

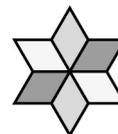
Permit for Commercial Filming & Photography on Council Land

under sections 200, 202 and 222 of the *Local Government Act 1999*.

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City of
**Norwood
Payneham
& St Peters**

Conditions

BETWEEN The Corporation of the City of Norwood Payneham and St Peters of 175 The Parade Norwood SA 5067 (the **Council**)

AND

The **Permit Holder** as described in Item 1 of the Schedule.

BACKGROUND

- A. The Council is the registered proprietor of or has the care, control and management of the Land.
- B. The Permit Holder has requested a Permit to use the Area for the Permitted Use during the Times of Use.
- C. The Council has agreed to grant the Permit Holder a Permit of the Area, and (if necessary) has undertaken community consultation and/or been granted Parliamentary approval in accordance with the *Local Government Act 1999* (SA).
- D. The Council and Permit Holder wish to record the terms of their agreement in this Permit.

TERMS

1. DEFINITIONS

In this Permit:

Act means the *Retail and Commercial Leases Act 1995*.

Agreed Consideration means the Permit Fee, Outgoings and all other consideration (whether in money or otherwise) to be paid or provided by the Permit Holder for any supply or use of the Area and any goods, services or other things provided by the Council under this Permit (other than tax payable under clause 14).

Area means the area described in Item 3 including the Council's Equipment.

Business Day means a day which is not a Saturday, Sunday or public holiday in South Australia.

Commencement Date means the commencement date of the Initial Term described in Item 4.

Council means the party described as 'the Council' in this Permit and where the context permits includes the employees, contractors, agents and other invitees of the Council.

Council's Equipment means all fixtures and fittings, plant, equipment, services, chattels and other goods installed or situated in or on the Area and made available for use by the Permit Holder.

Default Rate means the rate which is 2% per annum greater than the published annual rate of interest charged from time to time by Westpac Banking Corporation on overdraft facilities of more than \$100,000 and if there is more than one rate published, the highest of those rates.

GST has the same meaning as given to that term in the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any ancillary or similar legislation.

GST Rate means 10% or such other percentage equal to the rate of GST imposed from time to time under the GST Legislation.

Legislation includes any relevant Statute or Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any local government body or authority.

Permit means this permit granted by the Council to the Permit Holder and, where clause 2.2 applies, a permit granted by the Council pursuant to section 222 of the Act.

Permit Fee means the fee (if any) set out in Item 7.

Permit Holder means the party described as 'Permit Holder' in this Permit and where the context permits includes the employees, contractors, agents, customers and other invitees of the Permit Holder.

Permit Holder's Equipment means any and all fixtures and fittings and other equipment installed in or brought onto or kept in the Area by the Permit Holder.

Permitted Use means the use described in Item 6.

Land means the Council land, reserve or public road described in Item 2 and includes any part of the Land.

Services includes all services (including gas, electricity, water, sewerage, lifts, escalators, communications, fire control, air-conditioning, plumbing and telephone and all plant, equipment, pipes, wires and cables in connection with them as applicable) to or of the supplied by any authority, the Council or any other person the Council authorises.

Statutory Authorities means any authorities created by or under any relevant Legislation including the Council in its separate capacity as such an Authority.

Term means the term of this Permit commencing on the Commencement Date described in Item 4 and any period during which the Permit Holder holds over or remains in occupation of the Area.

Times of Use means the times set out in Item 5.

2. GRANT OF PERMIT

2.1 The Council grants and the Permit Holder accepts a Permit of the Area for the Term and during the Times of Use as set out in this Permit.

2.2 To the extent that any use of the Land permitted by this Permit requires a permit under section 222 of the Act, the Council hereby grants a permit pursuant to section 222 of the Act to use the relevant portion of road for such use for the Term, and the terms and conditions of this Permit will apply equally to the permit granted pursuant to this clause 2.2 subject to necessary variations.

2.3 The rights conferred by this Permit shall rest in contract only and shall not create or confer upon the Permit Holder any tenancy, estate or interest in or over the Area or the Land.

