

RESOLUTION NO. R-2018-44

**A RESOLUTION RATIFYING AND/OR APPROVING AND AUTHORIZING
THE EXECUTION OF A COMMUNITY PARTNER PLAYGROUND AGREEMENT,
AND A FIRST AND SECOND ADDENDUM TO A COMMUNITY PARTNER PLAYGROUND AGREEMENT,
WITH THE MAYWOOD PARK DISTRICT, KABOOM! AND A FUNDING PARTNER OF KABOOM!**

**(Purchase, Installation and Maintenance of Playground Equipment
and Playground Surface Materials at Winfield Scott Park, 1800 South Maywood Drive)**

WHEREAS, the President and Board of Trustees of the Village of Maywood (the "Village Board" or the "Village"), operating as a home rule municipality, have all of the powers and authority granted to such municipalities pursuant to Article VII, Sections 6 and 10(a) of the Illinois Constitution of 1970, including the right to exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the President and Board of Trustees of the Village of Maywood desire to ratify the approval of and/or authorize and approve the execution of a COMMUNITY PARTNER PLAYGROUND AGREEMENT WITH THE MAYWOOD PARK DISTRICT, KABOOM! AND A FUNDING PARTNER OF KABOOM! (the "Agreement"), a FIRST ADDENDUM to the Agreement (the "First Addendum") and a SECOND ADDENDUM to the Agreement (the "Second Addendum"), to allow the Maywood Park District, KaBoom! and the Funding Partner Of KaBoom! to purchase and install certain playground equipment and playground surface materials in the Village-owned Winfield Scott Park located at 1800 South Maywood Drive, Maywood, Illinois, and for the Maywood Park District, at its cost, to maintain the playground equipment (the "Project"). Copies of the Agreement, the First Addendum and the Second Addendum are attached hereto as **Group Exhibit "A"** and made a part hereof; and

WHEREAS, the Agreement provides that all funding necessary to pay for the completion of the Project (the purchase and installation of the playground equipment and playground surface materials) shall be the responsibility of the Maywood Park District, KaBoom! and the Funding Partner Of KaBoom!, and the Village shall not be obligated to pay any monies towards the completion of the Project or the maintenance of the playground equipment and playground surface materials; and

WHEREAS, the President and Board of Trustees of the Village of Maywood, at the Regular Board of Trustees meeting of July 17, 2018, approved a different version of the Agreement, with edits made by the Village Attorney. KaBoom! has refused to accept any changes to the Agreement as originally drafted. The Village and Park District, however, desire to clarify and revise certain obligations under the Agreement between themselves, and, to that end, have agreed to enter into the Second Addendum in which such clarifications and revisions are made; and

WHEREAS, the President and Board of Trustees of the Village authorize the Project through the approval of this Resolution, which will repeal the action taken by the Board in Resolution No. R-2018-34, and will ratify the execution by the Village of the Agreement as originally drafted (not previously approved by the Board), ratify the execution by the Village of the First Addendum (not previously approved by the Board), and approve and authorize execution of the Second Addendum, all as attached hereto as **Group Exhibit "A"** and made a part hereof; and

WHEREAS, the President and Board of Trustees of the Village of Maywood have the authority to approve and enter into the attached Agreement, First Addendum and Second Addendum (**Group Exhibit "A"**) pursuant to its home rule powers and contracting authority provided by Article VII, Sections 6 and 10(a) of the Illinois Constitution of 1970, as well as the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*), and find that, subject to approval and execution by the Park District of the Second Addendum, entering into the Agreement, First Addendum and Second Addendum is in the best interests of the Village, its residents, property owners, local businesses and the public.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MAYWOOD, COOK COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

SECTION 2: The President and Board of Trustees of the Village of Maywood authorize, ratify and approve, as applicable, the execution or previous execution of the attached Agreement, the First Addendum and the Second Addendum, for the purchase and installation of certain playground equipment and playground surface materials at Winfield Scott Park, 1800 South Maywood Drive (the "Project"), copies of which are attached hereto as **Group Exhibit "A"** and made a part hereof.

