

JOHN JEFFERY CARTER

LAW OFFICE

October 31, 2019

VIA EMAIL

Dan Efseaff, General Manager - defseaff@paradisepd.com
Paradise Recreation and Park District
6626 Skyway
Paradise, CA 95969

Kevin Phillips, General Manager - jkmphillips@yahoo.com
Paradise Irrigation District
6332 Clark Road
Paradise, CA 95969

Emily LaMoe - elamoe@minasianlaw.com
Minasian, Meith, Soares, Sexton & Cooper, LLP
1681 Bird Street
Oroville, CA 95965

Re: Lease of Paradise Lake for Recreation

Dear Dan, Kevin and Emily:

Please find attached a proposed lease pursuant to which Paradise Irrigation District leases to Paradise Recreation and Park District Paradise Lake for recreation purposes.

Please be advised that I have yet to review and discuss the lease with Dan and therefore reserve on behalf of Paradise Recreation and Park District the right to make additions or changes to this agreement. However, in the interest of time, I send this simultaneously to Dan and to you so that we may hasten our review and revision of the draft lease in hopes of getting it to the respective boards of directors for the districts in November.

I look forward to receiving your comments and suggest that any and all such comments be sent to all in order that we each may stay abreast of them. If any of you believe that we should meet to review and finalize the draft lease, that can easily and quickly be done.

I look forward to hearing from you.

Sincerely,

JOHN JEFFERY CARTER

JJC:nh
Enclosures

**LEASE AGREEMENT BETWEEN PARADISE IRRIGATION DISTRICT
AND PARADISE RECREATION AND PARK DISTRICT**

This Agreement (the “Agreement”) is entered into on the date last set forth below opposite the parties’ signatures by and between Paradise Irrigation District, a California irrigation district (“PID”) and Paradise Recreation and Park District, a California recreation and park district (“PRPD”) (PID and PRPD each may also be referred to as a “Party” and collectively as the “Parties”) and is based upon the following facts:

A. PRPD is the owner of that certain real property situated in Butte County, California commonly known as Paradise Lake (the “Lake”). The Lake consists of the land underlying and adjacent to the water stored thereon and the improvements located thereon, including, without limitation, administrative and caretaking facilities, picnic, boat launching, and parking facilities, and hiking and walking trails and paths, all as more particularly shown on the attached in Exhibit “A.” For purposes hereof, the Lake does not include the dam, known as Paradise Dam, which captures and stores the water at the Lake.

B. The Lake is one of two public water supply reservoirs owned and operated by PID. As such, the Lake is strictly regulated. PID allows fishing and limited recreational uses including boating, hiking, and picnicking, but excluding swimming and other uses not specifically allowed. PID’s regulations for recreational use of the Lake (the “Rules”) are set forth in the attached Exhibit “B.”

C. Due to the Camp Fire of November 2018 which caused widespread destruction and damage to the facilities of PID and PRPD, PID now must focus its rehabilitation, repair, and replacement efforts on its water storage and delivery facilities, and not on managing and operating the Lake for recreation. PRPD, however, has the staff and resources available to it to enable it to assume management and operation of the Lake for recreation in accordance with the Rules.

D. Both Parties believe continued management and operation of the Lake for recreation is in the best interests of their residents and of the residents of the Greater Ridge area and of Butte County and will facilitate and quicken the restoration of the Parties and their communities.

In consideration of the foregoing facts, the recital of which is by this reference incorporated in the agreement of the Parties set forth below, and of the mutual covenants, conditions, and agreements set forth below, the Parties agree as follows:

1. **Leased Premises.** PRPD hereby leases from PID the Lake for purposes of recreation pursuant to the terms and conditions herein set forth.

2. **Term.** Recognizing that PRPD will be seeking federal, state and/or local grants and funding for recreation at the Lake and the likelihood that any such funding shall require PRPD to have a long term lease of the Lake, the term of this Lease shall be 20 years, commencing on _____, 2019 and terminating on _____, 2039 unless extended by mutual written agreement of the Parties. Notwithstanding the foregoing, the Parties shall meet not less frequently than annually during the term hereof to review this Agreement and assure it continues to serve their best interests and the interests of their residents. If as a result of any such meeting the Parties agree that this Agreement no longer serves such interests, then they may agree in writing to terminate this Agreement on such terms and conditions as they shall agree, provided, however, that in no event shall this Agreement be terminated if in so doing it will cause PRPD to breach any agreement it may have with any agency providing it with grant funding or loans for recreation programs and activities at the Lake.

