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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer
Megan Allegretti, Director of Program Improvement

Meeting Date May 14, 2025

Subject KABOOM!, Inc. Master Agreement

Ask of the Board Approval by the Board of Education of the Playspace Master Agreement with KABOOM!, Inc., Bethesda, MD, effective January 1, 2025 through December 31, 2029, terminating the previous Master Agreement, effective February 23, 2023 through February 22, 2026.

Background KABOOM!, Inc. and OUSD have collaborated on the construction of new playspaces at mutually agreed-upon school sites over the last three years. This Master Agreement updates and continues our strong partnership to enable the District to collaborate with KABOOM!, Inc. to install up to twenty (20) or more playspaces at OUSD schools.

Discussion This Master Agreement would provide a foundation for KABOOM!, Inc. and OUSD to install up to twenty additional playspaces (without the need for additional or separate agreements). In deciding which schools to prioritize, the Agreement provides that the schools selected must be elementary schools and middle schools that predominantly meet one or more of the following criteria:

- Have facilities below District standard as identified by the District (likely via its Facilities Assessment)
- Have high unduplicated pupil percentages, in all cases greater than 30%
- Have responses to questions related to safety and living schoolyards on the California Healthy Kids Survey that are below the District average
- Serve approximately 250 students daily to ensure high use of the Playspace investments.

Fiscal Impact While the cost of each playspace is covered by KABOOM!, Inc. (with support from its funding partners), there are additional costs to the District for each playspace, primarily preparing each project site for installation and for safety surfacing. The cost of preparing a site for the installation of each playspace will vary depending on project scope, square footage of school yard, and condition of schoolyard.

Preparation activities may include, but are not limited to, repairing/resurfacing asphalt after the District's removal of existing safety surfacing (matting) under the existing play structure and fencing.

The approved Measure Y Spending Plan already authorizes the matching funds of \$10.4M in the Living School Yards Initiative from Measure Y- Fund 21.

Attachment(s)

- Playspace Partner Master Agreement Between Oakland Unified School District and KABOOM!, Inc.
- 23-0457 Playspace Partner Master Agreement - KABOOM!, Inc. - Chief Systems and Services Officer

**PLAYSPACE PARTNER MASTER AGREEMENT BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT AND
KABOOM!, INC.**

RECITALS

KABOOM! believes that play is a critical part of childhood, and key to a child’s ability to thrive – physically, socially, emotionally, cognitively and creatively. This is especially true for kids growing up in under-resourced urban communities. The Oakland Unified School District (“OUSD” or “District”) is focused on transforming its schools to create a world-class education system for the children of Oakland to learn, grow, and play. District and KABOOM! may be individually referred to herein as a “Party,” or may be collectively referred to herein as the “Parties.”

KABOOM! and OUSD seek to collaborate on the construction of new playspaces at school sites (“Playspaces”) mutually agreed to the Parties. All Playspaces collectively may be referred to herein as the “Projects” and each a “Project”.

The Parties commit to prioritizing equity in selecting schools at which to construct Playspaces. Toward this end, the Parties shall select elementary schools and middle schools that predominantly meet one or more of the following criteria:

- Have facilities below District standard as identified by the District (likely via its Facilities Assessment)
- Have high unduplicated pupil percentages, in all cases greater than 30%
- Have responses to questions related to safety and living schoolyards on the California Healthy Kids Survey that are below the District average
- Serve approximately 250 students daily to ensure high use of the Playspace investments.

This Agreement will, when executed by the duly authorized representatives of each Party, represent the complete legally binding agreement between the Parties regarding the Project. The District acknowledges and understands the primary source of funding for the Project is funding from third parties provided to KABOOM!. As such, the District acknowledges and understands the scope of the Project (i.e., the number of Playspaces) is contingent upon KABOOM! securing the necessary contributions from such third parties.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

- I. **Purpose and Scope.** The purpose and scope of this Agreement is to enable the District to collaborate with KABOOM! to install up to twenty (20) or more Playspaces at OUSD schools. Each Playspace may include one or more of the following: play structures, youth sport courts, teaching gardens, murals, nature exploration areas, outdoor classrooms, trees and plants, and other schoolyard improvements. The location, project scope and

details of each Playspace shall be determined and agreed to in writing by the duly authorized representatives of each Party.

- II. **Term.** This Agreement shall commence upon January 1, 2025 and remain in effect for five (5) years (i.e., through December 31, 2029), unless the term ("Term") is extended or terminated earlier pursuant to this Agreement.

III. **Costs and Funding.**

- A. **Cost.** The District is responsible for preparing each project site for installation and for safety surfacing. The cost of preparing a site for the installation of each Playspace will vary depending on project scope, square footage of school yard, and condition of schoolyard. Preparation activities may include, but is not limited to, repairing/resurfacing asphalt after District's removal of existing safety surfacing (matting) under the existing play structure and fencing.

- B. **Hold Harmless.** The District is solely responsible for and shall hold KABOOM! harmless from any costs incurred by the District for any prior site preparation, upgrades or improvements or any equipment or materials purchased to supplement those secured by KABOOM!. To the extent that KABOOM! is contractually obligated to hold any third party funding sources harmless, OUSD shall also hold any third party funding sources harmless but only to the extent that OUSD has agreed to hold KABOOM! harmless under this Agreement.

C. **Funding.**

- i. KABOOM! has advised the District that KABOOM! intends to seek contributions from third party funding sources in support of the Projects. KABOOM! shall not have any monetary obligations to the District with its fundraising efforts. Notwithstanding any other language in this Agreement, the District shall not be responsible for securing any necessary funding for the purchase and installation of each Playspace, provided that this does not prevent the District, at its sole discretion, from contracting with other third parties for services or materials related to the purchase and installation of a Playspace.
- ii. KABOOM! will execute a separate contract with each third party that provides financial and human resources ("Funding Partner") for each Playspace. 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 District shall not solicit sponsors or donors in relation to each Playspace whose products or services directly compete with the products or services

of the Funding Partner as identified to the District by KABOOM! and/or the Funding Partner. In the event the District solicits other sponsors or donors, then the District shall not permit such sponsors or donors to compete with the Funding Partner for signage and sponsorship recognition.

- iii. The Parties shall reasonably cooperate and collaborate with each other in fundraising efforts. Any funding source that will be publicly acknowledged on the Playspace must be consented to in writing by the Parties.

IV. Obligations of the District.

- A. Assessment Data. The District agrees to annually update and share with KABOOM! student demographic data and schoolyard quality ratings for all elementary schools.
- B. Pre-Planning. For each location that is selected for a new Playspace the District has agreed to obtain schoolyard design input from the school's leaders and will collaborate with KABOOM! to create a plan for schoolyard renovation elements that can be incorporated into the Playspace installation.
- C. Design Day. The District agrees to host a KABOOM!-facilitated "Design Day" for each Project and shall make best efforts to secure the attendance of at least twenty (20) adult stakeholders and twenty (20) youth, only so long as stakeholders presence on District property is consistent with Alameda County Department of Public Health guidelines and District policies regarding visitor access to District property. The Parties, through their duly authorized representatives, shall mutually agree in writing upon the date for the Design Day for each Playspace.
- D. Land Ownership. Before a site for a Project is selected, the District will, in writing, represent and warrant to KABOOM! that the District is the landowner of each project site property confirmed for a new Playspace. For each Playspace, the District shall provide KABOOM! with proof of land ownership upon request by written request from KABOOM!.
- E. Permits. Prior to Build Week for each Playspace, but no less than 30 days prior to, the District 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. District shall not be responsible for any delays that result from County Department of Public Health orders that close, decrease, or limit the District's ability to obtain necessary permits and licenses.
- F. Safety. The District shall make reasonable efforts to ensure the security of any equipment, tools, and supplies located on its property for purposes of Design Day or Build Week. The District shall ensure that the physical area in which each Playspace is to be located, as well as the areas surrounding and the access to the

area, are safe for volunteers and children while activities during Design Day and Build Week. Upon request from the District, KABOOM! shall cooperate with the District in respect of the District's obligations under this Section IV.D.

- G. Preparation. The District shall be responsible for the following for each Playspace:
- i. *Two (2) to three (3) days prior to Build Week:* Recruiting at least twenty (20) adult volunteers to participate in preparation activities, only if volunteers' presence on District property is consistent with Alameda County Department of Public Health guidelines and District policies regarding visitor access to District property.
 - ii. *At least two weeks before Build Week:* Preparing the site for the installation of the Playspace. Examples of such preparation that may be needed: removing existing playground equipment, footers, and safety surfacing; installing drainage and, irrigation for any trees and plantings that will be completed during Build Week; removing or repairing and sealing asphalt coating; preparing any walls and surfaces that will receive murals; adding curbing; grading the land; repairing/replacing existing safety surfacing (matting); removing fencing/barrier; fencing; and performing soil tests in the locations where play structures are mounted.
 - iii. *Utility checks before Build Week:* Conducting up to two (2) utility checks, with all utility check documentation provided to the KABOOM! project manager ("Project Manager") before Build Week, with the District making a good faith effort to provide such documentation to KABOOM! at least four (4) weeks before Build Week.
 - iv. *Soil testing before Build Week:* Conducting up to two (2) soil site tests, with all soil check documentation provided to the Project Manager upon completion. The District is responsible for undertaking any necessary risk mitigation should the soil be deemed unsafe for children and volunteers to perform the task contemplated under this Agreement. In the event that soil is deemed unsafe and risk mitigation is required, the District acknowledges that there may be a delay in the Build Week and/or Playspace completion.
 - v. *Prior to Build Week.* Meeting select contractors and giving them access to the schoolyards for Playspace planning purposes, provided reasonable notice is provided

- vi. *Prior to Build Week or during Build Week:* Supporting aspects of Playspace installation. Examples of such work that may be needed: installing trees; installing pathways (e.g. decomposed granite pathways); adding asphalt striping.
- vii. *Following Build Week:* Sealing murals and wood installed as part of the Playspace.

H. Maintenance.

- i. Upon the completion of each Playspace, the District shall have sole responsibility for its maintenance and supervision.
- ii. The District shall collaborate with KABOOM! during the planning for each Playspace to develop a maintenance program (“Maintenance Program”) with the goal of keeping the Playspace safe for and attractive to students. Guidance and materials for the purpose of developing a maintenance program for each Playspace are available upon request from the play equipment and safety surfacing manufacturers. Prior to Build Week, provide a written and signed copy of the site maintenance plan for each site.
- iii. In the event any Playspace is, in full or in part, no longer permitted for any reason to be located at its original site of construction or such site is no longer controlled by the District for any reason, then the District shall make a good faith effort to notify KABOOM! of such situation. Where feasible, the District shall, at its 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 OUSD children and the District shall maintain the Playspace in accordance with the Maintenance Program.
- iv. The District shall accept and shall be responsible for the safety surfacing for each Playspace. For each Playspace in use by the District, this responsibility shall include, but not be limited to, ensuring that the surfacing meets the applicable standards established by Consumer Product Safety Commission guidelines.
- v. The District will solely finance, install, and maintain alternative surfacing in the form of rubber matting, pour-in-place, engineered wood fiber, or other products, as playground safety surfacing meeting all safety guidelines as established by the American Society for Testing and Materials (ASTM F2223 and ASTM-1292) and the Consumer Product Safety Commission’s Handbook for Playground Safety. Guidance and materials for the purpose of developing a maintenance program for each Playspace are available,

upon request, from the play equipment and safety surfacing manufacturers.

I. Build Week.

- i. For each Project, the District shall use reasonable best efforts to recruit at least 75 volunteers to participate on Build Day and at least 20 volunteers to participate on each prep day over a 3-4 day installation event ("Build Week") for each Playspace, only so long as volunteers' presence on District property is consistent with Alameda County Department of Public Health guidelines and District policies regarding visitor access to District property. In the event that volunteer participation is precluded or limited by Public Health guidelines or District policies, Parties agree to have the Playspace professionally installed without volunteers on site to occur on a mutually agreed upon date. Any additional fees associated with professional installation shall be the responsibility of KABOOM!. The Parties, through their duly authorized representatives, shall mutually agree in writing upon the dates for the Build Week for each Playspace.
- ii. At each Build Week, the District shall provide, or shall cause a third party to provide, water, food, , , music, and restroom facilities for all volunteers on each day. Volunteers shall participate consistent with all Board Policies and Administrative Regulations (including, but not limited to, Board Policy 1240 and Administrative Regulation 1240).
- iii. The District shall ensure that all Build Week volunteers sign a waiver substantially similar to the version as provided in Exhibit A.

J. Survey Reporting. To the extent not prohibited by law, the District agrees to cooperate with the distribution of at least one survey to families, volunteers, staff, and other stakeholders regarding the experience and impact of designing and installing each Playspace. The Parties agree that the intent is to distribute such surveys within thirty days (30) of the conclusion of Build Week. The Parties shall agree on the survey and neither Party shall unreasonably delay or obstruct agreement on the survey.

K. Code of Conduct. The District agrees to comply with the Build Site Expectations and Code of Conduct (a copy of which is attached as Exhibit B). The District 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.

V. Obligations of KABOOM!.

- A. Project Management. While KABOOM! shall manage the overall execution for installing each Playspace, KABOOM! shall not have or be given any ownership in a Playspace. KABOOM! shall provide technical and organizational leadership and guidance for each Project and shall:
- i. Facilitate community planning, including Design Day during which community children and adults will share their input on the design of the Playspace.
 - ii. Coordinate participation by any third parties, including involvement in planning meetings, and work with third parties 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 District.
 - iii. Manage construction logistics for each Playspace, coordinate site preparation activities with the District, inventory equipment and materials, and assure that the necessary tools and materials and other general supplies are available during Build Week.
 - iv. Select and manage vendors that will provide the necessary equipment and installation for each Playspace before the safety surfacing has been installed.
 - v. Lead the Build Week activities, including the coordination of team leaders and volunteers.
 - vi. Facilitate an end of day ceremony at the conclusion of the Build Week, providing partners the opportunity for dedication comments.
- B. Inspection. KABOOM!, in collaboration with the District, will secure an Installation Supervisor to review the structure at the conclusion of the Build Week (or, if KABOOM! assumes responsibility for the 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.
- i. KABOOM! shall be responsible for the costs for an Installation Supervisor unless the installation of the Playspace is not completed by the mutually agreed upon timeline and the untimely completion is solely due to failure of the District, in which case the District shall be responsible for securing and paying for the Installation Supervisor.
 - ii. The District understands and acknowledges that it will accept ownership of the Playspace even if an Installation Supervisor cannot be secured.

