

RESOLUTION OF THE CITY COUNCIL

No. 492

Approved September 14, 2001

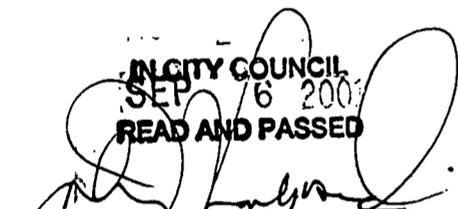
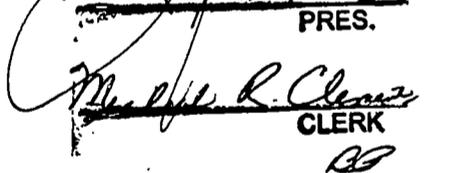
WHEREAS, "Boundless Playgrounds" is a concept by which playgrounds may be constructed which are suitable for use by handicapped individuals;

WHEREAS, The City of Providence wishes to construct such a playground at Roger Williams Park;

WHEREAS, the Hasbro Corporation has agreed to undertake, at its own cost, the construction of such a playground at Roger Williams Park.

WHEREAS, such proposal requires an agreement among the City of Providence, the Hasbro Corporation and "Boundless Playgrounds".

NOW THEREFORE BE IT RESOLVED, That His Honor the Mayor is, on behalf of the City of Providence authorized to enter into an Agreement for the construction of a "Boundless Playground" at Roger Williams Park. Said Agreement shall be substantially in accordance with the document attached hereto as Exhibit "A".

IN CITY COUNCIL
SEP 16 2001
READ AND PASSED

PRES.

CLERK

APPROVED
SEP 14 2001

MAYOR

Vertical stamp: RECEIVED
Vertical stamp: SEP 14 2001
Vertical stamp: albruce@providence.org

IN CITY COUNCIL
MAY 17 2001
FIRST READING
REFERRED TO COMMITTEE ON
FINANCE

Michael R. Choate
BO

THE COMMITTEE ON

Finance
Recommends *Be Continued*
Anna M. Stetson
8-20-01 CLERK

THE COMMITTEE ON

Finance
Recommends - *Approval, As Amended*
Anna M. Stetson
8-28-01 CLERK

Councilman Butler (By request)

COPY

ROGER WILLIAMS PARK BOUNDLESS PLAYGROUND AGREEMENT

This Agreement is made and entered into as of the _____ 2001, by and among the City of Providence, a municipality in the State of Rhode Island ("City"), Hasbro, Inc., a Rhode Island corporation ("Hasbro"), and Boundless Playgrounds, Inc., a non-profit corporation of the State of Connecticut ("Boundless Playgrounds").

WITNESSETH

WHEREAS, the City, acting through the Providence Parks Department, owns, operates, and maintains a public park and playground at Roger Williams Park (the "Park") for the use and recreation of the children and citizens of the City of Providence and the State of Rhode Island;

WHEREAS, the City intends to utilize a portion of the Park property for the construction, creation, operation, and maintenance of a universally-accessible, fully-integrated, sensory-rich playground to be known as a "Boundless Playground" (the "Playground");

WHEREAS, Boundless Playgrounds desires to act as program manager to develop the Playground for the benefit of children of all abilities; and

WHEREAS, Hasbro has provided funding exclusively for Boundless Playgrounds' development of the Playground at the Park.

NOW, THEREFORE, in consideration of Hasbro's grant of Three Hundred Fifty Thousand Dollars (\$350,000) to Boundless Playgrounds, and in consideration of the mutual covenants and promises contained herein, the adequacy, sufficiency, and receipt of which are hereby acknowledged, the parties hereby agree as follows:

1. Program Manager. Boundless Playgrounds shall act as program manager for the design of the Playground and shall engage a reputable firm to serve as general contractor ("General Contractor") to provide services, including but not limited to design, engineering, and construction of the Playground. General Contractor shall select reputable firms for any

work subcontracted and shall ensure that every vendor requires each of its subcontractors to carry insurance in accordance with the terms of Exhibit A at all times during the performance of services hereunder. Prior to commencement of any services, the General Contractor shall provide to Boundless Playgrounds, Hasbro, and the City all applicable credentials, certifications and/or licenses as state or local law or regulation or code may require, and certificate(s) of insurance that substantially comply with the requirements set forth on Exhibit A, attached hereto and made a part hereof. In addition, the General Contractor shall name Hasbro, the City, and Boundless Playgrounds, as additional insureds on the insurance policies.

