



## SHIRE OF DENMARK

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# SERVICE AGREEMENT

This Agreement is made on the \_\_\_\_\_ day of \_\_\_\_\_ year

## 1. PARTIES

**Shire of Denmark** of 953 South Coast Highway, Denmark, Western Australia

and

**Denmark Chamber of Commerce** [ABN 62 127 248 004] of, PO Box 148, Denmark, Western Australia

## 2. INTRODUCTION

- a) The Shire of Denmark ("the Shire") is the manager of the land comprising the whole of Reserve 48198, whole of Lot 501 on Deposited Plan 61023, Certificate of Title Volume LR3157 Folio 222, corner of South Coast Highway and Ocean Beach Road, Denmark.
- b) The Shire owns the buildings and improvements located on the Reserve including the building known as the Denmark Visitor Centre ("DVC").
- c) The Shire has agreed to lease the DVC to the Denmark Chamber of Commerce ("DCC") for a term commencing on 1 December 2024 and expiring on 30 June 2026.
- d) The Parties enter into this agreement to record the terms of their financial relationship.

## 3. AGREEMENT

It is agreed as follows:

- 3.1 During the term of this agreement, and in consideration of the financial assistance provided by the Shire, DCC agrees to:
  - a) Open and operate a face-to-face visitor service at the DVC to promote tourism and tourist facilities and services throughout Denmark for at least 30 hours per week, to be reviewed annually.
  - b) 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 near as possible, financially self-sustaining.
  - c) Meet with the Shire's Chief Executive Officer ("CEO") as required to address, amongst other things:
    - (i) the operation of the DVC;
    - (ii) the allocation of funds provided by the Shire;
    - (iii) developing agreed priorities for Tourism in the Denmark Region;
    - (iv) review the performance of the agreement against the KPIs and amend or vary the KPIs as necessary; and
    - (v) obstacles faced by the DCC in achieving common objectives.

30 July 2024 - Attachment 9.3.1a

- d) In May 2025 and upon termination of this Agreement, present to the CEO a report including;
  - (i) a profit and loss statement
  - (ii) an operating budget
  - (iii) reporting against the following KPIs:
    - A. Visitation numbers to the DVC for tourism related activity.
    - B. Tourism face to face service delivery hours at the DVC.
    - C. Volunteer workforce participation statistics.
    - D. Shire approved sub-tenancy arrangements undertaken since last report.
- e) The information provided to the Shire in parts d) will be circulated internally to Councillors and Senior Officers for information. The Shire of Denmark's CEO will inform DCC should there be any concerns raised.
- f) The DCC may be required to address Councillors at a Concept Forum outlining the activities undertaken for the previous 12 months.
- g) If operating face to face visitor servicing on a Sunday, check and maintain the DVC toilets on Sundays, including provision of all consumables.
- h) Notify the Shire of any changes to its address, telephone number or email address.
- i) Obtain approval from the Shire CEO before applying for or requesting grant funding relating to tourism, with such approval not to be unreasonably withheld.
- j) Sale of merchandise or souvenirs within the DVC must not create any unreasonable competition concerns for local businesses.

3.2 During the term of this agreement the Shire agrees to:

- a) Provide financial assistance to DCC, for the term of the lease and this agreement, to enable it to perform its obligations under this agreement. The Shire, upon receiving an invoice from DCC, will pay these funds within 10 working days.
 

1 December 2024 – 30 November 2025: \$75,000 (ex GST)

1 December 2025 – 30 June 2026: \$43,750 (ex GST), pro rata
- b) Clean and maintain the DVC toilets during the week (Monday, Wednesday and Friday), this includes providing all consumables and cleaning materials.
- c) Provide a lease agreement for the term of this agreement for the yearly rental of \$1.00 (ex GST) which shall be deemed to have been paid by the Lessee to the Lessor.
- d) Consider granting a 100% concession of the rates payable, pursuant to section 6.47 of the Local Government Act 1995, for the financial years that fall within the term of this agreement.

3.3 That this agreement records the basis of the financial arrangements between the parties for a specified period being 1 December 2024 to 30 June 2026.

