

**When recorded, return to:**

City of Tempe basket

**THIRD ADDENDUM TO  
DEVELOPMENT AND DISPOSITION AGREEMENT  
No. C2006-60D**

THIS THIRD ADDENDUM TO DEVELOPMENT AND DISPOSITION AGREEMENT (the “Third Addendum”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016 (the “Effective Date”), between the City of Tempe, an Arizona municipal corporation (“City”), and Childsplay Inc. an Arizona non-profit corporation (“Childsplay”).

**RECITALS**

A. City and Childsplay are parties to that certain Development and Disposition Agreement (C2006-60) dated as of March 2, 2006 and recorded on March 24, 2006 in the Official Records of Maricopa County, Arizona as Recorder’s Number 2006-0401031, as amended by a First Addendum to Development and Disposition Agreement (C2006-20a) dated October 5, 2006 and recorded on November 3, 2006 in the Official Records of Maricopa County, Arizona as Recorder’s Number 2006-1458223, and a Second Addendum to Development and Disposition Agreement (C2006-60C) dated as of October 2, 2008 and recorded on November 24, 2008 in the Official Records of Maricopa County, Arizona as Recorder’s Number 2008-1004131(collectively the “Development Agreement”). In addition, the Parties have entered into the following agreements: an Accommodation and Settlement Agreement dated as of May 31, 2007 (C2006-60B); and a Performance Agreement dated as of January 14, 2016 (C2016-04). Capitalized terms used herein without definition shall have the meanings given such terms in the Development Agreement.

B. City and Childsplay are parties to that certain Special Warranty Deed dated October 30, 2006 and recorded on October 30, 2006 in the Official Records of Maricopa County, Arizona as Recorder’s Number 2006-1428556 (the “Deed”) whereby the City conveyed the Property to Childsplay pursuant to the terms of the Development Agreement. For purposes of this Third Addendum, the term “Property” refers to the real property conveyed to Childsplay via the Deed.

C. City and Childsplay desire to have the City repurchase the Property for the Repurchase Price as set forth in this Third Addendum and to further amend the Development Agreement as more fully outlined herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto state, confirm and agree as follows:

## A G R E E M E N T

1. **Accuracy of Recitals.** The parties acknowledge the accuracy of the Recitals as if fully set forth herein.

2. **Development Agreement.** The parties hereby acknowledge and agree that each of them has satisfied its respective obligations under certain portions of Section 2 of the Development Agreement, and that neither has any further obligation or liability thereunder.

2.1 Section 2.1 of the Development Agreement is hereby amended in its entirety to read as follows:

2.1 **Duration of Development Agreement.** The term of the Development Agreement commenced on the date it is executed by all of the parties and continue until two (2) years after expiration of the Lease, unless sooner terminated as provided herein.

2.2 Sections 2.2, 2.3, 2.4, 2.5 and 2.6 of the Development Agreement are hereby terminated and deleted.

3. **Reconveyance to City.** Pursuant to Section 3.2 of the Development Agreement, City conveyed the Property to Childsplay by the Deed. City and Childsplay hereby acknowledge and agree that each has satisfied its respective obligations under Section 3 of the Development Agreement and that neither has any further obligation or liability thereunder. Sections 3.1 through 3.5 of the Development Agreement are hereby terminated and deleted, and replaced with the following:

3.1 Childsplay hereby agrees to voluntarily reconvey the Property to City on the terms and conditions set forth below. City and Childsplay may open an escrow (“Escrow”) with a title or escrow company (“Escrow Agent”) to facilitate the consummation of the reconveyance of the Property. City and Childsplay shall execute any escrow instructions (“Escrow Instructions”) reasonably requested by Escrow Agent in connection with opening the Escrow or otherwise facilitating the consummation of the reconveyance of the Property. In the event of any conflict or inconsistency between the Escrow Instructions and this Third Addendum, the provisions of this Third Addendum shall prevail.

