

**THIS LEASE** is made

**BETWEEN:**

**SHIRE OF DENMARK**, 953 South Coast Highway, Denmark, Western Australia ("the Lessor")

**AND**

**DENMARK TOURISM INC**, corner Ocean Beach Road and South Coast Highway, Denmark Western Australia ("the Lessee")

**BACKGROUND:**

- A. By the vesting order made herein under and virtue of the provisions of The Transfer of Land Act 1893, as amended, the Reserve 48198 situated within the district of the Lessor was vested in the Lessor in trust for the objects and purposes for which the Land is reserved with power to the Lessor, subject to the approval in writing of the Minister of Lands being first obtained, to lease the whole or any portion for any term not exceeding twenty-one (21) years from the date of the lease for community purposes, subject to the powers reserved by and contained in the Act.
- B. Subject to the approval in writing of the Minister of Lands, the Lessor has agreed to lease to the Lessee and the Lessee has agreed to take on lease from the Lessor portion of Reserve 48198 (portion of Lot 501 on Deposited Plan 61023) and the buildings thereon being the Leased Premises for the term and upon the terms and conditions contained in this Lease.

## OPERATIVE PART:

THE PARTIES AGREE WITH EACH OTHER as follows:

### 1. DEFINITIONS AND INTERPRETATIONS

#### 1.1 Definitions

In this lease, unless there is something inconsistent in the subject or context, the following applies:

**Building** means any building erected on the Land and which the Leased Premises form part and includes any additions to the Building.

**Commencement Date** means the date mentioned in Item 3 of the Schedule.

**Further Term** means the further term mentioned in Item 4 of the Schedule.

**GST** means a tax levied on the value of a good or service or property supplied, including but not limited to the value represented by the rent and any other money payable by the Lessee to the Lessor for goods and services or property; and

**Land** means the land described in Item 1 of the Schedule.

**Lessor's Fixtures & Fittings** means the fixtures, fittings, plant and equipment belonging to the Lessor and being the items contained in the list in Item 9 of the Schedule.

**Leased Premises** means the premises described in Item 2 of the Schedule together with the Lessor's Fixtures and Fittings forming part of or annexed or affixed to the Leased Premises.

**Plan** means the plan annexed to this lease and marked Annexure "A".

**Rent** means the rent described in Item 6 of the Schedule.

**Review Date** means the dates referred to in item 7 of the Schedule.

**Schedule** means the Schedule to this lease.

**Supply** means a good or service or property supplied under this deed, including but

not limited to the Leased Premises and other goods or services or property supplied by the Lessor to the Lessee under this deed.

**Lessee's Business** means the business described in Item 8 of the Schedule.

**Termination Date** means the date mentioned in Item 3 of the Schedule.

**1.2 Headings, Number, Gender and Person**

Headings and underlinings are for convenience only and do not affect the interpretation of this deed. Words importing the singular include the plural and vice versa. Words importing a gender include any gender. A reference to a person includes a reference to a natural person, a corporation and any entity capable of being the subject of legal proceedings;

**1.3 Provisions of Deed**

A reference to a part, clause, paragraph, conditions, provision, party, annexure, exhibit or schedule is a reference to a part, clause, paragraph, condition, provision, party, annexure, exhibit or schedule to this deed;

**1.4 Statutes**

A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws issued under that statute;

**1.5 Document**

A reference to any document includes any amendment, supplement, replacement or novation of that document;

**1.6 Party**

A reference to a party includes permitted assigns and in the case of a corporation includes its successors, and in the case of a natural person that party's personal representative;

**1.7 Business Day**

Where used Business Day means a day on which trading banks generally are open for business in Western Australia and that day is not a Saturday, Sunday or public holiday in that State;

**1.8 Due Date**

Where the day on or by which any thing is to be done is not a Business Day that thing must be done on or by the preceding Business Day;

**1.9 Whole and Part**

Reference to the whole, whether express or implied, is also a reference to any part of the whole;

**1.10 Contra Proferentem**

No rules of construction apply to the disadvantage of a party on the basis that the party was responsible for the preparation of this Agreement or any part of it;

**1.11 Governing Law**

This deed must be construed in accordance with and governed by the laws of Western Australia;

**1.12 Joint and Several**

An obligation on the part of two or more persons binds them jointly and severally;

**1.13 Severability**

Any provision of this deed which is prohibited or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective only to the extent of that prohibition or unenforceability and does not invalidate the remaining provisions of this deed or affect the validity or enforceability of the provision in any other jurisdiction. This clause will not apply if its application would materially affect the legal or commercial arrangements intended to operate;

**1.14 Bodies and Associations**

If an association, body or authority, statutory or not, ("body") ceases to exist or is reconstituted, renamed, replaced or its powers or functions are transferred to any other body, a reference to that body means the body established or constituted in its place or that undertakes the powers or functions of that body;

**1.15 Moratorium not to Apply**

Unless application is mandatory by law any statute proclamation, order, regulation, or moratorium present or future will not apply to this lease so as to abrogate extinguish, impair, diminish, fetter delay or otherwise prejudicially affect any rights powers privileges remedies or discretions given or accruing to the Lessor;

## **2. LEASE**

- 2.1 Subject to the consent of the Minister for Lands AND UPON AND SUBJECT to the Land Administration Act 1997 and any subsidiary legislation made there under and any subsidiary legislation of the Lessor AND UPON AND SUBJECT to the covenants and conditions herein after contained AND ALSO the covenants and powers implied under the Transfer of Land Act 1893 unless hereby negotiated or modified the Lessor hereby leases to the Lessee and the Lessee hereby takes on the Leased Premises for the term subject to the payment of the rent and the observance and performance by the Lessee of the Lessee's Covenants ("Lease").