- 3.4 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.
- 3.5 This Agreement shall be governed by the laws in force in the State of Western Australia.
- 3.6 In the event of any part of this Agreement being or becoming void or unenforceable then that part shall be severed from this Agreement. Nothing prevents either party proposing a replacement part that is able to be enforced, if required.
- 3.7 Any amendments to this Agreement are to be agreed to by both parties in writing. The variation then becomes an appendix to this Agreement.
- 3.8 This Agreement shall be binding upon each party notwithstanding the avoidance, invalidity or unenforceability of any part.
- 3.9 The tolerance 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.
- 3.10 Neither party shall at any time without the prior written consent of the other party disclose to any person any trade secrets, customer lists, patents, design copyright materials or confidential information relating to the other party's business or to any of its related or associated companies. Both parties shall at all times take all necessary and available steps to prevent such disclosure to any person not entitled thereto.
- 3.11 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 representative having that party's express or implied authority in writing. Such demand or notice is to be delivered or sent by post to the other party at that party's address. Such demand or notice shall be deemed to have been served on the date which such letter would in the ordinary course of post have arrived at the address to which it is sent.
- 3.12 Each party shall pay their own legal costs for the preparation, examination, variation and execution of this Agreement and shall share equally any duties payable hereon.
- 3.13 No party shall assign, transfer or convey any of its rights or obligations under this agreement without the prior written consent of each of the parties.

#### **4. DISPUTE RESOLUTION**

- 4.1 A party claiming that a dispute has arisen must notify the other party in writing by giving details of the dispute.
- 4.2 During the 21-day period after a notice is given (initial period) each party to the dispute must use its best efforts to resolve the dispute.
- 4.3 If the dispute is unable to be mutually resolved within the initial period, the dispute will be referred for mediation in accordance with the Mediation Rules of the Law Society of Western Australia.
- 4.4 A mediator will be nominated by the President of the Law Society of Western Australia or the President's nominee and each party will share equally any costs associated with the services of a mediator.
- 4.5 The decision of the mediator shall be final and binding on all parties.

#### **5. TERMINATION AND DAMAGES**

- 5.1 Termination of this Agreement can be made by either party by written notice to the other party if the other party commits any breach of any provision of this Agreement and has failed to remedy such breach within thirty (30) days of receipt of written notice requiring it to do so.
- 5.2 Any termination of this Agreement pursuant to sub paragraph 5.1 is without prejudice to the rights of the party terminating to seek and obtain damages for any breach of this Agreement by the other party.
- 5.3 At the end of the Term pursuant to clause 2(c), the DCC agrees:
- a) Provide documentation related to DVC, including but not limited to memberships and intellectual property.
  - b) Transfer ownership of all DVC specific furniture and equipment as provided in Schedule 1 (to be determined).
- 5.4 At the end of the Term pursuant to clause 2(c), the Shire agrees:
- a) To purchase up to \$20,000 of merchandise at the cost price to DCC, subject to the stock not being not more than 36 months old.
- 5.5 In the case of Termination of this Agreement by the Shire pursuant to sub paragraph 5.1, clause 5.4 will not apply.
- 5.6 The Shire acknowledges that if it fails to provide funding pursuant to paragraph 3.2, or fails to provide the lease pursuant to paragraph 3.2(c) or terminates the lease in accordance with clause 11.1 of the Lease, then the DCC will have incurred significant detriment in reliance on the funding pursuant to paragraph 3.2, such detriment includes, but is not limited to:
- (a) relocation expenses in moving the DCC office to the DVC;

- (b) personal time and effort from DCC staff and committee members and other volunteers;
- (c) liability to employees engaged, and in relation to other commercial relationships entered into, on the assumption of ongoing funding;

and if this Agreement is terminated by the DCC due to a breach of clause 3.2 by the Shire, the Shire will negotiate with the DCC in good faith to ascertain fair compensation for the Shire's failure to comply with clause 3.2 and the consequent detriment suffered by the DCC.

## **SCHEDULE 1**

Details to be determined upon negotiation.

Executed as a Deed on \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_

The Common Seal of  
**Shire of Denmark**  
was hereunto affixed in the  
presence of:

\_\_\_\_\_  
Shire President

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Executed by Denmark Chamber of Commerce**  
in accordance with section 127 of the Corporations Act 2001:

\_\_\_\_\_  
President

\_\_\_\_\_  
Treasurer

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Signed** by the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Address

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Witness Occupation

# LEASE

SHIRE OF DENMARK  
[Lessor]

and

DENMARK CHAMBER OF COMMERCE  
[Lessee]

**Portion of Reserve 48198**



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## Parties

1. **Shire of Denmark** of 953 South Coast Highway, Denmark, Western Australia (**Lessor**)
2. **Denmark Chamber of Commerce Incorporated** [A0824062S] t/as **Denmark Chamber of Commerce** [ABN 62 127 248 004] of, PO Box 148, Denmark, Western Australia (**Lessee**)

## Agreed terms

**SUBJECT TO THE COVENANTS AND POWERS IMPLIED UNDER THE LAND ADMINISTRATION ACT 1997 AND THE TRANSFER OF LAND ACT 1893 AS AMENDED (UNLESS HEREBY NEGATED OR MODIFIED) AND ALSO TO THE COVENANTS AND CONDITIONS CONTAINED HEREIN.**

### 1. Definitions and interpretation

#### 1.1 Terms in Reference Schedule

Terms in bold type in the Reference Schedule have the meaning shown opposite.