SECTION 3: The President and Board of Trustees of the Village of Maywood authorize and direct that the Village President, the Village Clerk, the Village Manager, the Village Engineer and the Village Attorney, or their designees, transmit executed originals or certified copies of all documents, including the Agreement, the First Addendum and the Second Addendum, to all parties and agencies that are entitled to receive such documents, as required and directed by any other governmental oversight regulatory agency, in order to comply with the terms of the Agreement. Further, the President and Board of Trustees authorize and direct the Village President and Village Clerk, or their designees, to execute and deliver all other instruments, payments and documents that are necessary to fulfill the Village's obligations under the Agreement, First Addendum and Second Addendum. In addition, the Village Board authorizes and directs the President and Clerk, or their designees, to execute any updated version of the attached Agreement, First Addendum or Second Addendum which may contain certain non-substantive and non-financial modifications that are approved by the Village Attorney.

SECTION 4: The ratifications, approvals and authorizations given in Sections 2 and 3 above are specifically conditioned on acceptance, approval and execution by the Maywood Park District of the Second Addendum. Should such acceptance, approval and execution fail to be given, the ratifications, approvals and authorizations given in this Resolution shall be null and void.

SECTION 5: Resolution No. R-2018-34, authorizing the approval and execution of a different version of the Agreement, as approved by the Village President and Board of Trustees on July 17, 2018, is hereby repealed.

SECTION 6: This Resolution shall be in full force and effect from and after its adoption, approval and publication in the manner provided by law.

ADOPTED this 4th day of September, 2018 pursuant to a roll call vote as follows:

AYES: Mayor Perkins, Trustee(s) H. Yarbrough, I. Brandon, A. Sanchez, K. Wellington
and R. Rivers

NAYS: None

ABSENT: Trustee M. Lightford

APPROVED by me as Village President, and attested by the Village Clerk, on the 5th day of September, 2018.

Edwenna Perkins, Village President

ATTEST:

Viola Mims, Village Clerk

Group Exhibit "A"

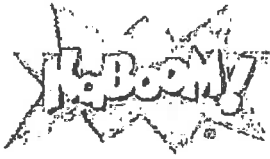
**COMMUNITY PARTNER PLAYGROUND AGREEMENT WITH
THE MAYWOOD PARK DISTRICT, KABOOM! AND A FUNDING PARTNER OF KABOOM!
(Purchase, Installation and Maintenance of Playground Equipment and
Playground Surface Materials at Winfield Scott Park, 1800 South Maywood Drive)**

**FIRST ADDENDUM TO COMMUNITY PARTNER PLAYGROUND AGREEMENT –
BETWEEN ALL PARTIES**

**SECOND ADDENDUM TO COMMUNITY PARTNER PLAYGROUND AGREEMENT –
BETWEEN ONLY THE VILLAGE AND THE MAYWOOD PARK DISTRICT**

(attached)

ORIGINAL AGREEMENT



COMMUNITY PARTNER PLAYGROUND AGREEMENT

June 15, 2018

KaBOOM!, Inc. (referred to herein as KaBOOM!) is pleased that Maywood Park District and The Village of Maywood (jointly referred to herein as the Community Partner) have agreed to collaborate with KaBOOM! and «FP» (referred to herein as the Funding Partner) in the construction of a new playground at 1800 South Maywood Drive Maywood, IL 60153 (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 named Community Partner is unconditionally agreeing to each of the following obligations, in each case meeting the requirements provided by KaBOOM!:
 - (a) **Fundraising.** In support of the Project, the Maywood Park District must contribute \$8,500 to KaBOOM!, which will apply the funds directly to the purchase of playground equipment. KaBOOM! will invoice the Maywood Park District for such amount promptly following the execution of this Agreement, which amount must be paid in full at least thirty (30) days prior to the Project's Build Day (as defined below).
 - (b) **Project Site.**
 - (i) **Ownership.** At the time of execution of this Agreement, the Village of Maywood shall provide KaBOOM! with proof of land ownership evidenced by either a deed granting title to the property to the Village of Maywood or a letter from the property owner showing approval for the Project. The Maywood Park District 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, Maywood Park District 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.** Maywood Park District 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 Maywood Park District is responsible for undertaking any necessary risk mitigation should the soil be deemed unsafe for children and volunteers.
 - (iv) **Safety and Security.** Maywood Park District 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 Maywood Park District. The Maywood Park District shall collaborate with KaBOOM! during the Project

