DONATION AND INDEMNIFICATION AGREEMENT

This DONATION AND INDEMNIFICATION AGREEMENT ("Agreement") is made and entered into effective this ___ day of January, 2015, by and between THE WOODLANDS TOWNSHIP (the "Township"), a political subdivision of the State of Texas created and operating pursuant to Chapter 289, Acts of the 73rd Texas Legislature, Regular Session, 1993, as amended, and _____, a _____ (the "Donee"). The Township and the Donee are hereafter referred to individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the Township owns certain playground equipment located at {name of park(s)}, as more particularly described in Exhibit A attached hereto (the "Equipment"), which is scheduled to be removed and replaced; and

WHEREAS, the Township has determined that the residual value, if any, of the Equipment is less than the cost to disassemble, remove and dispose of the Equipment; and

WHEREAS, Donee desires to acquire the Equipment in connection with its charitable program of providing playgrounds in underprivileged areas located outside of the United States of America, its territories, insular areas and protectorates; and

WHEREAS, Donee is willing, at its sole cost and expense, to disassemble and remove the Equipment in accordance with the schedule set by the Township; and

WHEREAS, the Township is willing to donate the Equipment to Donee subject to and in accordance with the terms and conditions of this Agreement; and

NOW, THEREFORE, for and in consideration of the promises and mutual agreements set forth herein, the Township and the Company agree as follows:

AGREEMENT

1. Donation of Equipment. Subject to strict compliance by Donee with the terms and conditions of this Agreement, the Township hereby donates and conveys title to the Equipment to Donee. **Donee accepts the Equipment and each part thereof "as-is" without user manuals, warning labels or instructions, and acknowledges and agrees that: (i) the Township is neither a manufacturer nor a vendor of the Equipment; (ii) the Township has not made and does not hereby make any covenant, representation or warranty, express or implied, with respect to (a) compliance with any and all applicable guidelines, regulations or requirements, including, but not limited to those promulgated or provided by the American Society for Testing and Materials (ASTM) and United States Consumer Product Safety Commission (CPSC), (b) the merchantability, condition, quality, durability, design, operation, fitness for use, or suitability of the Equipment in any respect whatsoever, including any proposed use or application thereof by Donee or others, or (c) the absence of defects, latent or otherwise, in the design, manufacture or condition of the Equipment. The**

Township makes no representation that the Equipment has any value, use or application, other than potentially as scrap metal. Donee hereby assumes and accepts all risks incident to its acceptance and use of the Equipment and agrees that the Township shall not be liable for any damages or losses, actual, incidental, consequential, exemplary or otherwise, of or to Donee or other person or entity arising out of or in connection with the use, performance or condition of the Equipment or the operation or maintenance thereof. Donee affirmatively disclaims reliance on any oral representations concerning the Equipment.

2. Removal of Equipment. Donee, within _____ (__) days of the effective date of this Agreement, shall disassemble and remove the Equipment from {name of park(s)}. Only the Equipment, as set forth in **Exhibit A** attached hereto, shall be disassembled and removed. Donee shall notify the Director of the Township's of Park and Recreation Department prior to scheduling any disassembly and removal of the Equipment and provide the Director or his designee the opportunity to be present to observe said disassembly and removal. Unless otherwise requested by the Township, Donee, at its cost, shall restore any areas disturbed by the disassembly and removal of the Equipment to the condition existing prior to the Equipment removal activities.

3. Use of Equipment. Donee represents, warrants and agrees that it will not install, repurpose or allow any of the Equipment to be reused within the United States of America, its territories, insular areas or protectorates. Donee represents, warrants and agrees that it will not resell, donate, exchange or otherwise dispose of the Equipment within the United States of America, its territories, insular areas or protectorates, other than through a sale of the Equipment for scrap or disposal at a proper metal recycling facility or disposal site.

4. Insurance. Donee shall maintain commercial general liability insurance with a limit of not less than $1,000,000 each occurrence and a $2,000,000 aggregate limit. Such policy shall be written on a form or forms acceptable to the Township and shall cover liability arising from premises liability, operations, personal injury, and liability assumed under an insured contract. The Township shall be included as an additional insured on such policy and Donee shall provide the Township with a certificate indicating same prior to Donee's disassembly and removal of the Equipment.

5. Indemnification. **TO THE FULLEST EXTENT PERMITTED BY LAW, DONEE AGREES TO PROTECT, DEFEND (WITH ATTORNEYS REASONABLY ACCEPTABLE TO THE TOWNSHIP), HOLD HARMLESS, AND INDEMNIFY THE TOWNSHIP, ITS DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, AND AGENTS (HEREIN COLLECTIVELY REFERRED TO AS "INDEMNITEES"), FROM AND AGAINST ALL CLAIMS, ACTIONS, LIABILITIES, DAMAGES, LOSSES (INCLUDING ECONOMIC LOSSES), FEES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN THE ENFORCEMENT OF THIS INDEMNITY PROVISION) ARISING IN WHOLE OR IN PART OUT OF: (A) ANY ACTUAL OR ALLEGED BODILY INJURY OR DEATH; (B) INJURY TO, DESTRUCTION OF, OR ENVIRONMENTAL IMPAIRMENT OF TANGIBLE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE LOSS OF USE RESULTING THEREFROM; (C) VIOLATION OF APPLICABLE LAWS, RULES OR REGULATORY REQUIREMENTS; (D) FAILURE BY DONEE TO PROCURE AND**

MAINTAIN ALL INSURANCE REQUIRED BY THIS AGREEMENT; OR (E) ANY OTHER DAMAGE OR LOSS ARISING OUT OF OR RESULTING FROM THE EQUIPMENT (INCLUDING, WITHOUT LIMITATION, ITS DISASSEMBLY, AND REMOVAL) OR NEGLIGENT ACT OR OMISSION (WHETHER SOLE, JOINT, CONCURRENT OR GROSS) OF DONEE, OR ANY OFFICER, DIRECTOR, AGENT, EMPLOYEE OR REPRESENTATIVE OF DONEE, RELATED IN ANY WAY TO THE EQUIPMENT.

THIS INDEMNITY DOES NOT APPLY TO ANY CLAIMS, ACTIONS, LIABILITIES, DAMAGES, LOSSES (INCLUDING ECONOMIC LOSSES), FEES, COSTS, AND EXPENSES THAT MAY OCCUR OR ARISE PRIOR TO THE TIME DONEE BEGINS DISASSEMBLY AND/OR REMOVAL OF THE EQUIPMENT FROM THE TOWNSHIP'S PROPERTY. THIS INDEMNITY SHALL SURVIVE THE TERM OF THIS AGREEMENT.

6. Term. This Agreement shall remain in full force and effect for a term of _____ (__) years after its effective date.

7. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations and discussions concerning the subject matter hereof.

[Signature Page Follows]

EXECUTED this ___ day of January, 2015, to be effective as of the Effective Date set forth hereinabove.

THE WOODLANDS TOWNSHIP

By:_____
Don T. Norrell,
President/General Manager

[NAME OF DONEE]

By:_____

Name:_____

Title:_____