3. **Use of Premises.**

a. PRPD shall use the Lake for recreation and recreational programs in accordance with the Rules. Notwithstanding the foregoing, should either Party wish to amend or otherwise modify any or all of the Rules, it shall meet and confer in good faith with the other Party with respect to its desired changes and the reasons therefor. If the Parties cannot agree within a period of 60 days of such meeting with respect to what if any, changes are to be made to the Rules, they shall refer the matter to mediation before a professionally trained and experienced mediator of their choosing and attempt to resolve their differences. The Parties shall each bear one-half the cost of such mediation, including the mediator's fees and costs, but each Party shall bear its own attorney's fees and costs. Without in any way limiting the foregoing, the Parties agree to discuss and consider whether swimming should be allowed at the Lake and if so, under what circumstances.

b. PRPD shall at all times observe and comply with all laws, ordinances, codes and regulations which pertain to or apply to the use of the Lake now or subsequently imposed, whether federal, state or local.

c. If the Lake ceases to be used for the purposes set forth herein and such use cannot be restored within a reasonable period of time thereafter, this Lease may be terminated by either party on 120 days advance written notice to the other.

4. **Consideration.** As consideration for its lease of the Lake, PRPD agrees to pay to PID the sum of \$1.00 upon execution hereof and on each anniversary thereafter during the term of this Lease and to faithfully perform all of those obligations on its part to be performed hereunder.

5. **Utility and Operating Costs.** PRPD shall be responsible for all utility and operational costs relating to its use of the Lake for recreation. PID shall be responsible for any and all utility and operating costs relating to its use of the Lake and of Paradise Dam for the storage and delivery of water, including without limitation water testing and treatment.

6. **Repairs, Maintenance, and Alterations.** PRPD shall have exclusive use and possession of the Lake for recreation purposes and shall bear all costs and responsibility for repair and maintenance of recreational facilities at the Lake, excluding Paradise Dam. PRPD shall maintain the Lake and recreational facilities in a clean, safe, sanitary, and useable condition at all times. PRPD agrees to indemnify and hold PID free and harmless from any and all liabilities, claims, liens, encumbrances and judgments created or suffered in connection with labor, services or materials furnished in connection with any alterations, repairs or additions which PRPD causes to be made to the recreational facilities at the Lake. Any improvements or additions made to the Lake will become the property of PID at no cost to PID at the termination of this Agreement unless PID and PRPD enter into a written agreement providing otherwise.

7. **Taxes.** During the initial and any extended term of this Agreement, PRPD shall pay any and all taxes which during the term of this Agreement may be levied upon or assessed by reason of its recreational use of the Lake. Notwithstanding the foregoing, PID hereby acknowledges that, as of the date of this Agreement, no property taxes or possessory interest taxes are being assessed against the Lake or the

recreational facilities located thereon.

8. Indemnification.

a. To the fullest extent permitted by law, during the term of this Agreement and beyond as provided in subsection c. below, PRPD shall defend, indemnify and hold PID, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of PRPD, its officials, officers, employees, sublessees, consultants or agents in connection with PRPD's use of the Lake for recreation under this Lease including, without limitation, the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. PRPD shall reimburse PID and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

b. To the fullest extent permitted by law, during the term of this Agreement and beyond as provided in subsection c. below, PID shall defend, indemnify and hold PRPD, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of PID, its officials, officers, employees, sublessees, consultants or agents in connection with PID's use of the Lake and Paradise Dam for storage and delivery of water under this Lease including, without limitation, the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. PID shall reimburse PRPD and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

c. Each Party's responsibility for such defense and indemnity obligations shall survive the termination of this Lease for the fullest period of time allowed by law.

d. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Lease. Each Party's obligation to indemnify shall not be restricted by insurance proceeds, if any, received by the other Party, its directors, officials, officers, employees, agents, or volunteers.

9. General Liability Insurance.

a. PRPD shall obtain commercial general liability insurance (occurrence policy form) from one or more U.S. domiciled insurance companies licensed to do business in the State of California with an A.M. Best Company rating of "B" or better or, in the alternative, an unlicensed U.S. domiciled company or companies with an "A" rating, which provides coverage for bodily injury, personal injury and property damage liability in the amount of at least \$2,000,000 per occurrence and \$4,000,000 in the aggregate, with a maximum policy deductible of \$5,000, or as otherwise agreed upon by the Parties. PID shall be named "Additional Insured" to such policy.

b. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specific minimum insurance coverage requirements and/or limits shall be available to PID as the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to PRPD, whichever is greater.

c. The insurance coverage required herein shall be evidenced by a certificate of insurance with policy endorsements and shall be executed by an authorized official of the insurer(s). In addition to the limits of coverage described above, the certificate of insurance shall provide that the insurer shall provide to PID at least 30 days prior notice of cancellation or material change in coverage, or 10 days prior notice of cancellation for non-payment.

