

LICENCE AGREEMENT

SHIRE OF DENMARK

(Licensor)

- and -

DENMARK COMMUNITY RESOURCE CENTRE INC

(Licensee)



ACN 121 569 882

www.hfmlegal.com.au

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16 August 2022 - Attachment 9.3.1

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THIS LICENCE AGREEMENT is made on the date specified in Item 1 between:

- A the person (**Licensor**) specified in Item 2; and
- B the person (**Licensee**) specified in Item 3.

1. Definitions

In this Licence Agreement, the following words have these meanings if they begin with a capital letter in the text.

Annual Fee means the Annual Fee specified in Item 8 of the Schedule;

Head Lessor means ILYA and SUSAN FAY CENIN both of 'The Cove' Payne Road, Denmark in the State of Western Australia;

Item means an Item of the Schedule;

Lease means a lease between the Head Lessor and the Licensor in respect of the Licensed Area dated 21 November 2005;

Licence Agreement means this Licence Agreement as varied or amended from time to time;

Licensed Area means the Licensed Area described in Item 6 of the Schedule;

Permitted Use means the permitted use described in Item 7;

Schedule means the Schedule at the end of this Licence Agreement;

Term means the term specified in Item 4.

2. Recitals

- 2.1 The Licensor leases the Licenced Area from the Head Lessor for the purpose of television and radio rebroadcasting and has installed a 40 metre tower and associated equipment for this purpose.
- 2.2 The Licensor's lease over the Licensed Area (**Headlease**) expires on 30 June 2024.
- 2.3 The Licensee has requested access to the Licenced Area for the purpose of installing transmission equipment to broadcast the Denmark Community Radio Station.
- 2.4 The Licensor has agreed to grant a licence to the Licensee over the Licensed Area and the Head Lessor has consented to the Licensor granting the licence to the Licensee for the Permitted Use.
- 2.5 Save as is expressly or by necessary implication hereby varied this Licence is made subject to the terms and conditions of the Headlease and the parties agree to be bound by the Headlease.

3. Interpretation

3.1 In this Licence Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa.
- (b) a reference to a person includes:
 - i. a body corporate, unincorporated association, partnership or authority; and
 - ii. a person's successors, administrators, executors and assigns.
- (c) an agreement, undertaking or indemnity given by, or in favour of, more than one person binds, or is for the benefit of, them jointly and severally.
- (d) a reference to a clause is a reference to a clause in this Licence Agreement.
- (e) a reference to a thing (including any amount) is a reference to it wholly or partially.
- (f) a reference to this Licence Agreement includes any variation or extension of it.
- (g) a reference to a law includes any amendment or replacement of it.
- (h) headings are inserted for convenience only and do not affect the interpretation of this Licence Agreement.

4. Licence

4.1 In consideration of payment of the Annual Fee the Licensor permits the Licensee to use and occupy the Licensed Area, on a non exclusive basis, for the term specified in Item 4 and for the Permitted Use specified in Item 7 subject to the due and punctual performance of the terms and conditions set out in this Licence Agreement.

5. No Estate or Interest

5.1 This Licence Agreement does not confer upon the Licensee any estate or interest in the Licensed Area or any part thereof and the possession and control of the Licensed Area shall at all times remain vested in the Licensor.

6. Holding Over

6.1 If the Licensee continues to use the Licensed Area after the last day of this Licence Agreement (including any option to renew the Term), it does so under an annual tenancy beginning on the day after the last day of this Licence Agreement as specified in the Schedule.

6.2 If the holding over provisions apply then:

- (a) either party may terminate this Licence Agreement on one (1) month's written notice to the other; and
- (b) both parties continue to be bound by the terms of this Licence Agreement.

7. Licence Fee

7.1 The Licensee must pay to the Licensor the Annual Fee.

8. Licensee's Obligations

8.1 The Licensee, on behalf of its employees, volunteers, agents, contractors, servants, guests and invitees, through out the term of this Licence Agreement, will:

- (a) ensure that the Licensed Area is only used for the Permitted Use as specified in Item 7 and for any other use permitted by the Licensor in writing from time to time;
- (b) ensure that the Licensed Area is maintained in a clean and tidy state and protect it from damage;
- (c) not create a nuisance including any offensive, noisy or noxious activity on or around the Licensed Area;
- (d) not improve, add to or alter the Licensed Area without first obtaining the prior written consent of the Licensor whose consent is not to be unreasonably withheld;
- (e) not erect a poster or sign on any part of the Licensed Area without first obtaining the prior written consent of the Licensor;
- (f) make good any damage to infrastructure caused by the Licensee;
- (g) unless otherwise agreed, remove all property, including any fixtures attached to the Weedon Hill Transmission Tower by the Licensee and, at its cost, ensure that the Licensed Area is left in a clean and tidy state at the end of the Term; and
- (h) observe, comply with and ensure that the Licensee's employees, volunteers, agents, contractors, servants, guests and invitees observe and comply with all rules, terms, conditions or reasonable directions in respect of the use of the Licensed Area made by the Licensor from time to time.