- iii. As its sole option, the District shall obtain and be responsible for the cost for its own safety inspector to review the installation with the Playspace after completion. KABOOM! agrees to reasonably cooperate with any safety inspector, or other third-party, retained by the District in connection with a Project for such purpose.
- C. Vendors. As part of its Project Management responsibility to manage the overall execution for installing each Playspace, KABOOM! shall select and manage vendors that will provide necessary equipment for the Playspace (e.g., surfacing, Playspace equipment, peripheral projects, landscaping, etc.). KABOOM! shall use commercially reasonable efforts to guard against any loss to the District through the failure of suppliers to properly honor their commitments, but KABOOM! shall not be held responsible for any such failure on their part. If the District requires different surfacing than that which is provided by KABOOM!, the District shall have sole responsibility for vendor selection and installation of the surfacing materials.

VI. **Mutual Obligations.**

- A. Fundraising Plan. The Parties agree to put in best efforts to develop, collaborate, and implement a fundraising plan to seek funding from third parties that will contribute to the cost of site preparation, playspace equipment and materials, installation, marketing and data collection for the project site locations.
- B. Project Scope and Site Selection.
 - i. The District and KABOOM! shall jointly agree on the site for each Project using the selection criteria outlined in Recitals. Each selection shall be made at least four (4) months in advance of the anticipated Build Week for each such Project.
 - ii. The Parties shall collaborate and agree on the project scope and execution of each Playspace prior to the project confirmation.
 - iii. Following confirmation of each Project location, the District and KABOOM! will identify Build Week dates, which shall occur on mutually agreeable dates.
- C. Project Site Preparation. KABOOM!, in collaboration with the District, shall coordinate site preparation prior to Build Week which includes laying out the Playspace location, digging holes, setting footers, inventory of equipment, cutting lumber, and prepping/priming any painting projects to ensure that the Playspace area is prepared for Build Week. Upon written request from OUSD, KABOOM! shall cooperate in good faith with OUSD to align the site preparation to OUSD's Living Schoolyard Guidelines as updated from time to time. KABOOM! acknowledges that

in the event that soil is deemed unsafe and risk mitigation is required that there may be a delay in the Build Week and/or Project completion to allow for proper mitigation and/or remediation.

D. Build Week Postponement.

- i. The Build Week shall not be postponed except when weather or other conditions jeopardize the safety of the volunteers or threaten the structural integrity of each Playspace. The decision to postpone the Build Week will be made by the duly authorized representatives of the Parties. In the event that the Build Week is postponed, KABOOM! and the District shall develop a plan for rescheduling the Build Week at the next earliest date possible for each Party. Notwithstanding the foregoing, in the event that the date of the Build Week is cancelled or changed as a result of the District's sole failure to satisfy its obligations in connection with the Project, then the District shall be liable to KABOOM! for all such additional expenses related to the rescheduled Build Week.
- ii. The Parties acknowledge that in the event that soil is deemed unsafe and/or risk mitigation is required pursuant to Section IV.E.iv that there may be a delay in the Build Week and/or the completion of each Playspace to allow for proper mitigation. Any delays/postponement of Build Week resulting from necessary soil mitigation, shall result in KABOOM! and the District developing a plan for rescheduling the Build Week.
- iii. The Parties acknowledge that in the event that permits required by Section IV.C are delayed through no fault of the District's timeliness in filing for permits that there may be a delay in the Build Week and/or completion of the Playspace to allow for proper mitigation. Any delays/postponement of Build Week resulting from obtaining necessary permits, shall result in KABOOM! and the District developing a plan for rescheduling the Build Week.

E. Playspace Ownership. The Parties acknowledge and accept that the District is the owner of each Playspace in its entirety, for the lifetime of the product, including the equipment and/or safety surfacing at the time purchased by KABOOM!.

F. Equipment, Tools and Supplies Safety and Security. The District shall use best efforts to ensure the safety and security of the equipment, tools, supplies and volunteers on site during Build Week, either through the placement of a storage container from a third party vendor to be coordinated by KABOOM! or the coordination of staffing and supervision oversight during Build Week. The District

and KABOOM! shall coordinate with respect to the timing and delivery logistics of equipment and supplies.

G. Promotional Activities and Intellectual Property.

- i. The District shall seek prior approval from KABOOM! for any materials that reference the Project or a specific Playspace or contain the name, trademarks, service marks, logos and other intellectual property (collectively, the "Marks") of KABOOM!, including press releases, fliers and promotional materials. The District acknowledges and agrees that KABOOM! is the sole owner of all right, title, and interest in and to the Marks. The District acknowledges that KABOOM! may take all steps to protect its Marks as it deems appropriate. The District shall not use the Marks in any manner that would harm the reputation of KABOOM! or disparage or negatively reflect upon the Marks. Upon expiration of or termination of this Agreement for any reason, the District shall cease all use of the Marks. The District shall collaborate with KABOOM! to secure media coverage for the Project.
- ii. KABOOM! will provide proposed promotional materials relating to the Project for the District's review and approval, which approval shall not be unreasonably withheld or delayed.
- iii. The Parties acknowledge that KABOOM! may place the Playspace on its list of KABOOM! projects on the KABOOM! website and KABOOM! will send information to the District on maintenance programming and enhancements.

H. Signage. The District shall allow the names and logos of KABOOM! and, upon mutual written agreement through the duly authorized representatives of the Parties any third party funders, to be displayed on permanent signage (a copy of which has been provided). The size, structure, and location of any signage shall be determined through mutual written agreement through the duly authorized representatives of the Parties.

VII. Warranty. The equipment and the safety-surfacing related to each Playspace may be covered under warranty by the applicable manufacturers (a copy of which is provided in Exhibit C). The District acknowledges that any warranties and/or guarantees on any equipment or material are subject to the respective manufacturer's terms thereof, and the District agrees to look solely to such manufacturers for any such warranty and/or guarantee. Neither KABOOM! 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.

VIII. Insurance Coverage.

A. District.

- i. The District 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 playspaces installed from four weeks (4) before each 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 over any other insurance covering KABOOM! and its funding partners.

B. KABOOM!.

- i. KABOOM! shall obtain and maintain insurance to be insured against liability for workers' compensation in accordance with applicable state law and will comply with such provisions before commencing the performance of the Work of this Agreement.
- ii. To perform the work in connection with this agreement, KABOOM! shall maintain Commercial General Liability insurance, including automobile coverage with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. Evidence of insurance shall be provided upon request. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.
- iii. Upon request by the District, KABOOM! shall submit written evidence of any insurance required by this Agreement.

- C. Contractors. If KABOOM! engages with any contractor, independent contractor, or subcontractor to perform work in connection with this Agreement, KABOOM! shall require that any contractor, independent contractor, or subcontractor procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident.

- i. KABOOM! shall require its playground equipment manufacturer maintain Commercial General Liability Insurance with limits of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate, for harassment, bodily injury, and property damage. Coverage for harassment may either be provided through General Liability Insurance or Professional Liability Insurance. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured with the additional insured endorsement provided to OUSD within 15 days of effective date of this Agreement (and within 15 days of each new policy year thereafter during the term of this Agreement). Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against KABOOM!. The policy shall protect KABOOM! and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase OUSD's liability as set forth in the policy beyond the amount or amounts shown or to which OUSD would have been liable if only one interest were named as an insured.
- ii. Upon request by the District, KABOOM! shall submit written evidence of any insurance required by this Agreement.
- iii. As promptly and reasonably practicable following execution of this Agreement and, in any event, at least three (3) business days prior to the Build Week for the first Playspace begun under this Agreement, KABOOM! shall ensure that the District is endorsed to the required Commercial General Liability policies held by its playground equipment manufacturer as an additional insured by endorsement. All evidence of such insurance, which should be available via Certificates of Insurance.

IX. **Termination.**

- A. This Agreement may be terminated:
 - i. By either Party, in the event of a breach by the other Party of any of its obligations hereunder, which breach (other than in the case of a payment breach), to the extent curable, remains uncured thirty (30) days after such Party has provided written notice of such breach to the other Party; or
 - ii. By either Party in the event such Party is delayed or prevented from fulfilling any of its obligations hereunder for a period longer than ten (10) calendar days by any cause beyond its reasonable control, including acts of God, acts or omissions of civil or military authorities, earthquake, fire, strike, flood, riot, act of terrorism, war, transportation delay, or inability due to such causes to obtain required labor, materials or facilities.

- B. Upon any termination, except as otherwise provided herein, 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.
- X. **Status of KABOOM!**. KABOOM!, in the performance of this Agreement, shall be and act as an independent contractor. KABOOM! understands and agrees that it and all of its employees shall not be considered officers, employees, agents, or partners and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which the District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. KABOOM! shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to KABOOM!'s employees. In the performance of the work herein contemplated, KABOOM! is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work as noted in its obligations in Section V.
- XI. **Indemnification**.
- A. **Mutual Indemnification**. Each Party shall indemnify and hold harmless the other Party and their respective affiliates', directors, Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers 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 but not limited to any of the foregoing arising under, out of, or in connection with any breach of this Agreement by the indemnifying party, any negligence or misconduct taken in connection with this Agreement by indemnifying party or its employees, representatives, officers, consultants, and volunteers. This provision shall survive any termination or expiration of this Agreement.
- B. **District Indemnification of KABOOM!**. The District shall indemnify and hold harmless KABOOM!, the Funding Partner(s), and its 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), resulting from the use, operation, maintenance, safety and condition of any playground property and equipment installed under this Agreement, 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.

- XII. **Data Sharing and Impact Reports.** Following completion of the playspaces, upon reasonable request by KABOOM!, the District shall use best efforts to provide to KABOOM! the items listed below for a period of three (3) years following completion of the Playspace in addition to photographs of the Playspace in use by youth, information on usage, stories of impact on the surrounding community, and any other information reasonably requested by KABOOM!. Photographs of youth on playspaces will only be provided if District is able to obtain written consent by the parent/guardians of the youth in the photographs.
- A. Annually, the District shall share a current list of all Playspaces in the Location, including (but not limited to) all Playspaces that were opened, renovated, or closed during past twelve (12) months. The list shall include full addresses of each location and/or other geolocation data, including latitude and longitude coordinates.
 - B. The District agrees to meet at least quarterly with KABOOM!'s Learning and Evaluation team to discuss existing data sets or methods that could be used to estimate changes in physical activity and exercise among existing and potential users of the playspaces. If applicable, the District agrees to share data on changes in physical activity and exercise among playspace users on an annual basis. District and KABOOM! may alter the quarterly schedule as necessary in writing.
 - C. To the extent the Parties agree on any additional outcome data in addition to the data described in this section, the parties will, based on such additional data, enter into an addendum to this Agreement to set forth in detail the requirement(s) and each parties' obligations. In instances where data with personally identifiable information will need to be shared, KABOOM! and the District shall enter into a separate agreement governing such data sharing.
- XIII. **Limitation of Liability.** Notwithstanding any other provision of this Agreement, in no event shall either Party be liable to the other Party or, to the extent provided hereunder KABOOM!'s third party funding sources, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the Services performed in connection with this Agreement, provided, however, that the foregoing shall not limit either Party's obligation to pay any damages that may be awarded to a third party in connection with any claim to the extent that a Party is obligated to indemnify the other Party for such third party claim under this Agreement.
- XIV. **Legal Notices.** All legal notices provided for under this Agreement shall be sent via email to the email address set forth below and may also be either (i) personally delivered during normal business hours or (ii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other Party at the address set forth below.

OUSD

Name:
Site/Dept: Office of General Counsel
Address: 1011 Union St.
City, ST Zip: Oakland, CA 94607
Phone: (510) 879-8000
Email: ousdlegal@ousd.org

KABOOM!

Name: KABOOM!
Title: c/o Gerry Megas, Chief Financial Officer
Address: 7200 Wisconsin Avenue, Suite 400
City, ST Zip: Bethesda, MD 20814
Phone: (202) 464-6180
Email: gmegas@KABOOM!.org

Notice shall be effective when received if personally served or emailed or, if mailed, three days after mailing. Either Party must give written notice of a change of mailing address or email.

XV. General Provisions.

A. Incident/Accident/Mandated Reporting. KABOOM! shall notify OUSD, via email pursuant to Section XIII (Legal Notices), within 24 hours of learning of any significant accident or incident in connection with the preparation or installing of each Playspace. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. KABOOM! shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD. KABOOM! shall bear all costs of compliance with this Section.

B. Public Health.

- i. Through its execution of this Agreement, KABOOM! declares that it is able to meet its obligations and perform the Services required pursuant to this Agreement in accordance with any shelter-in-place (or similar) order or curfew (or similar) order ("Orders") issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
- ii. Consistent with the requirements of Section XIV.A (Incident/Accident/Mandated Reporting), KABOOM! agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including,

but not limited to, providing OUSD with information regarding possible exposure of OUSD student or student's family member, staff, agents, representatives, officers, consultants, trustees, and volunteers to KABOOM! or any employee, subcontractor, agent, or representative of KABOOM! and information necessary to perform contact tracing, as well as complying with any OUSD testing and vaccination requirements.

- iii. KABOOM! shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.
- C. Assignment. The obligations of KABOOM! under this Agreement shall not be assigned by KABOOM! without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.
- D. Non-Discrimination. It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, KABOOM! agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code section 12900 and Labor Code section 1735 and OUSD policy. In addition, KABOOM! agrees to require like compliance by all its subcontractor (s). KABOOM! shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.
- E. Drug-Free/Smoke Free Policy. No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, KABOOM! employees, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
- F. Waiver. No delay or omission by either Party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a subsequent act from constituting a violation of this Agreement.
- G. Litigation. This Agreement shall be deemed to be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

- H. Integration/Entire Agreement of Parties. This Agreement constitutes the entire agreement between the PARTIES and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both PARTIES.
- I. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- J. Provisions Required By Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
- K. Counterparts and Electronic Signature. This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.
- L. Agreement Publicly Posted. This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
- M. Agreement Contingent on Board Approval. District shall not be bound by the terms of this Agreement until it has been formally approved by the District's Board. This Agreement shall be deemed to be approved when it has been signed by the Board, and/or the Superintendent as its designee.