d. PRPD acknowledges and agrees that PID, its officers, boards and commissions, and members thereof, its employees and agents, are covered as additional insureds with respect to any liability arising out of the activities of PRPD as the named insured. Such additional insured status shall be evidenced by a policy endorsement executed by an authorized official of the insurer(s). A blanket

endorsement which provides additional insured status to any person or organization with whom PRPD, as named insured, has entered into a written contract, such as this Lease, shall satisfy this requirement.

e. The insurance coverage required herein shall be primary and non-contributory insurance with respect to PID, its officers, officials and employees. Any insurance or self-insurance maintained by PID, its officers, officials or employees shall be in excess of the insurance afforded to the named insured by the insurance coverage required herein and shall not contribute to any loss. Such primary insurance status shall be evidenced by a policy endorsement issued by an authorized official of the insurer(s), and shall be at least as broad as CG 20 10 04 13. In the alternative, a letter issued by an authorized official of the insurer(s) and copies of the pertinent page(s) of the policy shall satisfy this requirement.

f. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of PID of Chico (if agreed to in a written contract or agreement) before PID's self-insurance shall be called upon to protect it as a named insured.

g. PRPD hereby agrees to waive all rights of subrogation against PID for losses arising from activities performed by PRPD or its contractors, subcontractors, or sublessee(s) for PID under this Agreement.

10. Fire and Extended Hazards Insurance.

a. At all times during the term of this Agreement, PRPD shall, at its sole cost and expense, maintain in full force and effect fire insurance obtained from one or more U.S. domiciled insurance companies licensed to do business in the State of California with an A.M. Best Company rating of "B" or better or, in the alternative, an unlicensed U.S. domiciled company or companies with an "A" rating, insuring all of the recreational facilities at the Lake excluding Paradise Dam against fire, extended coverage hazards, vandalism, and malicious mischief. All such insurance shall be in the form or forms reasonably approved by PID, shall insure such facilities at the Lake in an amount equal to their full replacement value,

and shall provide that the insurer shall give PID at least 30 days' prior notice of cancellation or material change in coverage.

b. Upon execution of this Agreement, a copy of the insurance policy or policies required herein or, in lieu thereof, the face page of such policy or policies and any endorsements which limit or otherwise affect the coverage provided shall be delivered by PRPD to PID for approval as to form and sufficiency. When such insurance policy or policies has been so approved, PRPD may substitute for the same a certificate of insurance issued by the respective insurance company or companies certifying that such insurance policy or policies is in full force and effect and all recreational facilities at the Lake excluding Paradise Dame are insured in the amount required herein.

c. In the event any dispute over whether the amount of such insurance complies with the requirements of this section cannot be resolved by agreement, either Party may request the carrier of the insurance then in force to determine the full replacement value of the recreational facilities at the Lake and the resulting determination shall be conclusive between the parties for purposes of this section.

d. If any of the recreational facilities at the Lake are damaged or destroyed from a risk covered by the insurance policy required by this section, all of the proceeds of such insurance shall be paid to PRPD for the purpose of its repairing or restoring such damaged or destroyed improvements or facilities. Upon such receipt PRPD promptly shall commence such repair or restoration work and thereafter prosecute the same with reasonable dispatch.

11. **Hazardous Materials.**

a. **Definition.** As used in this Agreement, the term "Hazardous Material" shall mean any substance, water, or material which has been determined by any federal, state, or local government authority to be capable of posing a risk of injury to health, safety, and property, including but not limited to, all of those materials, wastes and substances designated as hazardous or toxic by the U.S. Environmental Protection Agency, the U.S. Department of Labor, the U.S. Department of Transportation and/or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment.

b. Prohibited Without Consent. Neither Party shall cause or permit any Hazardous Materials to be brought onto, stored, used, generated, recycled, or disposed of in, on, under or about the Lake by its agents, employees, contractors, licensees, sublessees or invitees, without the prior written consent of the other Party which shall not be unreasonably withheld or delayed so long as such Party demonstrates to other Party's reasonable satisfaction that the Hazardous Materials, and the quantities thereof, are necessary or useful to its business. Notwithstanding the foregoing, PRPD shall have the right to bring onto, store, use and handle on the Lake (i) minor quantities of generally available Hazardous Materials used for routine cleaning and maintenance of the recreational facilities at the Lake and other operational aspects of its business, and (ii) products containing Hazardous Materials that are used by or in motor vehicles provided that the same are at all times stored, used, handled and disposed of in compliance with all Environmental Laws, and (iii) products commonly used in the ordinary course and scope of PRPD's business.

