

DEED of WAIVER and INDEMNITY

KENTHURST LITERARY INSTITUTE INC

(Releasee)

AND

.....
PARENT/GUARDIAN 1

.....
PARENT/GUARDIAN 2

.....
PARENT/GUARDIAN 3

.....
PARENT/GUARDIAN 4

MINOR/CHILD 1

MINOR/CHILD 2

MINOR/CHILD 3

MINOR/CHILD 4

MINOR/CHILD 5

MINOR/CHILD 6

OR

.....
ADULT MALE/FEMALE

(Releasor)

DATED

COLEMAN GREIG LAWYERS

Level 15, 32 Smith Street
Parramatta NSW 2150
Tel: +61 2 9895 9200
Fax: +61 2 9895 9290
Ref: EXA: 2231991

CONTENTS

- DETAILS..... 1
- INTRODUCTION..... 2
- TERMS 2
- IT IS AGREED..... 2
- 1. DEFINITIONS AND INTERPRETATION 2
- 2. TERM 3
- 3. WAIVER 3
- 4. INDEMNITY AND RELEASE 4
- 5. NO ASSIGNMENT WITHOUT CONSENT 4
- 6. COSTS AND DISBURSEMENTS 5
- 7. NOTICES 5
- 8. VARIATION OR WAIVER 5
- 9. GOVERNING LAW AND JURISDICTION 5
- 10. FURTHER ASSURANCE 6
- 11. COUNTERPARTS 6
- 12. WHOLE AGREEMENT 6
- 13. NO RELIANCE ON WARRANTIES AND REPRESENTATIONS..... 6
- 14. SEVERANCE 6
- 15. NO MERGER 6
- 16. CONSENTS AND APPROVALS..... 6
- EXECUTED AS A DEED..... 7

DETAILS

PARTIES

Releasee

Name: **KENTHURST LITERARY INSTITUTE INC**
(Registration Number Y1203610)
Address: The Secretary, PO Box 45, Kenthurst, NSW, 2156
Email: klikenthurst@gmail.com

Releasor (Adult)

Name:
Address:
Telephone:
Email:

Releasor (Adult)

Name:
Address:
Telephone:
Email:

Releasor (Adult)

Name:
Address:
Telephone:
Email:

Releasor (Child)

Name:
Address:
Date of Birth:
Age:

Releasor (Child)

Name:
Address:
Date of Birth:
Age:

Releasor (Child)

Name:
Address:
Date of Birth:
Age:

DATE OF DEED

INTRODUCTION

- A. The Releasee manages, administers and operates the Kenthurst Community Swimming Pool.
- B. The Releasor is a [description of the Releasor] and wishes to use the Kenthurst Community Swimming Pool for the purposes of swimming activities, recreation, enjoyment and leisure, OR
- C. [ALTERNATIVE] The Releasor is a [family/group of friends] comprised of [] Parents/Guardians, and and [] Minors/Children, and who wish to use the Kenthurst Community Swimming Pool for the purposes of swimming activities, recreation, enjoyment and leisure; and
- D. The Releasee allows the Releasor to use and the Releasor agrees to use the Kenthurst Community Swimming Pool subject to the provisions of this Deed.

TERMS

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless otherwise indicated by the context:

- (a) *Business Day* means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, New South Wales.
- (b) *Business Hour* means an hour in the period between 8am to 6pm on a Business Day.
- (c) *Claims* means any claim, demand, suit, action, cause of action, proceeding, judgment, penalty, fine and liability of any kind however caused, and whether arising under contract, tort, negligence, equity, statute or otherwise.
- (d) *Kenthurst Community Swimming Pool* means the swimming pool located at 131-135 Kenthurst Road, Kenthurst, 2156, New South Wales.
- (e) *Minor/Child* means any person under the age of 18 years entering, accessing or using the Kenthurst Community Swimming Pool via the Releasor.
- (f) *Parent/Guardian* means a Releasor who is accompanied by a Minor/Child when entering, accessing or using the Kenthurst Community Swimming Pool.
- (g) *Related Body Corporate* has the meaning given in section 50 of the *Corporations Act 2001* (Cth); and
- (h) *Representatives* means, with respect to a party, any of that party's directors, officers, employees, independent contractors, agents, consultants, advisors and other representatives, such as management committee members.

1.2 In this Deed, unless otherwise indicated by the context:

- (a) words importing the singular include the plural and vice versa.
- (b) headings are for convenience only and do not affect interpretation of this Deed.
- (c) a reference to a clause, paragraph, schedule or the Details page is a reference to a clause, paragraph, schedule or the Details page of this Deed.
- (d) where any word or phrase is given a definite meaning in this Deed, any part of speech or other grammatical form of that word or phrase has a corresponding meaning.