2. Design, Engineering, and Construction Standards. Boundless Playgrounds shall ensure that the Playground is designed, engineered, and constructed as a "Boundless Playground", in accordance with the Boundless Playgrounds criteria set forth in Exhibit B. In addition, Boundless Playgrounds shall require the General Contractor to design, engineer, and construct the Playground in accordance with all applicable U.S. Consumer Product Safety Commission (CPSC) guidelines, American Society for Testing and Materials (ASTM) standards, other applicable standards in the industry for universally accessible play areas, and all other applicable local, state, and federal laws and regulations. Boundless Playgrounds will also require the General Contractor to design, engineer and construct Playground equipment and play surfacing certified by International Play Equipment Manufacturer's Association (IPEMA) as complying with all applicable ASTM and other standards, including but not limited to ASTM F-1487-98 ("Standard Consumer Safety Performance Specifications for Playground Equipment for Public Use Standard") and ASTM F-1292-99 ("Impact Attenuation of Surface Systems Under and Around Playground Equipment Standard").
3. Approval and Permission To Use Intellectual Property of Hasbro. The parties hereto expressly acknowledge and agree that Hasbro's prior written approval shall be required for use of the name, characters, symbols, designs, likeness, and visual representations of any Hasbro toy, game, or other product or property, or for the use of the copyrights and trademarks thereon, or for the use of any other intellectual property of Hasbro in connection with the Playground. Hasbro's approval and permission is expressly contingent upon the good faith negotiation and execution of a mutually acceptable license or other

agreement, which shall contain, among other provisions, quality control and intellectual property protection provisions.

4. Timing. Boundless Playgrounds shall contract with the General Contractor to ensure that the Playground is constructed and operational in accordance with the timeline and schedule set forth on Exhibit C, attached hereto and made a part hereof. Boundless Playgrounds shall exercise its best efforts in performing its obligations under this Agreement and acknowledges that time is of the essence for the performance of its obligations.

5. Priority Matrix and Objectives. Boundless Playgrounds, Hasbro, and the City acknowledge that they conducted a “Values and Outcomes” exercise which culminated in the development of a priority matrix and objectives of the project contemplated herein, both of which are attached hereto and made a part hereof as Exhibit D. The parties also conducted “Dreaming and Design Parties” for children of all abilities to share their ideas and suggestions for design of the Playground and selection of the Playground equipment.

6. Site Plan. Boundless Playgrounds may incorporate recommendations received during the Values and Outcomes exercise and the Dreaming and Design Parties. Boundless Playgrounds shall use the Site Plan for the purchase and placement of the Playground equipment and apparatus. The Site Plan is attached hereto as Exhibit E and is made a part hereof.

7. Operation and Maintenance of Playground. The parties understand and agree that the Playground and all equipment and apparatus placed thereon shall at all times remain the property of the City. The parties agree that following completion of the Playground and prior to the opening of the Playground, Boundless Playgrounds shall ensure that: (a) an inspection of the Playground is conducted by a Certified Playground Safety Inspector (CPSI) certified by the National Recreation and Parks Association, (b) the Playground equipment manufacturer confirms in writing that the equipment has been properly installed in accordance with its standards and all applicable laws and regulations, and (c) any safety deficiencies identified are corrected by the General Contractor and certified in writing by the General Contractor as corrected. Prior to the opening of the Playground, the City shall review the Playground and the CPSI inspection report, inspect corrected safety

deficiencies, if any, and notify Boundless Playgrounds of the corrected safety deficiencies or any other material safety deficiencies in writing. Furthermore, prior to the opening of the Playground, the City shall notify Boundless Playgrounds in writing that it accepts the Playground for public use, which acceptance shall not be unreasonably withheld.

Following its written acceptance of the Playground, the City shall operate, maintain, and repair the Playground (including but not limited to the grounds, the Playground surfacing, and the Playground equipment and apparatus (except for the Mr. Potato Head® and the Candy Land® path, both of which Hasbro shall maintain)) in accordance with all applicable ASTM and CPSC standards. In the event any Playground equipment or apparatus requires repair, replacement, or other change, or any other material change, modification, or addition to the Playground is deemed advisable or necessary, they shall be made in accordance with the maintenance, repair, and upkeep standards set forth on Exhibit F, attached hereto and made a part hereof.

Boundless Playgrounds shall ensure that a CPSI shall inspect and certify the Playground annually. The City shall inspect the Playground monthly and shall maintain in force property and casualty insurance coverage for the Playground in accordance with the terms of Exhibit A. Routine repairs or replacement of equipment shall be made by the City according to ASTM and CPSC standards, as applicable. The City agrees that, absent written consent from Boundless Playgrounds, which shall not be unreasonably withheld, it shall not, in any material manner, alter, replace, change or modify the Playground, including but not limited to the equipment and apparatus. In addition, the City agrees to operate and maintain the Playground in accordance with the Boundless Playgrounds' criteria for full integration and universal accessibility, the Americans with Disabilities Act ("ADA"), applicable state and local disability discrimination laws, applicable ASTM standards, and all other applicable federal, state, and local laws and regulations.

8. Obligations, Liability, and Indemnification.

a. Hasbro's Obligations to Provide Funding.

Except for the limited indemnity obligation of Hasbro set forth in Section 8(b) below, the parties agree and acknowledge that Hasbro's sole obligation hereunder is to

provide funding, which obligation the parties hereby acknowledge has been satisfied in full by Hasbro as of the date hereof. Furthermore, Hasbro assumes no other obligation or liability whatsoever under this Agreement or with respect to the design, engineering, construction, use, operation, repair, upkeep, or maintenance of the Park, the Playground, its equipment or apparatus, or any claims or disputes (including but not limited to personal injury claims) related hereto or thereto in any way.

b. Obligation of Boundless Playgrounds, General Contractor, and Hasbro to Indemnify City During Construction Period.

Each of Boundless Playgrounds, the General Contractor, and Hasbro agrees to indemnify, defend, and hold harmless the City, its agents, and its employees from and against any and all liability, claims, judgments, costs, losses, expenses (including reasonable attorneys' fees), and demands arising directly out of their respective actions or inactions, or the actions or inactions of its employees, agents, or subcontractors, during the Playground's construction period; provided, however, Hasbro's indemnity obligation hereunder shall be limited to its actions or inactions, or the actions or inactions of its employees, during the volunteer day at the Playground, May __, 2001.

c. Obligation of Boundless Playgrounds to Indemnify City for Design Defects.

Boundless Playgrounds agrees to indemnify, defend, and hold harmless the City, its agents, and its employees from and against any and all liability, claims, judgments, costs, losses, expenses (including reasonable attorneys' fees), and demands arising directly out of any design defects in connection with the Playground. This indemnification clause shall survive the termination of this Agreement.

d. Obligation of City and Boundless Playgrounds to Indemnify Hasbro.

Each of the City and Boundless Playgrounds agrees to indemnify, defend, and hold harmless Hasbro, its affiliates, subsidiaries, officers, directors, stockholders, agents and employees, from and against any and all liability, claims, judgments, costs, losses, expenses (including attorneys' fees) and demands arising directly or indirectly out of its

respective actions or inactions, or the actions or inactions of its agents or subcontractors, in connection with this Agreement, the Playground, or anything related in any way thereto. This indemnification clause shall survive the termination of this Agreement.

e. Obligation of City to Indemnify Boundless Playgrounds.

As a condition of the City's acceptance of the Playground for public use (as described in Section 7 hereof), the City agrees to indemnify, defend, and hold harmless Boundless Playgrounds, its officers, directors, and employees, from and against any and all liability, claims, judgments, costs, losses, expenses (including attorneys' fees) and demands arising directly or indirectly out of its respective actions or inactions, or actions or inactions of its agents or subcontractors, in connection with this Agreement, the Playground, or anything related in any way thereto. This indemnification clause shall survive the termination of this Agreement.

9. Audit. The parties mutually agree that all records and books retained by any party reasonably related to this Agreement shall be made available for inspection and/or audit to the requesting party at any time during normal business hours, under reasonable circumstances, and without business interruption. The requesting party shall be entitled to copy any information reasonably related to this Agreement from such records and books. The party requesting the inspection and/or the audit shall provide written notice to the other party at least fifteen (15) days prior to the date of the audit or inspection.
10. Termination. Fifteen (15) years from the effective date hereof, this Agreement and the parties obligations hereunder shall terminate, and the Playground shall close and cease to operate; provided, however, at that time, Hasbro may consult with the City to determine the future use of that portion of the Park dedicated to the Playground.
11. Miscellaneous. If any provision or item of this Agreement or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Agreement which shall be given effect without the invalid provisions, items or applications and, to this end, the provisions of this Agreement are hereby declared severable. This Agreement shall be governed by the laws of the State of Rhode Island and the parties hereto consent to the jurisdiction of the courts of Rhode Island in the event of a dispute

arising hereunder. This Agreement shall be binding upon, and inure to the benefit of, all of the parties and their respective successor and agencies, including any entity with which, or into which, Hasbro may be merged or which may succeed to its agents or business; provided, however, that the obligations of Boundless Playgrounds are personal and shall not be assigned without the other parties' prior written consent. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized as of the day and year first written above.

WITNESS:

City of Providence, Rhode Island

By: _____

Its: _____, duly authorized

WITNESS:

Hasbro, Inc.

By: _____

Its: _____, duly authorized

WITNESS:

Boundless Playgrounds, Inc.

By: _____

Its: Executive Director, duly authorized

WITNESS:

Town & Country Landscaping, Inc.

By: _____

Its: _____, duly authorized

Exhibit A

Insurance Requirements

- Commercial General Liability, including endorsements for Products and Completed Operations and Contractual Liability, with a limit of not less than \$1,000,000.00 per occurrence;
- Builders' Risk insurance on the entire work;
- Architects and Engineers Professional Liability, with a limit of not less than \$1,000,000.00 per occurrence;
- Automobile Liability with a limit of not less than \$1,000,000.00 each accident;
- Workers' Compensation insurance with statutory limits for the state or states in which the work is to be performed; and
- Employers' Liability insurance with a minimum limit of \$500,000.00 per accident.

Exhibit B

Boundless Playgrounds Criteria

Performance Standards For Boundless Playgrounds™ Play Environment Designs

1.0 General Requirements:

1.1 Playground Safety Compliance Requirements - All *Boundless Playgrounds* certified play environment designs shall be compliant with the ASTM F1487 "Standard Consumer Safety Performance Specification for Playground Equipment for Public Use" as published by the American Society for Testing and Materials, West Conshohocken, PA and the U.S. Consumer Product Safety Commission's "Handbook for Public Playground Safety" Publication #325. The playground equipment producers must supply a third party certification of compliance to both of these standards for all manufactured playground equipment.

1.1.1 *Exemption:* Play environment features/playground equipment structures that have no moving parts, like playhouses and sandboxes are exempt from this requirement.

1.2 State and Local Compliance Requirement - All *Boundless Playgrounds* certified play environment designs shall be compliant with all pertinent state and local regulations/codes or requirements for playgrounds and play environments.

1.3 ADAAG Compliance Requirement - All *Boundless Playgrounds* certified play environment designs shall be compliant with all provisions of the American with Disabilities Act Accessibility Guidelines including but not limited to the provisions covering play environments, pathways, parking, drinking fountains, access to public restroom facilities.

1.4 Safety Inspection - A Certified Playground Safety Inspector (CPSI) should inspect the *Boundless Playgrounds* play environment after the installation has been completed. The National Recreation and Parks Association, Ashburn, VA is the authorizing agency of the certification of a CPSI. (A list of CPSI's in your area can be obtained by calling 703.858.0784) Any safety deficiencies identified in the CPSI report must be corrected by the playground equipment vendor/installer or adjusted to the satisfaction of the play environment owner.

1.5 Maintenance Plan - A routine maintenance plan shall be provided to the owner of the play environment by the producer/supplier of the playground equipment.

2.0 Site Requirements:

2.1 Surfacing Materials - All *Boundless Playgrounds* play environment certified designs shall provide a diversity of surfacing materials.

2.1.1 All safety surfacing materials used in the playground equipment use zones shall meet the provisions for impact attenuation in accordance with ASTM F1292 "Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment". Only test results with certified reports from an independent testing laboratory shall be acceptable as proof of compliance.

2.1.2 All accessible surfaces shall be firm, stable, and slip resistant. Diversity must be added to the accessible surfaces with more than one of these characteristics; texture, minor variations in grade, undulation and/or color.

2.1.3 All *Boundless Playgrounds* play environment certified designs shall provide safety surfacing materials in the accessible portions of the playground equipment use zones in compliance with ASTM F1951 "Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment". Only test results with certified reports from an independent testing laboratory shall be acceptable as proof of compliance.

2.1.4 In all areas of the play environment where a child using a wheelchair could play interactively with peers accessible safety surfacing material shall be provided.

2.2 Age-segregated Play Zones - Unless otherwise dictated by the specific use of the play environment site all *Boundless Playgrounds* play environment certified designs shall provide age-segregated play zones for children 2 to 5 years old and children 5 to 12 years old. An area for children under 2 years old is recommend when feasible.

2.2.1 Any play environment for children under 5 years old should provide a method of securing the children in the space, like a fence. This feature is a *Boundless Playgrounds* play environment design requirement when the play environment is sited near a potential hazard - example open water or a street.

2.3 Signage - Signage indicating the age appropriateness of play equipment is required. Signage requiring adult supervision for children of all ages is recommended. Braille signage is recommended.

2.4 Shade - Shade should be provided as a feature of *Boundless Playgrounds* certified play environment design.

2.5 Diverse Natural Materials - All *Boundless Playgrounds* play environment certified designs shall provide opportunities for children of all abilities to interact with a diversity of child-friendly (hardy, indigenous, non-poisonous) natural organic and inorganic materials.

3.0 Playground Equipment Requirements:

3.1 Accessibility Features - All *Boundless Playgrounds* play environment certified designs shall provide opportunities for children using their typical means of mobility to access a minimum 70% of the elevated play surfaces.

3.1.1 For children less than 5 years old integrated play opportunities can be provided on accessible elevated play surfaces that are reached by the use of a transfer platform. When transfer platforms are used on composite play structures as the sole means of providing access for children with mobility impairments these criteria must be adhered to:

(a) Connections between elevated play surfaces shall be selected to encourage all children to crawl through some portion of the play structure. (b) The safety surfacing materials in the play equipment use zone shall be unitary rubber surface.

3.1.2 All *Boundless Playgrounds* play environment certified designs shall provide a minimum of 3 play choices on each elevated play surface where children using their typical means of mobility can play.

3.1.3 All *Boundless Playgrounds* play environment certified designs shall provide looped play features. Children must be able to access a slide directly at a transfer point before the slide, use the slide, aided or independently cross the surfacing and get back to the top of the slide. The design must provide space both on the ground and on the elevated play surface for an adult to assist children without posing a hindrance to active child play.

3.2 Multi-sensory Features - All *Boundless Playgrounds* play environment certified designs shall provide movement stimuli for all children like up & down, back & forth, round & round. The play environment should provide an opportunity for children of all abilities to develop upper body strength, cross lateral pattern skill and balance. All *Boundless Playgrounds* play environment certified designs shall provide rigorous physical play features like climbers and upper body devices for typically-able children.

3.3 Manipulative Play Features - All *Boundless Playgrounds* play environment certified designs shall provide manipulative play experiences for children of all abilities like raised sand play tables linked with a sand box.

3.4 Playground Equipment Safety Requirements - All *Boundless Playgrounds* play environment certified designs shall provide a safe environment for children of all abilities to play interactively with their peers and siblings.

3.4.1 All *Boundless Playgrounds* play environment certified designs shall provide barriers and/or guardrails at any opening or edge where access has been provided for users of wheelchairs to limit the potential of an inadvertent fall from an elevated surface. This provision includes: (a) the openings at the top of a stairway or the entrance to an upper body device on an elevated surface that is part of a composite play structure and, (b) any surface in the play environment like the edge created by an elevated retaining wall.

3.4.2 All *Boundless Playgrounds* play environment certified designs shall provide adequate space on the elevated level surfaces accessible to children using wheelchairs to accommodate two children using wheelchairs to maneuver. (Ramps to access elevated level composite play structure platforms must comply with the provisions of ASTM F1487-98.)

3.4.3 All *Boundless Playgrounds* play environment certified designs shall provide a visual prompt between adjacent play platforms with a difference in elevation like platforms with different colors or edge markers.

Exhibit C

Schedule

[TO BE PROVIDED BY BOUNDLESS PLAYGROUNDS]

Exhibit D

Priority Matrix and Objectives

[TO BE PROVIDED BY BOUNDLESS PLAYGROUNDS]

Exhibit E

Site Plan

[TO BE PROVIDED BY BOUNDLESS PLAYGROUNDS]

Exhibit F

Maintenance, Repair and Upkeep Standards

[TO BE PROVIDED BY EQUIPMENT MANUFACTURERS AND BY CITY]