c. Indemnity. Each Party shall be solely responsible for and shall indemnify, hold harmless and defend the other Party, its officers, employees and agents from and against any and all liabilities arising from or in any way relating to its use of Hazardous Materials on or at the Lake, provided that the liabilities are or are reasonably likely to be a result of or related to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Materials in, on, under or about the Lake at any time after the date of this Agreement but not before the date of PRPD's first taking possession of the Lake, and provided that the Liabilities are or were, caused by that Party or its agents, employees, contractors, licensees, sublessees or invitees. The indemnification under this Section shall survive the termination of this Agreement.

d. Notice. If at any time during the term of this Agreement, Hazardous Materials are discovered by either Party to be on or at the Lake, such Party shall immediately notify the other Party in writing of such occurrence. PID and PRPD each further agree to promptly notify the other of any communication received from any governmental entity concerning Hazardous Materials or the violation of any law or regulation that related to such substances.

12. **Assignment.**

a. PRPD shall not voluntarily, or by operation of law, assign, sublet, transfer, mortgage, or otherwise transfer or encumber all or any part of PRPD's interest in this Agreement or in the Lake or any part thereof, without the prior written consent of the PID. Any attempted assignment, transfer, sublease, encumbering or renting without such consent shall be void and constitute a breach of this Agreement. In the event a receiver, trustee or conservator is appointed to take possession of the assets of PRPD, or the possession of the Lake, or a general assignment is made by PRPD for the benefit of creditors, or any action is taken by or against PRPD under any insolvency law or bankruptcy act, PID, at its option, may forthwith terminate this Agreement.

b. Any consent by PID to the assignment or other transfer of rights hereunder by PRPD shall not release PRPD from any obligations under this Agreement, and the PID's consent, unless expressly provided therein, shall not include consent to any subsequent assignment or transfer by PRPD or PRPD's heirs, successors or assigns. Additionally, all the terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the lawful successors and assigns of the Parties hereto.

13. **Entry and Inspection.** PRPD agrees that PID, its agents and employees, may enter upon the Lake at any reasonable time for the purpose of making inspections, surveys and measurements and performing work necessary for its maintenance and operation of Paradise Dam and Lake for purposes of water storage and delivery, all with the understanding that the same will be performed in such a manner as will cause a minimum of interference with PRPD's use of the Lake. PID agrees to provide PRPD with reasonable prior notice of any such entry and inspection.

14. **Non-Discrimination.** PRPD herein covenants by and for itself, its successors, and assigns, and all persons claiming under or through it, and that use of the Lake is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex (including all forms thereof), sexual orientation, disability, medical condition, marital status, pregnancy, national origin, ancestry or any other class protected by law, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Lake herein leased. Nor shall PRPD itself, or any person claiming under or through PRPD, establish or permit any such practice or practices

of discrimination or segregation with reference to the selection, location, number, use, or occupancy of the Lake herein leased.

15. **Condition of Lake.** PRPD understands and agrees that no representation, statement or warranty, express or implied, has been made by or on behalf of PID as to the condition of the Lake or the suitability of the Lake for its intended use. PRPD hereby acknowledges that it has had the opportunity to inspect the Lake and hereby agrees to accept the Lake "as is" with respect to all known or obvious conditions which currently exist in and on the Lake.

16. **Waste or Nuisance.** During the term of this Agreement, PRPD shall not commit or allow to be committed any waste on the Lake or maintain or allow to be maintained any nuisance thereon.

17. **Default.** In the event PRPD fails to keep and perform any term, condition or covenant contained within this Agreement, its exhibit, and any subsequent amendments, and PRPD fails or is unable to cure such default within 30 days after being given written notice thereof, then all rights of PRPD under this Agreement and to the use and occupancy of the Lake shall terminate and PID shall have the immediate right of reentry and may remove all unauthorized persons and property therefrom.

18. **Attorney's Fees.** In the event suit should be brought for recovery of the Lake or for any sum due hereunder, or to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to all costs incurred in connection with such action, including reasonable attorney's fees.

19. **Notices.** Any notice required or desired to be given hereunder may be served personally or by registered or certified mail with the United States Postal Service, return receipt requested, postage prepaid, addressed as follows. Notice becomes effective on the date of personal service or five (5) days following date of postmark.

If to PID: Paradise Irrigation District
6332 Clark Road
Paradise, CA 95969
Attn: General Manager

If to PRPD: Paradise Recreation and Park District
6626 Skyway
Paradise, CA 95969
Attn: General Manager

20. **Covenant of Quiet Possession.** PID covenants that it will deliver quiet possession of the Lake to PRPD on the date the term of this Agreement is to commence and that PRPD's quiet possession will not be disturbed by PID or those claiming under it during the terms of this Agreement unless as otherwise provided for in this Agreement.

