



Binkley Toys Inc.  
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## NON-DISCLOSURE AGREEMENT

This Agreement ("Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_

by and between \_\_\_\_\_ ("Disclosing Party") having a

principal place of business at \_\_\_\_\_ (address)

And Binkley Toys Inc. having a principal place of business at 130 Church Street #398, New York, NY 10007. (Receiving Party").

WHEREAS Disclosing Party, prior to entering into this Agreement, owns valuable Confidential Information, as defined below; and

WHEREAS, the parties are engaged in discussions concerning possible business and financial relationships and in connection therewith the parties wish to evaluate certain information relating to the business, operations and technology of the other party; and

WHEREAS, the party's desire to enter into this Non-disclosure Agreement to ensure that any Confidential Information that may be disclosed during or pursuant to such discussions will be protected from misappropriation and not used except in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the sufficiency of which is hereby acknowledged, the parties hereby agree to the following terms and conditions:

### 1. Definitions:

1.1 "Effective Date" means - \_\_\_\_\_, 20\_\_

1.2 "Disclosing Party" means a party providing or furnishing access to such party's Confidential Information.

1.3 "Receiving Party" means a party receiving Confidential Information or to whom access to such Confidential Information is permitted from a Disclosing Party.

1.4 "Confidential Information" means and includes any and all:

- 1.4.1 trade secrets concerning the business and affairs of the Disclosing Party, product specifications, data, know-how, compositions, processes, designs, sketches, graphs, drawings, samples, inventions and ideas, past, current, and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), computer software and database technologies, systems, structures (and related processes, formulae, composition, improvements, devices, processes, know-how, inventions, discoveries, concepts, ideas, designs, methods and information), and any other information, however, documented that is a trade secret; and
- 1.4.2 information concerning the business and affairs of the Disclosing Party (which includes historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, the names and backgrounds of key personnel, personnel training techniques and materials, and written confirmation of oral conversations) between the Disclosing Party or its representatives and Receiving Party however documented, that has been or may hereafter be provided or shown to Receiving Party by Disclosing Party or by the directors, officers, employees, agents, consultants, advisors or other representatives, including legal counsel, accountants and financial advisers ("Representatives") of Disclosing Party or is otherwise obtained from review of documents or property provided by Disclosing Party to Recipient or discussions among the Parties or their respective Representatives (including current or prospective financing sources) irrespective of the form of the communication, and also includes all notes, analyses, compilations, studies, summaries and other material prepared by either Party's Representatives containing or based, in whole or in part, on any information included in the foregoing. If any information that Disclosing Party deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret for purpose of this Agreement, then such information will be considered Confidential Information for purposes of this Agreement.

## **2. Confidential and Proprietary Nature of the Information**

- 2.1 Each Party acknowledges the confidential and proprietary nature of the Confidential Information shall hold and keep the same as provided in this Agreement, and otherwise shall comply with each and every restriction and obligation in this Agreement.

### **3. Obligations with respect to Confidential Information**

- 3.1 **Non-disclosure.** Receiving Party shall limit access to Disclosing Party's Confidential Information solely to those persons or entities to whom such disclosure is necessary to perform the stated purposes of evaluation of such Confidential Information, and who are subject to an agreement which binds such party to the provisions of this Agreement. Under no circumstances shall a Receiving Party permit any disclosure, access, copying, review, or examination of such Confidential Information by any person or entity not identified in the preceding sentence.
- 3.2 **Litigation and Patent Prosecution.** If litigation is commenced to enforce or interpret this Agreement, all Confidential Information shall be maintained as confidential under appropriate secrecy orders. If a Receiving Party becomes legally required or compelled to disclose any Confidential Information of a Disclosing Party, the Receiving Party will promptly notify the Disclosing Party sufficiently in advance of such disclosure to enable the Disclosing Party to seek a protective order or other appropriate remedy. Each Receiving Party further agrees that it shall not knowingly undertake or assist in any attempt to interfere with any pending applications for the issuance of Letters Patent with respect to the technological developments of a Disclosing Party based on Confidential Information received hereunder from the Disclosing Party.
- 3.3 **Violations.** A Receiving Party shall immediately notify the Disclosing Party of any information indicating an actual or threatened violation of any of the provisions of this Article.
- 3.4 **Marking.** All Confidential Information shall be so identified at the time of disclosure by an appropriate and conspicuous legend, marking or stamp, or so designated orally in front of witnesses.
- 3.5 **Return of Confidential Information.** Upon written request, a Receiving Party shall (a) promptly return to Disclosing Party all of the Disclosing Party's Confidential Information, fixed or stored in any written, oral, graphic, electronic, magnetic, optical or other medium, together with all copies and summaries thereof in the possession or under the control of Receiving Party or Representatives to which such disclosure has been made, whether authorized or unauthorized, and (b) destroy materials generated by Receiving Party or his Representatives that include or refer to any part of the Confidential Information, without retaining a copy of any such material.
- 3.6 **Duration of Obligations.** Notwithstanding any termination of this Agreement, the obligation of each party set forth in paragraphs 2, 3, 4, 5, 6 shall survive.

