General Counsel, JetBlue
27-01 Queens Plaza North,
Long Island City, NY 11101

with a copy to: _____

10. **Entire Agreement.** This Agreement contains the complete statement of all the agreements among the parties hereto with respect to the subject matter thereof, and all prior agreements among the parties hereto respecting the subject matter hereof, whether written or oral, are merged herein and shall be of no further force or effect. This Agreement may not be changed, modified, discharged, or terminated, except by an instrument in writing signed by all of the parties hereto.

11. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document.

12. **Parties Bound.** This Agreement shall be binding upon the Recipient and its respective successors. The foregoing shall not be affected by the failure of any Related Party to join in this Agreement or to execute and deliver an Acknowledgement hereof.

13. **Authority.** The Recipient represents that the undersigned individual(s) executing this Agreement on behalf of the Recipient below is authorized to execute this Agreement on behalf of the Recipient and to legally bind such party.

14. **Disclosure of Ownership Rights or License.** Nothing contained herein shall be construed as the granting or conferring by the Port Authority of any rights by ownership, license or otherwise in any Information.

15. **No Liability.** Neither Recipient, the Commissioners of the Port Authority, nor any of them, nor any officer, agent or employee thereof, shall be charged personally with any liability, or held liable to under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach, or attempted or alleged breach thereof.

16. **Construction.** This Agreement is the joint product of the parties hereto and each provision of this Agreement has been subject to the mutual consultation, negotiation, and agreement of the parties hereto, and shall not be construed for or against any party hereto. The captions of the various sections in this Agreement are for convenience only and do not, and shall not be deemed to, define, limit or construe the contents of such Sections.

RECIPIENT:

JETBLUE AIRWAYS CORPORATION

Signature: 

Print Name: Justin Ginsburgh

Title: Director, JFK Development

Date: March 20, 2019

EXHIBIT A

ACKNOWLEDGMENT BY RELATED PARTY INDIVIDUAL

I, Justin Ginsburgh (“**Related Party**”), am employed as a(n) Director, Properties by JETBLUE AIRWAYS CORPORATION I have been provided with and have read the Non-Disclosure and Confidentiality Agreement between JETBLUE AIRWAYS CORPORATION (the “**Recipient**”) and The Port Authority of New York and New Jersey (the “**Port Authority**”) dated March 20, 2019 (hereinafter the “**Agreement**”), and the Port Authority Handbook attached to the Agreement. I understand that because of my employer’s relationship with the Port Authority, both my employer and I may be provided with access to, and/or copies of, sensitive security materials, protected or confidential information. If it is required for me to review or receive Protected Information, as it is defined in the aforementioned Agreement, I acknowledge that I will be bound by each and every term and provision contained therein.

To the extent that I am currently in the possession of, or have previously come into contact with, marked information as it relates to the aforementioned Agreement, I agree to conform my handling procedures for Protected Information to the practices and procedures set forth and defined herein, or risk loss of access to said Information.

Signature: 

Print Name: Justin Ginsburgh

Date: 3/26/19

Schedule B
Form of Port Authority NDA

See attached.

MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

THIS MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (this “Agreement”) made this 22nd day of January, 2018 (the “Effective Date”), governs the disclosure of information by and between **The Port Authority of New York and New Jersey** (the “Port Authority”), a body corporate and politic created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States, with an office and place of business at 4 World Trade Center, 150 Greenwich Street, New York, New York 10007, and **JetBlue Airways Corporation** (“JetBlue”), with an office and place of business at 27-01 Queens Plaza North, Long Island City, New York 11101 (each of the Port Authority and JetBlue may be referred to herein individually as a “Party” and collectively as “the Parties”). From and after the Effective Date, this Agreement shall supersede and replace that certain Confidentiality Agreement entered into by the Port Authority in favor of JetBlue dated November 30, 2017.