REST OF PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto agree and execute this MOU and to be bound by its terms and conditions:

KABOOM!

Name: Gerry Megas Signature: *Gerry Megas*

Position: cFO Date: 4/14/25

OUSD

Name: _____ Signature: _____

Position: _____ Date: _____

☐ Board President

☐ Superintendent

☐ Chief/Deputy Chief/Executive Director

Name: _____ Signature: _____

Position: _____ Date: _____

Approved as to form by OUSD Legal Department

Name: Shalini Anadkat Signature: *shalinianadkat* Date: 4/9/2025

EXHIBIT A

Playspace Volunteer Build Day Waiver

KABOOM! PLAYSPACE PROJECT -- VOLUNTEER WAIVER AND RELEASE

This form must be signed by or on behalf of each volunteer who will participate in or otherwise be involved with the construction of the FP, CP and KABOOM! Playspace Build (the "Playspace Build" or the "Project"), or will be on the construction site of the Playspace Build, occurring Build Month, Day, Year in City, State. If you are unable to read this print, please speak with the person handling volunteer registration for assistance.

The KABOOM! project and activities will include the playspace construction, side projects and play enhancement projects on and in the periphery of the playspace construction site including, without limitation, building interiors at or near the site. The "playspace construction site" is the physical space where the playspace is being installed; the playspace construction projects are any activities directly related to the installation and placement of the playspace equipment, the mixing of concrete, and/or moving safety surfacing onto the playspace site. Volunteers under age 18 (or under 19 in AL and NE) may not work on the "playspace construction site", as defined above. Volunteers under 18 but who meet this state's minimum age for employment may work on the side projects, such as beautification and play enhancement projects, and other non-playspace construction site projects and may help with preparation for the build day only if they have received and delivered KABOOM! written approval from a parent or legal guardian for participation. Any children under state's minimum age for employment will not be supervised by KABOOM! in any way or be allowed to participate in playspace or non-playspace construction projects managed by KABOOM!; however KABOOM! will work with the community partner to procure supplies for use by these children and to help them plan projects that are occurring on a site that is distinctly separated from the playspace construction site. No children under this state's legal working age should be on the playspace construction site.

I understand that I will be spending the day(s) as a volunteer for the Project and will be participating at my own risk. I acknowledge that my participation is voluntary and does not constitute a condition or requirement of employment. I further acknowledge that the Project will occur at a construction site and that the construction site will be a potentially dangerous place. I attest that I am physically fit and prepared for this event and these activities.

I will not create an unsafe situation for other individuals or myself nor will I use any tool or engage in any task with which I am not completely comfortable. I will abide by all applicable federal, state and local laws, as well as the rules and directions of the sponsors and coordinators. If I see any situation that I feel is unsafe, I will immediately call it to the attention of KABOOM! or a safety coordinator. If I bring any children or young adults with me to participate in the Project, I will be solely responsible for providing for their safety and will keep them under close supervision at all times. FOR EACH PARTICIPANT UNDER 18 (19 in AL and NE), THE PARENT OR GUARDIAN MUST FILL OUT A SEPARATE WAIVER. I understand that a volunteer may be at the Project to provide medical treatment in the event of an injury, and if necessary to assist in arranging transportation to medical facilities, but acknowledge that neither KABOOM! nor any other of the Released Parties (as defined below) are in any way responsible for providing such medical volunteer or treatment.

On behalf of myself, as well as my heirs, executors, administrators and assigns, I hereby forever release, discharge, waive and agree to indemnify and hold harmless KABOOM!, FP, CP, Landscape Structures Inc. and/or Connor Sport Court International, and any additional sponsors of the Project, along with their respective officers, directors, agents, employees, contractors, successors and assigns, and any volunteers to whom I give my consent to provide medical treatment to me or to any children or young adults under my supervision ("Released Parties"), from and against any and all claims, demands, actions,

causes of action, obligations, liabilities, suits, losses, damages, costs, expenses, and fees, including, without limitation, court costs and attorneys' fees, of any and every nature of character, including, without limitation, for death, personal injury and/or loss of property, whether anticipated or unanticipated, directly or indirectly, whether caused, in whole or in part, by the sole or concurrent negligence or wrongdoings, strict liability or fault of the Released Parties or otherwise, arising out of or connected in any way with my participation in the Project or any side projects in connection with the Project.

I acknowledge that I have read the foregoing paragraph and know and understand the full contents and effects of it. IF BUILD IS IN CALIFORNIA KEEP THIS SECTION, IF NOT, REMOVE: I understand the full nature, extent, and import of Section 1542 of the California Civil Code and of the entire release stated in the foregoing paragraph. Accordingly, I waive and relinquish, any and all rights or benefits that I may have under the provisions of Section 1542 of the California Civil Code, which reads as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in its favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." I hereby grant KABOOM!, FP and CP full and complete permission to use my name and likeness, including any photographs, videography and interview footage and quotations from me obtained in connection with the Project (whether or not at the Project Build or otherwise) in legitimate promotions of the Project and to further the mission and vision of KABOOM! in any and all media now known or hereinafter developed without restriction or compensation.

I understand that I have given up substantial rights by signing this Waiver and have signed it freely and voluntarily without any inducement, assurance or guarantee being made to me and I INTEND MY SIGNATURE TO BE A COMPLETE AND UNCONDITIONAL RELEASE of all liability of Released Parties to the greatest extent allowed by law.

Adult Volunteer (Age 18+)

I am here to volunteer from:

- ☐ CP (I am a: ☐ staff member / ☐ non-staff member)
☐ Local Community
☐ FP

Signature of Participant Date

Printed Name of Participant

Address

City State Zip

Email Address

- ☐ I would not like to receive information about KABOOM! in the future.
☐ I would not like to receive information about CP in the future.

Volunteer Under Age 18 (Or under 19 in AL and NE)

Please fill out a SEPARATE waiver for your child—use this section ONLY

Signature of Parent or Legal Guardian of Participant

Printed Name of Parent or Legal Guardian

Do you affirm that your child or dependent meets this state's minimum age requirements for employment?

☐ Yes, my child may volunteer ☐ No, my child cannot volunteer

Printed Name of Child Participant Date

EXHIBIT B

Build Site Expectations and Code of Conduct (Next Page)

Build Site Expectations and Code of Conduct

KABOOM! believes a playspace Build site should be a safe, inclusive environment with a welcoming atmosphere for each participant. Across the site, from balloons and playful banners to managing tool safety, participants at a KABOOM! Build site should feel comfortable, respected and able to participate in a meaningful way. All participants (including employees, vendors, visitors and volunteers) shall comply with the following practices and code of conduct:

- **No smoking, alcohol or drugs**

- KABOOM! sites are non-smoking, tobacco-free areas (this includes chewing tobacco and electronic cigarettes). Participants wishing to take a break to use tobacco products must leave the Build site area and are expected to comply with applicable laws and regulations further prohibiting the use of tobacco products in or around the property (example: smoke-free school zone).
- The use of alcoholic beverages or drugs is prohibited anywhere in or around the Build site.

- **Family-friendly language**

- All Build Days should feel like a celebration that is inclusive and respectful to all participants. KABOOM! will work with the Community Partner to incorporate upbeat music into the day. The music must be family-friendly, with no expletives, nor any lyrics or content that may be demeaning to any race, religion, gender identity, age, ethnicity, sexual orientation, disability or other characteristic.
- Participants must not use profane or obscene language on a KABOOM! Build sites.
- Language or innuendos that degrade or demean a person of any race, religion, gender identity, age, ethnicity, sexual orientation, disability or other characteristic are prohibited on a KABOOM! Build site.

- **Safety**

- A KABOOM! Build is an active construction site. There are many deep holes and other moving parts on a KABOOM! site. Volunteers are reminded to be careful and mindful of safety for everyone throughout the day.
- There will be no power tools operated on Build Day, with the exception of corded or cordless drills. Anyone operating a drill should wear safety goggles.
- Gloves, dust masks, ear plugs and other safety supplies are available for participants' use.
- While KABOOM! Builds happen rain or shine, a clearly outlined evacuation plan will be in place prior to Build Day in the event of lightning or extremely inclement weather.
- Youth may participate in the youth activities area or other projects designated by the KABOOM! staff outside of the playground footprint, but not in the playground footprint.

- **Open Carry**

- KABOOM! is committed to providing a safe and inviting atmosphere for all of our volunteers and staff. We request that participants do not bring firearms onto our playgrounds even in states where 'open carry' is permitted.

Any participant observing a violation of this code of conduct, should promptly advise a KABOOM! staff member on site. The staff member will advise the Community Partner so that it may address the situation with the individual(s) involved. All KABOOM! staff members on site shall endeavor to promote a safe, welcoming, inclusive and fun environments for all participants.

EXHIBIT C

Warranties by Applicable Manufacturers (Next 7 Pages)



Play Equipment Warranty

You have our word.

Landscape Structures Inc. ("Manufacturer") warrants that all playstructures and/or equipment sold will conform in kind and in quality to the specifications manual for the products identified in the Acknowledgment of Order and will be free of defects in manufacturing and material. Manufacturer further warrants:

100-Year Limited Warranty On all PlayBooster® and PlayShaper® aluminum posts, stainless steel fasteners, clamps, beams and caps against structural failure due to corrosion/natural deterioration or manufacturing defects, and on PlayBooster steel posts against structural failure due to material or manufacturing defects.

15-Year Limited Warranty On all Evos® and Weevos® steel arches, all plastic components (including TuffTimbers™ edging), all aluminum and steel components not covered above, Mobius® climbers, Rhapsody® Outdoor Musical Instruments, decks and TenderTuff™ coatings (except Wiggle Ladders, Chain Ladders and Swing Chain) against structural failure due to material or manufacturing defects.

10-Year Limited Warranty On concrete products against structural failure due to natural deterioration or manufacturing defects. Does not cover minor chips, hairline cracks or efflorescence.

8-Year Limited Warranty On Aeronet® climbers and climbing cables against defects in materials or manufacturing defects.

5-Year Limited Warranty On Rhapsody® cables and mallets against defects in materials or manufacturing defects, on polycarbonate panels against defects in materials or manufacturing defects, and on bamboo panels against delamination due to defects in materials or manufacturing defects. Does not cover damage which may be associated with the natural characteristics of bamboo aging, including but not limited to discoloration, splitting, cracking, warping or twisting, nor the formation of algae, mold and other forms of fungal-type bodies on bamboo.

3-Year Limited Warranty On all other parts, i.e.: Pulse® products, all swing seats and hangers, Mobius climber handholds, Wiggle Ladders, Chain Ladders and ProGuard™ Swing Chain, Track Ride trolleys and bumpers,

all rocking equipment including Sway Fun® gliders, belting material, HealthBeat® resistance mechanism, Seesaws, etc., against failure due to corrosion/natural deterioration or manufacturing defects.

The environment near a saltwater coast can be extremely corrosive. Some corrosion and/or deterioration is considered "normal wear" in this environment. Product installed within 500 yards (457 meters) of a saltwater shoreline will only be covered for half the period of the standard product warranty, up to a maximum of five years, for defects caused by corrosion. Products installed in direct contact with saltwater or that are subjected to salt spray are not covered by the standard warranty for any defects caused by corrosion.

This warranty does not include any cosmetic issues or wear and tear from normal use of the product, or misuse or abuse of the product. It is valid only if the playstructures and/or equipment are erected to conform with Landscape Structures' installation instructions and maintained according to the maintenance procedures furnished by Landscape Structures Inc.

All the warranties commence on date of Manufacturer's invoice. Should any failure to conform to the above express warranties appear within the applicable warranty period, Manufacturer shall, upon being notified in writing promptly after discovery of the defect and within the applicable warranty period, correct such nonconformity either by repairing any defective part or parts, or by making available a replacement part within 60 days of written notification. Manufacturer shall deliver the repaired or replacement part or parts to the site free of charge, but will not be responsible for providing labor or the cost of labor for the removal of the defective part or parts, the installation of any replacement part or parts or for disposal costs of any part or parts. Replacement parts will be warranted for the balance of the original warranty.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

The remedies hereby provided shall be the exclusive and sole remedies of the purchaser. Manufacturer shall not be liable for any direct, indirect, special, incidental or consequential damages.

Manufacturer neither assumes nor authorizes any employee, representative or any other person to assume for Manufacturer any other liability in connection with the sale or use of the structures sold, and there are no oral agreements or warranties collateral to or affecting this agreement. The warranties stated above are valid only if the structures and/or equipment are erected in conformance with Landscape Structures' installation instructions and maintained according to the maintenance procedures furnished by Landscape Structures Inc.; have been subjected to normal use for the purpose for which the goods were designed; have not been exposed to saltwater or salt spray; have not been subject to misuse, negligence, vandalism, or accident; have not been subjected to addition or substitution of parts; and have not been modified, altered, or repaired by persons other than Manufacturer or Manufacturer's designees in any respect which, in the judgement of Manufacturer, affects the condition or operation of the structures.

To make a claim, send your written statement of claim, along with the original job number or invoice number to: Landscape Structures Inc. 601 7th Street South, Delano, Minnesota, 55328-8605.

 President

Signed:

Date: 01/01/20





Terms of Sale

PRICING: Landscape Structures' list prices do not include delivery and handling charges. Prices are subject to change without notice.

TERMS: To tax-supported institutions and those with established credit: net 30 days from the date of the invoice. 1.5% per month thereafter; freight charges are prepaid and applied to the invoice.

TAXES: Landscape Structures' list prices do not include applicable taxes, if any.

WEIGHTS: Weights are approximate and may vary.

DELIVERY: If delivery of the equipment is by common carrier, and there is damage or a shortage, notify the carrier at once and sign delivery documents provided by the carrier noting the damage or shortage. Most products are delivered on large pallets and will require a forklift or similar equipment to unload as a unit on the site.