#### 1.2 Definitions

**Authority** includes any government or governmental, semi-governmental, administration, fiscal or financial body, department, commission, council, authority, tribunal, agency or entity including but not limited to any court, tribunal, agency or entity including but not limited to any court, tribunal or person having jurisdiction over the parties, the Premises or this Lease;

**CEO** means the person employed as the Chief Executive Officer of the Lessor from time to time;

**Claim** includes any claim or legal action and all costs and expenses incurred in connection with it;

**Commencing Date** means the commencing date specified in the reference schedule;

**Financial Year** means 1 July to 30 June;

**Lessor's Property** means any property owned by the Lessor on the Premises including but not limited to the items specified in the reference schedule;

**Lessee's Property** means any property owned by the Lessee on the Premises including but not limited to the items specified in the reference schedule;

**Land** means the land described in the Reference Schedule;

**Official Requirement** means any requirement, notice, order or direction of any statutory authority and includes the provisions of any statute, ordinance or by-law;

**Plan** means the plan of the Land annexed to this Lease (if any);

**Premises** mean the whole of the Land and includes the Lessor's Property;

**Purposes** means the purposes described in the Reference Schedule;

**Services** means all utilities and services to the Premises;

**Structural Building Repairs** means substantial and major repairs or replacement of essential structures relating to all loads, internal actions, material properties and foundation conditions that significantly affect structural sufficiency or serviceability including but not limited to:

- floors;
- masonry;
- roof covering and roof structure;
- footings and foundations;
- painting of external surfaces;
- outer walls of any construction but does not include windows, doors, doorframes, and door furniture;

- ceilings; and
- Sewerage, drainage and water supply but does not include taps and other visible water fittings.

**Lessee's Employees** means each of the Lessee's employees, contractors, agents, customers, sublessees, licensees, invitees, volunteers or others (with or without invitation) who may be on Premises;

**Lessee's Property** includes all fixtures and other on the Premises which are not the Lessor's;

**Term** means the term of this Lease specified in the reference schedule and includes the further term as applicable; and

**Termination Date** means the date of termination of this Lease specified in the reference schedule.

### 1.3 Interpretation

- (a) Reference to:
- (i) the singular includes the plural and the plural includes the singular;
  - (ii) a person includes a body corporate;
  - (iii) a party includes the party's executors, administrators, successors and permitted assigns;
  - (iv) "month" or "monthly" means calendar month or calendar monthly; and
  - (v) a right includes a remedy, authority or power.
- (b) If a party consists of more than one person, this Lease binds them jointly and each of them severally.
- (c) Headings are for convenience only and do not form part of this Lease or affect its interpretation.

## 2. Reserve, term and holding over

### 2.1 Reserve

The Land is vested in the Lessor for the Purposes with the power to lease for any term not exceeding twenty one (21) years subject to the consent of the Minister for Lands and this lease is subject to the covenants and powers implied under the *Land Administration Act 1997 (WA)* and the *Transfer of Land Act 1893 (WA)* (unless negated or modified by the provisions of this Lease) and to the covenants and conditions contained in this Lease.

### 2.2 Term

The Lessor leases the Premises to the Lessee for the Term commencing on the Commencing Date.

### 2.3 Monthly Tenancy

If the Lessee continues to occupy the Premises after the Term with the Lessor's consent then:

- (a) the Lessee does so as a monthly lessee on the same basis as at the last day of the Term; and
- (b) either party may terminate the monthly tenancy by giving to the other 1 month's notice expiring on any day.

## 3. Rent and rent reviews

### 3.1 Rent

- (a) The Lessee must pay the Rent in the amount and method described in the Reference Schedule.
- (b) Each payment of Rent must be made with an additional amount equal to any goods and services, consumption, value added tax applying to that payment.