1. Definitions

- 1.1 “Confidential Information” means any information of or about Disclosing Party Group provided by or on behalf of Disclosing Party to Receiving Party Group on or after the Effective Date hereof, with respect to materials provided by the Port Authority as the Disclosing Party and on or after November 30, 2017 with respect to materials provided to the Port Authority as Receiving Party and includes: (a) documents and/or information provided by, or on behalf of, the Disclosing Party in oral, electronic or written form, whether or not marked or identified as confidential, sensitive or proprietary, if a reasonable implication is that such material is intended to be confidential, sensitive and/or proprietary, (b) all copies of all such documents and/or information, and (c) all other media that contain such Confidential Information, including any extracts, compilations, studies or other documents based upon or derived from Confidential Information.
- 1.2 “Related Party” or “Related Parties” means the directors, employees, officers, partners or members of a Party, and the Party’s outside consultants, attorneys, advisors, accountants, architects, engineers or subcontractors or sub-consultants (and their respective directors, employees, officers, partners or members) to whom any Confidential Information is disclosed or made available.
- 1.3 “Disclosing Party” means, with respect to any Confidential Information, the Party that disclosed it. “Disclosing Party Group” means the Disclosing Party and its Related Parties.
- 1.4 “Business Purpose” means the business transaction which has occasioned the need or desirability of exchanging Confidential Information, in this instance, a potential new terminal development at JFK.
- 1.5 “Acceptable Use” means the use of Confidential Information solely for purposes related to the receiving Party Group’s participation and involvement in the Business Purpose, and only for such period of time during which Receiving Party (or an individual Related Party) is involved in Business Purpose-related activities.
- 1.6 “Receiving Party” means, with respect to any Confidential Information, the party who received it. “Receiving Party Group” means the Receiving Party and its Related Parties.
- 1.7 “Required Disclosure” means the disclosure by any member of Receiving Party Group of Disclosing Party’s Confidential Information to the extent required by law, regulation, or judicial or governmental order or in a judicial or governmental proceeding, or in the case of the Port Authority, disclosure under any freedom of information laws to which the Port Authority is subject by law or rule, regulation or resolution, such as the Freedom of Information Law of New York (N.Y. Pub. Off. Law §§ 84 et seq.) and the New Jersey Open Public Records Act (N.J.S. 47:1A-1 et seq.).
- 1.8 “Authorized Disclosure” means the disclosure of Confidential Information strictly in accordance with this Agreement: only to a Related Party who has (i) a need to know such Confidential Information strictly for Acceptable Use; and (ii) signed a confidentiality agreement with the Receiving Party or is otherwise bound by confidentiality obligations at least as restrictive as those contained herein.

2. Nondisclosure Obligations

2.1 Confidential Information may be used by the Receiving Party solely for the Accepted Use and may not be used for any other purpose. Receiving Party shall hold Disclosing Party's Confidential Information in confidence and may not use or disclose Disclosing Party's Confidential Information, except as expressly permitted herein, without the prior written consent of Disclosing Party, which consent may be granted or refused in Disclosing Party's sole discretion. Receiving Party shall take reasonable measures to protect the Confidential Information of Disclosing Party from becoming known to the public or falling into the possession of persons other than those persons authorized to have any such Confidential Information, which measures shall include the same degree of care that Receiving Party uses to protect its own information of a similar nature, but in no event with less than a reasonable degree of care. Receiving Party may only disclose Disclosing Party's Confidential Information to its Related Parties who fulfill the conditions for Authorized Disclosure. Disclosure or receipt of Confidential Information by a Party's Related Parties is deemed to be a disclosure or receipt, as the case may be, of Confidential Information by that Party. Any breach of the terms of this Agreement by a Party's Related Parties is deemed to be a breach by that Party. In particular, the Parties will not disclose to any person, the substance of any discussions or negotiations taking place concerning the Business Purpose or any terms, conditions, or other facts under consideration with respect to the Business Purpose, except for Required Disclosure.

2.2 Receiving Party's obligations under Section 2.1 will cease to apply with respect to Confidential Information that Receiving Party can document: (i) is or becomes publicly available without breach of this Agreement by Receiving Party or its Related Parties; (ii) was in Receiving Party's or its Related Parties possession without obligation of confidentiality prior to receipt pursuant to this Agreement; (iii) is independently developed by Receiving Party or its Related Parties without use of or reference to Disclosing Party's Confidential Information; (iv) is obtained by Receiving Party or its Related Parties from a third party without any obligation of confidentiality to Disclosing Party.

2.3 Nothing in this Agreement will prohibit Receiving Party or its Related Parties from making a Required Disclosure; provided that Receiving Party shall: (i) where permitted, give Disclosing Party reasonable notice of such Required Disclosure prior to disclosure; (ii) cooperate, to the extent commercially reasonable, with Disclosing Party, at Disclosing Party's expense, in the event that it elects to contest such disclosure or seek a protective order with respect thereto; and (iii) in any event only disclose the specific Confidential Information, or portion thereof, required under the Required Disclosure.

3. General Provisions

3.1 All Confidential Information of Disclosing Party is and will remain the property of Disclosing Party. Nothing contained in this Agreement will be construed as granting or conferring any rights by license or otherwise, either express, implied or by estoppel, to any Confidential Information of Disclosing Party, or under any patent, copyright, trademark, trade secret or other intellectual property right or any other right of Disclosing Party. Receiving Party may not alter, modify, reverse engineer, or attempt to derive the composition or underlying information, structure or ideas of any Confidential Information and may not remove, overprint, deface or change any notice of confidentiality, copyright, trademark, logo, legend or other notices of ownership or other rights from any originals or copies of any of Disclosing Party's Confidential Information.

3.2 Notwithstanding the above, JetBlue acknowledges that the Port Authority's obligations under this Agreement are subject to the provisions of its Access to Port Authority Public Records Policy, and any amendments thereto. The Port Authority's Access to Port Authority Public Records Policy can be found at <http://corpinfo.panynj.gov/documents/Access-to-Port-Authority-Public-Records/>. This Agreement does not contemplate the disclosure by the Port Authority of "Critical Infrastructure Information (as defined in the Homeland Security Act of 2002 (6 U.S.C. §131-134)) or "Sensitive Security Information" (as defined in the Transportation Security Administration Rules and Regulations, 49 CFR 1520 and in the Office of the Secretary of Transportation Rules & Regulations, 49 CFR 15).