planning process to develop a maintenance program 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 Maywood Park District for any reason, then Maywood Park District promptly shall notify KaBOOM! following its becoming aware of such situation and shall, at the Maywood Park District 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 Maywood Park District to maintain) such playground in accordance with the maintenance program. In addition, the Maywood Park District 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 Playworld Systems, Inc.

- (c) Design Day. Maywood Park District 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.
- (d) Build Day. Maywood Park District shall recruit 175 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 Maywood Park District shall ensure that all volunteers sign a waiver. On the Build Day, the Maywood Park District shall provide food, water, tools, dumpsters, music and restroom facilities for all volunteers.
- (e) Promotion: Intellectual Property. The Maywood Park District 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 Maywood Park District 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 Maywood Park District 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 Maywood Park District shall cease all use of the Marks. The Maywood Park District shall collaborate with KaBOOM! and the Funding Partner to secure media coverage for the Project. 2/4/11
- (f) Signage. The Community Partner shall allow the names and logos of KaBOOM! and the Funding Partner to be displayed on permanent playground signage, which shall be substantially in the form provided to the Community Partner during the application process and shall be no greater than 14 1/4 inches wide by 30 1/4 inches tall and mounted on poles in a mutually-agreed location.
- (g) Playground Costs. Maywood Park District is solely responsible for and shall hold KaBOOM! and the Funding Partner harmless from any costs incurred by the Maywood Park District for any prior site preparation, upgrades or improvements or any equipment or materials purchased to supplement those secured by KaBOOM!.
- (h) 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 may be obtained, upon request, from such manufacturers. The Maywood Park District acknowledges that any warranties and/or guarantees on any equipment or material are subject to the respective manufacturer's terms thereof, and the Maywood Park District 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.

- (i) Insurance. The Village of Maywood (or such other appropriate entity to which KaBOOM! consents in writing) shall obtain and maintain from no less than seven (7) days prior to the Build Day and through the first anniversary of the Build Day, commercial general liability insurance (providing coverage against liability for bodily injury, death and property damage that may arise out of or be based upon the use of the playground) with a limit of not less than one million dollars (\$1,000,000) per occurrence. The Village of Maywood shall also obtain and maintain worker's compensation insurance policies with statutory limits for the state in which the work is performed for their volunteer employees. Within seven (7) days from execution of this Agreement, the Village of Maywood shall provide to KaBOOM! a copy of a certificate from its insurer indicating the nature, scope, duration and amount of insurance coverage, and naming KaBOOM! and the Funding Partner as additional insureds under such policy, which insurance shall be primary over any other insurance covering KaBOOM! and the Funding Partner and which policy shall provide that KaBOOM! and the Funding Partner be given at least thirty (30) days prior written notice of any change or cancellation of coverage.
- (j) 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.
- (k) Data and Reporting Requirements. Maywood Park District 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.
- (l) Code of Conduct. The Maywood Park District shall establish, communicate and enforce a code of conduct for all participants in the Project's Build Day events. The Maywood Park District shall identify certain core standards that are expected to be included in the Maywood Park District's code of conduct.