#### **4. Ownership of Confidential Information.**

- 4.1 Disclosing Party retains all right, title and interest in all Confidential Information disclosed by such party under this Agreement and all improvements and modifications made thereto by such party. Any modifications of Disclosing Party's Confidential Information, and any improvements of technology or know-how of any party based upon such Confidential Information, made by or with the assistance of a Receiving Party, shall be the property of the Disclosing Party, and title to all intellectual property rights in such modifications or improvements shall be, and is hereby, transferred and assigned to Disclosing Party.

#### **5. Exceptions**

- 5.1 None of the foregoing obligations and restrictions apply to that part of the Confidential Information of Disclosing Party that Receiving Party demonstrates (a) is or becomes generally available to the public through no wrongful act of any person or entity; (b) is or becomes available to Receiving Party from another source on a non-confidential basis, but only if obtained without violation of an obligation of non-disclosure, and without breach of this Agreement; (c) was independently developed without any use or reference to another party's Confidential Information and without violation of an obligation of nondisclosure; (d) has been approved in writing by the Disclosing Party; (e) following the Effective date, was intentionally furnished by the Disclosing Party to a third party without similar restrictions on disclosure; (f) has been disclosed pursuant to a requirement of law, but only to the extent such disclosure is required; or (g) was rightfully in the possession of the Receiving Party prior to the Effective date hereof, as evidenced by written records.

#### **6. General Provisions.**

- 6.1 Governing law, Venue and Jurisdiction. This Agreement shall be governed by the laws of the State of New York, USA, without reference to conflict of laws principles. This Agreement is entered into and to be performed in the State of New York, USA, and any action or proceeding seeking to enforce any provision of, or based on any right arising out of this Agreement, including, but not limited to Injunctive Relief as set forth in Paragraph 6.3 below, shall be the courts of the State of New York and each of the parties consent to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.
- 6.2 Service of Process. Process in any action or proceeding referred to in paragraph 6.1 may be served on any part anywhere in the world.

- 6.3 Non-waiver/Severability. Failure to enforce this Agreement shall not be a waiver of any provision of this Agreement, and a waiver of breach shall not be a waiver of any other or subsequent breach. If any provision of this Agreement is held invalid or unenforceable, such determination will not affect the remaining portions of this Agreement, and the affected provisions shall be interpreted and enforced to the full extent possible to carry out the intent of such provision.
- 6.4 Injunctive Relief. Each party acknowledges that a breach by a Receiving Party of any obligation owed to Disclosing Party under this Agreement, whether actual or threatened, will cause irreparable harm to Disclosing Party, and that Disclosing Party shall be entitled to seek immediate injunctive relief from a court of competent jurisdiction without the need to prove that irreparable harm has been or will be incurred, and with full waiver of any undertaking which may otherwise be imposed by law.
- 6.5 Non-assignment. No part of this Agreement may be assigned to any third party without express written consent of all other parties hereto, which consent shall not be unreasonably withheld, except that this restriction shall not apply in the event that the Agreement is assigned by a party to a third party in connection with a purchase or acquisition of all or substantially all of such party's assets by such third party.
- 6.6 Warranty of Authority. Each party warrants and represents that such party has the full and necessary authority to bind the party so represented by such party's signature to all terms and conditions of this Agreement, and that the party so represented is fully capable of performing all terms and conditions of this Agreement.
- 6.7 Notices. Notices under this Agreement shall be in writing and effective when delivered, if by personal delivery or delivery by a national courier, upon receipt, if sent by telephonically confirmed facsimile or upon first attempted delivery after mailing by certified carrier, return receipt requested, postage prepaid. Unless otherwise specified in writing, all notices shall be directed to the parties at the addresses set forth at the first paragraph of the Agreement.
- 6.8 Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties related to the subject matter hereof, and supersedes all previous communications, proposals, representations and agreements, whether oral or written, relating hereto. This Agreement can only be modified by written agreement by the parties.
- 6.9 Section Headings, Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section", "Sections", "Paragraph" or "Paragraphs" refer to the corresponding Section or Sections of this Agreement unless otherwise specified. All words used in this Agreement will be construed

to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

6.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute one and the same Agreement.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed on its behalf and delivered to the other parties. This Agreement may be executed in counterparts.

Disclosing Party :

Receiving Party:

Print Name: \_\_\_\_\_

Name: Binkley Toys Inc.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_