



## IMAGINATION PLAYGROUND AGREEMENT

KaBOOM!, Inc. (referred to herein as KaBOOM!) is pleased that City of Fort Lauderdale (referred to herein as the Grantee) has agreed to accept from KaBOOM! and Target Enterprises, Inc. (referred to herein as the Funding Partner) an Imagination Playground (the "Grant"). This Imagination Playground Agreement (this "Agreement") sets forth the Grantee's obligations in connection with the Grant 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 Grant.

1. Obligations of the Grantee. By executing this Agreement, the Grantee is unconditionally agreeing to each of the following obligations, in each case meeting the requirements provided by KaBOOM!:
  - (a) Delivery. The Grantee shall accept the delivery of the Imagination Playground by the mutually agreed upon delivery date. The Grantee shall work with KaBOOM! to establish a date for the delivery of the Imagination Playground Grant.
  - (b) Ownership. The Grantee is the owner of the Imagination Playground in its entirety, for the lifetime of the equipment and is responsible for all liability arising out of or otherwise relating to ownership, use, maintenance or repair of the Imagination Playground. In the event any of the Imagination Playground equipment included in the Grant can no longer be owned and maintained by the Grantee, the Grantee shall promptly notify KaBOOM! and shall, at the Grantee's sole cost and expense, take such steps as may be necessary to promptly and safely relocate the Imagination Playground to an alternate site that serves children and shall ensure that the successor controlling person of the Imagination Playground shall continue to make the Imagination Playground available to children and shall maintain the Imagination Playground in accordance with the maintenance instructions.
  - (c) Maintenance. Maintenance of the Imagination Playground and supervision of its use is the sole responsibility of the Grantee. The Grantee shall maintain the Imagination Playground in accordance with maintenance instructions.
  - (d) Storage and Space. The Grantee agrees to provide a minimum of 74"x27"x37" of storage space for the four Imagination Playground carts. The Grantee has access to a minimum of 450 square feet of open space where the Imagination Playground shall be used.
  - (e) Grant Reporting. The Grantee shall use its commercially reasonable efforts to provide, and otherwise shall cooperate in good faith with KaBOOM! in regards to obtaining information related to the Grant. This shall include but is not limited to:
    - (i) The Grantee shall submit a Programming Plan to KaBOOM! within 28 days of this executed Agreement.
    - (ii) The Grantee shall submit a Final Report within 14 days following the delivery of the Imagination Playground.
    - (iii) The Grantee shall submit a completed follow-up survey to be provided by KaBOOM! within three months following the delivery of the Imagination Playground.
  - (f) Promotion; Intellectual Property. The Grantee shall seek prior approval from KaBOOM! and/or the Funding Partner for any materials that reference the Grant 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 Grantee shall submit a pre-approved press release using a KaBOOM! provided template to a minimum of one media outlet. If requested,

Grantee agrees to collaborate with a representative from the Funding Partner to plan and host a grant award presentation, prior to, on, or just following the arrival of the Imagination Playground.

- (g) Logos. The Grantee shall allow the names and logos of KaBOOM! and the Funding Partner to be displayed on the Imagination Playground cart.
- (h) Warranty. The Imagination Playground may be covered under warranty by the applicable manufacturers, a copy of which may be obtained, upon request, from such manufacturers. The Grantee acknowledges that any warranties and/or guarantees on any equipment or material are subject to the respective manufacturer's terms thereof, and the Grantee 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 Grantee 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 Imagination Playground, in each case, in amounts not less than one million dollars (\$1,000,000). This self-insurance shall be primary over any other insurance covering KaBOOM! and its funding partners.
- (j) Indemnification. Except as prohibited by the Florida Constitution or by the laws of the State of Florida, and subject to the limitations contained in Section 768.28, Florida Statutes (as amended or revised), the Grantee shall indemnify, defend 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 by the Grantee, any of Grantee actions associated with this Project or resulting from the use of any playground property and equipment that is the subject of this grant, including those for personal injury, death, or property damage, except to the extent resulting from the gross negligence or willful misconduct or willful negligence of such indemnified person. This provision shall survive any termination or expiration of this Agreement.

## 2. Obligations of KaBOOM!.

- (a) Imagination Playground. KaBOOM! shall provide technical and organizational leadership and guidance for the Grant and shall:
  - (i) Coordinate Funding Partner participation for the Grant and shall work with vendors to procure equipment and materials in a timely manner.
  - (ii) Manage shipping and logistics for the Grant in coordination with the Grantee.
  - (iii) Make available certain educational and promotional materials related to the Grant.
  - (iv) Provide templates for all reports, surveys, press releases and programming plan.
- (b) Promotion. KaBOOM! will provide promotional materials relating to the Grant for the Grantee's review and approval, which approval shall not be unreasonably withheld or delayed.

## 3. Termination. In the event that the Grantee breaches this Agreement, KaBOOM! may terminate this Agreement upon written consent to the Grantee of such termination. Breach of this agreement may warrant forfeiture of this grant and require the Grantee to return the Imagination Playground to KaBOOM! at the expense of the Grantee. KaBOOM! has the sole right, at its discretion, to waive or postpone any deadline or requirement stipulated in this Imagination Playground Agreement.

4. General Provisions. The Grantee represents to KaBOOM! that all information provided by it to KaBOOM!, including in the Grant Application, is true, correct and complete in all respects and does not omit any information relevant to the Grant. 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. The Funding Partner shall be an intended third party beneficiary of Sections 1(b), (e), (f), (g), (h), (i) and (j), Sections 2(b), 3, and 4 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 Imagination Playground Agreement where indicated below, each of KaBOOM! and the Grantee agrees, as of the date identified above, to be legally bound by all of the terms and provisions set forth above.

**City of Fort Lauderdale**

By: \_\_\_\_\_

Name: Lee R. Feldman

Title: ICMA-CM

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**KaBOOM!, Inc.**

By: \_\_\_\_\_

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Title: Chief Financial Officer

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Approved as to form:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_