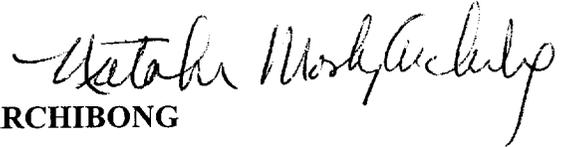


A RESOLUTION



BY COUNCILMEMBER NATALYN MOSBY ARCHIBONG

**AUTHORIZING THE MAYOR OR HER DESIGNEE TO ENTER INTO AN AGREEMENT TO ACCEPT THE DONATION OF IMPROVEMENTS TO CABBAGETOWN PARK FROM CABBAGETOWN INITIATIVE COMMUNITY DEVELOPMENT CORPORATION; AND FOR OTHER PURPOSES.**

**WHEREAS**, Cabbagetown Park is a public park owned and maintained by the City of Atlanta; and

**WHEREAS**, Cabbagetown Initiative Community Development Corporation is a private, non-profit organization dedicated to the preservation, restoration and maintenance Cabbagetown Park as a green space and as a cultural and recreational resource which enhances the quality of life for all Atlantans; and

**WHEREAS**, the construction of a playground in Cabbagetown Park would constitute an improvement to the park grounds and increase the recreational resources in the Cabbagetown Historic District; and

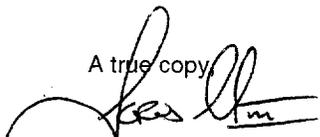
**WHEREAS**, KaBOOM! is a non-profit organization that develops, manages and coordinates community-build playground programs; and

**WHEREAS**, Cabbagetown Initiative Community Development Corporation proposes to enter into a written agreement with KaBOOM! as a Community Partner for services to plan, design and construct a community-built playground in Cabbagetown Park (the "Project"); and

**WHEREAS**, the value of the contribution to the Project by Cabbagetown Initiative Community Development Corporation is \$15,000; and

**WHEREAS**, Cabbagetown Initiative Community Development Corporation wishes to donate to the City of Atlanta the resulting improvement to Cabbagetown Park.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA**, as follows that the Mayor be and hereby is authorized to enter into an agreement to accept on behalf of the City of Atlanta the donation of improvements to Cabbagetown Park in the form of a community-build playground from Cabbagetown Initiative Community Development Corporation as set forth in substantial form in the draft document that is attached and labeled as Attachment A.

A true copy  
  
Deputy Clerk

**ADOPTED** by the City Council  
**APPROVED** by the Mayor

December 1, 2003  
December 9, 2003

DRAFT

**AGREEMENT  
BETWEEN  
THE CITY OF ATLANTA  
AND  
THE CABBAGETOWN INITIATIVE COMMUNITY DEVELOPMENT  
CORPORATION**

THIS AGREEMENT REGARDING THE DONATION OF A COMMUNITY-BUILD PLAYGROUND AND THE EQUIPMENT THEREON, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2003 by and between the City of Atlanta, a municipal corporation and political subdivision created pursuant to the laws of the State of Georgia, and the CABBAGETOWN INITIATIVE COMMUNITY DEVELOPMENT CORPORATION, a private, non-profit corporation organized and existing under the laws of the State of Georgia.

**WITNESSETH THAT:**

**WHEREAS**, Cabbagetown Park is a public park owned and maintained by the City of Atlanta; and

**WHEREAS**, Cabbagetown Initiative Community Development Corporation is a private, non-profit organization dedicated to the preservation, restoration and maintenance Cabbagetown Park as a green space and as a cultural and recreational resource which enhances the quality of life for all Atlantans; and

**WHEREAS**, Cabbagetown Initiative Community Development Corporation has entered into a written agreement with KaBOOM!, a non-profit organization that develops, manages and coordinates community-build playground programs, for services to plan, design and construct a community-build playground in Cabbagetown Park ; and

**WHEREAS**, Cabbagetown Initiative Community Development Corporation wishes to donate to the City of Atlanta resulting improvement to Cabbagetown Park valued at \$15,000,

**NOW, THEREFORE**, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the City and the Cabbagetown Initiative Community Development Corporation, intending to be legally bound, do hereby covenant and agree as follows:

**I. OBJECTIVE**

The City does hereby accept and Cabbagetown Initiative Community Development Corporation does hereby donate the community-build playground to be constructed in Cabbagetown Park pursuant to a separate written agreement between Cabbagetown Initiative Community Development Corporation and KaBOOM!. (Exhibit 1).

## **Attachment A**

### **II: FORCE MAJEURE**

A. If the community-build playground project to be completed by Cabbagetown Initiative Community Development Corporation and KaBOOM! is prevented, suspended, or postponed by reason of any extended illness, fire, casualty, heightened state of emergency, act of terrorism, lockout, labor strike, riot, war, Act of God, or by ordinance, law, order or decree of any legally constituted authority (hereinafter, "*Force Majeure Event*"), then during such Force Majeure Event this Agreement may, at the option of the City, be suspended during the continuance of such Force Majeure Event. In the event that any such suspension described above continues for a period or aggregate of periods of forty-five (45) days, the parties may terminate this Agreement by mutual written consent.