INSTALLATION: All playstructures and/or equipment are delivered unassembled and packaged with recyclable materials. For a list of factory-certified installers in your area, please contact your Landscape Structures playground consultant.

SERVICE: We have knowledgeable, qualified playground consultants throughout the world who are available to help you before, during and after the sale. Landscape Structures has exclusive design software that features all of our parts and pieces in pull-down menus. With this software, your playground consultant can design a playground layout that meets not only your needs, but ASTM and CPSC standards as well. In addition, we have a full staff of NPSI-certified designers, along with 2D and 3D drawing capabilities and custom capabilities to assist you with your playground plans.

RETURN POLICY: As an indication of our commitment to our customers, Landscape Structures will accept returns of new structures and/or new equipment purchased within 60 days of the original invoice date. Advance notification is necessary to ensure proper credit. Parts not included in this return policy are custom parts (including PlayShaper® posts), as well as used or damaged parts. A 20% restock fee plus all return freight charges will apply to all product returns. **NOTE:** All parts are subject to inspection upon return. Parts returned damaged may not receive a full credit. For this reason, it is important that all returned parts are properly packaged to prevent damage while in transit.

PRODUCT CHANGES: Because of our commitment to safety, innovation, and value, we reserve the right to change specifications at any time.

PLEASE CONTACT US AT:

Landscape Structures Inc.
601 7th St. South
Delano, MN 55328-8605
888.438.6574 (*inside the U.S.A.*)
763.972.5200 (*outside the U.S.A.*)
playlsi.com



601 7th Street South • Delano, MN 55328-8605 • 888.438.6574 • 763.972.5200 • Fax 763.972.3185 • playlsi.com

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Connor Sport Court Intl., Inc.

Game Court Components and Accessories Warranty
(Valid Upon Registration)

10-Year Limited Warranty

For a period of ten (10) years from the date of the installation, Connor Sport Court International, Inc. (herein Sport Court®) and its authorized Representative (herein Distributor/Dealer/Sales Agent) warrants to the Original Purchaser that Sport Court®'s Components and Accessories (herein Components and Accessories) are free from any defect(s) in workmanship or material. This Limited Warranty is subject to the Components and Accessories Warranty, Additional Provisions, Limitations/Exclusions and Registration of Warranty provisions set forth below.

COMPONENTS AND ACCESSORIES WARRANTY

During the 10-year period covered under this Components and Accessories Warranty, Sport Court® will replace/repair any defective Component(s) or Accessory(ies) under the following schedule:

- Basketball Systems, including height adjustment mechanism, arms and actuators; basketball poles, backboards, winches, basketball rims, and anchors; and other steel components including light and net poles, light bars, rebounder frames, poles and sleeves;
 - 0 _ 3 Years, no charge to Original Purchaser.
 - 4 _ 7 Years, 50% of List Price (as defined below) to Original Purchaser.
 - 8 _ 10 Years, 70% of List Price (as defined below) to Original Purchaser.
- Light bulbs and lenses, court nets, ball containment netting, game equipment (excluding balls), backboard and pole pads only as follows:
 - 0 _ 1 Year, no charge to Original Purchaser.

This Components and Accessories Warranty is subject to the Additional Provisions, Limitations/Exclusions and Registration of Warranty Provisions set forth below and specifically excludes any aesthetic oxidation/rust of/to any Components incident to or arising from the installment/use of any Components in an outdoor setting.

ADDITIONAL PROVISIONS

At its option, Sport Court® may replace/repair any defective aspect of the Components or the Accessories covered by any of the foregoing Warranties, according to the schedules set forth herein. For purposes of the foregoing Warranties, List Price shall mean the prevailing retail price as of the date any Component(s)/Accessory(ies) that may be replaced. Original Purchaser's refusal, or failure, to pay his/her portion of any replacement costs due under the foregoing Warranties renders the foregoing Warranties void and unenforceable and relieves Sport Court® and Distributor/Dealer/Sales Agent of any further obligation(s) under any of the foregoing Warranties.

LIMITATIONS/EXCLUSIONS

Sport Court®'s Warranties herein are void and unenforceable as to the Original Purchaser if:



Connor Sport Court Intl., Inc.

Game Court Components and Accessories Warranty

(Valid Upon Registration)

SPORT COURT

- Original Purchaser fails to maintain the Component(s) or Accessory(ies) in accordance with Sport Court®'s approved maintenance procedures; or
- The Component(s) or Accessory(ies) have been misused, used in other than approved applications, or damaged by accident, unreasonable use, abuse, neglect, act(s) of God, or any other cause not directly due to any defect(s) in material(s) or workmanship of the Component(s) or Accessory(ies); or
- The Component(s) or Accessory(ies) have been exposed to any use(s)/load(s) in excess of Sport Court®'s specifications that have been provided to Original Purchaser by Distributor/Dealer/Sales Agent at the time of installation. If the Original Purchaser cannot locate the specification sheet, Sport Court® will provide the same upon request, or Original Purchaser may visit Sport Court®'s website at www.sportcourt.com to obtain a copy of the same.
- Original Purchaser does not utilize Distributor/Dealer/Sales Agent to install the Component(s) or Accessory(ies) and the alleged defect(s) in workmanship or material result from or is/are incident to, in whole or in part, the installation of any Component(s) or Accessory(ies).

Sport Court® is not a joint venturer with, or partner, affiliate, agent or representative of, any Distributor/Dealer/Sales Agent or any others, and only authorized officers of Sport Court® have the authority to bind or obligate Sport Court® in connection with the foregoing Warranties or in any other manner whatsoever. Except as provided herein, Sport Court® does not warrant or guarantee installation. Any alteration or amendment of the foregoing Warranties without the prior written consent of Sport Court® shall invalidate the foregoing Warranties in their entirety.

NO WARRANTIES, EXPRESSED OR IMPLIED, ARE MADE BEYOND THOSE WARRANTIES SET FORTH HEREIN. TO THE EXTENT PERMITTED BY LAW, ANY IMPLIED WARRANTY(IES) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLICABLE TO ANY COMPONENT(S) OR ACCESSORY(IES) ARE EXCLUDED. NEITHER SPORT COURT® NOR THE DISTRIBUTOR/DEALER/SALES AGENT SHALL BE LIABLE OR RESPONSIBLE TO THE ORIGINAL PURCHASER FOR ANY LOST PROFITS/WAGES, INCONVENIENCE, COMMERCIAL LOSS, INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES SUFFERED OR SUSTAINED BY THE ORIGINAL PURCHASER. SPORT COURT®,S MAXIMUM RESPONSIBILITY TO THE ORIGINAL PURCHASER UNDER THE FOREGOING WARRANTIES IS/ARE LIMITED TO THE TOTAL PRICE PAID BY THE ORIGINAL PURCHASER TO SPORT COURT® FOR THE COMPONENT(S)/ACCESSORY(IES). THE FOREGOING DAMAGE LIMITATION SHALL APPLY REGARDLESS OF WHETHER THE ORIGINAL PURCHASER ASSERTS ANY CLAIM(S) FOR BREACH OF WARRANTY/CONTRACT, STRICT LIABILITY OR TORTIOUS MISCONDUCT AND REGARDLESS OF WHETHER SPORT COURT® HAS BEEN ADVISED OF ANY POTENTIAL FOR DAMAGE(S) TO THE ORIGINAL PURCHASER PRIOR TO ACCRUAL OF ANY CLAIM(S) BY, TO, OR FOR THE BENEFIT OF THE ORIGINAL PURCHASER.

THE FOREGOING WARRANTIES MAY NOT BE ASSIGNED OR TRANSFERRED BY THE ORIGINAL PURCHASER. SPORT COURT® S AND DISTRIBUTOR S/SALES AGENT S OBLIGATIONS UNDER THE FOREGOING WARRANTIES ARE EXTINGUISHED UPON THE ORIGINAL PURCHASER,S SALE, ASSIGNMENT, TRANSFER OR RELOCATION OF THE COMPONENT(S)/ACCESSORY(IES) FROM THE SITE THE COMPONENT(S)/ACCESSORY(IES) WAS/WERE ORIGINALLY INSTALLED BY DISTRIBUTOR/DEALER/SALES AGENT. IF THE ORIGINAL PURCHASER SELLS, ASSIGNS



Connor Sport Court Intl., Inc.

Game Court Components and Accessories Warranty

(Valid Upon Registration)

**S P O R T
C O U R T**

OR TRANSFERS THE COMPONENT(S)/ACCESSORY(IES) AS A FIXTURE TO THE REAL PROPERTY UPON WHICH THE COMPONENT(S)/ACCESSORY(IES) WAS/WERE ORIGINALLY INSTALLED, SPORT COURT® AND DISTRIBUTOR/DEALER/SALES AGENT SHALL HAVE NO FURTHER OBLIGATIONS UNDER THE FOREGOING WARRANTIES TO ANY PURCHASER, ASSIGNEE OR TRANSFEREE OF THE ORIGINAL PURCHASER. THE FOREGOING WARRANTIES SHALL BE GOVERNED AND INTERPRETED UNDER THE INTERNAL LAWS OF THE STATE OF UTAH WITHOUT REFERENCE TO ANY CHOICE OF LAW PROVISION(S) OF ANY OTHER STATE OR JURISDICTION.

REGISTRATION OF WARRANTY

Registration of this warranty may be accomplished by:

The authorized Sport Court® Distributor/Dealer/Sales Agent will submit Original Purchaser's name and information to the Warranty Registration Database at the Sport Court® corporate office.

If the authorized Sport Court® Distributor/Dealer/Sales Agent fails to correctly register the Customer's warranty, then Sport Court®'s obligations under this Warranty shall become effective on the date of Distributor's/Dealer's/Sales Agent's installation of the Component(s) or Accessory(ies). If the Component(s) or Accessory(ies) is/are not installed by any Distributor/Dealer/Sales Agent of Sport Court, then this Warranty shall become effective upon Original Purchaser's full payment for the Component(s) or Accessory(ies).



Outdoor Surface Warranty

15-Year Limited Warranty

For a period of fifteen (15) years from the date of installation, Sport Court® warrants to the Original Purchaser (herein Purchaser) that Sport Court's Outdoor Surface tiles (herein Tiles) are free from any defect in workmanship or material. This 15-Year Limited Warranty is subject to the Outdoor Surface Tiles Warranty, Replacement or Repair of Product, Limitations and Exclusions, and Warranty Registration and Claim Procedure provisions set forth below.

Outdoor Surface Tiles Warranty

During the fifteen (15) year period covered under this Outdoor Surface Tiles Warranty, Sport Court through its authorized Distributors, Dealer or Sales Agent (herein Agent) will replace or repair any defective tiles under the following schedule:

0 to 5 Years - No charge to Purchaser.

6 to 7 Years - 60% of List Price (as defined below) charge to Purchaser.

8 to 15 Years - 75% of List Price (as defined below) charge to Purchaser.

Replacement or Repair of Product

At its option, Sport Court may replace or repair any defective Tiles or Surface component covered by this Warranty according to the schedule herein. List Price shall mean the prevailing retail price as of the date on which any warranty claim is filed with Sport Court. Purchaser's refusal or failure to pay their portion of any replacement costs due under this Warranty renders the Warranty void and unenforceable and relieves Sport Court and its authorized Agent of any further obligation under this Warranty.

Limitations and Exclusions

Sport Court warranties are void and unenforceable if:

- a) Purchaser fails to maintain the Tiles in accordance with the Sport Court approved maintenance procedures; or
- b) The Tiles have been misused, used in other than approved applications or damaged by accident, unreasonable use, abuse, neglect, acts of God, or any other cause not directly due to any defect in materials or workmanship of the Tiles; or
- c) The Tiles have been exposed to any uses or loads in excess of the Sport Court specifications provided to Purchaser by Agent at the time of installation. If the Purchaser cannot locate the specification sheet, Sport Court will provide the same upon request, or Purchaser may visit Sport Court's website at www.sportcourt.com to obtain a copy of the same.

Sport Court is not a joint venture with, or partner, affiliate, or representative of, any Agent, or any others, and only authorized officers of Sport Court have the authority to bind or obligate Sport Court in connection with this Warranty or in any other manner whatsoever. Except as provided herein, Sport Court does not warrant installation.

Any alteration or amendment of this Warranty without the prior written consent of Sport Court shall invalidate this Warranty in its entirety.

NO WARRANTIES, EXPRESSED OR IMPLIED, ARE MADE BEYOND THE WARRANTIES SET FORTH HEREIN. TO THE EXTENT PERMITTED BY LAW, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLICABLE TO ANY FLOORING IS EXCLUDED. NEITHER SPORT COURT NOR THE AGENT SHALL BE LIABLE OR RESPONSIBLE TO THE PURCHASER FOR ANY LOST PROFITS OR WAGES, INCONVENIENCE, COMMERCIAL LOSS, INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES SUFFERED OR SUSTAINED BY THE PURCHASER.

THE MAXIMUM RESPONSIBILITY OF SPORT COURT TO THE PURCHASER UNDER THIS WARRANTY IS LIMITED TO THE TOTAL PRICE PAID BY THE PURCHASER TO SPORT COURT OR ITS AGENT FOR THE FLOORING. THE FOREGOING DAMAGE LIMITATION SHALL APPLY REGARDLESS OF WHETHER THE PURCHASER ASSERTS ANY CLAIM FOR BREACH OF WARRANTY OR CONTRACT, STRICT LIABILITY OR TORTIOUS MISCONDUCT, AND REGARDLESS OF WHETHER SPORT COURT HAS BEEN ADVISED OF ANY POTENTIAL FOR DAMAGES TO THE PURCHASER PRIOR TO ACCRUAL OF ANY CLAIM BY, TO, OR FOR THE BENEFIT OF THE PURCHASER.