## **3. TERM, RENTAL AND GENERAL OUTGOINGS**

### **3.1 Term**

This lease will commence on the Commencement Date and will terminate on the Termination Date subject to the option to renew the term contained in clause 8.3 of this lease;

### **3.2 Rent**

The Lessee will pay to the Lessor on demand during the term of this Lease the Rent specified in Item 6 of the Schedule;

### **3.3 Review of Rent**

Not applicable during the Term or Further Term of the Lease;

### **3.4 Payment of Rent**

The Lessee will pay the rental reserved (without any deduction) at the times and in the manner to the Lessor at the place specified in Item 5 of the Schedule or as the Lessor otherwise directs in writing;

### **3.5 Rates and Taxes**

The Lessee will pay all rates and taxes including (but without limiting the generality of the foregoing) local authority rates sewerage water and excess water rates and land tax (State and Federal) payable in respect of the Leased Premises.

The Lessee should note that the property has been declared exempt from rates by the Minister for Local Government, following a request by the Lessor, pursuant to Section 6.26 (2) (k) of the Local Government Act 1995. This notwithstanding, the Lessee is still required to meet the cost of ESL, refuse, administration and interest (if any) charges payable on the land.

### 3.6 **Utility Charges**

The Lessee will pay punctually all charges for electric light, electric power, gas or other heating power or illuminant now or hereafter imposed payable or charged in respect of the Leased Premises PROVIDED ALWAYS that all those charges (if any) will be apportioned between the Lessor and the Lessee at the expiration or sooner determination of the term created or any extension or renewal of the term;

### 3.7 **GST**

- (a) The Lessee must pay to the Lessor the amount of any GST the Lessor pays or is liable to pay on a Supply.
- (b) The Lessee must pay to the Lessor the amount of the GST that the Lessee is liable to pay at the same time and in the same manner as the Lessee is obliged to pay for that Supply, including in relation to rent, at the time the Lessee is obliged to pay those amounts.
- (c) The price for each Supply, including rent, fixed or determined under this deed does not include GST on that Supply and the Lessee must pay the amount of GST in addition to the price for that Supply fixed or determined under this deed.
- (d) A written statement given to the Lessee by the Lessor of the amount of GST that the Lessor pays or is liable to pay is conclusive as between the Lessor and the Lessee except in the case of an obvious error.

## 4. **REPAIRS, MAINTENANCE AND PAINTING OF LEASED PREMISES**

### 4.1 **Repair and Maintain**

The Lessor will keep and maintain the gardens and surrounds (external) to the building, bitumen and paved surfaces of car park and access ways to and from adjoining roads necessary external signage adjoining the Leased Premises on Reserve 48198 and items listed at item 9 of The Schedule including all external lighting in good and tenantable repair and condition.

The Lessee will keep and maintain the building (internal) including (but without limiting the generality of the foregoing) internal walls, ceilings and floors and internal fixtures and fittings and all locks keys and fastenings thereof and toilets sinks and basins in good and tenantable repair and condition.

Fair wear and tear and damage recoverable under any policy or policies of insurance hereby excepted.

#### 4.2 **Painting**

The Lessee will keep the internal paintwork and the Lessor will keep the external paintwork of the Leased Premises in good order and condition and repainted as often as may be reasonably necessary as agreed by both Lessee and Lessor;

#### 4.3 **Right of Lessor to Enter Leased Premises**

The Lessee will permit the Lessor and the Lessor's contractors and workmen and with or without plant materials and appliances and without any payment or compensation to the Lessee or abatement of rental to enter into and upon the Leased Premises for the purpose of complying with the requirements of any requisition which may be served under any acts and also for the purpose of doing any other necessary repairs, renovations or works on or to the Leased Premises which the Lessee is not obliged to carry out;

#### 4.4 **Right of Lessor to Inspect Leased Premises**

The Lessee will permit the Lessor and the Lessor's agents at all reasonable times to enter and view the state of cleanliness and repair of the Leased Premises and forthwith to clean and repair and amend in a proper and workmanlike manner any defect for which the Lessee is liable if applicable and of which written notice will be given to the Lessee;

#### 4.5 **Not to Make Alterations to Leased Premises**

The Lessee will not make or permit or suffer to be made any alterations in or additions to the Leased Premises or any part thereof without the prior consent in writing of the Lessor and not without the consent to damage cut or alter any part of the walls, ceilings, floors, partitions, timbers, windows, fixtures or fittings in or about the Leased Premises;

#### 4.6 **Alterations Due to Nature of Business**

The Lessee will at the Lessee's expense carry out any modifications alterations or improvements which any government or other competent authority requires to be made to the Leased Premises by reason of the nature of the business conducted on the Leased Premises and to comply with all conditions as that authority may impose;