9. Insurance

9.1 The Licensee must:

- (a) Maintain, with insurers acceptable to the Licensor, and on terms approved by the Licensor (with such approval to be presumed unless the Licensor expressly disapproves):
 - i. in the name of the Licensee and (if requested by the Licensor) the Licensor, public liability insurance in respect of the Licensed Area (including without limitation any risk associated with or arising directly or indirectly from the Licensed Area, including the condition of the Licensed Area) for an amount of not less than twenty million dollars (\$20,000,000) in respect of any one claim; and

- ii. such other insurances relating to the Licensed Area as are required by law (e.g. workers' compensation insurance).
- (b) ensure that the insurance policies contain all conditions, endorsements and exclusions reasonably acceptable to or required by the Licensor from time to time;
- (c) pay all insurance premiums on time;
- (d) provide evidence of the currency of the insurance policy or policies whenever reasonably requested to do so by the Licensor; and
- (e) immediately notify the Licensor if an insurance policy required by this clause is cancelled or an event occurs which may allow a claim or affect its rights under an insurance policy in connection with the Licensed Area.

10. Indemnities and Releases

10.1 Indemnity

The Licensee shall indemnify and keep indemnified the Licensor, its employees and agents from and against all claims, actions, liabilities and losses arising from, and any costs, charges and expenses incurred in connection with:

- (a) loss of or damage to any property; and/or
- (b) injury or death of any person,

caused by an act, negligence or default of the Licensee or of the Licensee's employees, agents, contractors, servants, guests and invitees. This does not apply to the extent caused or contributed to by the Licensor.

10.2 Release

The Licensee releases and discharges the Licensor and its employees and agents from and against all claims, actions, liabilities and losses arising from, and any costs, charges and expenses incurred in connection with:

- (a) loss of or damage to any property; and/or
- (b) injury or death or any person,

which the Licensee or any person claiming through the Licensee has or at any time hereafter might have had against the Licensor or its employees or agents, caused by an act, negligence or default of the Licensee or of the Licensee's employees, agents, contractors, servants, guests and invitees. This does not apply to the extent caused or contributed to by the Licensor.

11. No Assignment or Subletting

11.1 The Licensee must not:

- (a) assign this Licence Agreement;
- (b) create in favour of any person an interest in this Licence or the Licensed Area;

or

- (c) allow any person to use or occupy the Licensed Area,

without the prior written consent of the Licensor, which consent will not be unreasonably withheld.

12. Ending this Licence

12.1 Either party may terminate this Licence Agreement upon six (6) month's written notice to the other party at any time during the Term (or any option to renew the Term) of this Licence Agreement.

12.2 Upon determination of this Licence Agreement, the Licensee must:

- (a) remove any of its property located on the Licensed Area;
- (b) return the Licensed Area to a condition consistent with that at commencement of this Licence Agreement or to a level reasonably agreed by the Parties; and
- (c) make good any damage caused by the Licensee to the Licensed Area or any property of the Licensor.

13. Acknowledgement

13.1 The parties hereby acknowledge and agree that in the event that any transfer in ownership of the Licensed Area to a related entity of the Licensor occurs during the term of this Licence Agreement, this Licence Agreement is intended to and will continue to apply.

14. GST

14.1 Consideration is exclusive of GST

The consideration for a Supply under this Licence Agreement (other than under this clause 14) is exclusive of any GST imposed on the Supply.

14.2 Recovery of GST

If a Supply under this Licence Agreement is subject to GST:

- (a) the Recipient of the Supply must pay, in addition to the other consideration payable or to be provided for the Supply, an additional amount equal to the GST; and
- (b) the Recipient must pay the additional amount to the supplier at the same time as the other consideration.

However, the Recipient need not pay the additional amount until the supplier gives the Recipient a Tax Invoice.