THE FOREGOING WARRANTY MAY NOT BE ASSIGNED OR TRANSFERRED BY THE PURCHASER. THE OBLIGATIONS OF SPORT COURT AND ITS AUTHORIZED AGENT UNDER THIS WARRANTY ARE EXTINGUISHED UPON THE PURCHASER'S SALE, ASSIGNMENT, TRANSFER, OR RELOCATION OF THE FLOORING FROM THE SITE WHERE THE FLOORING WAS ORIGINALLY INSTALLED BY AGENT. IF THE PURCHASER SELLS, ASSIGNS, OR TRANSFERS THE FLOORING AS A FIXTURE TO THE REAL PROPERTY UPON WHICH THE FLOORING WAS ORIGINALLY INSTALLED, SPORT COURT AND ITS AUTHORIZED AGENT SHALL HAVE NO FURTHER OBLIGATION UNDER THIS WARRANTY TO THE PURCHASER, OR ANY ASSIGNEE, OR TRANSFEREE OF THE PURCHASER.

THE FOREGOING WARRANTY SHALL BE GOVERNED AND INTERPRETED UNDER THE INTERNAL LAWS OF THE STATE OF UTAH WITHOUT REFERENCE TO ANY CHOICE OF LAW OR PROVISION OF ANY OTHER STATE OR JURISDICTION.

Warranty Registration and Claim Procedure

The Agent will register this Warranty. If the authorized Agent fails to register the warranty, then the obligation of Sport Court under this Warranty shall become effective on the date of installation.

Should you have a problem with any Sport Court product, please contact your Sport Court Agent. To file a claim under this Warranty, Sport Court or its authorized Agent may request photos and tile samples.

Board Office Use: Legislative File Info.	
File ID Number	23-0457
Introduction Date	2/22/2023
Enactment Number	23-0290
Enactment Date	2/22/2023 CJH



**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer

Meeting Date February 22, 2023

Subject KABOOM! Master Agreement

Ask of the Board Approval by the Board of Education of the Playspace Partner Master Agreement with KABOOM!, Inc.

Background KABOOM! and OUSD have collaborated on the construction of new playspaces at mutually agreed to school sites. This occurred on a one-off basis, with separate agreements reached for each site and playspace.

Discussion This Master Agreement would provide a foundation for KABOOM! and OUSD to install up to twenty additional playspaces (without the need for additional or separate agreements). In deciding which schools to prioritize, the Agreement provides that the schools selected must be elementary schools and middle schools that meet one or more of the following criteria:

- Have facilities below District standard as identified by the District (likely via its Facilities Assessment)
- Have an unduplicated pupil percentages of greater than 50%
- Have responses to questions related to safety and living schoolyards on the California Healthy Kids Survey that are below the District average
- Serve approximately 250 students daily to ensure high use of the Playspace investments.

In accordance with the Master Agreement, each playspace is built with the help of a significant number of community members.

Fiscal Impact While the cost of each playspace is covered by KABOOM! (with support from its funding partners), there are additional costs to the District for each playspace, primarily preparing the site (e.g., soil sampling, underground scanning, removing old play structures, repairing and/or leveling surfacing) and installing the safety surface underneath the playspace. The Agreement authorizes the District to spend

up to \$250,000 per playspace. For 20 playspaces, this is a total of \$5 million. The source would be Fund 21, which is the bond fund. None of this funding goes to KABOOM!.

Attachment(s)

- Playspace Partner Master Agreement Between Oakland Unified School District and KABOOM!, Inc.

**PLAYSPACE PARTNER MASTER AGREEMENT BETWEEN
OAKLAND UNIFIED SCHOOL DISTRICT AND
KABOOM!, INC.**

RECITALS

KABOOM! believes that play is a critical part of childhood, and key to a child’s ability to thrive – physically, socially, emotionally, cognitively and creatively. This is especially true for kids growing up in under-resourced urban communities. The Oakland Unified School District (“OUSD” or “District”) is focused on transforming its schools to create a world-class education system for the children of Oakland to learn, grow, and play. District and KABOOM! may be individually referred to herein as a “Party,” or may be collectively referred to herein as the “Parties.”

KABOOM! and OUSD seek to collaborate on the construction of new playspaces at school sites (“Playspaces”) mutually agreed to the Parties. All Playspaces collectively may be referred to herein as the “Projects” and each a “Project”.

The Parties commit to prioritizing equity in selecting schools at which to construct Playspaces. Toward this end, the Parties shall select elementary schools and middle schools that predominantly meet one or more of the following criteria:

- Have facilities below District standard as identified by the District (likely via its Facilities Assessment)
- Have an unduplicated pupil percentages of greater than 50%
- Have responses to questions related to safety and living schoolyards on the California Healthy Kids Survey that are below the District average
- Serve approximately 250 students daily to ensure high use of the Playspace investments.

This Agreement will, when executed by the duly authorized representatives of each Party, represent the complete legally binding agreement between the Parties regarding the Project. The District acknowledges and understands the primary source of funding for the Project is funding from third parties provided to KABOOM!. As such, the District acknowledges and understands the scope of the Project (i.e., the number of Playspaces) is contingent upon KABOOM! securing the necessary contributions from such third parties.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

- I. **Purpose and Scope.** The purpose and scope of this Agreement is to enable the District to collaborate with KABOOM! to install up to twenty (20) Playspaces at OUSD schools. Each Playspace may include one or more of the following: play structures, youth sport courts, teaching gardens, murals, and/or nature exploration areas. The location and details of each

Playspace shall be determined and agreed to in writing by the duly authorized representatives of each Party.

- II. **Term.** This Agreement shall commence upon February 23, 2023 and remain in effect for three (3) years (i.e., through February 22, 2026), unless the term ("Term") is extended or terminated earlier pursuant to this Agreement.

III. **Costs and Funding.**

- A. **Cost.** The District is responsible for preparing each project site for installation and safety surfacing. The cost of preparing a site for the installation of each Playspace, which may include, but is not limited to, repairing/resurfacing asphalt after District's removal of existing safety surfacing (matting) under the existing play structure and fencing, shall not exceed \$250,000 per Playspace.

- B. **Hold Harmless.** The District is solely responsible for and shall hold KABOOM! harmless from any costs incurred by the District for any prior site preparation, upgrades or improvements or any equipment or materials purchased to supplement those secured by KABOOM!. To the extent that KABOOM! is contractually obligated to hold any third party funding sources harmless, OUSD shall also hold any third party funding sources harmless but only to the extent that OUSD has agreed to hold KABOOM! harmless under this Agreement.

C. **Funding.**

- i. KABOOM! has advised the District that KABOOM! intends to seek contributions from third party funding sources in support of the Projects. KABOOM! shall not have any monetary obligations to the District with its fundraising efforts. Notwithstanding any other language in this Agreement, the District shall not be responsible for securing any necessary funding for the purchase and installation of each Playspace, provided that this does not prevent the District, at its sole discretion, from contracting with other third parties for services or materials related to the purchase and installation of a Playspace.
- ii. KABOOM! will execute a separate contract with each third party that provides financial and human resources ("Funding Partner") for each Playspace. 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 District shall not solicit sponsors or donors in relation to each Playspace whose products or services directly compete with the products or services of the Funding Partner as identified to the District by KABOOM! and/or the

Funding Partner. In the event the District solicits other sponsors or donors, then the District shall not permit such sponsors or donors to compete with the Funding Partner for signage and sponsorship recognition.

- iii. The District has agreed that it will reasonably cooperate with KABOOM! in its fundraising efforts.

IV. Obligations of the District.

- A. Design Day. The District agrees to host a KABOOM!-facilitated “Design Day” for each Project and shall make best efforts to secure the attendance of at least twenty (20) adult volunteers and twenty (20) youth, only so long as volunteers’ presence on District property is consistent with Alameda County Department of Public Health guidelines and District policies regarding visitor access to District property. The Parties, through their duly authorized representatives, shall mutually agree in writing upon the date for the Design Day for each Playspace.
- B. Land Ownership. Before a site for a Project is selected, the District will, in writing, represent and warrant to KABOOM! that the District is the landowner of each project site property confirmed for a new Playspace. For each Playspace, the District shall provide KABOOM! with proof of land ownership upon request by written request from KABOOM!.
- C. Permits. Prior to Build Week for each Playspace, but no less than 30 days prior to, the District 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. District shall not be responsible for any delays that result from County Department of Public Health orders that close, decrease, or limit the District’s ability to obtain necessary permits and licenses.
- D. Safety. The District shall make reasonable efforts to ensure the security of any equipment, tools, and supplies located on its property for purposes of Design Day or Build Week. The District shall ensure that the physical area in which each Playspace is to be located, as well as the area’s surrounding and the access to the area, are safe for volunteers and children while activities during Design Day and Build Week. Upon request from the District, KABOOM! shall cooperate with the District in respect of the District’s obligations under this Section IV.D.
- E. Preparation. The District shall be responsible for the following for each Playspace:
 - i. *Two (2) to three (3) days prior to Build Week:* Recruiting at least fifteen (15) adult volunteers to participate in preparation activities, only if volunteers’ presence on District property is consistent with Alameda County

Department of Public Health guidelines and District policies regarding visitor access to District property.

- ii. *At least two weeks before Build Week:* Preparing the site for the installation of the Playspace. Examples of such preparation that may be needed: removing existing playground equipment, footers, and safety surfacing; grading the land; repairing/replacing existing safety surfacing (matting); removing fencing/barrier; fencing; and performing soil tests in the locations where play structures are mounted.
- iii. *Utility checks before Build Week:* Conducting up to two (2) utility checks, with all utility check documentation provided to the KABOOM! project manager ("Project Manager") before Build Week, with the District making a good faith effort to provide such documentation to KABOOM! at least four (4) weeks before Build Week.
- iv. *Soil testing before Build Week:* Conducting up to two (2) soil site tests, with all soil check documentation provided to the Project Manager upon completion. The District is responsible for undertaking any necessary risk mitigation should the soil be deemed unsafe for children and volunteers to perform the task contemplated under this Agreement. In the event that soil is deemed unsafe and risk mitigation is required, the District acknowledges that there may be a delay in the Build Week and/or Playspace completion.

F. Maintenance.

- i. Upon the completion of each Playspace, the District shall have sole responsibility for its maintenance and supervision.
- ii. The District shall collaborate with KABOOM! during the planning for each Playspace to develop a maintenance program ("Maintenance Program") with the goal of keeping the Playspace safe for and attractive to students. Guidance and materials for the purpose of developing a maintenance program for each Playspace are available upon request from the play equipment and safety surfacing manufacturers.
- iii. In the event any Playspace is, in full or in part, no longer permitted for any reason to be located at its original site of construction or such site is no longer controlled by the District for any reason, then the District shall make a good faith effort to notify KABOOM! of such situation. Where feasible, the District shall, at its 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 OUSD

children and the District shall maintain the Playspace in accordance with the Maintenance Program.

- iv. The District shall accept and shall be responsible for the safety surfacing for each Playspace. For each Playspace in use by the District, this responsibility shall include, but not be limited to, ensuring that the surfacing meets the applicable standards established by Consumer Product Safety Commission guidelines.
- v. The District will solely finance, install, and maintain alternative surfacing in the form of rubber matting as playground safety surfacing meeting all safety guidelines as established by the American Society for Testing and Materials (ASTM F2223 and ASTM-1292) and the Consumer Product Safety Commission's Handbook for Playground Safety. Guidance and materials for the purpose of developing a maintenance program for each Playspace are available, upon request, from the play equipment and safety surfacing manufacturers.

G. Build Week.

- i. For each Project, the District shall use reasonable best efforts to recruit at least 100 volunteers to participate over a 3-4 day installation event ("Build Week") for each Playspace, only so long as volunteers' presence on District property is consistent with Alameda County Department of Public Health guidelines and District policies regarding visitor access to District property. In the event that volunteer participation is precluded or limited by Public Health guidelines or District policies, Parties agree to have the Playspace professionally installed without volunteers on site to occur on a mutually agreed upon date. Any additional fees associated with professional installation shall be the responsibility of KABOOM!. The Parties, through their duly authorized representatives, shall mutually agree in writing upon the dates for the Build Week for each Playspace.
- ii. At each Build Week, the District shall provide, or shall cause a third party to provide, water, food, tools, dumpsters, music, and restroom facilities for all volunteers on each day. Volunteers shall participate consistent with all Board Policies and Administrative Regulations (including, but not limited to, Board Policy 1240 and Administrative Regulation 1240).
- iii. The District shall ensure that all Build Week volunteers sign a waiver substantially similar to the version as provided in Exhibit A.

H. Data and Reporting Requirements. To the extent not prohibited by law, the District agrees to cooperate with the distribution of at least one survey to families,

volunteers, staff, and other stakeholders regarding the experience and impact of designing and installing each Playspace. The Parties agree that the intent is to distribute such surveys within thirty days (30) of the conclusion of Build Week. The Parties shall agree on the survey and neither Party shall unreasonable delay or obstruct agreement on the survey.

- I. Code of Conduct. The District agrees to comply with the Build Site Expectations and Code of Conduct (a copy of which is attached as Exhibit B). The District 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.

V. Obligations of KABOOM!.

- A. Project Management. While KABOOM! shall manage the overall execution for installing each Playspace, KABOOM! shall not have or be given any ownership in a Playspace. . KABOOM! shall provide technical and organizational leadership and guidance for each Project and shall:
 - i. Facilitate community planning, including Design Day during which community children and adults will share their input on the design of the Playspace.
 - ii. Coordinate participation by any third parties, including involvement in planning meetings, and work with third parties 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 District.
 - iii. Manage construction logistics for each Playspace, coordinate site preparation activities with the District, inventory equipment and materials, and assure that the necessary tools and materials and other general supplies are available during Build Week.
 - iv. Select and manage vendors that will provide the necessary equipment and installation for each Playspace before the safety surfacing has been installed.
 - v. Lead the Build Week activities, including the coordination of team leaders and volunteers.
 - vi. Facilitate a ribbon cutting ceremony at the conclusion of the Build Week, providing partners the opportunity for dedication comments.