#### 4.7 **No Obligation to Make Alterations**

Subject to clause 4.6, nothing contained in this Lease will impose on the Lessee any liability to make or pay for any structural alterations or additions to the Leased Premises or any part of the Leased Premises or to any electrical wiring in the Leased Premises or any part of the Leased Premises;

#### 4.8 **Notice of Damage**

Should any damage occur to the Leased Premises or should the Lessee receive any notice from any statutory or public authority with respect to the Leased Premises the Lessee will forthwith give notice in writing to the Lessor;

#### 4.9 **Lessee to Make Good Damage**

That on the expiration or sooner determination of the term or any extension or renewal of the term the Lessee will be at liberty to remove all Lessee's fixtures and fittings installed or placed on the Leased Premises by the Lessee but will be responsible for making good any damage caused to the Leased Premises by that removal;

### 5. **OPERATION AND USE OF LEASED PREMISES**

#### 5.1 **Use of Leased Premises**

The Lessee shall not without first obtaining the written consent of the Lessor carry on or permit to be carried on upon the Leased Premises any activity, business, trade, occupation or calling other than the Lessee's Business relating to destination marketing or visitor servicing.

The Lessor acknowledges the current Sub Lease of a portion of the Leased Premises to the Denmark Woodturners by the Denmark Tourism Incorporated and the construction of a storage facility (shed) for the sub lessee. It is also acknowledged that on the expiry of the Lease this storage facility (shed) becomes an asset of the Lessor. It is further acknowledged that the sub lease arrangement will conclude at the expiry of the former lease, being 30 April 2017.

#### 5.2 **Nuisance**

The Lessee will not at any time during the term or any extension or renewal of the term to carry on or do or suffer or permit to be carried on or done in or upon the Leased Premises or any part of the Leased Premises any noxious or offensive art, trade, business or calling or anything which is unlawful or which constitutes a nuisance annoyance or damage to any owner or occupier of any adjoining or adjacent property or which will constitute an infringement of any statutes having control over or affecting the Leased Premises or the business for the time being carried on upon the Leased Premises and at all times to comply with the requirements of all those statutes;

#### 5.3 **Auction Sales**

Not to hold an auction sale on the Leased Premises without first obtaining the written consent of the Lessor;



#### 5.4 **Signs**

Not to place or suffer to be placed or maintained on the roof of the Building or on any exterior part or on any door, wall or window of the Leased Premises or on the interior of the windows, display windows or doors any television or wireless antennae or mast or other apparatus or any sign, awning or canopy or advertising matter or other thing of any kind and not to place or maintain any decoration lettering or advertising matter of a permanent or semi-permanent nature on or under any awning or canopy without first obtaining the written approval of the Lessor which approval not to be withheld except if:

- (a) To grant consent would not constitute responsible management of the Leased Premises or of the Building; or
- (b) The thing does not comply in every respect with the requirements of all statutes;

The Lessee will maintain any sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved in good condition and repair at all times;

#### 5.5 **Conduct of Operations of Leased Premises**

The Lessee covenants and agrees with the Lessor as follows:

- (a) to conduct the Lessee's business in the Leased Premises and keep the same open for business during the regularly customary days and hours for the type of business conducted;
- (b) not to use or permit the use of any portion of the Leased Premises for sleeping purposes or as sleeping apartments;
- (c) to keep the Leased Premises in a thorough state of cleanliness; to store all garbage, rubbish and refuse in a proper hygienic manner within the Leased Premises and to attend to the expeditious disposal thereof and to observe any directions given from time to time by the Lessor relating thereto; to keep all drains inside the Leased Premises clean and free from obstruction;
- (d) not to burn any garbage, refuse or rubbish;
- (e) not to use or permit the water closets, lavatories, grease traps and other sanitary appliances to be used for any purpose other than that for which they were constructed and not to do or suffer to be done any act or thing that might

choke or otherwise affect or damage the same;

- (f) not without the prior written consent of the Lessor to use or permit or suffer to be used chemicals, burning fluids, acetylene-gas or alcohol in lighting the Leased Premises or any other method than by electricity and not to use or permit or suffer to be used any method of heating other than by electricity gas oil or solid fuel; and
- (g) to take all proper precautions to keep the Leased Premises free from rodents, vermin, insects, pests, birds and animals and in the event of failing so to do if so required by the Lessor but at the cost of the Lessee to employ from time to time or periodically pest exterminators appointed by the Lessor for that purpose;

## **6. INSURANCE AND INDEMNITY**

### **6.1 Insurance**

The Lessee will take out and at all times keep in force a third party indemnity policy with a cover of not less than TEN MILLION DOLLARS (\$10,000,000.00) to cover those risks as are referred to in clauses 6.5 and 6.6 and any other risks as the Lessor may from time to time nominate with a public insurance office approved by the Lessor (which approval will not be unreasonably withheld);

### **6.2 Payment of Insurance Premiums**

The Lessee will pay to the insurer not less than 7 days prior to the date specified by it for payment all premiums as and when owing in respect of the insurance policies to be taken out by the Lessee under clause 6.1 and to produce to the Lessor on demand by it the policies of insurance referred to in those clauses and the receipts relating to the payment of premiums;

### **6.3 Not to Invalidate Insurance Policies**

The Lessee will not bring or permit to be brought into or upon the Leased Premises or any part thereof any goods of a hazardous nature other than those generally used for the purpose of the Lessee's business upon the Leased Premises and not to do or permit to suffer or to be done upon the Leased Premises anything which may invalidate or affect any insurance in respect of the Leased Premises or cause any increased or extra premium to be payable in respect thereof;