2.4 The Permit Holder agrees and acknowledges that this Permit does not give the Permit Holder any exclusive right to use the Area and that the Council may licence or hire the Area to other parties at any time outside of the Times of Use.

3. PERMIT FEE

The Permit Holder must pay to the Council the Permit Fee (if any) set out in Item 7 of the Schedule in the manner and at the times directed by the Council acting reasonably.

4. USE OF AREA

4.1 Permitted Use

The Permit Holder must use the Area strictly only for the Permitted Use.

4.2 **Nuisance and Offensive Activities**

4.2.1 Notwithstanding clause 4.1, the Permit Holder must not carry on any offensive or dangerous activities on or from the Area or create a nuisance or disturbance to Council, the public or other owners or occupiers of nearby land, and must take all reasonable steps to minimise noise, dust and vibration from the Area.

4.2.2 The Permit Holder will be responsible for the conduct of any persons participating in the Permitted Use and will use its best endeavours to ensure that they comply with the terms of this Permit.

4.3 **Use of Services**

4.3.1 The Permit Holder will ensure that the Services (if any) are used carefully and responsibly and in accordance with any directions that may be given by the Council from time to time.

4.3.2 The Permit Holder must promptly repair or correct any damage or malfunction which results from any misuse or abuse of the Services by the Permit Holder, and must immediately notify the Council of any such damage or malfunction.

4.4 **Cleaning**

The Permit Holder must keep the Area clean, tidy and free from rubbish, and must not cause the Area to be left untidy or in an unclean state or condition at the expiry or earlier determination of this Permit.

4.5 **Qualified Persons**

The Permit Holder must ensure that there are sufficiently qualified people in attendance at the Area, in accordance with any applicable industry standards, to supervise the Permitted Use conducted in the Area under this Permit.

4.6 **Notification of Hazards**

The Permit Holder must immediately notify the Council upon becoming aware of any hazards, risks and obligations relating to the Area (including under the *Work Health and Safety Act 2012*).

4.7 **Alcohol and Gaming**

Unless the Permit Holder first obtains the written consent of the Council, the Permit Holder must not apply for a liquor Permit under the *Liquor Licensing Act 1997*.

4.8 **Smoking**

The Permit Holder acknowledges and agrees that smoking is prohibited in the Area and the Land in accordance with the Council's Smoke-Free Policy and that no smoking by the Permit Holder or any participant in the Permitted Use under this Permit is permitted on the Area or Land at any time.

4.9 **Signs**

The Permit Holder must not place any signs or advertisements on the outside or inside (if they can be seen from outside) of the Area, except a sign or signs which:

4.9.1 are approved by the Council; and

4.9.2 comply with any relevant Statutory Requirements.

4.10 **Advertising**

The Permit Holder must not offer to sell goods, solicit, attempt to attract trade or business, tout or spruik on the Area or any area owned or controlled by the Council surrounding the Area, other than directly related to the Permitted Use.

4.11 **Vehicles**

The Permit Holder must not cause or permit vehicles to be driven onto or parked on the Area or the Land, unless prior approval has been obtained from the Council.

4.12 **Keys**

4.12.1 Any keys issued by the Council to the Permit Holder for the purpose of conducting the Permitted Use at the Area will remain the property of the Council and must be returned to the Council upon the expiry or earlier determination of this Permit, unless otherwise agreed.

4.12.2 The Permit Holder will be liable to pay to the Council the cost of issuing and/or replacing any keys, in accordance with the Council's ordinary fees and charges for this service.

4.13 **Council Events**

4.13.1 The Permit Holder acknowledges and agrees that if the Area is being used for another organised purpose (**Event**), which has been approved or authorised by the Council and notified to the Permit Holder in advance, the Permit Holder will cooperate with the organisers of the Event and the Council and the Permit Holder will, if required, cease operation of the Permitted Use at the Area for the duration of the Event, and may relocate to another location, subject to the Council's prior consent.