14.3 Adjustment of additional amount

If the additional amount differs from the amount of GST payable by the supplier on the Supply:

- (a) the supplier must promptly issue an Adjustment Note to the Recipient; and
- (b) an amount equal to the difference must be paid by the supplier to the Recipient, or by the Recipient to the supplier, as appropriate.

14.4 Reimbursement

If any party is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the payment must exclude any part of that cost or expense which is attributable to GST for which that party or the Representative Member of any GST Group of which that party is a Member is entitled to an Input Tax Credit.

14.5 Definitions

In this clause, **Adjustment Note**, **GST**, **GST Group**, **Input Tax Credit**, **GST Law**, **Member**, **Recipient**, **Representative Member**, **Supply** and **Tax Invoice** have the meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

15. Notices

15.1 A notice, approval or other communication under or about this Licence Agreement must be:

- (a) in writing; and
- (b) delivered to the party, or left at or sent by registered prepaid post, to the address of the party specified in items 2 and 3 of the schedule.
- (c) A notice, approval or other communication under or about this Licence Agreement is taken to have been received:
 - (i) if delivered or left at the address of the party, on that day;
 - (ii) if posted, on the seventh day after posting; and
 - (iii) if sent by email, when the sender receives confirmation that the email has been transmitted in its entirety.

16. Dispute Resolution

16.1 Any dispute arising under this Licence Agreement will, in the absence of agreement between the parties, be determined by the award of a single arbitrator, if the parties can agree upon one, and if not then as appointed by the President of the Law Society of Western Australia from time to time, and in either case the provisions of the *Commercial Arbitration Act 1985* (WA) shall apply and either party may be represented by lawyers and/or counsel at any stage during the arbitration proceedings.

17. Compliance with Laws and Requirements

17.1 The Licensee shall comply with and observe at its cost all present and future statutes, regulations, planning schemes, local laws, by-laws and orders affecting the use of the Licensed Area by the Licensee and with all notices received either by the Licensor or the Licensee from any relevant authority.

18. Costs

18.1 The parties will bear their own legal costs for the preparation, negotiation, consideration and execution of this Licence Agreement.

19. Governing Law

19.1 This Licence Agreement is governed by the law in force in Western Australia and each party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts of Western Australia.

20. Severability

20.1 If any clause in this Licence Agreement is held to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, the validity and enforceability of the remaining clauses shall not be affected and each remaining clause will be valid and enforceable to the fullest extent permitted by law.

21. Counterparts

21.1 This Licence Agreement may consist of separate counterparts and the counterparts taken together constitute one and the same instrument.

22. Execution

The common seal of **SHIRE OF DENMARK ABN 24 355 062 623** was hereunto affixed by authority of resolution of the Council in the presence of:

Signature of Shire President

Signature of Chief Executive Officer

Name of Shire President

Name of Chief Executive Officer

Executed by **DENMARK COMMUNITY RESOURCE CENTRE INC ABN 37 464 298 309**
in accordance with section 15 of the *Associations Incorporation Act 2015* (WA).

Signature

Name

Position

Signature

Name

Position

DRAFT

SCHEDULE

Item 1 Date of Licence Agreement

The _____ day of _____ 2022

Item 2 Licensor

Name: Shire of Denmark
Address: 953 South Coast Highway, Denmark WA 6333
Contact: Chief Executive Officer
Tel: (08) 9848 0300
Email: enquiries@denmark.wa.gov.au

Item 3 Licensee

Name: Denmark Community Resource Centre Inc trading as Denmark FM
Address: 2 Strickland St, Denmark WA 6333
Contact: Denmark FM Manager
Tel: 0483 841 974
Email: manager@denmarkfm.com.au

Item 4 Term

Commencing on the date of this Licence and ending on the 29th day of June 2024.

Item 5 Licensed Area

That part of the land known as Lot 210 on deposited plan 20982 and comprised in certificate of title volume 2103 folio 633 and shaded in the Plan of Licence Area.

Item 6 Permitted use

The Licensee is permitted to use the Licensed Area as follows:

- (a) to install radio and transmission equipment in the Licensed Area in order to broadcast the Demark Community Radio Station; and
- (b) to maintain the equipment it has installed in the Licensed Area.