### **6.4 Third Party Indemnity**

The Lessee will indemnify the Lessor from and against all claims demands

proceedings judgments damages costs and losses of any nature whatsoever which the Lessor may suffer or incur in connection with the loss of life and or personal injury to any person and or damage to any property (wheresoever occurring) arising from or out of any occurrence at the Leased Premises or the use by the Lessee of the Leased Premises or any part thereof or occasioned wholly or in part by any neglect default or omission by the Lessee or by the employees, agents, contractors, customers, lawful visitors, invitees, licensees or sub-Lessees of the Lessee or by any other person or persons using or upon the Leased Premises with the consent or approval express or implied of the Lessee;

#### **6.5 Indemnity**

The Lessee will indemnify the Lessor from all loss and damage to the Leased Premises caused by the negligent use or misuse, waste or abuse of air-conditioning, fire protection or fire fighting installations or equipment, water, gas or electricity supplied to the Leased Premises or the Lessee in connection with the Leased Premises or the use and occupation thereof or by faulty sanitary, water, gas or electric pipes or wires or fittings fixtures fixed or installed in the Leased Premises by the Lessee or by the employees agents or independent contractors of the Lessee;

#### **6.6 Release of Lessor**

The Lessor will not be liable for any loss or damage suffered by the Lessee by reason of any accident arising from the water, sewerage, gas or electricity or other services used or installed in the Leased Premises or the Building or by reason of any leakage overflow or escape of water gas or electricity unless the same is directly attributable to the negligence of the Lessor or the employees of the Lessor.

### **7. ADDITIONAL COVENANTS BY LESSEE**

#### **7.1 Comply with Statutes**

- (a) The Lessee will keep and maintain the Leased Premises in a clean and good condition and comply in all respects with the provisions of all statutes affecting the Leased Premises and or the occupiers thereof and or the business carried on upon the Leased Premises and orders regulations and by-laws that may now or hereafter be enacted ordered or made and all directions pursuant to any statute that may lawfully be given by any Minister of the Crown Department Municipal Council or other competent authority or person;
- (b) The Lessee will comply punctually with every order or requisition made or issued under any statutes and not to do or leave or suffer to be done or left undone any act matter or thing whereby a nuisance or anything in the nature of

a nuisance or which may be deemed a nuisance by an authority constituted under any statute which may exist, arise or continue upon or in connection with the Leased Premises or the business carried on thereon and to abate any nuisance or alleged nuisance forthwith;

- (c) The Lessee will comply punctually with every order or requisition made or issued with respect to the Leased Premises by the Insurance Council of Australia and with any body or authority having the control or supervision of electrical installations or connections and also at the Lessee's own expense punctually to comply with every order or requisition made or issued with respect to the Leased Premises by the Western Australian Fire Brigades Board;

## 7.2 **Assignment of Lease**

The Lessee will not assign, sub-let, mortgage, charge or encumber the Leased Premises or any part of the Leased Premises or otherwise part with the possession of the Leased Premises or any part of the Leased Premises without the prior written consent of the Lessor. Such consent would not be unreasonably withheld by the Lessor. It is acknowledged by the Lessor that the Lessee sub-lets a portion of the Leased Premises to the Woodturners of Denmark and that a storage facility will be constructed at the rear of the Building and be the subject of this sub-letting arrangement and the Lessor and Lessee acknowledge and agree that the storage facility will become an asset of the Lessor at the conclusion of the sub Lease or by 30 April 2017 at the latest;

## 7.3 **Change in Shareholding of Lessee Corporation**

Where the Lessee is a corporation any change in the principal shareholding of the Lessee will be deemed to be an assignment of this lease and the Lessee will not permit any change without the consent of the Lessor which consent will not be unreasonably withheld if the provisions of clause 7.2 are complied with;

## 7.4 **Costs of Default**

The Lessee will pay all costs charges and expenses (including but not limited to solicitor's costs and surveyor's and Valuer's fees) incurred by the Lessor by reason of any default of the Lessee or for the purpose of or incidental to the compliance by the Lessor of the provisions of Section 81 of the Property Law Act 1969;

## 7.5 **Surrender of Leased Premises**

- (a) The Lessee will at the end or sooner determination of the term or any extension or renewal of the term remove from the Leased Premises all furniture fittings

and effects which are the property of the Lessee or over which the Lessee has custody or control and to restore and reinstate the Leased Premises to the same state and condition as the same are in at the beginning of this lease;

- (b) The Lessee will not remove the Lessor's Fixtures and Fittings;
- (c) The Lessee will quietly yield up possession to the Lessor and if so desired by the Lessor to remove or erase to the Lessor's satisfaction any trade or business name plates, sign, advertisement or notice whether internal or external making good all damage to the intent that the Leased Premises be left as if no business name plate, sign, advertisement or notice has been erected or painted or placed on the Leased Premises;
- (d) The Lessee agrees that any furniture fittings and effects not so removed by the Lessee within seven (7) days of the end or sooner determination of this Lease will if the Lessor so elects (the election to be made by written notice to the Lessee) be deposited in a public warehouse or elsewhere at the cost and for the account of the Lessee and the Lessor will not be liable to the Lessee for any loss or damage;

#### **7.6 Forbidding of Registration of Lease or Lodging of Caveats**

Neither the Lessee nor any Agent or other person on behalf of the Lessee will register this Lease or lodge a Caveat against the Land or any part of the Land.