4.13.2 The Permit Holder acknowledges and agrees that the Council will not be liable for any claims or costs suffered by the Permit Holder due to any disruption of the Permitted Use by any actions of the Council, including authorising or approving the Event.

4.14 **Operation of Drones**

The Permit Holder acknowledges and agrees that:

4.14.1 the operation of unmanned aircraft, including drones, in connection with the Permitted Use is restricted to operation over the Area (unless otherwise specified);

4.14.2 the Permit Holder must not record or photograph people without their consent in operating unmanned aircraft in connection with this Permit; and

4.14.3 the Permit Holder must comply at all times with all applicable legislative, licensing, certification and notification requirements (including under the *Civil Aviation Safety Regulations 1998*) and all applicable codes of practice, standards and directions (or similar) issued by the Civil Aviation Safety Authority ('CASA') in operating the unmanned aircraft.

4.15 **Statutory Requirements**

The Permit Holder must comply with all applicable legislation, regulations, by-laws, codes of practice, guidelines and Council policies relating to the Permitted Use or the Area, including any applicable industry or health and safety standards in relation to the Permitted Use.

4.16 **Comply with Directions**

The Permit Holder must comply with all reasonable directions given to the Permit Holder by any employee or officer of the Council in relation to this Permit or the Permitted Use.

4.17 **No Warranty**

The Council makes no warranty or representation regarding the suitability of the Area (structural or otherwise) for the Permitted Use or any other purpose.

5. INSURANCE

5.1 **Permit Holder must Insure**

The Permit Holder must keep current during the Term:

- 5.1.1 public risk insurance for at least the amount in Item 8 (or any other amount the Council reasonably requires) for each claim; and
- 5.1.2 other insurances required by any Statutory Requirement or which the Council reasonably requires.

5.2 **Requirements for Policies**

Each policy the Permit Holder takes out under this clause 5 must:

- 5.2.1 be with an insurer and on terms reasonably approved by the Council;
- 5.2.2 be in the name of the Permit Holder and note the interest of the Council and any other person the Council requires;
- 5.2.3 cover events occurring during the policy's currency regardless of when claims are made; and
- 5.2.4 note that despite any similar policies of the Council, the Permit Holder's policies will be primary policies.

5.3 **Evidence of Insurance**

The Permit Holder must give the Council certificates evidencing the currency of the policies the Permit Holder has taken out under this clause 5 prior to the Commencement Date and otherwise upon request. During the Term the Permit Holder must keep each policy valid and enforceable at all times.

6. PERMIT HOLDER'S EQUIPMENT, MAINTENANCE AND REMOVAL

- 6.1 Any Permit Holder's Equipment installed in or brought on to or kept at the Area by the Permit Holder under this Permit is subject to prior Council approval.
- 6.2 The Permit Holder must, at its own cost and expense during the Term, keep, maintain and replace the Permit Holder's Equipment in good, safe and proper repair and condition and in accordance with any applicable industry or health and safety standards, and is at the Permit Holder's risk in all respects.
- 6.3 The Permit Holder must remove any Permit Holder's Equipment installed in or brought on to or kept at the Area upon the expiration or earlier determination of this Permit.
- 6.4 Any Permit Holder's Equipment that is not removed from the Area in accordance with clause 6.3 may be subject to removal by the Council at the Permit Holder's Cost, recoverable as a debt.

7. ALTERATIONS BY THE PERMIT HOLDER

The Permit Holder must not carry out any alterations or additions to the Area without the Council's consent, which may be withheld by the Council at its absolute discretion.

8. DAMAGE

- 8.1 The Permit Holder must not permit, cause or contribute to damage to the Area or the Land, or any road, footpath, Council owned or controlled land or property in the

immediate vicinity of the Area, or any of the Council's Equipment or Services, in carrying out the Permitted Use or otherwise in connection with this Permit.

8.2 If the Permit Holder causes any damage described in clause 8.1 the Permit Holder must immediately notify the Council and at its own cost and expense promptly rectify the damage and reinstate the Area or the Land to the satisfaction of the Council and in accordance with all directions and requirements of Council.