- B. Inspection. KABOOM!, in collaboration with the District, will secure an Installation Supervisor to review the structure at the conclusion of the Build Week (or, if KABOOM! assumes responsibility for the 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.
- i. KABOOM! shall be responsible for the costs for an Installation Supervisor unless the installation of the Playspace is not completed by the mutually agreed upon timeline and the untimely completion is solely due to failure of the District, in which case the District shall be responsible for securing and paying for the Installation Supervisor.
 - ii. The District understands and acknowledges that it will accept ownership of the Playspace even if an Installation Supervisor cannot be secured.
 - iii. As its sole option, the District shall obtain and be responsible for the cost for its own safety inspector to review the installation with the Playspace after completion. KABOOM! agrees to reasonably cooperate with any safety inspector, or other third-party, retained by the District in connection with a Project for such purpose.
- C. Vendors. As part of its Project Management responsibility to manage the overall execution for installing each Playspace, KABOOM! shall select and manage vendors that will provide necessary equipment for the Playspace (e.g., surfacing, Playspace equipment, peripheral projects, landscaping, etc.). KABOOM! shall use commercially reasonable efforts to guard against any loss to the District through the failure of suppliers to properly honor their commitments, but KABOOM! shall not be held responsible for any such failure on their part. If the District requires different surfacing than that which is provided by KABOOM!, the District shall have sole responsibility for vendor selection and installation of the surfacing materials.

VI. **Mutual Obligations.**

- A. Project Site Preparation. KABOOM!, in collaboration with the District, shall coordinate site preparation prior to Build Week which includes laying out the Playspace location, digging holes, setting footers, inventory of equipment, cutting lumber, and prepping/priming any painting projects to ensure that the Playspace area is prepared for Build Week. Upon written request from OUSD, KABOOM! shall cooperate in good faith with OUSD to align the site preparation to OUSD's Living Schoolyard Guidelines as updated from time to time. KABOOM! acknowledges that in the event that soil is deemed unsafe and risk mitigation is required that there may be a delay in the Build Week and/or Project completion to allow for proper mitigation and/or remediation.
- B. Project Site Selection.

- i. The District and KABOOM! shall jointly agree on the site for each Project using the selection criteria outlined in Recitals. Each selection shall be made at least four (4) months in advance of the anticipated Build Week for each such Project.
- ii. Following confirmation of each Project location, the District and KABOOM! will identify Build Week dates, which shall occur on mutually agreeable dates.

C. Build Week Postponement.

- i. The Build Week shall not be postponed except when weather or other conditions jeopardize the safety of the volunteers or threaten the structural integrity of each Playspace. The decision to postpone the Build Week will be made by the duly authorized representatives of the Parties. In the event that the Build Week is postponed, KABOOM! and the District shall develop a plan for rescheduling the Build Week at the next earliest date possible for each Party. Notwithstanding the foregoing, in the event that the date of the Build Week is cancelled or changed as a result of the District's sole failure to satisfy its obligations in connection with the Project, then the District shall be liable to KABOOM! for all such additional expenses related to the rescheduled Build Week.
- ii. The Parties acknowledge that in the event that soil is deemed unsafe and/or risk mitigation is required pursuant to Section IV.E.iv that there may be a delay in the Build Week and/or the completion of each Playspace to allow for proper mitigation. Any delays/postponement of Build Week resulting from necessary soil mitigation, shall result in KABOOM! and the District developing a plan for rescheduling the Build Week.
- iii. The Parties acknowledge that in the event that permits required by Section IV.C are delayed through no fault of the District's timeliness in filing for permits that there may be a delay in the Build Week and/or completion of the Playspace to allow for proper mitigation. Any delays/postponement of Build Week resulting from obtaining necessary permits, shall result in KABOOM! and the District developing a plan for rescheduling the Build Week.

D. Playspace Ownership. The Parties acknowledge and accept that the District is the owner of each Playspace in its entirety, for the lifetime of the product, including the equipment and/or safety surfacing at the time purchased by KABOOM!.

- E. Equipment, Tools, and Supplies. The District shall accept at each project site a storage container from a third party vendor to be coordinated by KABOOM!. The District and KABOOM! shall coordinate with respect to the timing and delivery logistics of the storage container. The storage container shall be used to store the Playspace equipment, tools and supplies prior to Build Week until the conclusion of Build Week. KABOOM! shall select and manage the storage container vendor.
- F. Promotional Activities and Intellectual Property.
- i. The District shall seek prior approval from KABOOM! for any materials that reference the Project or a specific Playspace or contain the name, trademarks, service marks, logos and other intellectual property (collectively, the "Marks") of KABOOM!, including press releases, fliers and promotional materials. The District acknowledges and agrees that KABOOM! is the sole owner of all right, title, and interest in and to the Marks. The District acknowledges that KABOOM! may take all steps to protect its Marks as it deems appropriate. The District shall not use the Marks in any manner that would harm the reputation of KABOOM! or disparage or negatively reflect upon the Marks. Upon expiration of or termination of this Agreement for any reason, the District shall cease all use of the Marks. The District shall collaborate with KABOOM! to secure media coverage for the Project.
 - ii. KABOOM! will provide proposed promotional materials relating to the Project for the District's review and approval, which approval shall not be unreasonably withheld or delayed.
 - iii. The Parties acknowledge that KABOOM! may place the Playspace on its list of KABOOM! projects on the KABOOM! website and KABOOM! will send information to the District on maintenance programming and enhancements.
- G. Signage. The District shall allow the names and logos of KABOOM! and, upon mutual written agreement through the duly authorized representatives of the Parties any third party funders, to be displayed on permanent signage (a copy of which has been provided). The size, structure, and location of any signage shall be determined through mutual written agreement through the duly authorized representatives of the Parties.
- VII. Warranty. The equipment and the safety-surfacing related to each Playspace may be covered under warranty by the applicable manufacturers (a copy of which is provided in Exhibit C). The District acknowledges that any warranties and/or guarantees on any equipment or material are subject to the respective manufacturer's terms thereof, and the District agrees to look solely to such manufacturers for any such warranty and/or

guarantee. Neither KABOOM! 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.

VIII. Insurance Coverage.

A. District.

- i. The District is responsible for providing insurance 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 or operation of each Playspace, from seven (7) calendar days before the Build Week and for a minimum of one year afterward, in each case, in amounts not less than one million dollars (\$1,000,000). This insurance shall be primary and non-contributing with any other insurance covering KABOOM!.
- ii. Within 15 days from execution of this Agreement, the District 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! as additional insured under such policy, which insurance shall be primary over any other insurance covering KABOOM! and which policy shall provide that KABOOM! is given at least thirty (30) days prior written notice of any change or cancellation of coverage.

B. KABOOM!.

- i. KABOOM! shall obtain and maintain insurance to be insured against liability for workers' compensation in accordance with applicable state law and will comply with such provisions before commencing the performance of the Work of this Agreement.
- ii. To perform the work in connection with this agreement, KABOOM! shall maintain Commercial General Liability insurance, including automobile coverage with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. Evidence of insurance shall be provided upon request. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.
- iii. Upon request by the District, KABOOM! shall submit written evidence of any insurance required by this Agreement.

- C. Contractors. If KABOOM! engages with any contractor, independent contractor, or subcontractor to perform work in connection with this Agreement, KABOOM! shall require that any contractor, independent contractor, or subcontractor procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident.
- i. KABOOM! shall require its playground equipment manufacturer maintain Commercial General Liability Insurance with limits of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate, for harassment, bodily injury, and property damage. Coverage for harassment may either be provided through General Liability Insurance or Professional Liability Insurance. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured with the additional insured endorsement provided to OUSD within 15 days of effective date of this Agreement (and within 15 days of each new policy year thereafter during the term of this Agreement). Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against KABOOM!. The policy shall protect KABOOM! and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase OUSD's liability as set forth in the policy beyond the amount or amounts shown or to which OUSD would have been liable if only one interest were named as an insured.
- ii. Upon request by the District, KABOOM! shall submit written evidence of any insurance required by this Agreement.
- iii. As promptly and reasonably practicable following execution of this Agreement and, in any event, at least three (3) business days prior to the Build Week for the first Playspace begun under this Agreement, KABOOM! shall ensure that the District is endorsed to the required Commercial General Liability policies held by its playground equipment manufacturer as an additional insured by endorsement. All evidence of such insurance, which should be available via Certificates of Insurance.

IX. Termination.

- A. This Agreement may be terminated:
- i. By either Party, in the event of a breach by the other Party of any of its obligations hereunder, which breach (other than in the case of a payment

breach), to the extent curable, remains uncured thirty (30) days after such Party has provided written notice of such breach to the other Party; or

- ii. By either Party in the event such Party is delayed or prevented from fulfilling any of its obligations hereunder for a period longer than ten (10) calendar days by any cause beyond its reasonable control, including acts of God, acts or omissions of civil or military authorities, earthquake, fire, strike, flood, riot, act of terrorism, war, transportation delay, or inability due to such causes to obtain required labor, materials or facilities.

- B. Upon any termination, except as otherwise provided herein, 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.

- X. **Status of KABOOM!**. KABOOM!, in the performance of this Agreement, shall be and act as an independent contractor. KABOOM! understands and agrees that it and all of its employees shall not be considered officers, employees, agents, or partners and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which the District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. KABOOM! shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to KABOOM!'s employees. In the performance of the work herein contemplated, KABOOM! is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work as noted in its obligations in Section V.

- XI. **Indemnification.**

- A. **Mutual Indemnification.** Each Party shall indemnify and hold harmless the other Party and their respective affiliates', directors, Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers 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 but not limited to any of the foregoing arising under, out of, or in connection with any breach of this Agreement by the indemnifying party, any negligence or misconduct taken in connection with this Agreement by indemnifying party or its employees, representatives, officers, consultants, and volunteers. This provision shall survive any termination or expiration of this Agreement.

- B. District Indemnification of KABOOM!. The District shall indemnify and hold harmless KABOOM! and its 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), resulting from the use, operation, maintenance, safety and condition of any playground property and equipment installed under this Agreement, 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.
- XII. Limitation of Liability. Notwithstanding any other provision of this Agreement, in no event shall either Party be liable to the other Party or, to the extent provided hereunder KABOOM!'s third party funding sources, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the Services performed in connection with this Agreement, provided, however, that the foregoing shall not limit either Party's obligation to pay any damages that may be awarded to a third party in connection with any claim to the extent that a Party is obligated to indemnify the other Party for such third party claim under this Agreement.
- XIII. Legal Notices. All legal notices provided for under this Agreement shall be sent via email to the email address set forth below and may also be either (i) personally delivered during normal business hours or (ii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other Party at the address set forth below.

OUSD

Name: Joshua R. Daniels
Site/Dept: Office of General Counsel
Address: 1000 Broadway, Suite 440
City, ST Zip: Oakland, CA 94607
Phone: (510) 879-8535
Email: ousdlegal@ousd.org

KABOOM!

Name: KABOOM!
Title: c/o Gerry Megas, Chief Financial Officer
Address: 7200 Wisconsin Avenue, Suite 400
City, ST Zip: Bethesda, MD 20814
Phone: (202) 464-6180
Email: gmegas@KABOOM!.org

Notice shall be effective when received if personally served or emailed or, if mailed, three days after mailing. Either Party must give written notice of a change of mailing address or email.

XIV. **General Provisions.**

- A. Incident/Accident/Mandated Reporting. KABOOM! shall notify OUSD, via email pursuant to Section XIII (Legal Notices), within 24 hours of learning of any significant accident or incident in connection with the preparation or installing of each Playspace. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. KABOOM! shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD. KABOOM! shall bear all costs of compliance with this Section.
- B. Coronavirus/COVID-19.
 - i. Through its execution of this Agreement, KABOOM! declares that it is able to meet its obligations and perform the Services required pursuant to this Agreement in accordance with any shelter-in-place (or similar) order or curfew (or similar) order (“Orders”) issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
 - ii. Consistent with the requirements of Section XIV.A (Incident/Accident/Mandated Reporting), KABOOM! agrees to notify OUSD, via email pursuant to Section XIII (Legal Notices), within 24 hours if KABOOM! or any employee, subcontractor, agent, or representative of KABOOM! (i) tests positive for COVID-19 or shows or reports symptoms consistent with COVID-19 and (ii) has been on OUSD property or has been in prolonged close contact with any OUSD student or student’s family member, staff, agents, representatives, officers, consultants, trustees, and volunteers within 48 hours of testing positive for COVID-19 or the development of symptoms consistent with COVID-19.
 - iii. In addition to the requirements of subparagraph (c), KABOOM! agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD student or student’s family member, staff, agents, representatives, officers, consultants, trustees, and volunteers to KABOOM! or any employee, subcontractor, agent, or representative of KABOOM! and information necessary to

perform contact tracing, as well as complying with any OUSD testing and vaccination requirements.

- iv. KABOOM! shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.
- C. Assignment. The obligations of KABOOM! under this Agreement shall not be assigned by KABOOM! without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.
- D. Non-Discrimination. It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, KABOOM! agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code section 12900 and Labor Code section 1735 and OUSD policy. In addition, KABOOM! agrees to require like compliance by all its subcontractor (s). KABOOM! shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.
- E. Drug-Free/Smoke Free Policy. No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, KABOOM! employees, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
- F. Waiver. No delay or omission by either Party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a subsequent act from constituting a violation of this Agreement.
- G. Litigation. This Agreement shall be deemed to be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
- H. Integration/Entire Agreement of Parties. This Agreement constitutes the entire agreement between the PARTIES and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both PARTIES.

- I. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- J. Provisions Required By Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
- K. Counterparts and Electronic Signature. This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.
- L. Agreement Publicly Posted. This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
- M. Agreement Contingent on Board Approval. District shall not be bound by the terms of this Agreement until it has been formally approved by the District's Board. This Agreement shall be deemed to be approved when it has been signed by the Board, and/or the Superintendent as its designee.

REST OF PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto agree and execute this MOU and to be bound by its terms and conditions:

KABOOM!

Name: Gerry Weag Signature: [Signature]
Position: CSO Date: 2/16/23

OUSD

Name: Mike Hutchinson Signature: [Signature]
Position: President, Board of Education Date: February 23, 2023
☒ Board President
☐ Superintendent
☐ Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell Signature: [Signature]
Position: Superintendent and Secretary, Board of Education Date: February 23, 2023

Approved as to form by OUSD Legal Department

Name: Joshua R. Daniels Signature: [Signature] Date: 2/17/2023

EXHIBIT A

2023 Playspace Volunteer Build Day Waiver

KABOOM! PLAYSPACE PROJECT -- VOLUNTEER WAIVER AND RELEASE

This form must be signed by or on behalf of each volunteer who will participate in or otherwise be involved with the construction of the FP, CP and KABOOM! Playspace Build (the "Playspace Build" or the "Project"), or will be on the construction site of the Playspace Build, occurring Build Month, Day, Year in City, State. If you are unable to read this print, please speak with the person handling volunteer registration for assistance.