#### **7.7 Legal Costs and Stamp Duty**

The Lessee will pay to the Lessor upon demand all the costs of and incidental to the instructions for and the preparation execution stamping and registration of this lease in triplicate and the stamp duty on this Lease;

### **8. LESSOR'S COVENANTS**

The Lessor HEREBY COVENANTS with the Lessee that

#### **8.1 Quiet Possession**

The Lessee duly paying the rentals reserved and performing and observing the covenants, conditions and stipulations contained or implied on the Lessee's part to be performed and observed will peaceably and quietly hold and enjoy the Leased Premises during the term and any extension and renewal of the term without any interruptions by the Lessor or any person or persons rightfully claiming under or in trust for the Lessor;

## 8.2 Insurance by Lessor

The Lessor will insure and keep insured or cause to be insured on a full reinstatement and replacement basis as the Lessor may decide from time to time the Building and the Lessor's fixtures and fittings in the Building against loss or damage by fire, fusion, explosion, smoke, lightning, flood, storm, tempest, rainwater, earthquake, riot, civil commotion, malicious damage, sprinkler leakage, water damage, impact by vehicles, aircraft and articles dropped therefrom and other usual and necessary risks against which an owner can and does ordinarily insure including (but without limiting the generality of the foregoing) all plant and machinery (including breakdown insurance) and breakage of glass for which the Lessor is responsible and loss of rent following damage;

## 8.3 Option to Renew

If at the date of exercise of the option in this Clause 8.3, the Lessee has not failed to comply with any notice given by the Lessor to the Lessee requiring the Lessee to remedy a breach by the Lessee of the provisions of this Lease on the Lessee's part to be complied with, the Lessee, subject to the prior approval of the Minister for Lands, has the option of extending this Lease for the further term specified in Item 4 of the Schedule, exercisable by giving to the Lessor a notice at their address appearing in this Lease (or at any other address as the Lessor notifies the Lessee in writing for that purpose) not less than three (3) calendar months written notice prior to the expiration of the term of renewing the term from the expiration of the term for the further term on the same terms and conditions as are contained or implied in this Lease (save and except this option of renewal which will be deemed expressly excluded) and the annual rental to be determined in accordance with Clause 3.3 of this Lease;

## 9. DEFAULT BY LESSEE

### 9.1 Right of Re-Entry

If;

- (a) the rent hereby reserved or any part thereof is at any time unpaid for 14 days after becoming due or;
- (b) in the case of a breach or non-observance of any of the other covenants, conditions or stipulations on the Lessee's part contained or implied and any breach or non-performance continuing after the expiration of 14 days written notice to the Lessee to remedy the same or;
- (c) in case the Lessee shall go into compulsory or voluntary liquidation or become bankrupt or enters into any composition arrangement with or assignment for

the benefit of the Lessee's creditors or have appointed under any acts or instrument or by order of any court a manager or an administrator or a trustee or a receiver or a receiver and manager or liquidator in relation to any part of the Lessee's undertakings or assets or property or;

- (d) any execution be issued against the Lessee or;
- (e) the Leased Premises are deserted or vacated or;
- (f) the Lessee fails to maintain the Visitors Centre Level 1 status or fails to operate in a professional manner over a continuing period and accreditation back to Level 1 or operational improvements do not occur within a three (3) month period of the written request of the Lessor to so correct the failings appropriate dispute resolution procedures may commence and if agreement is not reached;

THEN and in any case (but subject to the provision of the Bankruptcy Act 1966) the Lessor may at the Lessor's option re-enter upon occupy and resume possession of the Leased Premises or any part of the Leased Premises in the name of the whole and thereupon this lease and the term hereby created will cease and determine but without releasing the Lessee from rental accrued up to the time of re-entry and without prejudice to the right of action of the Lessor in respect of any breach of the covenants conditions and stipulations on the Lessee's part contained or implied in this lease;

## 9.2 **Acceptance of Rent Not to Prejudice Lessor's Rights**

Acceptance of rent by the Lessor after default by the Lessee under this lease will be without prejudice to the exercise by the Lessor of the powers conferred upon the Lessor by clause 9.1 or any other right, power or privilege of the Lessor under this lease and will not operate as an election by the Lessor either to exercise or not to exercise any of the Lessor's rights powers or privileges;

## 9.3 **Lessor's Right to Remedy Defaults**

The Lessor may but will not be obliged to remedy at any time without notice any default by the Lessee under this lease and whenever the Lessor so elects all costs and expenses incurred by the Lessor (including legal costs and expenses) in remedying a default will be paid by the Lessee to the Lessor on demand;

## 9.4 **Waiver**

If the Lessee is guilty of any default in the due performance or observance of any of the provisions contained or implied in this lease or does or performs other acts which would entitle the Lessor to determine this lease under the provision for re-entry the

receipt of the rental by the Lessor or the doing or omission of any other act or thing whatsoever by the Lessor or any employee or agent of the Lessor which but for this provision would or might amount to a waiver of the Lessor's right in respect of any breach or default after the happening of the event will not operate as nor be deemed to be a waiver in any way of the Lessor's powers and rights in respect of any breach or default any rule of law or equity to the contrary notwithstanding.