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 Maywood Park District
 - (ii) Manage construction logistics for the Project, coordinate playground site preparation activities with the Maywood Park District, 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 Maywood Park District, 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 Maywood Park District, in which case the Maywood Park District shall secure the Certified Playground Safety Inspector.
- (c) Promotion. KaBOOM! will provide proposed promotional materials relating to the Project for the Maywood Park District'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 Maywood Park District on playground maintenance programming and enhancements.
- (e) Post-Build Day. The Maywood Park District 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 Maywood Park District and the Funding Partner, except where such decision must be made by KaBOOM! on the construction site and representatives of the Maywood Park District and the Funding Partner are not available for consultation. In the event that the Build Day is postponed, KaBOOM!, the Maywood Park District 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 Maywood Park District's failure to satisfy its obligations in connection with the Project, then the Maywood Park District 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 Maywood Park District 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 Maywood Park District by KaBOOM! and/or the Funding Partner. In the event the Maywood Park District solicits other sponsors or donors, then the Maywood Park District 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 Maywood Park District 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 Maywood Park District 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 Maywood Park District 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 Maywood Park District exceeds the sum paid to KaBOOM! hereunder, the Maywood Park District 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 8 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.

Maywood Park District

KaBOOM!, Inc.

By: Louette C. Hall
Name: LONETTE C. HALL
Title: EXECUTIVE DIRECTOR

By: Gerry Mezas
Name: Gerry Mezas
Title: Chief Financial Officer

Address: 921 S. 9th AVE
Address: MAYWOOD, IL 60153
T: 708-344-4740 EXT. 1
e-mail: lhall@maywoodparkdistrict-il.org

Address:
4301 Connecticut Ave. NW, Suite ML-1
Washington, DC 20008
T: (202) 464-6180
F: (202) 659-0210
e-mail: gmezas@kaboom.org

Village of Maywood

By: Eduenna Perkins
Name: EDUENNA PERKINS
Title: MAYOR

Address:
Address: 125 S. 5th AVE.
T: 708-450-4492
e-mail: eperkins@maywood-il.org

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

Name:
LONETTE HALL

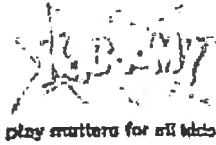
Telephone number:
708-344-4740 EXT. 1

Mailing Address:
921 S. 9th AVE MAYWOOD, IL 60153

Email: lhall@maywoodparkdistrict-il.org

Invoice Fax:
708-344-1553

FIRST ADDENDUM



July 25, 2018

In the event of any inconsistencies in the terms, provisions and conditions of the Community Partner Playground Agreement between the Community Partner and KaBOOM! and this Addendum the terms, provisions and conditions of this Addendum shall govern.

Addendum to the Community Partner Playground Agreement between Maywood Park District, Village of Maywood and KaBOOM! executed on July 15, 2018.

The Build Date will take place on September 14, 2018. The Funding Partner is Keurig Dr Pepper Snapple.

By signing this Agreement, both parties agree that each has read and understands this Addendum in its entirety.

Terms Agreed to by:

Maywood Park District

By: 
Name: Lonette Hall
Title: Executive Director

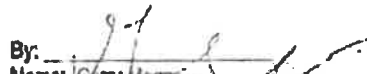
Address:
821 South 9th Avenue
Maywood, IL 60153
T: 708-844-4740
e-mail: lhall@maywoodparkdistrict-il.org

Village of Maywood

By: 
Name: Edwenna Perkins
Title: Mayor

Address:
40 Madison Street
Maywood, IL 60153
T: 708-450-4485
e-mail: eperkins@maywood-il.org

KaBOOM!, Inc.

By: 
Name: Gerry Megaw
Title: Chief Financial Officer

Address:
4301 Connecticut Avenue, NW
Suite ML-1
Washington, DC 20008
T: (202) 484-8075
F: (202) 659-0210
e-mail: omegas@kaboom.org

KaBOOM! Letter of Intent

By signing this document, I understand that if my organization is selected for a KaBOOM! project, my organization will (please initial each point):