21. **Entire Agreement.** This Agreement, and attached exhibits and documents referenced (each of which are expressly incorporated herein), constitutes the entire agreement of the Parties hereto relating to the Lake and shall supersede all prior written or oral negotiations or agreements of the Parties relating to the Lake.

22. **Modification.** This Agreement shall not be modified in any part except by written amendment duly executed by the Parties.

23. **Severability.** If any term, condition or covenant of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall remain valid and binding.

24. **Relationship of Parties.** Nothing herein contained shall be deemed to create a partnership or joint venture, nor shall the relationship between the Parties be construed as principal and agent, or other than landlord and tenant.

25. **Mutual Contract.** The Parties agree that this Agreement has been mutually drafted and authored by both Parties and that it shall not be construed against any Party.

26. **Operational Name.** PRPD agrees to operate and refer to its operations at the Lake under the name "Paradise Lake Recreation Facility" or such other reasonably similar name during the term of this Agreement.

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Executed by the Parties by their respective duly authorized officers, as of the dates set forth below.

PID:

Paradise Irrigation District, a California irrigation district

_____, 2019

By: _____
Kevin Phillips, General Manager

Approved as to Form:

By: _____
Emily LaMoe,
PID Attorney

PRPD:

Paradise Recreation and Park District, a California recreation and park district

_____, 2019

By: _____
Dan Efseaff, General Manager

Approved as to Form:

By: _____
John Jeffery Carter,
PRPD Attorney

Exhibit “A”

Exhibit “B”



DATE: 11/25/2019
TO: Recreation and Park Committee (Anderson/Rodowick)
FROM: Kristi Sweeney, Assistant District Manager
SUBJECT: KaBoom! proposal

REPORT IN BRIEF:

Staff is working with KaBoom! (an organization devoted to building safe, community-built playgrounds that encourage youth physical activity) to develop an approximate 2,500 sq. foot playground. KaBoom! is exploring funding through the Butte Strong Foundation to expand the playground at Bille Park and after an outreach and design process with children and adults, will host a community build day. The District Attorney is reviewing an agreement proposed by KaBoom!

Recommendation: *Upon concurrence with legal council, staff recommends that the Committee approve the concept and provide a positive recommendation of the cooperative agreement with KaBOOM! to the full Board of Directors at the December 11, 2019 meeting.*

Attachments:

- A. KaBoom! Proposed Agreement

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11/25/2019



COMMUNITY PARTNER PLAYGROUND AGREEMENT

November 26, 2019

KaBOOM!, Inc. (referred to herein as KaBOOM!) is pleased that «CP» (referred to herein as the Community Partner) has agreed to collaborate with KaBOOM! and «FP» (referred to herein as the Funding Partner) in the construction of a new playground at «Site_Name», «Site_Address», «City», «State», «Zip» (the "Project"). This Community Partner Playground Agreement (this "Agreement"), which sets forth the Community Partner's obligations in connection with the Project and certain matters on which the parties have agreed, will, when executed by the duly authorized representatives of each party, supersede any prior agreements and represent the complete legally binding agreement between the parties regarding the Project.

1. Obligations of the Community Partner. The Community Partner shall work with KaBOOM! and the Funding Partner as well as community residents to design, plan and build the Project. By executing this Agreement, the Community Partner is unconditionally agreeing to each of the following obligations, in each case meeting the requirements provided by KaBOOM!:
 - (a) Project Site.
 - (i) Ownership. At the time of execution of this Agreement, the Community Partner shall provide KaBOOM! with proof of land ownership evidenced by either a deed granting title to the property to the Community Partner or a letter from the property owner showing approval for the Project. The Community Partner is the owner of the playground in its entirety, for the lifetime of the playground, including the equipment and/or safety surfacing purchased by KaBOOM! and/or the Funding Partner.
 - (ii) Permits. Prior to Build Day, the Community Partner shall obtain or cause to be obtained all necessary permits and licenses regarding the installation, possession and use of the playground in compliance with applicable laws and regulations.
 - (iii) Preparation. The Community Partner shall ensure that the Project site is safe for volunteers and children, which responsibility includes: (1) recruiting fifteen (15) adult volunteers to participate in preparation activities two to three days prior to Build Day; (2) preparing the site for the installation of the Project at least two weeks before Build Day, which includes removing existing playground equipment, footers and safety surfacing, grading the land, removing fencing and performing soil tests; (3) conducting up to two (2) utility checks as reasonably requested by KaBOOM! with the appropriate utility companies, with the first test being completed on or before Design Day (as defined below) and with all utility check documentation provided upon completion to the KaBOOM! project manager who shall supervise the planning and installation of the playground (the "Project Manager"); and (4) conducting up to two (2) soil site tests as reasonably requested by KaBOOM!, with the first test being completed on or before Design Day and with all soil check documentation provided to the Project Manager upon completion. The Community Partner is responsible for undertaking any necessary risk mitigation should the soil be deemed unsafe for children and volunteers.
 - (iv) Safety and Security. The Community Partner shall ensure the security of equipment, tools, supplies and well being of the adults and children from the beginning of the preparation activities until the conclusion of Build Day, including any postponement.
 - (v) Maintenance. Maintenance of the playground facility and supervision of its use is the sole responsibility of the Community Partner. The Community Partner shall collaborate with KaBOOM! during the Project planning process to develop a maintenance program (a copy of which has been provided) for the playground and, with the support of the property owner (if owner is a separate party), shall maintain the playground and the property before and after the Build Day to ensure a safe and attractive playspace. In furtherance of the foregoing, in the event any playground equipment included in the Project no longer is permitted for any reason to be located at its original site of construction or such site is no longer controlled by the Community