## **10. LESSOR'S AND LESSEE'S COVENANTS**

The Lessor and the Lessee covenant and agree as follows:

### **10.1 Total or Partial Destruction**

If the Leased Premises are destroyed or damaged so as to render the Building substantially unfit for use and occupation or so as to render the rebuilding or reconstruction of the Building in its previous form impractical or undesirable in the opinion of the Lessor then:

- (a) This lease may be terminated without compensation by either the Lessor or the Lessee by notice in writing to the other provided that in the latter case the Lessor has failed to rebuild or reinstate the Building within three months after being requested so to do in writing by the Lessee;
- (b) Any termination of this lease will be without prejudice to the rights of either party in respect of any antecedent breach matter or thing;
- (c) Nothing contained or implied in this lease will be deemed to impose any obligation on the Lessor to rebuild or reinstate or make fit for use and occupation the Leased Premises;
- (d) Upon the happening of any damage or destruction the rent payable by the Lessee or a proportionate part of the rent according to the nature and extent of the damage sustained will abate until the Building is rebuilt or reinstated or made fit for use or occupation or until this lease is terminated pursuant to the provisions of clause 10.1(a) and in the event of any dispute arising out of the provisions of this subclause the same will be referred to arbitration under the Commercial Arbitration Act 1985 (W.A.);

### **10.2 Right of Lessor to Carry out Works**

If the Lessor desires or requires :

- (a) to execute any works which by law the Lessor is bound and has been required



to execute on the Leased Premises or the Building;

- (b) to alter repair add to or re-build any part of the Leased Premises or the building;
- (c) to construct, erect, lay down, alter, repair, cleanse, or maintain any drain, ventilator, shaft, water pipe, electric wires or gas pipes in connection with or for the accommodation of the Building or any adjoining property;
- (d) to underpin;
- (e) to reinstate or rebuild in case of fire;

THEN and in any case the Lessor may with or without employees agents workmen and contractors and appliances enter upon the Leased Premises and carry out works doing as little damage to the Leased Premises as is reasonably possible and restoring the same without unreasonable delay but without making compensation for any damage or inconvenience to the Lessee. Upon the happening of any event in this clause the rent payable by the Lessee or a proportionate part of the rent according to the nature and extent of the damage to the Leased Premises may abate while the Building is unfit for use or occupation and any dispute arising out of the provisions of this clause will be referred to arbitration under the Commercial Arbitration Act 1985 (W.A.);

### 10.3 **Leased Premises Unfit for Occupation**

Should any competent authority declare the Leased Premises as being unfit for occupation or order the Leased Premises to be demolished then the tenancy created will be determined as from the date the declaration or order takes effect without any compensation being payable to the Lessee and without prejudice to the liability of the Lessee for all rental up to the date of determination and for all breaches prior to the determination of this lease;

### 10.4 **Holding Over**

If after the expiration or sooner determination of the term granted or any extension or renewal of the term the Lessee with the consent of the Lessor remains in possession of the Leased Premises or any part of the Leased Premises without having exercised the option of renewal contained or having exercised the option remains in possession with that consent at the expiration of the Further Term or the Extended Term then in any case the Lessee will be a calendar monthly Lessee of the Leased Premises but otherwise at the same rental as that paid during the last calendar month of the

immediately preceding term and on the same covenants conditions and stipulations as are contained or implied except the option of renewal which will be deemed expressly excluded;

#### 10.5 **Interest**

If the Lessee fails to pay to the Lessor any moneys which are payable by the Lessee to the Lessor under the terms of this lease within three (3) days from the due date for the payment the Lessee will pay to the Lessor interest thereon or on so much thereof as remains unpaid from the due date or dates for the payment until the same is actually paid and also upon any judgment which the Lessor may obtain against the Lessee from the date of any judgment until satisfied at the rate of 1.5% for each month or part of a month during which any payment is overdue or any judgment unsatisfied;

#### 10.6 **Notices**

- (a) Any notice which is required to be served under this lease will be served on the Lessor and the Lessee (as the case may be):
  - (i) personally; or
  - (ii) by being posted by registered post to the Lessor or the Lessee; at the address specified in this lease.
- (b) The Lessor and the Lessee may change their respective addresses specified in clause 10.6(b) by giving written notice to the other, and if notice is given in accordance with this clause all notices will be served at the alternative addresses notified;
- (c) Any notice served by post will be deemed to be served on the third day after posting in Western Australia;
- (d) Any notice under this lease may be signed by a director or secretary of any party which is a corporation or by a solicitor on behalf of any party;

#### 10.7 **Entire Agreement**

The Lessee acknowledges and declares that in entering into this lease the Lessee has not relied on any promise, representation, warranty or undertaking given by or on behalf of the Lessor in respect to the suitability of the Leased Premises or the finish, facilities, amenities or services of the Leased Premises for any business to be carried on in the Leased Premises and all warranties if any implied by law are hereby so far as legally possible expressly negated and that the terms covenants conditions and provisions contained in this lease expressly or by statutory implication cover and comprise the whole of the agreement between the parties and it is expressly agreed

and declared that no further or other terms covenants conditions or provisions whether in respect of the Leased Premises or otherwise will be deemed to be implied in the lease or to arise between the parties by way of collateral or other agreement;

