

Deed of Indemnity & Release – Playground Equipment

Council ABN

Address:

And

The Rotary Club of Flemington Inc ABN 47 754 561 417

444 Racecourse Road Flemington VIC 3031



Date of this Deed:

Parties

Name Council ABN

Short Name **Council**

Name The Rotary Club of Flemington Inc ABN 47 754 561 417

Short Name **the Rotary Club**

Background

- A. Council is the owner of the Playground Equipment.
 - B. Council has determined that it no longer requires the Playground Equipment and wishes to gift the Playground Equipment to the Rotary Club for the Ultimate Use.
 - C. The Rotary Club accepts the gift of the Playground Equipment for the Ultimate Use.
 - D. The parties enter into this Deed to record the terms and conditions of their agreement.
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Agreed Terms

- 1. The Parties agree that the recitals contained in the Background section of this Deed shall form part of the terms and conditions of this Deed.
- 2. As soon as is reasonably practicable after the execution of this Deed by all Parties, the Rotary Club will carry out or cause to be carried out on its behalf the Removal Works.
- 3. The Rotary Club will be responsible for the cost of the Removal Works in their entirety. Council will be asked to contribute to the cost of removal by:
 - 3.1 On receipt of a Tax Invoice from the Club;
 - 3.2 Including the payment in agreed terms to the contractor responsible for removal.* strike out whichever is incorrect.
- 4. By its execution of this Deed, the Rotary Club acknowledges and agrees that Council makes no representation or warranty as to the condition and/or fitness for use of the Playground Equipment. The Rotary Club takes the Playground Equipment in its condition and state of repair as at the date of this Deed.
- 5. The Rotary Club undertakes and represents to Council that it will not make any Claims against Council, its officers and employees, agents, contractors and/or its insurers in relation to the Playground Equipment, the Removal Works or the Ultimate Use of the Playground Equipment and hereby releases Council, its officers and employees, agents, contractors and/or its insurers from and against all Claims, including Claims for costs or expenses of any nature arising from or in the course of the provision of this Deed concerning:
 - (a) injury to or death of any person whatsoever;
 - (b) damage to or loss of any property whatsoever; or
 - (c) consequential loss or damage,except to the extent such is caused by the negligent act or omission of Council.
- 6. The Rotary Club covenants to indemnify and keep indemnified Council, its officers and employees, agents, contractors and its insurers, from and against all costs, expenses, losses or damages (**Loss**) which they or any of them:
 - (a) may sustain, incur, or suffer; or

- (b) be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person

arising from or referable to the Playground Equipment, the Removal Works, the Ultimate Use of the Playground Equipment, this Deed or any non-compliance with this Deed. This indemnity includes, without limitation, any Loss due to bodily injury, sickness or death or loss, destruction or damage to property.

- 7. The Parties to this Deed agree to keep the fact of the existence of and the terms and conditions of this Deed, including the discussions and negotiations leading to the making of and entry into of this Deed, confidential. However, nothing in this Deed shall prevent disclosure:
 - (a) by the Parties to obtain professional advice, including but not limited to legal and financial advice;
 - (b) by the Parties to enable compliance with any law or the requirements of any regulatory or statutory body; and
 - (c) by the Parties to enforce this Deed.
- 8. The Parties acknowledge and warrant that:
 - the person executing this Deed has full capacity to execute this Deed;
 - they enter into this Deed fully and voluntarily on their own information and investigation; and
 - (a) they have had the opportunity of obtaining their own independent legal advice relating to the effect and all aspects and consequences of this Deed and understand and accept the effect and consequences thereof.

- 9. In this Deed the following special meanings apply:

Claim means any cause of action, claim, proceeding, suit, demand, cost, expense, liability, loss or damage made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent;

Council means City of * ABN * of * in the State of Victoria, and includes its employees and officers;

Current Location means *

Playground Equipment means the children's playground equipment located at the specified location comprising of a senior combination unit;

Parties means the parties to this Deed;

Removal Works means the works that are required to dismantle the Playground Equipment and remove it from the Current Location to a location for the Ultimate Use;

Ultimate Use means the reinstallation of the Playground Equipment by or on behalf of * at the * in *.

- 10. The following general interpretive provisions apply to this Deed:

- (a) If a court, arbitrator, tribunal or other competent authority determines that any provision of this Deed is unenforceable, illegal or void then it will be severed, and the other provisions of this Deed remain operative.
- (b) This Deed will be governed by and will be construed in accordance with the laws of the State of Victoria.
- (c) In this Deed unless the context otherwise indicates:

the singular includes the plural and vice versa;
 a reference to a gender includes a reference to each other gender;
 a reference to a person includes a reference to a firm, corporation or corporate body;
 if a party consists of more than one person this deed binds them jointly and each of them severally;
 a reference to a statute includes any statutes amending, consolidating or replacing the statute and any regulations made under the statute;
 (i) headings are for reference only and do not affect the interpretation of this Deed.

- 11. This Deed may be executed by the Parties in any number of counterparts. Each counterpart constitutes an original and all counterparts together will be taken to constitute one instrument.
- 12. This Deed cannot be amended or varied except in writing signed by the Parties.
- 13. A party cannot assign or otherwise transfer the benefit of this Deed without the prior consent of each other party.
- 14. This Deed is governed by and is to be interpreted in accordance with the laws of the State of Victoria and each party submits to the exclusive jurisdiction of the State of Victoria.

Signing Page

Signed, sealed and delivered as a Deed

Signed, sealed and delivered on behalf of)
 the **CITY OF *** by....., Chief)
 Executive Officer, pursuant to an)
 instrument of delegation authorised by a)
 Council resolution of * in the presence of:)
)
).....
 *

.....
 Signature of Witness

.....
Full Name of Witness

Signed, sealed and delivered by **THE**)
ROTARY CLUB OF FLEMINGTON)
KENSINGTON by being signed by those)
persons authorised to sign on its behalf:)

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Signature

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Signature

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Full name and position of signatory

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Full name and position of signatory

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Address of signatory

.....
Address of signatory

RORP



Rotary  Flemington
Kensington