3.2 In consideration of the reconveyance, City agrees to reimburse Childsplay the sum of \$1,948,102.30 (the “Repurchase Price”). The Repurchase Price shall be payable over five (5) years as follows:

(a) \$500,000.00 during fiscal year 2016-2017, to be paid within thirty-one (31) days of City Council approval of Third Amendment. City shall pay this sum directly to Childsplay;

(b) \$500,000.00 during fiscal year 2017-2018, on or before July 15, 2017, City shall pay this sum directly to Childsplay;

(c) \$300,000.00 during fiscal year 2018-2019, on or before July 15, 2018, City shall pay this sum directly to Childsplay;

(d) \$300,000.00 during fiscal year 2019-2020, on or before July 15, 2019; and

(e) \$348,102.30 during fiscal year 2020-2021, on or before July 15, 2020.

3.3 The date ("Closing Date") set for conveyance of title to the Property and the performance of all conditions (except those conditions expressly required to be performed earlier pursuant to this Agreement) relating thereto ("Closing" or "Close of Escrow") shall be thirty (30) days following the Feasibility Date, or such earlier date as City may specify by written notice to Childsplay.

3.4 City's obligation to consummate the transaction contemplated hereby or fulfill its obligations under this Agreement is subject to satisfaction of the following conditions precedent (which City may elect to waive, in whole or in part, in its sole discretion):

(a) Within ten (10) days after the Effective Date, Childsplay shall cause Escrow Agent to provide City with a current commitment for title insurance (the "Title Commitment") for the Property, disclosing all matters of record and other matters of which Escrow Agent has knowledge which relate to the title to the Property, and a legible copy of each of the instruments and documents referred to in the Title Commitment. The Title Commitment shall include Escrow Agent's requirements for Closing and issuing its title policies, which requirements (including those to be met by releasing or satisfying monetary encumbrances, but not those to be met solely by City) shall be met by Childsplay on or before the date set for Closing. City shall have ten (10) business days after receipt of the Title Commitment and copies of all instruments and documents referred to in the Title Commitment, or any amendment thereto and copies of all instruments and documents referred to therein, to object in writing to any matter shown thereon except any matters that existed as of the date City originally conveyed the Property to Childsplay. If City fails to object within said period, the condition of title to the Property shall be deemed approved. If City timely objects to any matter disclosed by the Title Commitment or any amendment thereto, Childsplay shall have ten (10) days after receipt of such objection in which to cure such objection. If Childsplay is unsuccessful in its efforts to cure City's objection, City shall have ten (10) days following notice from Childsplay of its inability to cure in which City shall elect either to waive its objection or terminate

its obligation to accept the reconveyance. Notwithstanding anything herein to the contrary, Childsplay shall satisfy and remove all monetary liens from the Property and cause the parties-in-possession title exception, if any, shown on the Title Commitment to be deleted on or before the Closing, and Buyer need not expressly object to any such matters as may be disclosed on the Title Commitment or any amendment thereto.

(b) During the Feasibility Period, City shall have the right to receive a certificate of completion of improvements made by Childsplay to the Property, survey and examine the Property and all improvements thereon, including, but not limited to, the physical condition of the improvements, and the existence of hazardous or toxic substances or pollutants, at any time after the execution of this Agreement, with any persons whom it shall designate, including, without limitation of the foregoing, appraisers, contractors, engineers and soil testing personnel. Childsplay shall permit access to the Property to City and any persons designated by City, and Childsplay shall afford them the opportunity to conduct, prepare and perform any surveys, appraisals, and any hydrological, topographical, environmental, feasibility and other engineering tests, studies, and reports upon the Property that City deems necessary or appropriate to assist it in determining whether it desires to accept the reconveyance of the Property. On completion of all such tests, studies and reports, City shall fill all holes produced by it and restore the Property to its condition existing prior to any tests or inspections. To the extent permitted by law, City shall indemnify, protect, defend and hold Childsplay harmless from all claims, costs, fees or liability of any kind arising out of the acts of City or City's agents pursuant to this Section 3.4(b), except that City shall have no liability for discovery of pre-existing conditions. If City in its sole and absolute discretion determines that the Property is not suitable for its purposes, City may, at any time on or before 5:00 P.M. on the thirtieth (30<sup>th</sup>) day following the Effective Date (the "Feasibility Date"), terminate its obligation to accept the reconveyance.

(c) Within ten (10) days after the Effective Date, Childsplay shall deliver to City copies of all reports, surveys, documents, approvals, drawings, plats, plans, specifications, filings or similar writings (collectively "Reports") pertaining to the Property or the development thereof, including but not limited to any Reports pertaining to drainage, soil, flood, hazardous or toxic substance or pollutants, archaeological or environmental conditions, or power or transmission lines on or adjacent to the Property, as well as all "as-built" drawings, engineering drawings, preliminary title reports previously received, and approvals received from any city or agency. Any such Reports not in the possession of Childsplay concurrently with the execution hereof but which come into its possession prior to Close of Escrow shall be delivered immediately to City.

(d) City is performing its own due diligence with respect to the Property, and acknowledges that except for those representations and warranties made by Childsplay in writing in the Development Agreement (as modified by this Third Addendum) or in the Reconveyance Deed, Childsplay is making no

additional representations or warranties, express or implied, with respect to the Property.

3.5 Owner's Title Policy; Closing Costs.

(a) At Closing, City shall obtain a standard coverage owner's policy of title insurance in the amount of the Reimbursement Payment insuring City's title to the Property, subject only to the usual printed exceptions contained in such title insurance policies, those matters which appear as exceptions in Schedule B of the Title Commitment and which are not objected to or are waived in the manner described in Section 3.4(a) hereof, and any other matters approved in writing by City. Childsplay shall also provide Escrow Agent at the Close of Escrow with any statements or affidavits reasonably requested by Escrow Agent in connection with issuance of the title policy, including information regarding mechanics liens or parties in possession.

(b) City shall pay the recording fees with respect to the Reconveyance Deed (as defined in Section 3.6 below) and any releases of encumbrances, all unpaid property taxes, the Escrow fees, and any other fees or charges connected with the reconveyance, all of which shall be deducted from the Reimbursement Payment. City and Childsplay shall each bear their own costs, including attorney's fees, in connection with the negotiations, due diligence, investigation and conduct of the transactions contemplated herein, including but not limited to the conveyance and lease of the Property.

3.6 The Property, including any and all improvements thereon and rights, easements and privileges appurtenant thereto, including any water rights, shall be conveyed to City, at the Closing, by special warranty deed (the "Reconveyance Deed") in the form substantially set forth in **Exhibit A** hereto, and any other instruments of assignment or transfer that may be necessary or appropriate, free and clear of all liens, restrictions, reservations, encumbrances and exceptions to title whatsoever, except only those matters of record that appear as exceptions on Schedule B of the Title Commitment and which are not objected to or which are waived in the manner described in Section 3.4(b). The Reconveyance Deed shall be deposited with Escrow Agent on or before Closing and shall be recorded at Closing notwithstanding the fact that the Repurchase Price will not have been paid in full at Closing.

3.7 Childsplay covenants with, and represents and warrants to, City as follows:

(a) To the best of its knowledge, no hazardous waste or substance, adverse environmental conditions or other legal noncompliance situations exist on or with respect to the Property. Childsplay has not received notice and is not otherwise aware that the Property is in violation of, nor has it been or is it currently under investigation for violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, worker health and safety, or to the environmental conditions in, at, on or under or about the Property.

(b) No unrecorded leases, easements, access agreements or other restrictive obligations and liabilities exist on or with respect to the Property.

(c) Childsplay is the owner of the Property and acting alone has full power and authority to enter into and perform this Agreement in accordance with its terms.

(d) There are no claims, actions, suits, condemnation actions or other proceedings pending or threatened by any entity regarding Childsplay or the Property.

(e) All taxes of any kind or nature which are or could become a lien against the Property (including but not limited to income, employment, construction, transaction, privilege, sales, use and real or personal property taxes) have been and will be paid current as of the date the Closing Date.

(f) To the best of its knowledge, there are no defects or conditions of the soil that will impair the use and operation of the Property. Childsplay has not used the Property as a landfill, waste disposal site or burial site.