#### 10.8 **Commercial Arbitration Act-Legal Representation**

Where it is necessary for any dispute under this lease to be determined by an arbitrator or umpire under the Commercial Arbitration Act 1985 (W.A.) then each party to the proceedings before an arbitrator or umpire may be represented by a duly qualified legal practitioner;

### 11. **ESSENTIAL TERMS**

#### 11.1 **Essential Terms of Lease**

Each of the covenants by the Lessee which are specified in this clause are essential to this lease:

- (a) The covenant to pay rent throughout the term at a date not later than 14 days after the due date for payment of each monthly instalment of rent (clause 3.2);
- (b) The covenant to pay the rates and taxes and outgoings throughout the term at a date not later than 14 days after the due date for payment (clauses 3.5 and 3.7);
- (c) The covenant restricting the right to transfer assign sublet mortgage charge or otherwise part with possession of the leased premises (clause 7.2);
- (d) The covenant restricting the trade and business of the Lessee upon the Leased Premises (clause 5.1);
- (e) The additional covenants relating to the conduct and use of the Leased Premises (clause 5.5).

#### 11.2 **Waiver**

In respect of the Lessee's obligation to pay rent the acceptance by the Lessor of arrears or of any late payment of rent will not constitute a waiver of the essentiality of the Lessee's obligation to pay rent in respect of those arrears or of the late payments or in respect of the Lessee's continuing obligation to pay rent during the term;

#### 11.3 **Breach of Essential Terms**

The Lessee covenants to compensate the Lessor in respect of any breach of an

essential term of this Lease and the Lessor is entitled to recover damages from the Lessee in respect of those breaches. The Lessor's entitlement under this clause is in addition to any other remedy or entitlement to which the Lessor is entitled (including to terminate this Lease);

#### **11.4 Repudiation of Lease**

In the event that the Lessee's conduct (whether acts or omissions) constitutes a repudiation of the lease (or of the Lessee's obligations under this lease) or constitutes a breach of any lease covenants the Lessee covenants to compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach;

#### **11.5 Damages for Repudiation or Breach of Lease**

The Lessor will be entitled to recover damages against the Lessee in respect of repudiation or breach of covenant for the damage suffered by the Lessor during the entire term of this lease;

#### **11.6 Damages Not Affected**

The Lessor's entitlement to recover damages will not be affected or limited by any of the following:

- (a) If the Lessee abandons or vacates the Leased Premises;
- (b) If the Lessor elects to re-enter or to terminate the lease;
- (c) If the Lessor accepts the Lessee's repudiation;
- (d) If the parties' conduct shall constitute a surrender by operation of law.

#### **11.7 Recovery of Damages for Entire Term of Lease**

The Lessor will be entitled to institute legal proceedings claiming damages against the Lessee in respect of the entire term including the periods before and after the Lessee has vacated the Leased Premises and before and after abandonment termination repudiation acceptance of repudiation or surrender by operation of law referred to in clause 11.6 whether the proceedings are instituted either before or after that conduct;

#### **11.8 Mitigation of Damages by Lessor**

In the event of the Lessee vacating the Leased Premises whether with or without the Lessor's consent the Lessor will be obliged to take reasonable steps to mitigate his damages and to endeavour to lease the Leased Premises at a reasonable rent and on reasonable terms. The Lessor's entitlement to damages will be assessed on the basis

that the Lessor should have observed the obligation to mitigate damages contained in this sub-clause. The Lessor's conduct taken in pursuance of the duty to mitigate damages will not by itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law.

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## THE SCHEDULE

- Item 1                      **Land**  
 The Land situated in the Shire of Denmark, Western Australia and being:-  
 Lot 501 on Deposited Plan 61023 and being the whole of the land in Certificate of Title Volume LR3157 Folio 222.
- Item 2                      **Leased Premises**  
 All those premises situated at corner of Ocean Beach Road and South Coast Highway, Denmark, Western Australia being portion of Reserve 48198 (portion of Lot 501 on Deposited Plan 61023) comprising the land under any building and any building, which is delineated red on the plan.
- Item 3                      **Commencement Date**  
 1 May 2017  
**Date of Termination of Lease**  
 30 April 2022
- Item 4                      **Further Term or Terms of Lease**  
**Further Term**  
 FIVE (5) YEARS from the date of termination mentioned in Item 3 above.
- Item 5                      **Place for Payment of Rent**  
 At the address of the Lessor or as the Lessor may otherwise direct in writing.
- Item 6                      **Rate of Rent**  
 ONE (1) DOLLAR per annum.
- Item 7                      **Review of Rent**  
 Not applicable during the Term or Further Term of the Lease.
- Item 8                      **Description of Business**  
 Destination Marketing; and  
 Tourism Promotion & Visitor Servicing

Item 9

**Lessor's Fixtures and Fittings**

Nil

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**ANNEXURE "A"**  
**PLAN**



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**Shire of Denmark**

and

**Denmark Tourism Inc.**

**SERVICE AGREEMENT**

Denmark Visitor Centre

THIS AGREEMENT is made the \_\_\_\_\_ day of **XXXX**

B E T W E E N:

SHIRE OF DENMARK of South Coast Highway Denmark, ("the Shire")

and

DENMARK TOURISM INC. of the Denmark Visitors Centre Denmark ("DTI")

