

## AGENT AGREEMENT

THIS AGREEMENT, made as of July 31, 2010, by and between the **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York with offices at 275 Oak Street, Suite 150, Buffalo, New York 14203 (the "Agency") and **FISHER-PRICE, INC.**, a Delaware limited liability company with offices at 636 Girard Avenue, East Aurora, New York 14052 (the "Company").

### WITNESSETH:

WHEREAS, the Agency was created by Chapter 293 of the Laws of 1970 of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project") consisting of: the acquisition and installation of improvements in and around the property located at 636 Girard Avenue, East Aurora, Erie County, to include construction and/or renovation, expansion, upgrading and equipping (collectively, the "Improvements"), and the acquisition and installation in and around the Improvements by the Company of certain items of machinery, equipment and other tangible personal property (the "Equipment," and collectively with the Improvements, the "Facility"); and

WHEREAS, by Resolution dated May 11, 2009 (the "Resolution"), the Agency authorized the Company to act as its Agent for the purposes of acquiring, constructing and equipping the Facility subject to the Company entering into this Agent Agreement.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Scope of Agency. The Company hereby agrees to limit its activities as Agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition, construction and equipping of the Facility. The scope of said agency shall include the right of the Company to exclusively possess and use the Facility until such time as the Agency shall have executed and delivered the Bill of Sale (as hereinafter defined). The right of the Company to act as Agent of the Agency shall expire on **July 30, 2011**, unless extended as contemplated by the Resolution. The aggregate amount of work performed as Agent for the Agency shall not exceed the amounts described in the Company's application to the Agency in this matter.

All contracts entered into as Agent for the Agency shall include the following language:

"Except to the extent of bond proceeds (to the extent bonds are issued by Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder."

2. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Facility:

(a) The Company is a corporation duly formed and validly existing under the laws of Delaware State, has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (c).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agreement.

(e) The Company covenants that the Facility will comply in all material respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) that the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility except in compliance with environmental laws and regulations, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents, representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the

above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

(f) Any personal property acquired by the Company in the name of the Agency shall be located in East Aurora, except for temporary periods during ordinary use.

3. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors and assigns harmless from and against, any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company of this Agreement or (ii) liability arising from or expense incurred by the Agency's financing, rehabilitating, renovation, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective executive director, directors, members, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

4. Insurance Required. Effective as of the date hereof and until the expiration or termination of the right of the Company to act as Agent of the Agency hereunder, the Company shall maintain, or cause to be maintained by its subagent or subcontractors, certain insurance requirements, and paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company; provided such policy of insurance shall not contain a standard co-insurance clause and provided further, such policy shall contain an agreed amount endorsement, or as an alternative to the foregoing, the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well, provided a periodic appraisal is performed and provided to the Agency.

(b) Workers' compensation insurance, New York State disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility. Such policy of insurance shall have limits as prescribed by New York State Workers' Compensation Law for employer's liability, or in the alternative, limits of \$1,000,000 in employer's liability coverage.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 3 hereof) and arising from bodily injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident/occurrence on account of bodily injury, including death resulting therefrom, and on account of damage to the property of others, with a \$2,000,000 aggregate amount of coverage, excluding liability imposed upon the Company by any applicable workers' compensation law; \$1,000,000 in Automobile Liability Coverage, and a blanket excess liability policy in the amount not less than \$5,000,000, protecting the Company against any loss or liability or damage for bodily injury or property damage.

5. Additional Provisions Respecting Insurance. (a) All insurance required by Section 4 hereof shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interests may appear, and (ii) at least sixty (60) days' prior written notice of the cancellation, non-renewal, or expiration thereof to the Company and the Agency.

(b) All such certificates of insurance of the insurers that such insurance is in force and effect, and all policies, shall be deposited with the Agency on the date hereof. At least thirty (30) days prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement.

(c) All insurance required of the Company shall be primary insurance without any right of contribution from any other insurance carried by the Agency to the extent that such other insurance provides the Agency with contingent and/or excess liability insurance with respect to its respective interest as such in the Project, and shall expressly provide that all provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Company) shall operate in the same manner as if there were a separate policy covering each insured.

(d) All insurance required of the Company shall waive any right of subrogation of the insurers thereunder against any person insured under such policy, and waive any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any person insured under such policy.