Partner for any reason, then the Community Partner promptly shall notify KaBOOM! following its becoming aware of such situation and shall, at the Community Partner's sole cost and expense, take such steps as may be necessary to promptly and safely relocate the playground equipment (including any permanent signage and other fixtures) to an alternate site that serves children or to ensure that the successor controlling person of such site shall continue to make such playground available to children in the same manner contemplated as of the Build Day and maintain (or permit the Community Partner to maintain) such playground in accordance with the maintenance program. In addition, the Community Partner shall accept and maintain engineered wood fiber as playground safety surfacing, meeting standards established by Consumer Product Safety Commission guidelines, for the lifetime of the playground. Guidance and materials for the purpose of developing a maintenance plan for the playground are available, upon request, from the playground equipment and safety surfacing manufacturers, including Landscape Structures Inc. or Playworld Systems, Inc.

- (b) Design Day. The Community Partner agrees to host a KaBOOM!-facilitated "Design Day" with at least twenty (20) adult volunteers and twenty (20) children. Such adult volunteers shall remain engaged in the planning activities throughout the Project's planning process.
- (c) Build Day. The Community Partner shall recruit «Volunteers» adult volunteers from the community to participate in a one-day installation event for the Project, which is scheduled to occur on «BD.» and which is referred to herein as the Build Day. The Community Partner shall ensure that all volunteers sign a waiver (a copy of which has been provided). On the Build Day, the Community Partner shall provide food, water, tools, dumpsters, music and restroom facilities for all volunteers.
- (d) Promotion; Intellectual Property. The Community Partner shall seek prior approval from KaBOOM! and/or the Funding Partner for any materials that reference the Project or contain the name, trademarks, service marks, logos and other intellectual property (collectively, and together with all goodwill attached or which shall become attached to any of the them, the "Marks") of KaBOOM! and/or the Funding Partner, including press releases, fliers and promotional materials. The Community Partner acknowledges and agrees that each of KaBOOM! and the Funding Partner is the sole owner of all right, title and interest in and to its respective Marks. The parties acknowledge that KaBOOM! and the Funding Partner may take all steps to protect their Marks as they deem appropriate. Any use of the Marks will inure to the sole benefit of KaBOOM! or the Funding Partner (as applicable). The Community Partner shall not use the Marks in any manner that would harm the reputation of KaBOOM! or the Funding Partner or disparage or negatively reflect upon the Marks. Upon expiration of or termination of this Agreement for any reason, the Community Partner shall cease all use of the Marks. The Community Partner shall collaborate with KaBOOM! and the Funding Partner to secure media coverage for the Project.
- (e) Signage. The Community Partner shall allow the names and logos of KaBOOM! and the Funding Partner to be displayed on permanent playground signage (a copy of which has been provided), and shall be no greater than 19 ½ inches wide by 30 ¼ inches tall and mounted on poles in a mutually agreed location.
- (f) Playground Costs. The Community Partner is solely responsible for and shall hold KaBOOM! and the Funding Partner harmless from any costs incurred by the Community Partner for any prior site preparation, upgrades or improvements or any equipment or materials purchased to supplement those secured by KaBOOM!.
- (g) Warranty. The playground equipment and the safety-surfacing related to the Project may be covered under warranty by the applicable manufacturers (a copy of which has been provided). The Community Partner acknowledges that any warranties and/or guarantees on any equipment or material are subject to the respective manufacturer's terms thereof, and the Community Partner agrees to look solely to such manufacturers for any such warranty and/or guarantee. Neither KaBOOM! nor the Funding Partner nor any of their respective affiliates, directors, officers, managers, partners, members, shareholders, employees, agents or representatives, have made nor are in any manner responsible or liable for any representation, warranty or guarantee, express or implied, in fact or in law, relative to any equipment or material, including its quality, mechanical condition or fitness for a particular purpose.
- (h) Insurance. The Community Partner is self-insured and is responsible for providing coverage for its own employees and against liability for bodily injury, death and property damage that may arise out of or be based on

the use of the playground at "Community Partner location", from 7 (seven) calendar days before the Build Day and for a minimum of one year afterward, in each case, in amounts not less than one million dollars (\$1,000,000). This self-insurance shall be primary and non-contributing with any other insurance covering KaBOOM! and its funding partners.