WHEREAS:

- A The Shire is the owner of the land situated at the corner of South Coast Highway and Ocean Beach Road Denmark and being Lot 501 on Deposited Plan 61023 and being the whole of the land in Certificate of Title Volume LR3157 Folio 222 on which is situated the building known as the Denmark Visitor Centre ("DVC")
- B. The Shire has agreed to lease the DVC to DTI for a further term of five years commencing on 1 May 2017 ("the Lease").
- C. The Parties have previously entered into a Memorandum of Understanding dated 31 March 2009 and this agreement is intended to replace that Memorandum.
- D. The Parties enter into this agreement to record the terms of their financial relationship.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

- 1. That this agreement records the basis of the financial arrangements between the parties for such period as shall coincide with the continuation of the current lease through to conclusion of the new lease.
- 2. The agreement supersedes the Memorandum of Understanding between the Parties signed on the 31<sup>st</sup> day of March 2009.
- 3. That no agreement between the parties in conflict with the terms of this agreement shall be effective unless in writing signed by or on behalf of each party.

4. During the term of this agreement and in consideration of the financial assistance of the Shire, DTI agrees that:
  - (a) It will operate the DVC to promote tourism and tourist facilities and services throughout the Shire and for the benefit of the people of and visitors to the Shire and those persons and organizations providing facilities and services for visitors to the Shire;
  - (b) It will use its best endeavours to maintain its Level 1 tourism accreditation;
  - (c) It will operate the DVC in such a manner as shall be consistent with its obligations hereunder and in compliance with the terms of the Lease and shall make its operations as nearly as possible financially self-sustaining;
  - (d) It will annually present to the Shire a strategy and operating budget for the following three years, incorporating its plans for that period and all anticipated expenses of such plans, Key Performance Indicators for that period and a proposal for financial assistance by the Shire.
  
5. During the term of this agreement and in consideration of the covenants of DTI herein contained the Shire agrees:
  - (a) To provide such financial assistance for DTI as in the reasonable opinion of the Shire may be required to enable DTI to perform its obligations under this agreement and the Lease.
  - (b) Upon receipt of each annual strategy and operating budget from DTI pursuant to clause 4(d) hereof, to meet with DTI to consider DTI's proposal for financial assistance and thereafter to determine whether it will grant financial assistance to DTI in accordance with the proposal and, if not, what financial assistance it will provide.
  
6. The parties shall make execute and do all acts deeds documents and things and without limiting the generality of the foregoing execute and sign all documents deeds applications forms and instruments which may reasonably be required to give full effect to this Agreement.
  
7. Neither party shall hereby in any way or for any purpose become a partner of the other party in the conduct of that party's business or otherwise or a joint venturer or a member of a joint enterprise with the other party.
  
8. Time shall be the essence of this Agreement in all respects.
  
9. This Agreement shall be governed by the laws in force in the State of Western Australia from time to time.

10. In the event of any part of this Agreement being or becoming void or unenforceable then that part shall be severed from this Agreement to the intent that all parts that shall not be or become void or unenforceable shall remain in full force and effect and be unaffected by any severance.
11. All disputes and questions whatever which shall arise between the parties to this Agreement or the construction or application thereof or any clause or thing herein contained or as to any act deed or omission of either party or as to any other matter or thing relating hereto or the rights duties and liabilities of either party hereunder shall be referred to a single arbitrator if the parties agree upon one otherwise to two arbitrators one to be appointed by each party in accordance with and subject to the provisions of the Commercial Arbitration Act 1985.
12. The toleration or sufferance of any breach or default under this Agreement shall not be construed to be a consent to or a waiver of that breach or default.
13. Neither party shall at any time without the prior written consent of the other party or unless ordered to do so in any court of competent jurisdiction or otherwise required by law disclose to any person any trade secrets, customer lists, patents, designs copyright materials, secret processes or other confidential information relating to the other party's Business or to any of its related or associated companies or its or their respective business associates or customers and the parties shall at all times take all necessary and available steps to prevent such disclosure to any person not entitled thereto.
14. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter of this Agreement and merges all prior discussions between them and neither of the parties shall be bound by any conditions definitions warranties or representations with respect to the subject matter of this Agreement other than as expressly provided herein.
15. Any demand or notice to any party shall be validly made or given if purporting to be signed by the party or by that party's solicitor or any other person having that party's express or implied authority in writing such demand or notice is delivered or sent by post to the other party at that party's address herein mentioned notwithstanding that the party may be under a disability and in the case of service by post such demand or notice shall be deemed to have been served on the date which such letter would in the ordinary course of post (including air mail if used) have arrived at the address to which it is sent notwithstanding actual non-delivery thereof.
16. Each party shall pay their own legal costs of and incidental to the instructions for and the preparation and execution of this Agreement and shall share equally any duties payable hereon.

SIGNED by the parties

THE COMMON SEAL of )  
SHIRE OF DENMARK )  
was hereunto affixed )  
in the presence of )

-----  
Cr Ross Thornton  
Shire President

-----  
Dale Stewart  
Chief Executive Officer

THE COMMON SEAL of )  
DENMARK TOURISM INC )  
was hereunto affixed in )  
the presence of: )

-----  
Simon Lyas  
Chairman

-----  
Michael Evans  
Treasurer