4. **Additional Responsibilities of the Parties.** City and Childsplay hereby acknowledge and agree that the Development Agreement is amended to include the following new sections:

7.14 Use Agreement. Concurrently with the reconveyance of the Property to City, the Parties will enter into a use agreement pursuant to which City will allow Childsplay to use the Property as set forth therein for a term not to exceed fifty (50) years (hereinafter the "Agreement"). The Agreement to be executed shall be in substantially the form attached hereto as **Exhibit B**, incorporated herein by this reference on or before the Closing Date.

7.15 Director. Article 7.15. Director. Within thirty (30) days after the Effective Date, Childsplay shall amend its Bylaws to authorize City to appoint one (1) non-voting member to its board of directors, which member shall have the title as designated by Childsplay, and shall have full rights and access to all agendas, materials and discussions of the board of directors, and shall be invited to attend all board meetings, except for Executive Sessions, but shall be exempt from financial contributions requirements, fundraising requirements, and attendance at other Childsplay events or meetings, in his or her sole discretion. Such member shall be selected and appointed administratively by the Mayor of the City of Tempe. Such member shall serve a standard term and may be subject to re-appointment in the Mayor's discretion. This obligation shall continue as long as Childsplay occupies the Premises.

7.16 City Use Reserved. Notwithstanding the Agreement, City shall be entitled to use any conference rooms or other underutilized space at or within the Property, at reasonable times and with reasonable advance notice, but not more than forty-eight (48) hours, and subject to availability as reasonably determined by mutual agreement of City and Childsplay.

5. **As-Is Purchase; Contribution Toward Compliance.** City and Childsplay hereby acknowledge and agree that each has satisfied its respective obligations under Section 5.1 of the Development Agreement and that neither has any further obligation or liability thereunder. Section 5.1 of the Development Agreement is hereby terminated and deleted. Section 5.2 shall continue in full force and effect.

6. **Default; Remedies; Termination.** Sections 6.2, 6.3, 6.4 and 6.5 of the Development Agreement are hereby deleted in their entirety.

7. **Effect of Third Addendum.** Except as amended in this Third Addendum, the Development Agreement shall remain in full force and effect.

8. **Governing Law.** This Third Addendum shall be governed by and construed in accordance with the laws of the State of Arizona.

9. **Counterparts.** This Third Addendum may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Third Addendum to be executed as of the day and year first above written.

***ATTEST:***

CITY OF TEMPE, an Arizona  
municipal corporation

\_\_\_\_\_  
Brigitta M. Kuiper  
City Clerk

By \_\_\_\_\_  
Mark W. Mitchell  
Mayor

***APPROVED AS TO FORM:***

---

Judith R. Baumann  
City Attorney

CHILDSPLAY, INC, an Arizona  
non-profit corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**List of Exhibits**

Exhibit "A"	Reconveyance Deed
Exhibit "B"	Use Agreement

Exhibit "A"

Reconveyance Deed

When recorded, return to:  
City of Tempe Basket

EXEMPT PER  
A.R.S. §11-1134A.3

SPECIAL WARRANTY DEED

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, CHILDSPLAY, INC., an Arizona non-profit corporation ("Grantor") does hereby sell and convey to CITY OF TEMPE, an Arizona municipal corporation, the following described real property situated in Maricopa County, Arizona, together with all rights and privileges appurtenant thereto ("Property"):

See Exhibit "A" attached hereto and by this reference incorporated herein.

SUBJECT TO taxes and assessments, reservations, any and all easements, rights-of-way, covenants, conditions, restrictions, liens and encumbrances of record or that would be shown by an accurate survey, Grantor does warrant and agree to defend the title against its acts and none other.

DATED this \_\_\_ day of \_\_\_\_\_, 2016.

CHILDSPLAY, INC.,  
an Arizona non-profit corporation

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

Its: \_\_\_\_\_

STATE OF ARIZONA        )  
                                          ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, the \_\_\_\_\_ of CHILDSPLAY, INC. on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

EXHIBIT "A"

Property

Lot 1, MITCHELL PARK a Subdivision Recorded in Book 870, page 14, records of Maricopa County, Arizona.

Exhibit "B"  
Use Agreement