The KABOOM! project and activities will include the playspace construction, side projects and play enhancement projects on and in the periphery of the playspace construction site including, without limitation, building interiors at or near the site. The "playspace construction site" is the physical space where the playspace is being installed; the playspace construction projects are any activities directly related to the installation and placement of the playspace equipment, the mixing of concrete, and/or moving safety surfacing onto the playspace site. Volunteers under age 18 (or under 19 in AL and NE) may not work on the "playspace construction site", as defined above. Volunteers under 18 but who meet this state's minimum age for employment may work on the side projects, such as beautification and play enhancement projects, and other non-playspace construction site projects and may help with preparation for the build day only if they have received and delivered KABOOM! written approval from a parent or legal guardian for participation. Any children under state's minimum age for employment will not be supervised by KABOOM! in any way or be allowed to participate in playspace or non-playspace construction projects managed by KABOOM!; however KABOOM! will work with the community partner to procure supplies for use by these children and to help them plan projects that are occurring on a site that is distinctly separated from the playspace construction site. No children under this state's legal working age should be on the playspace construction site.

I understand that I will be spending the day(s) as a volunteer for the Project and will be participating at my own risk. I acknowledge that my participation is voluntary and does not constitute a condition or requirement of employment. I further acknowledge that the Project will occur at a construction site and that the construction site will be a potentially dangerous place. I attest that I am physically fit and prepared for this event and these activities.

I will not create an unsafe situation for other individuals or myself nor will I use any tool or engage in any task with which I am not completely comfortable. I will abide by all applicable federal, state and local laws, as well as the rules and directions of the sponsors and coordinators. If I see any situation that I feel is unsafe, I will immediately call it to the attention of KABOOM! or a safety coordinator. If I bring any children or young adults with me to participate in the Project, I will be solely responsible for providing for their safety and will keep them under close supervision at all times. FOR EACH PARTICIPANT UNDER 18 (19 in AL and NE), THE PARENT OR GUARDIAN MUST FILL OUT A SEPARATE WAIVER. I understand that a volunteer may be at the Project to provide medical treatment in the event of an injury, and if necessary to assist in arranging transportation to medical facilities, but acknowledge that neither KABOOM! nor any other of the Released Parties (as defined below) are in any way responsible for providing such medical volunteer or treatment.

On behalf of myself, as well as my heirs, executors, administrators and assigns, I hereby forever release, discharge, waive and agree to indemnify and hold harmless KABOOM!, FP, CP, Landscape Structures Inc. and/or Connor Sport Court International, and any additional sponsors of the Project, along with their respective officers, directors, agents, employees, contractors, successors and assigns, and any volunteers to whom I give my consent to provide medical treatment to me or to any children or young adults under my supervision ("Released Parties"), from and against any and all claims, demands, actions,

causes of action, obligations, liabilities, suits, losses, damages, costs, expenses, and fees, including, without limitation, court costs and attorneys' fees, of any and every nature of character, including, without limitation, for death, personal injury and/or loss of property, whether anticipated or unanticipated, directly or indirectly, whether caused, in whole or in part, by the sole or concurrent negligence or wrongdoings, strict liability or fault of the Released Parties or otherwise, arising out of or connected in any way with my participation in the Project or any side projects in connection with the Project.

I acknowledge that I have read the foregoing paragraph and know and understand the full contents and effects of it. IF BUILD IS IN CALIFORNIA KEEP THIS SECTION, IF NOT, REMOVE: I understand the full nature, extent, and import of Section 1542 of the California Civil Code and of the entire release stated in the foregoing paragraph. Accordingly, I waive and relinquish, any and all rights or benefits that I may have under the provisions of Section 1542 of the California Civil Code, which reads as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in its favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." I hereby grant KABOOM!, FP and CP full and complete permission to use my name and likeness, including any photographs, videography and interview footage and quotations from me obtained in connection with the Project (whether or not at the Project Build or otherwise) in legitimate promotions of the Project and to further the mission and vision of KABOOM! in any and all media now known or hereinafter developed without restriction or compensation.

I understand that I have given up substantial rights by signing this Waiver and have signed it freely and voluntarily without any inducement, assurance or guarantee being made to me and I INTEND MY SIGNATURE TO BE A COMPLETE AND UNCONDITIONAL RELEASE of all liability of Released Parties to the greatest extent allowed by law.

Adult Volunteer (Age 18+)

I am here to volunteer from:

- ☐ CP (I am a: ☐ staff member / ☐ non-staff member)
☐ Local Community
☐ FP

Signature of Participant Date

Printed Name of Participant

Address

City State Zip

Email Address

- ☐ I would not like to receive information about KABOOM! in the future.
☐ I would not like to receive information about CP in the future.

Volunteer Under Age 18 (Or under 19 in AL and NE)

Please fill out a SEPARATE waiver for your child—use this section ONLY

Signature of Parent or Legal Guardian of Participant

Printed Name of Parent or Legal Guardian

Do you affirm that your child or dependent meets this state's minimum age requirements for employment?

☐ Yes, my child may volunteer ☐ No, my child cannot volunteer

Printed Name of Child Participant Date

EXHIBIT B

Build Site Expectations and Code of Conduct (Next Page)

Build Site Expectations and Code of Conduct

KABOOM! believes a playspace Build site should be a safe, inclusive environment with a welcoming atmosphere for each participant. Across the site, from balloons and playful banners to managing tool safety, participants at a KABOOM! Build site should feel comfortable, respected and able to participate in a meaningful way. All participants (including employees, vendors, visitors and volunteers) shall comply with the following practices and code of conduct:

- **No smoking, alcohol or drugs**
 - KABOOM! sites are non-smoking, tobacco-free areas (this includes chewing tobacco and electronic cigarettes). Participants wishing to take a break to use tobacco products must leave the Build site area and are expected to comply with applicable laws and regulations further prohibiting the use of tobacco products in or around the property (example: smoke-free school zone).
 - The use of alcoholic beverages or drugs is prohibited anywhere in or around the Build site.
- **Family-friendly language**
 - All Build Days should feel like a celebration that is inclusive and respectful to all participants. KABOOM! will work with the Community Partner to incorporate upbeat music into the day. The music must be family-friendly, with no expletives, nor any lyrics or content that may be demeaning to any race, religion, gender identity, age, ethnicity, sexual orientation, disability or other characteristic.
 - Participants must not use profane or obscene language on a KABOOM! Build sites.
 - Language or innuendos that degrade or demean a person of any race, religion, gender identity, age, ethnicity, sexual orientation, disability or other characteristic are prohibited on a KABOOM! Build site.
- **Safety**
 - A KABOOM! Build is an active construction site. There are many deep holes and other moving parts on a KABOOM! site. Volunteers are reminded to be careful and mindful of safety for everyone throughout the day.
 - There will be no power tools operated on Build Day, with the exception of corded or cordless drills. Anyone operating a drill should wear safety goggles.
 - Gloves, dust masks, ear plugs and other safety supplies are available for participants' use.
 - While KABOOM! Builds happen rain or shine, a clearly outlined evacuation plan will be in place prior to Build Day in the event of lightning or extremely inclement weather.
 - Youth may participate in the youth activities area or other projects designated by the KABOOM! staff outside of the playground footprint, but not in the playground footprint.
- **Open Carry**
 - KABOOM! is committed to providing a safe and inviting atmosphere for all of our volunteers and staff. We request that participants do not bring firearms onto our playgrounds even in states where 'open carry' is permitted.

Any participant observing a violation of this code of conduct, should promptly advise a KABOOM! staff member on site. The staff member will advise the Community Partner so that it may address the situation with the individual(s) involved. All KABOOM! staff members on site shall endeavor to promote a safe, welcoming, inclusive and fun environments for all participants.

EXHIBIT C

Warranties by Applicable Manufacturers (Next 7 Pages)

Landscape Structures Inc. ("Manufacturer") warrants that all playstructures and/ or equipment sold will conform in kind and in quality to the specifications manual for the products identified in the Acknowledgment of Order and will be free of defects in manufacturing and material. Manufacturer further warrants:

100-Year Limited Warranty On all PlayBooster® and PlayShaper® aluminum posts, stainless steel fasteners, clamps, beams and caps against structural failure due to corrosion/ natural deterioration or manufacturing defects, and on PlayBooster steel posts against structural failure due to material or manufacturing defects.

15-Year Limited Warranty On all Evos® and Weevos® steel arches, all plastic components (including TuffTimbers™ edging), all aluminum and steel components not covered above, Mobius® climbers, Rhapsody® Outdoor Musical Instruments, decks and TenderTuff™ coatings (except Wiggle Ladders, Chain Ladders and Swing Chain) against structural failure due to material or manufacturing defects.

10-Year Limited Warranty On concrete products against structural failure due to natural deterioration or manufacturing defects. Does not cover minor chips, hairline cracks or efflorescence.

8-Year Limited Warranty On Aeronet® climbers and climbing cables against defects in materials or manufacturing defects.

5-Year Limited Warranty On Rhapsody® cables and mallets against defects in materials or manufacturing defects, on polycarbonate panels against defects in materials or manufacturing defects, and on bamboo panels against delamination due to defects in materials or manufacturing defects. Does not cover damage which may be associated with the natural characteristics of bamboo aging, including but not limited to discoloration, splitting, cracking, warping or twisting, nor the formation of algae, mold and other forms of fungal-type bodies on bamboo.

3-Year Limited Warranty On all other parts, i.e.: Pulse® products, all swing seats and hangers, Mobius climber handholds, Wiggle Ladders, Chain Ladders and ProGuard™ Swing Chain, Track Ride trolleys and bumpers,

all rocking equipment including Sway Fun® gliders, belting material, HealthBeat® resistance mechanism, Seesaws, etc., against failure due to corrosion/ natural deterioration or manufacturing defects.

The environment near a saltwater coast can be extremely corrosive. Some corrosion and/or deterioration is considered "normal wear" in this environment. Product installed within 500 yards (457 meters) of a saltwater shoreline will only be covered for half the period of the standard product warranty, up to a maximum of five years, for defects caused by corrosion. Products installed in direct contact with saltwater or that are subjected to salt spray are not covered by the standard warranty for any defects caused by corrosion.

This warranty does not include any cosmetic issues or wear and tear from normal use of the product, or misuse or abuse of the product. It is valid only if the playstructures and/or equipment are erected to conform with Landscape Structures' installation instructions and maintained according to the maintenance procedures furnished by Landscape Structures Inc.



Play Equipment Warranty

You have our word.

All the warranties commence on date of Manufacturer's invoice. Should any failure to conform to the above express warranties appear within the applicable warranty period, Manufacturer shall, upon being notified in writing promptly after discovery of the defect and within the applicable warranty period, correct such nonconformity either by repairing any defective part or parts, or by making available a replacement part within 60 days of written notification. Manufacturer shall deliver the repaired or replacement part or parts to the site free of charge, but will not be responsible for providing labor or the cost of labor for the removal of the defective part or parts, the installation of any replacement part or parts or for disposal costs of any part or parts. Replacement parts will be warranted for the balance of the original warranty.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

The remedies hereby provided shall be the exclusive and sole remedies of the purchaser. Manufacturer shall not be liable for any direct, indirect, special, incidental or consequential damages.

Manufacturer neither assumes nor authorizes any employee, representative or any other person to assume for Manufacturer any other liability in connection with the sale or use of the structures sold, and there are no oral agreements or warranties collateral to or affecting this agreement. The warranties stated above are valid only if the structures and/or equipment are erected in conformance with Landscape Structures' installation instructions and maintained according to the maintenance procedures furnished by Landscape Structures Inc.; have been subjected to normal use for the purpose for which the goods were designed; have not been exposed to saltwater or salt spray; have not been subject to misuse, negligence, vandalism, or accident; have not been subjected to addition or substitution of parts; and have not been modified, altered, or repaired by persons other than Manufacturer or Manufacturer's designees in any respect which, in the judgement of Manufacturer, affects the condition or operation of the structures.

To make a claim, send your written statement of claim, along with the original job number or invoice number to: Landscape Structures Inc. 601 7th Street South, Delano, Minnesota, 55328-8605.

 President

Signed:

Date: 01/01/2020





Terms of Sale

PRICING: Landscape Structures' list prices do not include delivery and handling charges. Prices are subject to change without notice.

TERMS: To tax-supported institutions and those with established credit: net 30 days from the date of the invoice. 1.5% per month thereafter; freight charges are prepaid and applied to the invoice.

TAXES: Landscape Structures' list prices do not include applicable taxes, if any.

WEIGHTS: Weights are approximate and may vary.

DELIVERY: If delivery of the equipment is by common carrier, and there is damage or a shortage, notify the carrier at once and sign delivery documents provided by the carrier noting the damage or shortage. Most products are delivered on large pallets and will require a forklift or similar equipment to unload as a unit on the site.

INSTALLATION: All playstructures and/or equipment are delivered unassembled and packaged with recyclable materials. For a list of factory-certified installers in your area, please contact your Landscape Structures playground consultant.

SERVICE: We have knowledgeable, qualified playground consultants throughout the world who are available to help you before, during and after the sale. Landscape Structures has exclusive design software that features all of our parts and pieces in pull-down menus. With this software, your playground consultant can design a playground layout that meets not only your needs, but ASTM and CPSC standards as well. In addition, we have a full staff of NPSI-certified designers, along with 2D and 3D drawing capabilities and custom capabilities to assist you with your playground plans.

RETURN POLICY: As an indication of our commitment to our customers, Landscape Structures will accept returns of new structures and/or new equipment purchased within 60 days of the original invoice date. Advance notification is necessary to ensure proper credit. Parts not included in this return policy are custom parts (including PlayShaper® posts), as well as used or damaged parts. A 20% restock fee plus all return freight charges will apply to all product returns. **NOTE:** All parts are subject to inspection upon return. Parts returned damaged may not receive a full credit. For this reason, it is important that all returned parts are properly packaged to prevent damage while in transit.