- (e) an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity.
- (f) a reference to a statute, statutory provision or regulation includes all amendments, consolidations or replacements thereof.
- (g) a reference to a party to a document includes that party's legal personal representatives, successors and permitted assigns.
- (h) a covenant or agreement on the part of or for the benefit of two or more persons binds or benefits them jointly and severally.
- (i) a reference to a body, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (j) *use* of the Kenthurst Community Swimming Pool includes use by any person howsoever described entering, accessing or using the Kenthurst Community Swimming Pool via the Releasor; and
- (k) *including* and similar expressions are not words of limitation.

2. TERM

- 2.1 This Deed commences on the date specified in the Details page and continues until the date it is terminated in writing signed by both parties.

3. WAIVER

- 3.1 In consideration of the Releasee agreeing to:

- (a) accept the Releasor's booking to use the Kenthurst Community Swimming Pool.
- (b) allow the Releasor and any Minor/Child to use the Kenthurst Community Swimming Pool; and
- (c) accept the Releasor's payment to use Kenthurst Community Swimming Pool,

the Releasor agrees to the waiver of liability, indemnity and release of all Claims and the assumption of risk on behalf of the Releasor and any Minor/Child.

- 3.2 The Releasor accepts that there may be risk to property and to persons, including to their life and health due the Releasor and any Minor/Child using the Kenthurst Community Swimming Pool.

- 3.3 To the fullest extent permitted by law (including the *Competition and Consumer Act 2010* (Cth) and the *Civil Liability Act 2002* (NSW)), the Releasor:

- (a) hereby waives all rights to any and all Claims it may have now and/or in the future; and
- (b) releases and discharges from all liability and agrees not to sue the Releasee, in respect of any accident or damage to property or death of or injury to any person of whatever nature or kind which may be suffered or sustained in connection with the Releasor's and any Minor/Child's use of Kenthurst Community Swimming Pool, regardless of by whom it is used.

- 3.4 The Releasor acknowledges and agrees that the waiver of rights in clause 3.3 includes, but is not limited to, any risk, damage or loss that may arise from negligence or carelessness on the part of the Releasee.
- 3.5 The Releasor acknowledges and agrees that:
- (a) use of the Kenthurst Community Swimming Pool constitutes a “sporting activity” or a “leisure time pursuit” within the meaning of section 139A(2)(a) of the *Competition and Consumer Act 2010* (Cth); and/or
 - (b) using the Kenthurst Community Swimming Pool is an activity that involves a significant degree of physical risk; and
 - (c) it is using the Kenthurst Community Swimming Pool for the purposes of recreation, enjoyment or leisure.
- 3.6 The Releasor acknowledges that provisions of the *Competition and Consumer Act 2010* (Cth) imply certain guarantees into contracts for the supply of certain goods and services, such as warranties that services will be rendered with due care and skill.
- 3.7 By signing this Deed, the Releasor agrees that, to the fullest extent permitted by law:
- (a) the application of Subdivision B of Division 1 of Part 3-2 of the *Australian Consumer Law*, contained within Schedule 2 of the *Competition and Consumer Act 2010* (Cth), are excluded; and
 - (b) all rights under Subdivision B of Division 1 of Part 3-2 of the *Australian Consumer Law* are excluded,

in relation to the supply of services being the use of the Kenthurst Community Swimming Pool by the Releasee.

4. INDEMNITY AND RELEASE

- 4.1 The Releasor assumes responsibility for, and will at all times defend, indemnify, keep indemnified and hold the Releasee, its Representatives and any Related Body Corporate harmless from and against any and all Claims, losses, damages, compensation, sums of money, costs (including legal expenses on a full indemnity basis), charges, liabilities, expenses and taxes, of whatever kind or nature whether direct or indirect, arising out of or in connection with:
- (a) the Releasor’s and any Minor/Child’s use of Kenthurst Community Swimming Pool, regardless of by whom it is used; and
 - (b) in respect of any accident or damage to property or death of or injury to any person of whatever nature or kind which may be suffered or sustained in connection with the Releasor’s and any Minor/Child’s use of Kenthurst Community Swimming Pool.
- 4.2 The Releasor irrevocably and unconditionally releases and discharges the Releasee, its Representatives and any Related Body Corporate to the fullest extent permitted by law from all Claims and demands of every kind arising out of use of the Kenthurst Community Swimming Pool, including any liability which may arise in respect of any accident or damage to property or death of or injury to any person of whatever nature or kind in or near the Kenthurst Community Pool. The Releasor acknowledges and agrees that the Releasee will have no responsibility or liability for any loss or damage to any property of the Releasor and any Minor/Child.
- 4.3 The assumption, indemnity and release contained in clauses 4.1(a) and (b) continue in full force and effect notwithstanding any termination of this Deed (whether by expiration of time or otherwise) as to any act or omission occurring during the term of this Deed.

