



COMMUNITY PARTNER AGREEMENT

September 25, 2024

KABOOM!, Inc. (referred to herein as KABOOM!) is pleased that the City of Fullerton (referred to herein as the Community Partner) has agreed to collaborate with KABOOM! and the Funding Partner in the construction of a new playspace at Valencia Park, 3441 W Valencia Dr, Fullerton, CA 92833 (the "Project"). This Community Partner 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. The Community Partner acknowledges and agrees the primary source of funding for the Project is a contribution from the Funding Partner. In the event that such a contribution is not funded, then this agreement shall immediately terminate upon written notice thereof from KABOOM!.

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) Contribution. In support of the Project, the Community Partner must contribute \$8,500 to KABOOM!, which will apply the funds directly to the purchase of the equipment. KABOOM! will invoice the Community Partner 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 Week (as defined below).
 - (b) 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 playspace in its entirety, for the lifetime of the product, including the equipment and/or safety surfacing at the time purchased by KABOOM! with the financial resources provided by the Funding Partner.
 - (ii) Permits. Prior to Build Week, the Community Partner shall obtain or cause to be obtained all necessary permits and licenses regarding the installation, possession, and use of the playspace 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) preparing the site for the installation of the Project at least two weeks before Build Week, which may include removing existing equipment, footers, and safety surfacing, grading the land, repairing existing surfacing and removing fencing (2) conducting up to two (2) utility checks as reasonably requested by KABOOM! with the appropriate utility companies, with the first test being completed 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 equipment (the "Project Manager"); and (3) conducting up to two (2) soil site tests as reasonably requested by KABOOM!, with the first test being completed 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 Week, including any postponement. The Community Partner shall also ensure that all volunteers sign a waiver and designate a CPR certified staff member or volunteer to serve as the safety leader onsite for the Build Week.
- (v) Maintenance. Maintenance of the 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 play equipment and, with the support of the property owner (if owner is a separate party), shall maintain the equipment and the property before and after the Build Week to ensure a safe and attractive playspace. It is also the responsibility of the Community Partner to ensure that no one enters the playground within 72 hours of the completion of the final Build Day. Anyone accessing and/or touching the playground within 72 hours of its completion could prevent the concrete from curing properly or the surfacing (if rubber) from setting properly, leading to long-term damage that would be the responsibility of the Community Partner to repair. In furtherance of the foregoing, in the event any 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 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 equipment available to children in the same manner contemplated as of the Build Week and maintain (or permit the Community Partner to maintain) such play equipment in accordance with the maintenance program. In addition, if applicable, the Community Partner shall accept and maintain engineered wood fiber as play equipment safety surfacing, meeting standards established by Consumer Product Safety Commission guidelines, for the lifetime of the playspace. Guidance and materials for the purpose of developing a maintenance plan for the playspace are available, upon request, from the play equipment and safety surfacing manufacturers.
- (c) Design Day. The Community Partner agrees to host a KABOOM! facilitated Design Day event with at least twenty (20) adult volunteers and twenty (20) youth. Such adult volunteers shall remain engaged in the planning activities throughout the Project's planning process.
- (d) Build Week. The Community Partner shall recruit up to 90 total community volunteers to participate in a 3-day volunteer installation event (to be comprised of 30 volunteers on Day 1, 10 volunteers on Day 2 and 50 volunteers on Day 3) scheduled to occur on a mutually agreed upon date and which is referred to herein as the Build Week. The Community Partner shall ensure that all volunteers sign a waiver (a copy of which has been provided). During the Build Week, the Community Partner shall provide food, water, tools, dumpsters, music, hand washing and/or hand sanitizing facilities, and restroom facilities for all volunteers on each day.
- (e) 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 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 rights, 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.

- (f) Signage. The Community Partner shall allow the names and logos of KABOOM! and the Funding Partner to be displayed on permanent 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. If applicable, the Community Partner shall allow individual instructional signs to accompany the equipment.
- (g) 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!.
- (h) Warranty. The 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.
- (i) 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.
- (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, resulting from any actions taken by the Community Partner associated with this Project or resulting from the use of any play 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. The Community Partner shall distribute and complete play-related surveys, provided by KABOOM!, to its stakeholders, including parents/caregivers, volunteers, and staff (i) promptly following the execution of this agreement (ii) 2 weeks following the completion of the Project (iii) 12 months after the completion of the Project. Additionally, the Community Partner shall use its reasonable efforts to provide KABOOM! with any other information related to the Project that KABOOM! may request.
- (l) 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 Week events.

2. Obligations of KABOOM!.

- (a) Project. KABOOM! shall provide technical and organizational leadership and guidance for the Project and shall:
 - (i) Coordinate Funding Partner participation, facilitate 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) On the behalf of and in collaboration with the Community Partner, KABOOM! shall manage construction logistics for the Project, coordinate site preparation activities with the Community Partner, inventory equipment and materials, and assure that the necessary small hand tools and materials and other general supplies are available on the Build Week; Lead the Build Week activities, including the coordination of Build Week volunteers.
 - (iii) Make available certain educational and promotional materials related to the Project.
- (b) Inspection. KABOOM!, in collaboration with the Community Partner, will secure an Installation Supervisor to review the structure at the conclusion of the Build Week to ensure that the structure is safe and built to all appropriate standards and guidelines, unless the installation is not completed during the Build Week due to failure of the Community Partner, in which case the Community Partner shall secure the Installation Supervisor.
- (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 playspace on its list of KABOOM! builds on the KABOOM! website, and KABOOM! will send information to the Community Partner on maintenance programming and enhancements.

3. Build Week Postponement.

- (a) Public Health Compliance. KABOOM! will adhere to public health and safety guidelines as required. If health conditions do not allow project completion within close to the originally scheduled date, project will be rescheduled on a mutually agreed upon date or converted to a professional installation with no volunteers participating in building the playspace.
- (b) Weather or other conditions unrelated to Public Health. Build Week shall not be postponed except when weather or other conditions jeopardize the safety of the volunteers or threaten the structural integrity of the playspace. The decision to postpone the Build Week 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 Week is postponed, KABOOM!, the Community Partner, and the Funding Partner shall develop a plan for rescheduling the Build Week at the next earliest date possible for each party. The Funding Partner shall be responsible for all additional expenses related to the rescheduled Build Week, 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 Week. Notwithstanding the foregoing, in the event that the date of the Build Week 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 Week.

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 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 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 California, 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 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.

City of Fullerton

By: _____
Date:

Name: [Eric Levitt]
Title: [City Manager]

Address:
[303 West Commonwealth Avenue,
Fullerton, CA 92832]
T: [714-738-6314]
e-mail: [Eric.Levitt@cityoffullerton.com]

KABOOM!, Inc.

By: _____
Date:

Name: Gerry Megas
Title: Chief Financial Officer

Address:
7200 Wisconsin Avenue, Suite 400
Bethesda, MD 20814
T: (202) 464- 6180
F: (202) 659-0210
e-mail: gmeegas@kaboom.org

Contact information from the Community Partner who should receive KABOOM! invoices:

Name: [Edgar Rosales]
Title: [Senior Admin Analyst]
Mailing Address [303 West Commonwealth Ave,
Fullerton, CA 92832]
Email Address: [erosales@cityoffullerton.com]
Phone Number: [714-738-2880]