PRODUCT CHANGES: Because of our commitment to safety, innovation, and value, we reserve the right to change specifications at any time.

PLEASE CONTACT US AT:

Landscape Structures Inc.
601 7th St. South
Delano, MN 55328-8605
888.438.6574 (*inside the U.S.A.*)
763.972.5200 (*outside the U.S.A.*)
playlsi.com



601 7th Street South • Delano, MN 55328-8605 • 888.438.6574 • 763.972.5200 • Fax 763.972.3185 • playlsi.com

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Connor Sport Court Intl., Inc.

Game Court Components and Accessories Warranty
(Valid Upon Registration)

10-Year Limited Warranty

For a period of ten (10) years from the date of the installation, Connor Sport Court International, Inc. (herein Sport Court®) and its authorized Representative (herein Distributor/Dealer/Sales Agent) warrants to the Original Purchaser that Sport Court®'s Components and Accessories (herein Components and Accessories) are free from any defect(s) in workmanship or material. This Limited Warranty is subject to the Components and Accessories Warranty, Additional Provisions, Limitations/Exclusions and Registration of Warranty provisions set forth below.

COMPONENTS AND ACCESSORIES WARRANTY

During the 10-year period covered under this Components and Accessories Warranty, Sport Court® will replace/repair any defective Component(s) or Accessory(ies) under the following schedule:

- Basketball Systems, including height adjustment mechanism, arms and actuators; basketball poles, backboards, winches, basketball rims, and anchors; and other steel components including light and net poles, light bars, rebounder frames, poles and sleeves;
 - 0 _ 3 Years, no charge to Original Purchaser.
 - 4 _ 7 Years, 50% of List Price (as defined below) to Original Purchaser.
 - 8 _ 10 Years, 70% of List Price (as defined below) to Original Purchaser.
- Light bulbs and lenses, court nets, ball containment netting, game equipment (excluding balls), backboard and pole pads only as follows:
 - 0 _ 1 Year, no charge to Original Purchaser.

This Components and Accessories Warranty is subject to the Additional Provisions, Limitations/Exclusions and Registration of Warranty Provisions set forth below and specifically excludes any aesthetic oxidation/rust of/to any Components incident to or arising from the installment/use of any Components in an outdoor setting.

ADDITIONAL PROVISIONS

At its option, Sport Court® may replace/repair any defective aspect of the Components or the Accessories covered by any of the foregoing Warranties, according to the schedules set forth herein. For purposes of the foregoing Warranties, List Price shall mean the prevailing retail price as of the date any Component(s)/Accessory(ies) that may be replaced. Original Purchaser's refusal, or failure, to pay his/her portion of any replacement costs due under the foregoing Warranties renders the foregoing Warranties void and unenforceable and relieves Sport Court® and Distributor/Dealer/Sales Agent of any further obligation(s) under any of the foregoing Warranties.

LIMITATIONS/EXCLUSIONS

Sport Court®'s Warranties herein are void and unenforceable as to the Original Purchaser if:



SPORT
COURT

Connor Sport Court Intl., Inc.

Game Court Components and Accessories Warranty

(Valid Upon Registration)

- Original Purchaser fails to maintain the Component(s) or Accessory(ies) in accordance with Sport Court®'s approved maintenance procedures; or
- The Component(s) or Accessory(ies) have been misused, used in other than approved applications, or damaged by accident, unreasonable use, abuse, neglect, act(s) of God, or any other cause not directly due to any defect(s) in material(s) or workmanship of the Component(s) or Accessory(ies); or
- The Component(s) or Accessory(ies) have been exposed to any use(s)/load(s) in excess of Sport Court®'s specifications that have been provided to Original Purchaser by Distributor/Dealer/Sales Agent at the time of installation. If the Original Purchaser cannot locate the specification sheet, Sport Court® will provide the same upon request, or Original Purchaser may visit Sport Court®'s website at www.sportcourt.com to obtain a copy of the same.
- Original Purchaser does not utilize Distributor/Dealer/Sales Agent to install the Component(s) or Accessory(ies) and the alleged defect(s) in workmanship or material result from or is/are incident to, in whole or in part, the installation of any Component(s) or Accessory(ies).

Sport Court® is not a joint venturer with, or partner, affiliate, agent or representative of, any Distributor/Dealer/Sales Agent or any others, and only authorized officers of Sport Court® have the authority to bind or obligate Sport Court® in connection with the foregoing Warranties or in any other manner whatsoever. Except as provided herein, Sport Court® does not warrant or guarantee installation. Any alteration or amendment of the foregoing Warranties without the prior written consent of Sport Court® shall invalidate the foregoing Warranties in their entirety.

NO WARRANTIES, EXPRESSED OR IMPLIED, ARE MADE BEYOND THOSE WARRANTIES SET FORTH HEREIN. TO THE EXTENT PERMITTED BY LAW, ANY IMPLIED WARRANTY(IES) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLICABLE TO ANY COMPONENT(S) OR ACCESSORY(IES) ARE EXCLUDED. NEITHER SPORT COURT® NOR THE DISTRIBUTOR/DEALER/SALES AGENT SHALL BE LIABLE OR RESPONSIBLE TO THE ORIGINAL PURCHASER FOR ANY LOST PROFITS/WAGES, INCONVENIENCE, COMMERCIAL LOSS, INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES SUFFERED OR SUSTAINED BY THE ORIGINAL PURCHASER. SPORT COURT®'S MAXIMUM RESPONSIBILITY TO THE ORIGINAL PURCHASER UNDER THE FOREGOING WARRANTIES IS/ARE LIMITED TO THE TOTAL PRICE PAID BY THE ORIGINAL PURCHASER TO SPORT COURT® FOR THE COMPONENT(S)/ACCESSORY(IES). THE FOREGOING DAMAGE LIMITATION SHALL APPLY REGARDLESS OF WHETHER THE ORIGINAL PURCHASER ASSERTS ANY CLAIM(S) FOR BREACH OF WARRANTY/CONTRACT, STRICT LIABILITY OR TORTIOUS MISCONDUCT AND REGARDLESS OF WHETHER SPORT COURT® HAS BEEN ADVISED OF ANY POTENTIAL FOR DAMAGE(S) TO THE ORIGINAL PURCHASER PRIOR TO ACCRUAL OF ANY CLAIM(S) BY, TO, OR FOR THE BENEFIT OF THE ORIGINAL PURCHASER.

THE FOREGOING WARRANTIES MAY NOT BE ASSIGNED OR TRANSFERRED BY THE ORIGINAL PURCHASER. SPORT COURT®'S AND DISTRIBUTOR'S/SALES AGENT'S OBLIGATIONS UNDER THE FOREGOING WARRANTIES ARE EXTINGUISHED UPON THE ORIGINAL PURCHASER'S SALE, ASSIGNMENT, TRANSFER OR RELOCATION OF THE COMPONENT(S)/ACCESSORY(IES) FROM THE SITE THE COMPONENT(S)/ACCESSORY(IES) WAS/WERE ORIGINALLY INSTALLED BY DISTRIBUTOR/DEALER/SALES AGENT. IF THE ORIGINAL PURCHASER SELLS, ASSIGNS



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Connor Sport Court Intl., Inc.

Game Court Components and Accessories Warranty

(Valid Upon Registration)

OR TRANSFERS THE COMPONENT(S)/ACCESSORY(IES) AS A FIXTURE TO THE REAL PROPERTY UPON WHICH THE COMPONENT(S)/ACCESSORY(IES) WAS/WERE ORIGINALLY INSTALLED, SPORT COURT® AND DISTRIBUTOR/DEALER/SALES AGENT SHALL HAVE NO FURTHER OBLIGATIONS UNDER THE FOREGOING WARRANTIES TO ANY PURCHASER, ASSIGNEE OR TRANSFEREE OF THE ORIGINAL PURCHASER. THE FOREGOING WARRANTIES SHALL BE GOVERNED AND INTERPRETED UNDER THE INTERNAL LAWS OF THE STATE OF UTAH WITHOUT REFERENCE TO ANY CHOICE OF LAW PROVISION(S) OF ANY OTHER STATE OR JURISDICTION.

REGISTRATION OF WARRANTY

Registration of this warranty may be accomplished by:

The authorized Sport Court® Distributor/Dealer/Sales Agent will submit Original Purchaser's name and information to the Warranty Registration Database at the Sport Court® corporate office.

If the authorized Sport Court® Distributor/Dealer/Sales Agent fails to correctly register the Customer's warranty, then Sport Court®'s obligations under this Warranty shall become effective on the date of Distributor's/Dealer's/Sales Agent's installation of the Component(s) or Accessory(ies). If the Component(s) or Accessory(ies) is/are not installed by any Distributor/Dealer/Sales Agent of Sport Court, then this Warranty shall become effective upon Original Purchaser's full payment for the Component(s) or Accessory(ies).



Outdoor Surface Warranty

15-Year Limited Warranty

For a period of fifteen (15) years from the date of installation, Sport Court® warrants to the Original Purchaser (herein Purchaser) that Sport Court's Outdoor Surface tiles (herein Tiles) are free from any defect in workmanship or material. This 15-Year Limited Warranty is subject to the Outdoor Surface Tiles Warranty, Replacement or Repair of Product, Limitations and Exclusions, and Warranty Registration and Claim Procedure provisions set forth below.

Outdoor Surface Tiles Warranty

During the fifteen (15) year period covered under this Outdoor Surface Tiles Warranty, Sport Court through its authorized Distributors, Dealer or Sales Agent (herein Agent) will replace or repair any defective tiles under the following schedule:

0 to 5 Years - No charge to Purchaser.

6 to 7 Years - 60% of List Price (as defined below) charge to Purchaser.

8 to 15 Years - 75% of List Price (as defined below) charge to Purchaser.

Replacement or Repair of Product

At its option, Sport Court may replace or repair any defective Tiles or Surface component covered by this Warranty according to the schedule herein. List Price shall mean the prevailing retail price as of the date on which any warranty claim is filed with Sport Court. Purchaser's refusal or failure to pay their portion of any replacement costs due under this Warranty renders the Warranty void and unenforceable and relieves Sport Court and its authorized Agent of any further obligation under this Warranty.

Limitations and Exclusions

Sport Court warranties are void and unenforceable if:

- a) Purchaser fails to maintain the Tiles in accordance with the Sport Court approved maintenance procedures; or
- b) The Tiles have been misused, used in other than approved applications or damaged by accident, unreasonable use, abuse, neglect, acts of God, or any other cause not directly due to any defect in materials or workmanship of the Tiles; or
- c) The Tiles have been exposed to any uses or loads in excess of the Sport Court specifications provided to Purchaser by Agent at the time of installation. If the Purchaser cannot locate the specification sheet, Sport Court will provide the same upon request, or Purchaser may visit Sport Court's website at www.sportcourt.com to obtain a copy of the same.

Sport Court is not a joint venture with, or partner, affiliate, or representative of, any Agent, or any others, and only authorized officers of Sport Court have the authority to bind or obligate Sport Court in connection with this Warranty or in any other manner whatsoever. Except as provided herein, Sport Court does not warrant installation.

Any alteration or amendment of this Warranty without the prior written consent of Sport Court shall invalidate this Warranty in its entirety.

NO WARRANTIES, EXPRESSED OR IMPLIED, ARE MADE BEYOND THE WARRANTIES SET FORTH HEREIN. TO THE EXTENT PERMITTED BY LAW, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLICABLE TO ANY FLOORING IS EXCLUDED. NEITHER SPORT COURT NOR THE AGENT SHALL BE LIABLE OR RESPONSIBLE TO THE PURCHASER FOR ANY LOST PROFITS OR WAGES, INCONVENIENCE, COMMERCIAL LOSS, INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES SUFFERED OR SUSTAINED BY THE PURCHASER.

THE MAXIMUM RESPONSIBILITY OF SPORT COURT TO THE PURCHASER UNDER THIS WARRANTY IS LIMITED TO THE TOTAL PRICE PAID BY THE PURCHASER TO SPORT COURT OR ITS AGENT FOR THE FLOORING. THE FOREGOING DAMAGE LIMITATION SHALL APPLY REGARDLESS OF WHETHER THE PURCHASER ASSERTS ANY CLAIM FOR BREACH OF WARRANTY OR CONTRACT, STRICT LIABILITY OR TORTIOUS MISCONDUCT, AND REGARDLESS OF WHETHER SPORT COURT HAS BEEN ADVISED OF ANY POTENTIAL FOR DAMAGES TO THE PURCHASER PRIOR TO ACCRUAL OF ANY CLAIM BY, TO, OR FOR THE BENEFIT OF THE PURCHASER.

THE FOREGOING WARRANTY MAY NOT BE ASSIGNED OR TRANSFERRED BY THE PURCHASER. THE OBLIGATIONS OF SPORT COURT AND ITS AUTHORIZED AGENT UNDER THIS WARRANTY ARE EXTINGUISHED UPON THE PURCHASER'S SALE, ASSIGNMENT, TRANSFER, OR RELOCATION OF THE FLOORING FROM THE SITE WHERE THE FLOORING WAS ORIGINALLY INSTALLED BY AGENT. IF THE PURCHASER SELLS, ASSIGNS, OR TRANSFERS THE FLOORING AS A FIXTURE TO THE REAL PROPERTY UPON WHICH THE FLOORING WAS ORIGINALLY INSTALLED, SPORT COURT AND ITS AUTHORIZED AGENT SHALL HAVE NO FURTHER OBLIGATION UNDER THIS WARRANTY TO THE PURCHASER, OR ANY ASSIGNEE, OR TRANSFEREE OF THE PURCHASER.

THE FOREGOING WARRANTY SHALL BE GOVERNED AND INTERPRETED UNDER THE INTERNAL LAWS OF THE STATE OF UTAH WITHOUT REFERENCE TO ANY CHOICE OF LAW OR PROVISION OF ANY OTHER STATE OR JURISDICTION.

Warranty Registration and Claim Procedure

The Agent will register this Warranty. If the authorized Agent fails to register the warranty, then the obligation of Sport Court under this Warranty shall become effective on the date of installation.

Should you have a problem with any Sport Court product, please contact your Sport Court Agent. To file a claim under this Warranty, Sport Court or its authorized Agent may request photos and tile samples.