8.3 If the Permit Holder fails to promptly rectify and repair any such damage pursuant to clause 8.1, or alternatively if the Council elects in its discretion, the Council may undertake the rectification and repairs itself, without notice having been given to the Permit Holder and the Council shall be entitled to recover from the Permit Holder as a liquidated debt any costs incurred in doing so.

9. TRANSFERRING, SUBLETTING AND CHARGING

9.1 Subject to the Act, the Permit Holder must not assign this Permit without the Council's prior written consent.

9.2 The Permit Holder must not charge, sublicense or otherwise part with possession with the Area without the Council's prior written consent.

10. COUNCIL'S OBLIGATIONS AND RIGHTS

10.1 Right to Enter

The Council may enter the Area at any time without prior notice for any reason, and may close or restrict access to the Area in an emergency.

10.2 Right to Rectify

The Council may at the Permit Holder's cost do anything which the Permit Holder should have done under this Permit but which the Permit Holder has not done or which the Council reasonably considers the Permit Holder has not done properly.

11. RIGHTS AND OBLIGATIONS ON EXPIRY

11.1 Termination of Permit

This Permit will immediately cancel on the earlier of the expiration of the Term or the termination of the Permit by the Council as permitted under this Permit.

11.2 Handover of Area

11.2.1 Before this Permit comes to an end, the Permit Holder will (at its own cost and expense):

- (a) cease using the Area for the Permitted Use;
- (b) remove all of the Permit Holder's Equipment and repair any damage caused by such removal;
- (c) if required by the Council, remove and reinstate any alterations or additions made to the Area by the Permit Holder;
- (d) complete any repairs which the Permit Holder is obliged to carry out under this Permit.

11.2.2 If the Permit Holder fails to carry out the works required under clause 11.2.1, the Council may without notice undertake the work required itself and may recover any cost or expense incurred in connection with such works from the Permit Holder as a liquidated debt.

11.3 **Holding Over**

If, with the Council's consent, the Permit Holder continues to occupy the Area after the end of this Permit, the Permit Holder does so on a monthly recurring basis which either party may terminate on one (1) month's notice given at any time and is on the same terms as this Permit.

12. **BREACH**

12.1 **Council's Rights on Breach**

12.1.1 If the Permit Holder is at any time in breach of any of its obligations under this Permit, the Council and anybody authorised by the Council for that purpose may:

- (a) give notice specifying the breach and requiring the Permit Holder to remedy the breach within a reasonable period of time, being at least fourteen (14) days, unless the Council determines that a shorter period should apply to protect the health or safety of the public;
- (b) at any time thereafter come onto the Area without notice and do all things necessary to remedy that breach; and
- (c) terminate this Permit by giving written notice to the Permit Holder which will be effective immediately unless the Council specifies otherwise in the notice.

12.1.2 The Permit Holder will be liable to pay or reimburse the Council for all reasonable costs and expenses incurred in connection with any action taken by the Council under clause 12.1.1, which the Council may recover from the Permit Holder as a debt due and payable on demand.

12.1.3 The Permit Holder must immediately notify the Council if it breaches any provision of this Permit.

12.2 **Interest on Overdue Amounts**

If the Permit Holder does not pay an amount when it is due under this Permit, it must pay interest on that amount on demand from when the amount becomes due until it is paid in full. Interest is calculated on outstanding daily balances at the Default Rate.

13. **INDEMNITY AND RELEASE**

13.1 **Risk**

The Permit Holder occupies and uses the Area at the Permit Holder's risk.

13.2 **Indemnity**

The Permit Holder is liable for and indemnifies the Council against all actions, liabilities, penalties, claims or demands for any loss, damage, injury or death incurred or suffered directly or indirectly in connection with the granting of the Permit or the undertaking of the Permitted Use except to the extent caused or contributed to by the negligence or default of the Council.

13.3 **Release**

The Permit Holder releases the Council from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring in the Area except to the extent that they are caused by the Council's negligence or default.