Item 7 Annual Fee

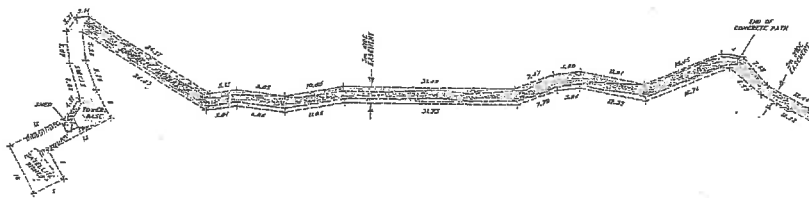
Denmark FM are required to acknowledge the Shire of Denmark as a supporter through its media.

SEE NEXT PAGE

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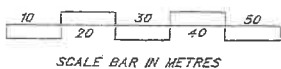
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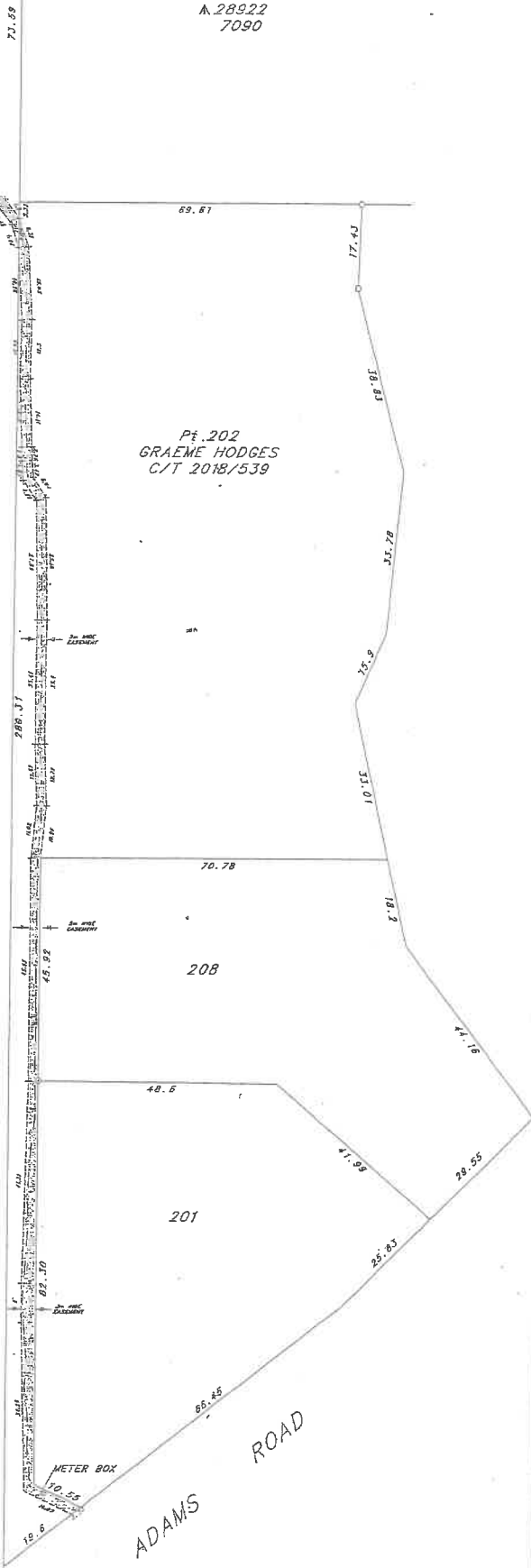
210
ILLYA CENIN

Pt. 202
GRAEME HODGES
C/T 2018/539

PROPOSED EASEMENTS OVER LOT 210
& Pt LOT 202 ADAMS ROAD - DENMARK



- LEASE AREA
- CENIN EASEMENT
- HODGES EASEMENT



HEAD LESSOR'S CONSENT

IILYA and SUSAN FAY CENIN both of 'The Cove' Payne Road, Denmark in the State of Western Australia being the Head Lessor CONSENT to the above Licence Agreement PROVIDED THAT such consent is restricted to the particular Licence Agreement herein authorised and save as aforesaid the covenants in the Head Lease against sub-letting, assignment, transfer or parting with possession of the Licensed Area or any part thereof or the Head Lease or any estate or interest therein shall continue to apply and remain in full force and effect provided further that nothing in this Licence Agreement shall release the Licensor from any obligation, term, covenant or condition contained in the Head Lease on the part of the Licensee to be observed and performed.

SIGNED BY)
IILYA CENIN)
in the presence of:)

Witness signature

Witness name

Witness address

Witness occupation

Witness email

SIGNED BY)
SUSAN FAY CENIN)
in the presence of:)

Witness signature

Witness name

Witness address

Witness occupation

Witness email