5. NO ASSIGNMENT WITHOUT CONSENT

A party may not assign its rights pursuant to this Deed without the prior written consent of the other party, which consent may not be unreasonably withheld.

6. COSTS AND DISBURSEMENTS

- 6.1 Each party must pay its own legal costs and disbursements in relation to the negotiation, preparation and completion of this Deed and other documents referred to in it, unless expressly stated otherwise.
- 6.2 The Releasor must pay all duty (including all fines, interest and penalties except those arising from the default of another party) in respect of this Deed and any transactions contemplated under this Deed or otherwise arising out of, or incidental to, this Deed.

7. NOTICES

- 7.1 A notice or other communication required or permitted to be given by one party to another must be in writing and is taken to have been given when (unless otherwise proved):
- (a) delivered personally, at the time it is delivered to the party.
 - (b) sent by pre-paid mail to the address of the addressee specified in the Details page:
 - (i) from Australia to an address within Australia, on the second Business Day after posting.
 - (ii) from Australia to an address outside Australia or from outside Australia to an address within Australia, on the fifth Business Day (at the address to which it is mailed) after posting; or
 - (c) sent by email to the email address of the addressee specified in the Details page or such other email address notified in writing as being the email address to use for the purposes of this clause:
 - (i) where the email is sent during a Business Hour on a Business Day, upon the return of a receipt which confirms successful transmission of the email to the email address of the recipient or, where no return receipt is produced by the recipient's email system, by the end of the last Business Hour on the day the email was sent; or
 - (ii) where the email is sent after the end of the last Business Hour on a Business Day or on a non-Business Day, the email will be deemed to be received at the beginning of the first Business Hour on the next Business Day.
- 7.2 The address for service of each party is set out in the Details page. A party may change its address for service by giving notice of that change in writing to the other parties.

8. VARIATION OR WAIVER

- 8.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 8.2 The exercise of a power or right does not preclude:
- (a) its future exercise; or
 - (b) the exercise of any other power or right.
- 8.3 The variation or waiver of a provision of this Deed or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

9. GOVERNING LAW AND JURISDICTION

- 9.1 This Deed is governed by the laws of New South Wales.
- 9.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

10. FURTHER ASSURANCE

Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Deed.

11. COUNTERPARTS

11.1 This Deed may be executed in any number of counterparts each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document and the date of this Deed will be the date on which a counterpart is executed by the last party.

11.2 The exchange of executed counterparts by email will create a binding deed.

12. WHOLE AGREEMENT

In relation to the subject matter of this Deed:

- (a) this Deed is the whole agreement between the parties; and
- (b) this Deed supersedes all oral and written communications by or on behalf of any of the parties.

13. NO RELIANCE ON WARRANTIES AND REPRESENTATIONS

In entering into this Deed, each party:

- (a) has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Deed made by any person; and
- (b) has relied entirely on its own enquiries in relation to the subject matter of this Deed.

This clause does not apply to warranties and representations that this Deed expressly sets out.

14. SEVERANCE

If any part of this Deed is invalid or unenforceable, this Deed does not include it. The remainder of this Deed continues in full force.

15. NO MERGER

Nothing in this Deed merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

16. CONSENTS AND APPROVALS

Where this Deed gives any party a right or power to consent or approve in relation to a matter under this Deed, that party may withhold any consent or approval or give consent or approval conditionally or unconditionally. The party seeking consent or approval must comply with any conditions the other party imposes on its consent or approval.

SIGNING PAGE

EXECUTED AS A DEED

RELEASEE:

SIGNED SEALED & DELIVERED by
KENTHURST LITERARY INSTITUTE INC
(Registration Number Y1203610) in accordance
with its Constitution:

.....
Name of President

.....
Signature of President

.....
Name of Secretary

.....
Signature of Secretary

RELEASOR:

SIGNED SEALED & DELIVERED by

.....
PARENT 1 Name

.....
Signature of Releasor (Parent 1)

in the presence of:

.....
Name of Witness

.....
Signature of Witness

AND

SIGNED SEALED & DELIVERED by

.....
PARENT 2 Name

.....
Signature of Releasor (Parent 2)

in the presence of:

.....
Name of Witness

.....
Signature of Witness

OR

SIGNED SEALED & DELIVERED by

.....
MALE/FEMALE ADULT

.....
Signature of Releasor (Male/Female Adult)

in the presence of:

.....
Name of Witness

.....
Signature of Witness

OR

EXECUTED for and on behalf of

.....
In accordance with Section 127(1) of the
Corporations Act 2001

.....
Name of Director

.....
Signature of Director

.....
Name of Director/Secretary

.....
Signature of Director/Secretary