### **III. INDEMNIFICATION**

A. Cabbagetown Initiative Community Development Corporation shall indemnify the City and hold it harmless against any losses, claims, damages or liabilities to which the City may become subject to, arising in any manner out of or in connection with acts taken or omitted to be taken (including any untrue statements made or statements omitted to be made) by Cabbagetown Initiative Community Development Corporation or otherwise arising out of or in connection with the community-build playground project hereunder unless, in a final adjudication, it is determined that such losses, claims, damages, or liabilities arose out of the gross negligence or gross misconduct of the City, to the extent that the City's governmental immunity does not apply.

### **IV. ASSIGNMENT OF AGREEMENT**

This Agreement, the obligations of Cabbagetown Initiative Community Development Corporation hereunder, and the obligations of the City hereunder shall not be assignable by Cabbagetown Initiative Community Development Corporation without the written consent of the City.

### **V. MISCELLANEOUS**

A. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without regard to the conflict of law principles thereof. The parties hereby agree to submit to the jurisdiction of the courts of the State for the purpose of resolving any dispute arising out of or resulting from this Agreement.

B. Notices. All notices and statements required hereunder shall be in writing and delivered, certified or registered first class mail (postage prepaid and return receipt requested), or via overnight delivery to the addresses set forth below unless notification of a change of address is given in writing. Notice may be sent via confirmed facsimile transmission but a hard copy must also be mailed. Notice shall be deemed given when mailed and faxed as follows:

**Attachment A**

If to Cabbagetown  
Community  
Development  
Corporation:

Ms. Lynne Pietak,  
Cabbagetown Initiative Community Development Corporation  
177 Estoria St  
Atlanta, Georgia 30312

If to City:

Ms. Dianne Harnell Cohen, Commissioner  
City of Atlanta Department of Parks, Recreation, and Cultural Affairs  
City Hall East, 875 Ponce de Leon Avenue, N.E., 8th floor  
Atlanta, Georgia 30308

and

Ms. Stacey Y. Abrams, Deputy City Attorney  
Department of Law  
68 Mitchell Street  
City Hall Towers, Suite 4100  
Atlanta, Georgia 30303  
Facsimile Number: (404) 658-6894

C. No Waiver. The waiver of any breach of this Agreement either by the City or Cabbagetown Initiative Community Development Corporation of any rights, remedies or defenses is not intended and will not be deemed a waiver of any additional rights, remedies or defenses to which such party would be entitled at law or in equity as to such breach. In addition, no waiver by either party of a breach of any term or provision of this Agreement will be construed to be a waiver of any proceeding or succeeding breach of the same or any other term or provision.

D. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument and may be delivered via electronic transmission with the same force and effect as if it were executed and delivered by the parties simultaneously in the presence of one another.

E. Headings. The headings to the Sections of this Agreement are for convenience only and shall not be considered a part of this Agreement or be used in determining the intent of the parties.

F. Severability. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely approximating the intention of the parties as expressed herein.

G. Survival. The provisions of Section III (Indemnification) shall survive the expiration or early termination of this Agreement.

**Attachment A**

H. Modifications or Extensions. Except as otherwise provided herein, this Agreement may only be modified or extended by a written agreement signed by both parties.

I. Entire Agreement. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, supersedes all previous written or verbal agreements between the parties, including but not limited to all representations, warranties, statements, correspondence, and understandings previously made by Cabbagetown Initiative Community Development Corporation or the City with respect to the subject matter of this Agreement.

\* \* \* \*

{Signatures on Following Page}

**IN WITNESS WHEREOF**, the City and Cabbagetown Initiative Community Development Corporation (CDC) have caused this Agreement to be executed as of \_\_\_\_\_, 2003.

**Attachment A**

**Cabbagetown Initiative CDC**

**The City of Atlanta**

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

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

Lynn Pietak  
Cabbagetown Initiative CDC

Mayor Shirley Franklin  
The City of Atlanta

RCS# 5190  
12/01/03  
5:15 PM

Atlanta City Council

Regular Session

CONSENT I

CONSENT I EXCEPT: 1698,1851,1852,1881,  
1309,2087,1719,1845,2164,  
ADOPT

YEAS: 15  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 1  
EXCUSED: 0  
ABSENT 0

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	Y Martin	Y Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Boazman	NV Woolard