- Assume all responsibilities as outlined in the KaBOOM! Community Partner Project Summary
- Fundraise \$8,500 USD toward the cost of playground equipment
- Own and maintain the playground for its lifetime
- Provide land and secure all necessary permits for construction of playground
- Remove all existing playground equipment currently on site
- Perform site preparation resulting in a flat and dirt surface two weeks prior to Build Day of a site measuring at least 2,500 square feet.
- Perform a utility check prior to Design Day and secure all necessary extensions to ensure the utility check is current through Build Day
- Perform a soil test for lead and arsenic within two weeks of Design Day and perform remediation if necessary
- Use equipment manufactured by PlayPower, Inc. or Landscape Structures, Inc. and accept engineered wood fiber safety surfacing
- Allow names and logos of KaBOOM! and the Funding Partner to be displayed on permanent playground signage, measuring no greater than 14 ¼ inches wide by 30 ¼ inches tall
- Recruit at least 15 community members, residents, and/or parents to participate in the Design Day and planning process
- Recruit 30 volunteers from the community to participate in two preparation days and recruit 175 volunteers from the community to participate on Build Day
- Provide food, water, tools, a dumpster, and music for volunteers on Build Day
- Build the playground through supervised volunteer installation
- Accept liability for and maintain the playground upon build completion
- Obtain and maintain insurance for the playground and Build Day, and add KaBOOM! and the Funding Partner as additional insureds for the term described in the contract
- Indemnify and hold harmless KaBOOM! and the Funding Partner
- Follow KaBOOM! protocol on all media and promotions as outlined in the Corporate Sponsorship Policy

Signing this Letter of Intent signifies that all contract signatories have reviewed the draft contract and are prepared to sign a final contract within three business days of being awarded a KaBOOM! playground project. Please ensure that the person authorized to sign contracts signs below.

Legal Name of Organization: Village of Maywood

Name of Organization to Use in Media: Village of Maywood/Maywood Park District

Name and Title of Signatory (please print): Edwenna Perkins, Mayor

Authorized Signature: Edwenna Perkins Date: 6-22-18

Signatory Mailing Address: 40 Madison Street, Maywood, IL 60153

Contact information for person who should receive KaBOOM! invoice:

Name:

Telephone number:

Mailing Address:

Email:

Fax:

**SECOND ADDENDUM TO COMMUNITY PARTNER PLAYGROUND AGREEMENT
(KABOOM PLAYGROUND)**

THIS SECOND ADDENDUM (the "Second Addendum") to a Community Partner Playground Agreement is made as of the Effective Date (as that term is defined herein) between the **VILLAGE OF MAYWOOD, an Illinois municipal corporation** (the "Village"), and the **MAYWOOD PARK DISTRICT, an Illinois unit of local government** (the "Park District").

RECITALS

Among the matters of mutual inducement which have resulted in this Second Addendum are the following:

A. On June 15, 2018, the Village, Park District and KaBoom, Inc. (collectively, the "Parties") entered into a Community Partner Playground Agreement (the "Agreement") in regard to the purchase, construction, ownership and maintenance of new playground equipment in Winfield Scott Park, a park owned by the Village located at 1800 South Maywood Drive (the "Project"). The Agreement is incorporated herein by reference as **Exhibit "A"** and made a part hereof; and

B. The Agreement set forth certain obligations of the Village and Park District, referred to jointly in the Agreement as the "Community Partner" relative to insurance, indemnification and other matters; and

C. On July 25, 2018, the Parties entered into an Addendum to the Agreement (the "First Addendum"), in which the Build Date of the Playground was specified, and the Funding Partner of the Project was named. The First Addendum is incorporated herein by reference as **Exhibit "B"** and made a part hereof; and

D. The Village and Park District now desire to clarify and revise between themselves their respective obligations relative to insurance and indemnification and other matters under the Agreement, and have agreed to amend the terms of the Agreement, as set forth below in this Second Addendum, to provide for such clarification and revisions; and

E. The Village and Park District find and agree that it is in the best interests of the residents of the Village of Maywood to enter into this Second Addendum.

IN CONSIDERATION of the above Recitals, the mutual covenants herein contained, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

SECTION 1: Incorporation.

A. Each of the foregoing Recitals is incorporated into this Second Addendum as if set forth in full in this Section 1 of this Second Addendum. All capitalized words used in the Agreement shall have the same meaning when capitalized in the Second Addendum, unless otherwise defined in this Second Addendum.