- (i) Indemnification. The Community Partner shall indemnify and hold harmless KaBOOM!, the Funding Partner and their respective affiliates, directors, officers, managers, partners, members, shareholders, employees, agents and representatives from any and all losses, liabilities, claims, actions, fees and expenses (including interest and penalties due and payable with respect thereto and reasonable attorneys' and accountants' fees and any other reasonable out-of-pocket expenses incurred in investigating, preparing, defending or settling any action), including any of the foregoing arising under, out of or in connection with any breach of this Agreement, any actions associated with this Project or resulting from the use of any playground property and equipment, including those for personal injury, death, or property damage, except to the extent resulting from the gross negligence or willful misconduct of such indemnified person. This provision shall survive any termination or expiration of this Agreement.
- (j) Data and Reporting Requirements. The Community Partner shall (i) promptly following the confirmation of the Project, distribute one or more play-related surveys provided by KaBOOM! to its stakeholders, including parents/caregivers, volunteers, staff and board members, (ii) cause members of its planning committee to complete a post-build survey provided by KaBOOM! within 2 weeks from the Build Day and a 6-month survey provided by KaBOOM! within 7 months from the Build Day.
- (k) Code of Conduct. The Community Partner agrees to comply with the build site rules (a copy of which has been provided). The Community Partner shall allow the build site rules to be displayed on site and communicate and enforce the build site rules for all participants in the Project's Design Day and Build Day events.

2. Obligations of KaBOOM!

- (a) Playground Build. KaBOOM! shall provide technical and organizational leadership and guidance for the Project and shall:
 - (i) Coordinate Funding Partner participation, facilitate playground design, including regular planning meetings, and work with vendors to procure equipment and materials in a timely manner, except to the extent that safety surfacing other than engineered wood fiber is used, which shall be procured by the Community Partner.
 - (ii) Manage construction logistics for the Project, coordinate playground site preparation activities with the Community Partner, inventory equipment and materials, and assure that the necessary tools and materials and other general supplies are available on the Build Day.
 - (iii) Lead the Build Day activities, including the coordination of Build Day captains and volunteers.
 - (iv) Make available certain educational and promotional materials related to the Project.
- (b) Inspection. KaBOOM!, in collaboration with the Community Partner, will secure a Certified Playground Safety Inspector to review the playground structure at the conclusion of the Build Day (or, if KaBOOM! assumes responsibility for the playground construction going beyond one day, at the conclusion of the installation) to ensure that the structure is safe and built to all appropriate standards and guidelines, unless the Build Day is not completed on the Build Day due to failure of the Community Partner, in which case the Community Partner shall secure the Certified Playground Safety Inspector.
- (c) Promotion. KaBOOM! will provide proposed promotional materials relating to the Project for the Community Partner's review and approval, which approval shall not be unreasonably withheld or delayed.
- (d) Website Listing. KaBOOM! will place the playground on its list of KaBOOM! builds on the KaBOOM! website and KaBOOM! will send information to the Community Partner on playground maintenance programming and enhancements.