6. This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

7. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Erie County Industrial Development Agency  
275 Oak Street, Suite 150  
Buffalo, New York 14203

With a copy to: Harris Beach PLLC  
726 Exchange Street, Suite 1000  
Buffalo, New York 14210  
Attn: Robert G. Murray, Esq.

To the Company: Fisher-Price, Inc.  
636 Girard Avenue  
East Aurora, New York 14052  
Attn: Gregory J. Wilber, Director of Facilities

With a copy to: Martin J. Clifford, Esq.  
716 Brisbane Building  
403 Main Street  
Buffalo, New York 14203

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the Federal or state courts located in Erie County, New York.

9. The Company agrees not to take title to any real property as agent for the Agency. Upon completion of the acquisition and installation of the Equipment, the Agency shall transfer title to the Equipment to the Company by a bill of sale (the "Bill of Sale") in the form attached hereto as Exhibit A.

10. By executing this Agent Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (1) legal services, including but not limited to those provided by the Agency's general counsel or bond/transaction counsel in connection with the Project; in accordance with the terms of the Administrative Fee Agreement between the Company and the Agency. The Agency counsel fees are \$18,000 based upon the Company's representations made in its application for Agency assistance, and as established in accordance with the Agency Legal Counsel Fee Schedule (the "Agency Counsel Fee"). The Agency Counsel Fee may be paid in three, one-third payments of the Agency Counsel Fee in accordance with the contemplated schedule of sales tax package extensions, and the Company covenants and agrees to make non-refundable, partial payments of one-third of the Agency Counsel Fee as follows:

(1) \$6,000 upon execution of this Agreement,

(2) \$6,000 upon the Company's execution of the extension of this Agreement from the date of July 31, 2010 for one year, and upon proof by the Company of continued compliance with Agency insurance requirements, immediately afterwhich an extended sales tax package will be provided to the Company, dated from the date of July 31, 2010 for one year, and

(3) \$6,000 upon the Company's execution of the further extension of this Agreement from the date of July 31, 2011 for one year, and upon proof by the Company of continued compliance with Agency insurance requirements, immediately afterwhich a further extended sales tax package will be provided to the Company, dated from the date of July 31, 2010 for one year.

In the event the Company does not proceed with the contemplated schedule of sales tax package extensions as expressed above, any remaining Agency Counsel Fee will be immediately due and payable. The Agency Counsel Fee includes all counsel fees for the preparation and issuance of the sales tax extensions contemplated by this Agreement. The Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of; (1) the applicant's withdrawal, abandonment, cancellation or failure to pursue the Project; (2) the inability of the Company to procure the services of one or more financial institutions to provide financing for the Project; or (3) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

*(Remainder of page intentionally left blank)*

IN WITNESS WHEREOF, the parties hereto have executed this Agent Agreement as of the day and year first above written.

**ERIE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: Karen M. Fiala  
Name: Karen M. Fiala  
Title: Assistant Treasurer

**FISHER-PRICE, INC.**

By: \_\_\_\_\_  
Name: Sarah J. Craig  
Title: Vice President,  
Human Resources & Administration

IN WITNESS WHEREOF, the parties hereto have executed this Agent Agreement as of the day and year first above written.

**ERIE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: Karen M. Fiala  
Title: Assistant Treasurer

**FISHER-PRICE, INC.**

By: Sarah J. Craig  
Name: Sarah J. Craig  
Title: Vice President,  
Human Resources & Administration

Reviewed  
FISHER-PRICE LAW DEPT.  
By: Daniel A. Dzialga



**EXHIBIT A**

**FORM OF BILL OF SALE**

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York with offices at 275 Oak Street, Suite 150, Buffalo, New York 14203 (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from FISHER-PRICE, INC., a Delaware corporation with offices at 636 Girard Avenue, East Aurora, New York 14052 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee and its successors and assigns, all those materials, machinery, equipment, fixtures or furnishings which were acquired by the Grantee as agent for the Grantor pursuant to the Agent Agreement dated as of July 31, 2010 (the "Equipment"), whether now owned or hereafter acquired, which Equipment is located or intended to be located at the Grantee's Facility located at 636 Girard Avenue, East Aurora, Erie County, New York.

TO HAVE AND TO HOLD the same unto the Grantee and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT "AS IS," WITHOUT RECOURSE OF ANY NATURE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OF DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by the officer described below on the date indicated beneath the signature of such officer and dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ERIE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

Form Only - Do Not Sign

By: \_\_\_\_\_  
Name: Karen M. Fiala  
Title: Assistant Treasurer