B. The Agreement attached hereto as **Exhibit "A"**, and the First Addendum attached hereto as **Exhibit "B"**, are incorporated herein by reference and made a part hereof. In all respects, except as specifically amended by this Second Addendum or unless the action or obligation or term has been completed or satisfied, the sections, terms, conditions and provisions of the Agreement and the First Addendum remain in full force and effect. In the event of any conflict between the Agreement, the First Addendum and this Second Addendum as to the obligations and responsibilities of the Village and Park District, this Second Addendum shall control.

SECTION 2: Modifications to Existing Community Partner Playground Agreement.

A. By Agreement of the Village and Park District, Section 1(d) of the Agreement is amended to read in its entirety as follows:

“(d) Build Day; Liability Waiver and Release Form. The Maywood Park District shall recruit up to one hundred seventy-five (175) adult volunteers from the community to participate in a one-day installation event for the Project, which is scheduled to occur on a date to be determined by the Parties and which is referred to herein as the Build Day. The Maywood Park District shall ensure that all Project volunteers sign a liability waiver and release form prepared by the Village Attorney, and shall return copies of the liability and waiver release forms to the Village Manager. On the Build Day, the Maywood Park District, at its cost, shall provide food, water, tools, dumpsters, music and restroom facilities for all volunteers.”

B. By Agreement of the Village and Park District, Section 1(g) of the Agreement is amended to read in its entirety as follows:

“(g) Playground Facility Costs. The Maywood Park District is solely responsible for and shall hold KaBOOM!, the Funding Partner and the Village of Maywood harmless from any costs incurred by the Maywood Park District for any prior site preparation, upgrades or improvements or any equipment or materials purchased to supplement those secured by KaBOOM!”

C. By Agreement of the Village and Park District, Section 1(h) of the Agreement is amended to read in its entirety as follows:

“(h) 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 may be obtained, upon request, from such manufacturers. The Maywood Park District acknowledges that any warranties and/or guarantees on any equipment or material are subject to the respective manufacturer’s terms thereof, and the Maywood Park District agrees to look solely to such manufacturers for any such warranty and/or guarantee. Neither KaBOOM! nor the Funding Partner nor the Village of Maywood nor any of their respective affiliates, directors, officers, appointed or elected officials, president and board of trustees, volunteers, 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.”

D. By Agreement of the Village and Park District, Section 1(i) of the Agreement is amended to read in its entirety as follows:

“(i) Insurance. The Maywood Park District, at its cost, shall obtain and maintain, from no less than seven (7) days prior to the Build Day and for the duration that the Playground Facility is located within Winfield Scott Park, commercial general liability insurance (providing coverage against liability for bodily injury, death and property damage that may arise out of or be based upon the design, installation and use of the Playground Facility issued on a claims made coverage with prior acts included) with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The Maywood Park District shall also obtain and maintain worker’s compensation insurance policies with statutory limits for the state in which the work is performed by their employees and volunteer employees. Within seven (7) days from execution of this Agreement, the Maywood Park District shall provide to the Village Manager of the Village of Maywood and to KaBOOM! a copy of certificate(s) of insurance, insurance policies and endorsements (issued on the

ISO CG 20 10 form) shall contain the insurer(s) written confirmation that the nature, scope, duration and amount of insurance coverage meets the requirements of this Agreement and shall remain in effect for all aspects of the Project for both ongoing and completed operations. The insurance coverage shall confirm coverage of the additional insured and indemnification obligations, and shall name the Village of Maywood, KaBOOM! and the Funding Partner and their affiliates (any of their respective affiliates, directors, officers, appointed or elected officials, president and board of trustees, volunteers, managers, partners, members, shareholders, employees, agents or representatives) as additional insureds under such policies, which insurance shall be primary over and not contribute with any other insurance covering the Village of Maywood, KaBOOM! and the Funding Partner, and which policy shall provide that KaBOOM! and the Funding Partner be given at least thirty (30) calendar days prior written notice of any change or cancellation of coverage.

In the event of a claim, demand, lawsuit or other action filed against any party arising out of matters covered under this Agreement, the receiving party shall immediately notify, in writing, each of the other parties so that they can notify their insurers of such claim, demand, lawsuit or other action. Any failure to comply with reporting provisions of any policy by a party shall not affect coverage and the indemnification and defense obligations under this Agreement. The additional insured and indemnification obligations of the Maywood Park District under this Agreement shall survive any termination or expiration of this Agreement and continue until the Playground Facility is removed from the Winfield Scott Park."

E. By Agreement of the Village and Park District, Section 1(j) of the Agreement is amended to read in its entirety as follows:

"(j) Indemnification. The Maywood Park District shall indemnify and hold harmless KaBOOM!, the Funding Partner and the Village of Maywood and their respective affiliates, directors, officers, appointed or elected officials, president and board of trustees, volunteers, 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 or omissions associated with this Project or resulting from the use of the Playground Facility, 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."

F. Effective Date. This Second Addendum shall be deemed dated and become effective on the date that the last signatory signs this Second Addendum.

G. Term. The term of this Second Addendum shall continue until this Second Addendum is terminated by: (1) the mutual written consent of the Parties; or (2) the conveyance of the Winfield Scott Park property to the Park District pursuant to an Intergovernmental Agreement currently being negotiated by the Village and the Park District.

IN WITNESS WHEREOF, the Parties hereto have executed this Second Addendum as of the dates set forth below, and the date of the last signatory below shall be the Effective Date of this Second Addendum.

THE VILLAGE OF MAYWOOD:

MAYWOOD PARK DISTRICT:

By: _____
Edwenna Perkins
Village President

By: _____
Name: _____
Title: _____

Date: _____, 2018.

Date: _____, 2018.

SUBSCRIBED AND SWORN TO
Before Me this _____ day of
_____, 2018.

SUBSCRIBED AND SWORN TO
Before Me this _____ day of
_____, 2018.

NOTARY PUBLIC

NOTARY PUBLIC

EXHIBIT "A"

COMMUNITY PARTNER PLAYGROUND AGREEMENT

(incorporated herein by reference)

EXHIBIT "B"

**FIRST ADDENDUM TO
COMMUNITY PARTNER PLAYGROUND AGREEMENT**

(incorporated herein by reference)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

CLERK'S CERTIFICATE

I, Viola Mims, Clerk of the Village of Maywood, in the County of Cook and State of Illinois, certify that the attached document is a true and correct copy of that certain Resolution now on file in my Office, entitled:

**A RESOLUTION RATIFYING AND/OR APPROVING AND AUTHORIZING
THE EXECUTION OF A COMMUNITY PARTNER PLAYGROUND AGREEMENT,
AND A FIRST AND SECOND ADDENDUM TO A COMMUNITY PARTNER PLAYGROUND AGREEMENT,
WITH THE MAYWOOD PARK DISTRICT, KABOOM! AND A FUNDING PARTNER OF KABOOM!**

**(Purchase, Installation and Maintenance of Playground Equipment
and Playground Surface Materials at Winfield Scott Park, 1800 South Maywood Drive)**

which Resolution was passed by the Board of Trustees of the Village of Maywood at a Regular Village Board Meeting on the 4th day of September, 2018, at which meeting a quorum was present, and approved by the President of the Village of Maywood on the 4th day of September, 2018.

I further certify that the vote on the question of the passage of said Resolution by the Board of Trustees of the Village of Maywood was taken by Ayes and Nays and recorded in the minutes of the Board of Trustees of the Village of Maywood, and that the result of said vote was as follows, to-wit:

AYES: Mayor Perkins, Trustee(s) H. Yarbrough, I. Brandon, A. Sanchez, K. Wellington and R. Rivers

NAYS: None

ABSENT: Trustee M. Lightford

I do further certify that the original Resolution, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Village of Maywood, this 5th day of September, 2018.

Viola Mims, Village Clerk

[SEAL]