13.4 Each indemnity is independent from the Permit Holder's other obligations and continues during this Permit and after this Permit ends.

14. GOODS AND SERVICES TAX

14.1 If GST applies to impose tax on the Agreed Consideration or any part of it or if the Council is liable to pay GST in connection with this Permit or any goods, services or other things supplied under this Permit then:

14.1.1 the Agreed Consideration for that supply is exclusive of GST;

14.1.2 the Council may increase the Agreed Consideration or the relevant part of the Agreed Consideration by a percentage amount which is equal to the GST Rate; and

14.1.3 the Permit Holder shall pay the increased Agreed Consideration on the due date for payment by the Permit Holder of the Agreed Consideration.

14.2 Where the Agreed Consideration is to be increased to account for GST under this clause 14, the Council shall, on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Permit Holder.

14.3 If the Permit Holder does not comply with its obligations under this Permit or with its obligations under the GST Legislation in connection with this Permit and as a result the Council becomes liable for penalties or interest for late payment of GST, then the Permit Holder must pay the Council on demand an amount equal to the amount of the penalties and interest.

15. GENERAL

15.1 Costs

The Permit Holder must, on request, pay or reimburse to the Council all legal and other costs and expenses incurred by the Council in consequence of any actual or threatened breach by the Permit Holder hereunder or in exercising or enforcing (or attempting to do so) any rights or remedies of the Council hereunder or at law or otherwise arising in consequence of any actual or threatened breach by the Permit Holder.

15.2 Execution of Permit

This Permit is not effective until the Permit Holder has received a copy of the Permit signed by the Council.

15.3 Waiver

If the Council accepts or waives any breach by the Permit Holder, that acceptance or waiver cannot be taken as an acceptance or waiver of any future breach of the same obligation or of any other obligation under this Permit.

15.4 Notice

15.4.1 A notice given under this Permit must be in writing and may be given by post, by email, or by delivery:

(a) to the Council at:

(i) its office;

(ii) the address or email address of the Council appearing in this Permit; or

(iii) any other address or email address of which written notification has been given;

(b) to the Permit Holder at:

(i) its address or email address appearing in this Permit; or

(ii) any other address or email address of which written notification has been given.

- 15.4.2 Where more than one person comprises a party, notice to one of those persons is effective notice to all of those persons and to that party.
- 15.4.3 Posted notices will be taken to have been received two (2) Business Days after posting with postage prepaid.
- 15.4.4 Notices delivered by hand will be taken to have been received when delivered.
- 15.4.5 Notices sent by email will be taken to have been received four (4) hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered.
- 15.4.6 However notices delivered by hand after 5.00 p.m. will be taken to have been received at 9.00 a.m. on the next Business Day at the place where it is received.
- 15.4.7 Notices will be regarded as effective if signed for and on behalf of a party by its lawyers or, if the party is a corporation, by a director or duly authorised officer of the corporation.

15.5 Severance

If any part of this Permit is found to be invalid or void or unenforceable, then that part will be severed from this Permit and the remainder of this Permit will continue to apply.

15.6 Special Conditions

The Permit Holder acknowledges and agrees that the Special Conditions (if any) form part of this Permit and bind the Permit Holder, and to the extent there is any inconsistency between the Special Conditions and any other term of this Permit, the Special Conditions shall prevail.

15.7 Entire Agreement

The Council and the Permit Holder acknowledge and agree that this Permit contains and represents the entire agreement reached between them with regard to the Area and that no promises, representations or undertakings, other than those contained in this Permit, were made or given or relied upon.

15.8 Resumption

If the Council receives notice of resumption or acquisition of the Area or the Land (or any part of the Land affecting the Area) from or by any Statutory Authority or any governmental or semi-governmental body, then the Council may terminate this Permit by giving not less than three (3) months written notice to the Permit Holder. When such termination takes effect, the rights and obligations of the Council and the Permit Holder hereunder will come to an end but if any breach by either party still exists at that time then the rights of the other party with regard to that existing breach will continue.