CONSENT I

			12-01-03 Council Meeting
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT	ITEMS ADVERSED ON CONSENT
1. 03-O-1875	42. 03-R-1830	81. 03-R-2030	122. 03-R-2071
2. 03-O-1876	43. 03-R-1849	82. 03-R-2031	123. 03-R-2072
3. 03-O-1965	44. 03-R-2120	83. 03-R-2032	124. 03-R-2073
4. 03-O-2153	45. 03-R-2121	84. 03-R-2033	125. 03-R-2074
5. 03-O-1376	46. 03-R-2122	85. 03-R-2034	126. 03-R-2075
6. 03-O-1963	47. 03-R-2125	86. 03-R-2035	127. 03-R-2076
7. 03-O-1841	48. 03-R-2160	87. 03-R-2036	128. 03-R-2077
8. 03-O-1377	49. 03-R-2000	88. 03-R-2037	129. 03-R-2078
9. 03-O-1837	50. 03-R-2001	89. 03-R-2038	130. 03-R-2079
10. 03-O-1880	51. 03-R-2002	90. 03-R-2039	131. 03-R-2080
11. 03-O-1896	52. 03-R-2003	91. 03-R-2040	132. 03-R-2081
12. 03-O-1897	53. 03-R-2126	92. 03-R-2041	133. 03-R-2082
13. 03-O-1898	54. 03-R-2127	93. 03-R-2042	134. 03-R-2083
14. 03-O-1888	<b>Items Adversed on consent</b>	94. 03-R-2043	135. 03-R-2084
15. 03-O-2108	55. 03-R-2004	95. 03-R-2044	136. 03-R-2085
16. 03-O-2142	56. 03-R-2005	96. 03-R-2045	137. 03-R-2086
17. 03-O-2143	57. 03-R-2006	97. 03-R-2046	138. 03-R-2087
18. 03-O-2144	58. 03-R-2007	98. 03-R-2047	139. 03-R-2088
19. 03-O-1899	59. 03-R-2008	99. 03-R-2048	140. 03-R-2089
20. 03-O-2146	60. 03-R-2009	100. 03-R-2049	141. 03-R-2090
21. 03-R-2110	61. 03-R-2010	101. 03-R-2050	142. 03-R-2091
22. 03-R-2111	62. 03-R-2011	102. 03-R-2051	143. 03-R-2128
23. 03-R-2112	63. 03-R-2012	103. 03-R-2052	144. 03-R-2129
24. 03-R-2113	64. 03-R-2013	104. 03-R-2053	145. 03-R-2130
25. 03-R-2114	65. 03-R-2014	105. 03-R-2054	146. 03-R-2131
26. 03-R-2115	66. 03-R-2015	106. 03-R-2055	147. 03-R-2132
27. 03-R-2116	67. 03-R-2016	107. 03-R-2056	148. 03-R-2133
28. 03-R-2139	68. 03-R-2017	108. 03-R-2057	
29. 03-R-2140	69. 03-R-2018	109. 03-R-2058	
30. 03-R-2154	70. 03-R-2019	110. 03-R-2059	
31. 03-R-2166	71. 03-R-2020	111. 03-R-2060	
32. 03-R-2117	72. 03-R-2021	112. 03-R-2061	
33. 03-R-2158	73. 03-R-2022	113. 03-R-2062	
34. 03-R-2156	74. 03-R-2023	114. 03-R-2063	
35. 03-R-2165	75. 03-R-2024	115. 03-R-2064	
36. 03-R-2118	76. 03-R-2025	116. 03-R-2065	
37. 03-R-2119	77. 03-R-2026	117. 03-R-2066	
38. 03-R-2124	78. 03-R-2027	118. 03-R-2067	
39. 03-R-2150	79. 03-R-2028	119. 03-R-2068	
40. 03-R-2152	80. 03-R-2029	120. 03-R-2069	
41. 03-R-2159		121. 03-R-2070	

**03-R-2158**  
(Do Not Write Above This Line)

A RESOLUTION  
BY COUNCILMEMBER NATALYN MOSBY  
ARCHIBONG

AUTHORIZING THE MAYOR OR HER DESIGNEE TO ENTER INTO AN AGREEMENT TO ACCEPT THE DONATION OF IMPROVEMENTS TO CABBAGETOWN PARK FROM CABBAGETOWN INITIATIVE COMMUNITY DEVELOPMENT CORPORATION; AND FOR OTHER PURPOSES.

**ADOPTED BY**  
DEC 01 2003  
**COUNCIL**

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred: 11/17/03  
 Referred To: CDD/HR  
 Date Referred:  
 Referred To:  
 Date Referred:  
 Referred To:

First Reading  
 Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Referred To \_\_\_\_\_

Committee: CDD/HR  
 Date: 11/21/03  
 Chair: Natlyn Mosby  
 Action: Fav, Adv, Hold (see rev. side)  
 Members: [Signature]  
 Refer To: [Signature]

Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Action: Fav, Adv, Hold (see rev. side)  
 Members \_\_\_\_\_  
 Refer To \_\_\_\_\_

Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Action: Fav, Adv, Hold (see rev. side)  
 Other \_\_\_\_\_  
 Members \_\_\_\_\_  
 Refer To \_\_\_\_\_

Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Action: Fav, Adv, Hold (see rev. side)  
 Other \_\_\_\_\_  
 Members \_\_\_\_\_  
 Refer To \_\_\_\_\_

**FINAL COUNCIL ACTION**  
 2nd     1st & 2nd     3rd  
 Consent     V Vote     RC Vote

**CERTIFIED**  
 DEC 01 2003  
 [Signature]

DEC 01 2003  
 [Signature]

**MAYOR'S ACTION**  
 APPROVED  
 DEC 09 2003  
 [Signature]

MAYOR