3.3 All confidential information furnished under this agreement is provided by Disclosing Party "as is" and "with all faults." Disclosing Party does not make any warranties, express or implied, regarding the accuracy, completeness, performance, merchantability, fitness for use, or noninfringement of any

intellectual property rights, or any right of privacy, or any rights of third persons or other attributes of its Confidential Information.

- 3.4 Upon written request by Disclosing Party, the Receiving Party Group shall immediately cease all use of and promptly return or destroy, at Receiving Party's and each Related Party's option, all copies or extracts, in any medium, of Disclosing Party's Confidential Information and, if requested, Receiving Party shall confirm the destruction in writing signed by an authorized representative of Receiving Party. The foregoing notwithstanding, Receiving Party may retain copies of the Confidential Information in accordance with procedures implemented to comply with applicable law, regulation or litigation hold policy; provided that all such copies are kept secure in accordance with Receiving Party's obligations under Section 2.1 and not used except as expressly permitted under this Agreement.
- 3.5 Neither Party may assign or transfer this Agreement or any of its rights hereunder or delegate any of its obligations hereunder (whether by merger, acquisition, operation of law, or otherwise) without the prior written consent of the other Party, which consent may be granted or refused in the non-assigning Party's sole discretion. No permitted assignment will relieve the assigning Party of its obligations hereunder with respect to the other Party's Confidential Information received by it prior to such assignment. Any attempted assignment in violation of this Section will be void. Subject to the foregoing, this Agreement will inure to the benefit of and be binding upon the Parties, their successors and permitted assigns.
- 3.6 Nothing in this Agreement will be construed to require either Party to disclose any Confidential Information to the other Party or to negotiate or enter into any business transaction with the other Party.
- 3.7 Nothing in this Agreement or in the activities contemplated by the parties hereunder will be deemed to create an agency, partnership, employment or joint venture relationship between the Parties. The officers, employees, agents and contractors of a Party will not be deemed officers, employees, agents or contractors of the other Party for any purpose. Each Party will be deemed to be acting solely on its own behalf and has no authority to incur obligations or perform any acts or make any statements on behalf of the other Party. Neither Party will represent to any person or permit any person to act upon the belief that it has any such authority from the other Party.
- 3.8 Any notice, demand or other communication (each, a "Notice") that is given or rendered pursuant to this Agreement by either Party to the other Party, shall be: (i) given or rendered, in writing, (ii) addressed to the other Party at its required address(es) for Notices delivered to it as set forth above, and (iii) delivered by either hand delivery, or nationally recognized courier service (e.g., Federal Express, US Postal Service Express Mail).
- 3.9 This Agreement and any claim, dispute or controversy arising out of, under or related to this Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of New York, without regard to choice of law principles. The Parties hereby submit to the personal jurisdiction of, and agree that any legal proceeding with respect to or arising under this Agreement will be brought solely in any federal or state court in the County of New York and State of New York.
- 3.10 Neither Party's commissioners, directors, or officers shall be charged personally by the other Party with any liability or held liable to the other Party under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach or attempted or alleged breach thereof, to the extent such commissioner, director or officer does not directly breach a term of this Agreement with respect to the disclosure of Confidential Information.
- 3.11 Receiving Party will comply with all applicable export laws and regulations and national security controls of the United States or other applicable foreign agency or authority and will not export or re-export any Confidential Information or the direct product of such Confidential Information to any proscribed country or entity unless properly authorized by the appropriate governmental agency.
- 3.12 This Agreement will continue from the Effective Date through the last date on which the Party (or in the case of a Related Party, that Related Party) is involved in Business Purpose-related activities, unless previously terminated by a Party for any reason upon ten (10) days' prior written notice to the other Party

of its intent to terminate, whichever occurs first. The Parties' obligations under Section 2, with respect to Confidential Information disclosed prior to the termination or expiration of this Agreement, will survive for a period of three (3) years following the date of such termination or expiration.

- 3.13 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior understanding and agreements between and among them respecting the subject matter hereof. It may not be modified except by a written agreement signed by both Parties. No delay, failure or waiver of either Party's exercise or partial exercise of any right or remedy under this Agreement will operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. No waiver of any provision of this Agreement will constitute a waiver of any other provision(s) or of the same provision on another occasion. If any court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect. More than one counterpart of this Agreement may be executed by the Parties hereto and may be transmitted by e-mail or other electronic transmission to the other Party, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Electronic signatures shall have the same legal force and effect as the exchange of original signatures. The provisions of this Section 3 will survive termination or expiration of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives, effective as of the Effective Date.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: _____
Its:

JETBLUE AIRWAYS CORPORATION

By: _____
Its: