

## EXCLUSIVE NEGOTIATING AGREEMENT

THIS EXCLUSIVE NEGOTIATING AGREEMENT (this “Agreement”), dated for reference purposes only as of April \_\_, 2018, is entered into by and among the CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners (the “Port”), and ATHLETICS INVESTMENT GROUP LLC D/B/A THE OAKLAND ATHLETICS, a California limited liability company (“Developer”) (Port and Developer collectively referred to as the “Parties”).

### Recitals

This Agreement is made with reference to the following facts and circumstances:

A. WHEREAS, the Port owns certain lands commonly referred to as the Charles P. Howard Terminal, Berths 67-68 (“Port Lands”), which Port Lands are more particularly depicted and described in **Exhibit A**, attached hereto and incorporated herein. The Developer wishes to enter into with the Port an option agreement with attached forms of ground lease (the “Lease”) and other negotiated transaction documents (with all such attached forms and exhibits collectively referred to as the “Option”) that would allow Developer to develop and operate all or a portion of the Port Lands as a world-class waterfront ballpark and to develop beneficial and related ancillary uses, including, without limitation, other Public Trust uses (the “Proposed Uses”); and

B. WHEREAS, the Port Lands are designated as a Port Priority Use Area pursuant to the “San Francisco Bay Area Seaport Plan” of the San Francisco Bay Conservation and Development Commission; and

C. WHEREAS, the Port Lands consist of granted lands and after-acquired lands that are subject to certain public trust limitations applicable to tidelands and submerged lands (the “Tidelands Trust”); and

D. WHEREAS, the Port is currently using the Port Lands for maritime support uses; and

E. WHEREAS, the Port and the Developer now wish to enter into this Agreement to negotiate the form of a potential Option for the Proposed Uses on Port Lands.

### Agreement

Accordingly, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Port and the Developer agree as follows:

**1. Term and Termination.** The term of this Agreement (the “Term”) shall begin on the Effective Date and terminate on the Termination Date.

**1.1** This Agreement shall commence upon the later to occur of: (a) the date that the Port Board authorizes and approves this Agreement, or (b) the date that the Parties have

signed this Agreement and the Port Attorney or his designee has approved the Agreement as to form and legality (“Effective Date”).

**1.2** This Agreement shall terminate on the earliest to occur of: (a) the execution of the Option by the Parties following authorization and approval thereof by the Port, or (b) the date that is one (1) year after the Port’s Board of Port Commissioners (“Port Board”) has authorized and approved this Agreement at a Port Board meeting (the “Termination Date”).

**2. Negotiations.** During the Term, the Port and the Developer agree to negotiate exclusively with each other and in good faith to reach an agreement on the terms of the Option, and the Port will not negotiate with any other party for the long-term use of the Port Lands except as explicitly permitted under Section 2.2 hereof. The Parties agree that the Port’s ability to enter into the Option is subject to the provisions of Section 4 (Threshold Conditions and Limitations) and Section 5 (Other Restrictions on Agreement). During the Term, the Port will be performing due diligence on the Developer and the Proposed Uses. The Developer agrees to provide information reasonably requested by the Port regarding the Developer and the Proposed Uses.

**2.1 Parameters for Negotiations.** The following nonexclusive list of items related to the Option shall be the subject of negotiations between the Parties during the Term:

- (A) proposed site plan, including, but not limited to, the total number of acres the Developer proposes to use and develop, and preliminary plans for parking, access points, vehicular/pedestrian circulation;
- (B) a description of all Proposed Uses, conditions, and related activities, including, but not limited to, non-sports venue uses, and ancillary and other Tidelands Trust-consistent beneficial uses (including any reservation of the Port’s right for future maritime operation needs on portions of the Port Lands);
- (C) term and conditions of a potential Option, including, but not limited to, the proposed Lease term, rent and other payments, when such rent and other payments would commence, maintenance and environmental responsibilities, and the required “As-Is” nature of the delivery of Port Lands;
- (D) a schedule of performance for the development of the Proposed Uses and key performance milestones, including, without limitation (1) due diligence, (2) delivery of the Port Lands after satisfaction or waiver of conditions precedent, including necessary legal and regulatory entitlements and approvals and financing, (3) site preparation and commencement of construction of improvements, and (4) completion of construction and commencement of operations.
- (E) a list of and target dates for securing necessary determinations and approvals, including, without limitation (1) for any necessary general plan

or zoning amendments, (2) under the California Environmental Quality Act (CEQA), and (3) pursuant to restrictions and Port obligations of the State Tidelands Trust, the San Francisco Bay Conservation and Development Commission, or other agencies, as applicable;

- (F) Port's right to terminate its obligations under the Option and associated Lease and any transaction documents if performance milestones are not satisfied within the times set forth in the schedule of performance, subject to negotiated force majeure provisions;
- (G) a preliminary economic feasibility study related to the Developers' financing and development of the Proposed Uses, including, without limitation, the cost and financing options available for any environmental investigation and remediation, program of monitoring and mitigation (if any) under CEQA, site preparation activities, and the design and construction of proposed on and off-site improvements;
- (H) a description of and process for community engagement to determine an appropriate package of community benefits, including workforce programs, that will result from the Proposed Uses;
- (I) a description of any Proposed Uses and their location that Developer believes may necessitate a transaction structure other than Lease and economic terms for any such transaction structure; and
- (J) identification of adjacent Port property and a description of the interaction of the adjacent property with Proposed Uses in terms of providing access, parking, or other supportive uses.

The Developer shall deliver to the Port an initial proposal on (i) the matters set forth in items (A)-(B) above no later than sixty (60) days after the Effective Date and (ii) the matters set forth in item (C)-(H) above no later than ninety (90) days after the date on which the Port provides comments to Developer's initial proposal on the matters set forth in items (A)-(B), in each case, to allow the Parties a reasonable time to negotiate and agree upon such terms during the Term.). Port shall respond to any initial proposal submitted by Developer no later than sixty (60) days following Port's receipt of the same.

**2.2 Short Term Agreements Pertaining to Port Land.** The Developer acknowledges and agrees that the Port has executed short-term rental agreements for the interim use and occupancy of portions of the Port Lands ("Existing Uses") and may execute additional short-term rental agreements for the interim use and occupancy of portions of the Port Land, subject to the limitations in this Section 2.2. The Developer further agrees that the obligation to negotiate exclusively and in good faith pursuant to this Agreement shall not be construed to prevent the Port from (1) soliciting or receiving proposals for the use, lease, or rental of all or any portion of the Port Land, or (2) negotiating and entering into space assignments, rental or lease agreements, or the

extension of any Existing Use for all or any portion of the Port Lands which have a term expiration date which does not extend beyond the date that is thirty (30) months after the Effective Date, unless a longer term is authorized in writing by the Developer. Developer agrees that month-to-month leases terminable at will by the Port are permitted short-term leases under this Agreement.

- 2.3 Cooperation On Regulatory and Public Input Process.** The Parties acknowledge and agree that the obligation to negotiate exclusively and in good faith pursuant to this Agreement shall not be construed to prevent the Parties from soliciting input from key regulatory agencies and community stakeholders related to the Proposed Uses provided that each party shall inform and cooperate with the other party of such efforts and shall act consistent with the Parties' obligations to negotiate exclusively in good faith and in accordance with the terms of this Agreement.

### **3. Deposit and Reimbursement of Port Expenses.**

- 3.1 Deposit.** Concurrent with the Developer's execution of this Agreement, Developer shall pay the Port the amount of One Hundred Thousand Dollars (\$100,000.00) (the "Deposit").
- 3.2 Reimbursement of Port Expenses.** Regardless of whether the Parties reach agreement on or execute an Option, the Port may use up to Fifty Thousand Dollars (\$50,000) of the Deposit to pay for reasonable third party costs incurred by the Port for the purpose of (a) performing any due diligence work related to the Developer or the Proposed Uses desired by the Port, and (b) evaluating and negotiating the Option, including, but not limited to, Port consultants costs for appraisals, site surveys, site plan, and engineering evaluations (the "Port Expenses"). The Port Expenses shall not include attorneys' fees incurred by the Port. Such portions of the Deposit that are used to pay for Port Expenses shall be non-refundable to the Developer.
- 3.3 Return or Application of Deposit.** If any party terminates this Agreement in writing prior to the Termination Date, the Deposit (minus any Port Expenses) shall be refunded to the Developer. If the Parties execute an Option during the Term that is duly authorized by the Port Board, the Deposit (minus any Port Expenses) shall be applied to any future Developer payments under the Option. In no event shall Developer be entitled to any accrued interest on the Deposit.
- 3.4 Retention of Deposit.** If the Parties do not execute an Option during the Term that is duly authorized by the Port Board, and neither party terminates this Agreement prior to the end of the Term, the Port shall be entitled to retain the entire Deposit together with any accrued interest.

### **4. Threshold Conditions and Limitations.**

- 4.1 Port Discretion.** The Developer acknowledges and agrees that under this Agreement, the Port is not committing itself or agreeing to enter into the Option (including any of its exhibits), undertake any exchange or lease of real property, or to grant any disposition of any real property interests to the Developer, approve any land

use entitlements, or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the Port or the Port Board. This Agreement does not constitute the disposition of property, and other than the obligation set forth in Section 2 (Negotiations), the Port shall have no legal obligation to Developer with respect to the Port Lands under this Agreement.

The Parties further agree that any Option executed by the Parties will (a) condition the Developer's rights to execute a binding ground lease or other transaction document on the Parties having completed the environmental review process required by applicable law, including, without limitation, certification of the appropriate document under the California Environmental Quality Act ("CEQA") by the applicable lead agency and (if the Port is the lead agency) the Port for the Proposed Uses and transactions contemplated by the Option; and (b) expressly state that the Port retains the absolute discretion under CEQA with respect to the Proposed Uses and the Option to (i) make such modifications to Proposed Uses and transaction documents associated with the Option as may be necessary to mitigate significant environmental impacts or as may otherwise be necessary or appropriate, and (ii) review, consider, and select other feasible alternatives to avoid significant environmental impacts. The Board retains the absolute discretion to not approve the Option, the Proposed Uses, and any transaction documents associated with the Option, any disposition of any real property interests to the Developer, any land use entitlements, or any other acts or activities relating to the subsequent independent exercise of discretion by the Port or the Board, pursuant to the procedures and requirements under CEQA and the CEQA Guidelines, including balancing the benefits against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided.

**4.2 Developer Discretion.** By entering into this Agreement, the Developer does not commit itself to enter into the Option or any subsequent transaction documents contemplated thereunder. The Parties agree that, other than the obligation set forth in Section 2 (Negotiations), the Developer shall have no legal obligation to the Port with respect to the Port Lands or the Option unless and until the Parties have negotiated and executed an Option duly authorized by the Port Board.

**4.3 Conflicts of Interest.** The Developer represents and warrants that it is familiar with the provisions of Section 1090 and Sections 87100 et seq. of the California Government Code, which provides that no member, official, or employee of the Port may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official, or employee participate in any decision relating to this Agreement that affects her or his personal interest or the interests of any corporation, partnership, or association in which she or he is interested directly or indirectly. As to the provisions referred to in the previous sentence, the Developer does not know of any facts that constitute a violation of Section 1090 or Sections 87100 et seq. of the California Government Code. The Developer further warrants that its entering into an Option and its performance under any such Option or any subsequent transaction documents will not result in or constitute a violation of Section 1090 or Section 87100 et seq. of the California Government Code.

- 5. Other Restrictions on Agreement.** In addition to the provisions of Section 4.1 (Port Discretion), the Developer acknowledges that the Port cannot enter into or be bound by any documents or agreements that shall cause or result in any future work by the Developer on the Port Lands (including, without limitation, the Option and any related transaction documents) or a grant of any rights with respect to any development or use of the Port Lands that is inconsistent with the Port's obligations under Tidelands Trust requirements and principles. The Developer acknowledges that the Port is acting in its capacity as a property owner with a proprietary interest in the Port Lands and not as a regulatory agency with police powers. Nothing in this Agreement shall limit in any way the Developer's obligation to obtain any regulatory approvals from any governmental agency having jurisdiction over the Port Lands or the operations proposed to be conducted thereon, including, but not limited to, the Port, the City of Oakland, and the San Francisco Bay Conservation and Development Commission.
- 6. Amendments.** This Agreement may be amended or modified only by a written instrument executed by the Parties.
- 7. Severability.** If any provision of this Agreement or its application to any person or circumstance is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by, and in response to, such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this Agreement. Without limiting the foregoing, in the event that any applicable federal or state law prevents or precludes compliance with any material term of this Agreement, the Parties shall promptly modify, amend, or suspend this Agreement, or any portion of this Agreement, to the extent necessary to comply with such provisions in a manner that preserves to the greatest extent possible the benefits to each of the Parties before such conflict with federal or state law. However, if such amendment, modification, or suspension would deprive the Port or the Developer of the substantial benefits derived from this Agreement or make performance unreasonably difficult or expensive, then the affected party may terminate this Agreement upon written notice to the other party. In the event of such termination, neither party shall have any further rights nor obligations under this Agreement except as otherwise provided herein.
- 8. Non-Waiver.** No waiver made by either party with respect to the performance, or manner or time of performance, or any obligation of the other party or any condition to its own obligation under this Agreement shall be considered a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.
- 9. No Presumption Against Drafter.** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including, without limitation, California Civil Code

Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. This Agreement shall be interpreted in a reasonable manner to effect the purposes of the Parties and this Agreement.

**10. Governing Law.** This Agreement shall be deemed to be made in and shall be construed in accordance with the laws of the State of California.

**11. Relationship of the Parties.** The Developer is and shall at all times be and remain independent from the Port and shall not be an agent of the Port. Nothing herein contained shall be construed to place the Parties in the relationship of partners or joint venturers. Neither party shall have any right or power to obligate or bind any other party in any manner whatsoever except as expressly authorized in this Agreement. This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights in any third party, unless otherwise expressly provided. No party is a fiduciary to any other party under this Agreement and no party has any special responsibilities to any other party to this Agreement beyond any obligations expressly set forth herein.

**12. Survival.** Notwithstanding anything to the contrary in this Agreement, any obligation that arises and was not satisfied before termination or excused by operation of law shall survive any termination of this Agreement, except to the extent otherwise provided herein.

**13. Mutual Confidentiality.**

**13.1 Confidentiality.** To the fullest extent permitted by applicable law, the Parties shall maintain all information concerning, or documents produced for the purpose of, negotiations between the Parties conducted pursuant to this Agreement as confidential, disclosing information only to those individuals and representatives as designated by the other party, provided that such individuals and representatives acknowledge and agree in writing to maintain the confidentiality of such information.

**13.2 Proprietary Information.** The Parties enter into this Agreement with the understanding that in the course of the negotiations, the Port may require or request that the Developer provide certain information that may be proprietary. Such information may be necessary for the Port to verify financial, operational, or trade secret information that is relevant to the negotiations under this Agreement and that will serve the public interest in assisting the Port to negotiate effectively. To the extent that Developer agrees to provides and designates such information as confidential or proprietary by clearly marking and labeling such information in writing as “CONFIDENTIAL” (“Developer Proprietary Information”), the Port shall not disclose such information publicly without the Developer’s consent, except to the extent that the Port is required to make such a disclosure under applicable law, including the California Public Records Act, as determined in the Port’s reasonable discretion.

**13.3 Public Disclosures.** The Port agrees to notify the Developer of any public records request that involves the Developer Proprietary Information. The Developer agrees to

bear all costs of any litigation that is filed to determine the applicability of public records law to the Developer Proprietary Information. The Developer acknowledges that the Port's disclosure of Developer Proprietary Information (or any portion thereof) to the Port's third party consultants retained to assist the Port in its negotiations with the Developer or to otherwise advise the Port with regard to the Port's finances shall not be considered a public disclosure under this Section 13, provided that such consultants acknowledge and agree in writing to maintain the confidentiality of such information. Developer acknowledges and agrees that the Port is required to comply with requests for disclosure to the extent required under the California Public Records Act (Cal. Gov. Code § 6250 et seq.). The provisions under this Section 13 shall survive the Term.

**14. Attorneys' Fees.** In the event of a default under this Agreement or in the event a dispute arises in a judicial or quasi-judicial proceeding concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its or their rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable in-house and outside attorneys' fees. For purposes of this Agreement, reasonable fees of attorneys of the Port Attorney's Office shall be based on the fees the Port Attorney pays its outside private attorneys who work on any such dispute or a reasonable hourly rate (comparable to a rate charged by a qualified outside counsel) for work completed by attorneys in the Port Attorney's Office. The provisions under this Section shall survive the Term.

**15. Real Estate Commissions.** The Developer and the Port each represents to the other that it has not engaged a broker, agent, or finder in connection with this Agreement or the transactions contemplated hereby. In the event any broker, agent, or finder makes a claim, the party through whom such claim is made agrees to indemnify and defend the other party from any losses, damages, or liability arising out of such claim. The provisions under this Section shall survive the Term.

**16. Notices.** Unless otherwise expressly provided herein, any notice given under this Agreement shall be effective upon receipt only if in writing and given by delivering the notice in person or by sending it certified mail with a return receipt requested or by a nationally recognized courier service with proof of delivery, return receipt requested, with postage prepaid, as follows:

If to the Port:

Christopher Lytle  
Executive Director  
Port of Oakland  
530 Water Street  
Oakland, CA 94607



with copies to: Pamela Kershaw  
Director of Commercial Real Estate  
Port of Oakland  
530 Water Street  
Oakland, CA 94607

Danny Wan  
Port Attorney  
Port of Oakland  
530 Water Street  
Oakland, CA 94607

If to the Developer: Dave Kaval  
President  
Oakland Athletics  
7000 Coliseum Way  
Oakland, CA 94621

with copies to: Neil Kraetsch  
General Counsel  
Oakland Athletics  
7000 Coliseum Way  
Oakland, CA 94621

Neil Sekhri  
Gibson, Dunn & Crutcher LLP  
555 Mission Street, Suite 3000  
San Francisco, CA 94105

**17. Assignment.** The Port and the Developer acknowledge and agree that the Port is entering into this Agreement with the Developer based on the particular experience, financial capacity, skills and capabilities of the Developer. This Agreement is personal to the Developer and is not assignable without the prior written consent of the Port, which may be given, withheld, or conditioned in the Port's sole and absolute discretion. Any attempted assignment of this Agreement, or a significant or material change of the Developer, at the Port's option, shall be considered an event of default under this Agreement if such default is not cured within fifteen (15) days after the Port gives written notice to the Developer.

**18. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed effective as originals.

**19. Transaction Costs.** Other than as provided for in Section 3.2 (Reimbursement of Port Expenses) and Section 14 (Attorneys' Fees), the Parties agree that each party shall be responsible for all of its own costs and the costs associated with any consultants of other

members of its own team related to the negotiation and preparation this Agreement, the Option, and any associated transaction documents, including the Lease.

**20. Right of Entry.** Upon request, and provided that the Developer has executed an Access Agreement, the Port shall grant the Developer the right to enter on the Port Lands during normal business hours in accordance with the terms of the Access Agreement and this Agreement for the purpose of performing non-invasive, visual investigations of the Port Lands to assess the feasibility of developing the Port Lands.

**20.1 Physical Investigations.** If the Developer wishes to conduct any physical studies of the Port Lands, including invasive investigations regarding environmental conditions, soil condition, or physical building inspections, the Developer shall submit a detailed written proposed scope of work (“Proposed Work Plan”) for the Port’s review and approval in the Port’s proprietary capacity as the owner of the Port Lands as well as in the Port’s regulatory capacity acting as a Lead Agency with respect to the Port Lands for purposes of CEQA and any other local land use regulatory permits or approvals required. The Port, acting in its proprietary capacity, shall have the right to grant, deny, or condition such Proposed Work Plan in its sole discretion. It shall be reasonable for the Port to deny such Proposed Work Plan if, among other reasons, the Proposed Work Plan requires the Port to incur any cost or expense other than the time of those Port staff directly involved in the negotiations under this Agreement.

**20.2 Access Agreement.** If the Port approves or conditionally approves such Proposed Work Plan, the Port shall grant the Developer a right of entry under an access agreement in a form to be determined by the Port and to be approved by the Port Attorney or his designee (“Access Agreement”). If the Proposed Work Plan requires any permits or other governmental approvals (including, without limitation, any Port permits or approvals from DTSC or the RWQCB), the Developer shall work with the Port to obtain any such governmental approvals at no cost or expense to the Port. If the Proposed Work Plan requires any Port permits, the Port may (acting in its regulatory capacity) grant, deny, or condition such Port permits in its sole and absolute discretion. If the Parties enter into an Access Agreement, the Developer shall provide copies of all reports and studies regarding the condition of the Port Lands (including, without limitation, any improvements or subsurface conditions) prepared by, for, or on behalf of, the Developer as a result of such entry upon the Port Lands.

\_\_\_\_\_ Developer’s Initials

**21. Time of the Essence.** Time is of the essence with respect to each provision of this Agreement.

**22. Entire Agreement.** This Agreement (including the Exhibit(s)) contains all the representations and the entire agreement between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this

Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person and no court or other body shall consider those drafts in interpreting this Agreement.

**23. Implementation of Agreement.** The Port's Executive Director shall have the authority to issue interpretations and/or enter into certain amendments of this Agreement on behalf of the Port (including, without limitation, extensions of the times for performance set forth in the last paragraph of Section 2.1 (Parameters for Negotiation), not to exceed the length of the Term) so long as such actions do not change the material terms and conditions of this Agreement that were approved by the Board.

**24. Cooperation.** In connection with this Agreement, the Developer and the Port shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement.

**25. Defaults and Remedies.** In the event of any default by any party under this Agreement, the non-defaulting party may give notice to the defaulting party specifying in reasonable detail the basis for the determination of the default. The defaulting party shall have fifteen (15) days from the date the default notice is given to cure such default or defaults specified in the notice. If a default is not cured within fifteen (15) days from the date of the default notice, the non-defaulting party may terminate this Agreement.

The Parties, by their respective execution hereof, knowingly agree, notwithstanding anything herein to the contrary, that (a) a party's sole remedy for another party's breach of the obligation to negotiate exclusively and in good faith pursuant to this Agreement shall be termination or action to specifically enforce such obligation, and (b) no party shall have any right to any other equitable or damage remedies under the law for such a breach of this Agreement. If the non-defaulting party elects the remedy of specific performance, such party shall be entitled to (y) an injunction restraining any breach by the defaulting party, and (z) specific performance of the defaulting party's obligations hereunder, and the Parties further agree that the non-defaulting party shall not be required to demonstrate or prove actual damages or post any bond or other security or demonstrate the likelihood of irreparable damage in order to obtain the injunctive relief set forth above.

**26. Waiver of Damages.** Except as related to the remedy of specific performance, each party hereby releases the other party from any and all actions, demands, claims, costs, expenses, damages and liabilities (including, without limitation, attorneys' fees and costs) relating to or arising from the such party's breach of the obligation to negotiate exclusively and in good faith pursuant to this Agreement. Each party makes such release with full knowledge of California Civil Code Section 1542 ("Section 1542"). Each party hereby specifically waives the provisions of Section 1542 and any similar law of any other state, territory or jurisdiction

to the extent of this release. This waiver shall also include a release of rights provided under Section 1542, which states:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

**[Signatures on next page]**

**IN WITNESS WHEREOF**, the Parties do hereby execute this Agreement as of the Effective Date.

**DEVELOPER**

**ATHLETICS INVESTMENT GROUP  
LLC D/B/A THE OAKLAND  
ATHLETICS**, a California limited liability  
company

Dated: \_\_\_\_\_, 2018

By \_\_\_\_\_  
Dave Kaval  
President

**PORT OF OAKLAND**

**CITY OF OAKLAND**, a municipal  
corporation, acting by and through its Board of  
Port Commissioners,

Dated: \_\_\_\_\_, 2018

By: \_\_\_\_\_  
J. Christopher Lytle  
Executive Director

**THIS AGREEMENT SHALL NOT BE  
VALID OR EFFECTIVE FOR ANY  
PURPOSE UNLESS AND UNTIL IT IS  
SIGNED BY THE PORT ATTORNEY.**

Approved as to form and  
legality this \_\_\_\_\_ day  
of \_\_\_\_\_ 2018.

\_\_\_\_\_  
Port Attorney

Port Resolution No. \_\_\_\_\_

P.A. #: \_\_\_\_\_

**EXHIBIT A**

**Illustrative Description of Port Lands**

[see attached]