- (e) Post-Build Day. The Community Partner shall (i) within one week following the Build Day, complete and submit a Post Build Report, in the form to be made available by KaBOOM!, and (ii) shall use its commercially reasonable efforts to provide, and otherwise shall cooperate in good faith with KaBOOM! regarding obtaining, such other information related to the Project as KaBOOM! from time to time may request.
3. Build Day Postponement. The Build Day shall not be postponed except when weather or other conditions jeopardize the safety of the volunteers or threaten the structural integrity of the playground. The decision to postpone the Build Day will be made by majority agreement of the representatives of KaBOOM!, the Community Partner and the Funding Partner, except where such decision must be made by KaBOOM! on the construction site and representatives of the Community Partner and the Funding Partner are not available for consultation. In the event that the Build Day is postponed, KaBOOM!, the Community Partner and the Funding Partner shall develop a plan for rescheduling the Build Day at the next earliest date possible for each party. The Funding Partner shall be responsible for all additional expenses related to the rescheduled Build Day, including, without limitation, equipment, labor and materials, storage and travel costs and expenses; *provided, however*, that the Funding Partner shall be notified of the estimated amount of such additional expenses in connection with rescheduling of the Build Day. Notwithstanding the foregoing, in the event that the date of the Build Day is cancelled or changed as a result of the Community Partner's failure to satisfy its obligations in connection with the Project, then the Community Partner shall be liable to KaBOOM! and the Funding Partner for all such additional expenses related to the rescheduled Build Day.
4. Funding Partner Relations. KaBOOM! has a separate contract with the Funding Partner pursuant to which the Funding Partner has agreed to provide financial and human resources for the Project. In recognition of the Funding Partner's contribution of such resources, the Funding Partner shall receive first placement on any recognition materials developed for the Project, including playground signage, banners, T-shirts, press releases, website and newsletter stories, and flyers, and the Community Partner shall not solicit sponsors or donors in relation to the Project whose products or services directly compete with the products or services of the Funding Partner as identified to the Community Partner by KaBOOM! and/or the Funding Partner. In the event the Community Partner solicits other sponsors or donors, then the Community Partner shall not permit such sponsors or donors to compete with the Funding Partner for signage and sponsorship recognition.
5. Termination. In the event that the Community Partner fails to make the payments required under Section 1(a) or otherwise breaches this Agreement, KaBOOM! may terminate this Agreement upon written notice to the Community Partner of such termination. Furthermore, if either party is delayed or prevented from fulfilling any of its obligations hereunder by any cause beyond its reasonable control, including acts of God, acts or omissions of civil or military authorities, fire, strike, flood, riot, act of terrorism, war, transportation delay, or inability due to such causes to obtain required labor, materials or facilities, such party shall not be liable hereunder for such delay or failure and either party may terminate this Agreement if the other is unable to perform any obligation hereunder for a period longer than ten (10) calendar days due to such force majeure event, in which case KaBOOM! shall refund to the Community Partner any amounts paid to KaBOOM!, less expenses already committed and/or incurred prior to the date of such termination. If, upon termination as provided herein, the sum due KaBOOM! by the Community Partner exceeds the sum paid to KaBOOM! hereunder, the Community Partner shall pay KaBOOM! for any such additional sum due upon presentation of appropriate documentation within thirty (30) days of invoice. Except as set forth above, upon any termination, this Agreement shall become void and have no effect, and no party shall have any liability to the other party, except that nothing herein will relieve any party from liability for any intentional breach of this Agreement prior to such termination.
6. General Provisions. The Community Partner represents to KaBOOM! that all information provided by it to KaBOOM!, including in the Playground Profile Application, is true, correct and complete in all respects and does not omit any information relevant to the Project. Each party has all requisite power and authority, including any necessary approval by its governing body, to execute and deliver this Agreement, and to perform its obligations hereunder. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party hereto. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns, and where expressly stated, their affiliates and representatives. This Agreement shall be governed by and construed under the laws of the State of New York, without regard to conflicts of laws principles to the extent that the application of the laws of another jurisdiction would be required thereby. This

Agreement may be altered, modified or amended only by a written document signed by both parties. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute the same agreement and may be delivered by facsimile or electronic mail transmission with the same force and effect as if originally executed copies hereof were delivered. Any notices required or permitted to be given hereunder shall be sent by certified or registered United States mail, postage prepaid, by personal delivery addressed to the applicable party or by facsimile or electronic mail transmission (the receipt of which is confirmed) at the address set forth under such party's signature below. The Funding Partner shall be an intended third party beneficiary of Sections 1(b), (e), (f), (g), (h), (i) and (j) and Sections 2(b), 3, 4 and 6 of this Agreement and is entitled to enforce its rights under such sections as if it were a party to this Agreement.

By executing this Community Partner Playground Agreement where indicated below, each of KaBOOM! and the Community Partner agrees, as of the date identified above, to be legally bound by all of the terms and provisions set forth above.

«CP»

KaBOOM!, Inc.

By: _____

Name: «Signatory_1»

Title: «Sig_1_Title»

Address:

«S1_Address»

T: «S1_Phone»

«S1_Fax»

e-mail: «S1_Email»

By: _____

Name: Gerry Megas

Title: Chief Financial Officer

Address:

4301 Connecticut Ave. NW, Suite ML-1

Washington, DC 20008

T: (202) 464- 6180

F: (202) 659-0210

e-mail: gmeegas@kaboom.org

«CP_2»

«Signatory_2»

«Sig_2_Title»

«S2_Address»

«S2_Phone»

«S2_Fax»

«S2_Email»

Contact information for the person who should receive KaBOOM! invoices:

Name: «Invoice_Name»

Telephone number: «Invoice_Phone»

Mailing Address:

«Invoice_Address»

Email: «Invoice_Email»

«Invoice_Fax»