#### **4. Operating Expenses**

##### **4.1 Expenses Due to Lessee's Use**

- (a) The Lessee must pay to the relevant authorities all charges for rates, taxes, charges, assessments, licence fees, duties, impositions, penalties, and other outgoings whatever which now or at any time during the Term are assessed and charged upon or in respect of the Premises or the use or occupation of the Premises or any part.
- (b) The Lessee must pay to the relevant authorities all charges for gas, electricity, water, telephone and internet and the costs incurred by the Lessor in providing Services to the Premises.
- (c) The Lessee must pay to the Lessor all expenses due solely to the Lessee's use of the Premises.

##### **4.2 Goods and Services Tax**

###### **(a) Consideration is exclusive of GST**

The consideration for a Supply under this Lease is exclusive of any GST imposed on the Supply.

###### **(b) Recovery of GST**

If a Supply under this Lease is subject to GST:

- (i) 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
- (ii) 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.

###### **(c) Adjustment of additional amount**

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

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

###### **(d) Reimbursement**

If any part 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.

###### **(e) Definitions**

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

#### **5. Use of the Premises**

##### **5.1 Permitted Use**

The Lessee must only use the Premises for the Permitted Use.

##### **5.2 Restrictions on Use**

The Lessee must not:

- (a) disturb lessees or owners of adjacent premises;

- (b) overload any Services;
- (c) damage the Lessor's Property;
- (d) alter the Premises, or do any building work without the Lessor's prior consent;
- (e) do anything that may invalidate the Lessor's insurance or increase the Lessor's premiums or risk; or
- (f) damage, destroy or remove any native vegetation on the Premises without the CEO's consent other than pruning, trimming or cutting vegetation with the intention of keeping the premises neat and tidy.
- (g) Not allow anything to be done or to occur in or about the Premises which is noxious, offensive or audibly or visually a nuisance.

### **5.3 No warranty as to Use**

The Lessor does not warrant that the Premises:

- (a) is suitable for any purpose; or
- (b) may be used for the Permitted Use.

### **5.4 Official Requirements and rules**

At its expense, the Lessee must comply with any Official Requirement concerning the Premises, the Lessee's Property or the Lessee's use or occupation of the Premises.

### **5.5 Registration of Lease and Caveats**

The Lessee must not register the lease at Landgate or register any absolute caveat against the certificate of title to the land of which the Premises forms part to protect its interests under this Lease but the Lessee shall be entitled to lodge a "Subject to claim" caveat against the certificate of title to the land of which the Premises forms part.

## **6. Maintenance and repair**

### **6.1 Repair**

- (a) The Lessee must:
  - (i) keep and maintain the Premises in good repair, order and condition including painting of internal surfaces; and
  - (ii) fix any damage caused by the Lessee or the Lessee's Employees.
- (b) The Lessor is responsible for Structural Building Repairs and may do any repairs or maintenance to the Premises. The Lessor must give the Lessee reasonable notice before doing so and must cause as little disruption to the Lessee's business as is reasonably possible in the circumstances.

### **6.2 Cleaning and Maintenance**

The Lessee must:

- (a) do such things as may reasonably be required to eradicate, exterminate and keep the Premises free from rodents, vermin, noxious weeds and other pests of any kind, and will procure that pest exterminators are employed from time to time for that purpose;
- (b) keep the Premises clean and tidy and free of infectious diseases; and
- (c) keep the Lessee's Property clean and maintained in good order and condition.

### **6.3 Not to pollute**

- (a) The Lessee must not cause pollution in or contamination of the Premises or any adjoining land by garbage, waste matter, oil and other pollutants whether by stormwater or other run-off or arising from use of the Premises.

- (b) The Lessee must collect and dispose of all garbage, waste matter, oil and other pollutants from the Premises at a place and in a manner required or approved by the Lessor and all relevant authorities having control over the disposal of waste matter and the protection of the environment.

#### **6.4 Lessor's right to inspect and repair**

- (a) The Lessor may enter the Premises for inspection or to carry out maintenance, repairs or major structural repairs at any reasonable time after giving notice to the Lessee. In an emergency, the Lessor may enter at any time without giving the Lessee notice.
- (b) The Lessor may carry out any of the Lessee's obligations on the Lessee's behalf if the Lessee does not carry them out on time. If the Lessor does so, the Lessee must promptly pay the Lessor's costs.

#### **6.5 Notice of damage or defect in services**

The Lessee must promptly give the Lessor notice of:

- (a) any damage to, defect or disrepair in the Services or the Lessor's Property; and
- (b) any circumstances likely to cause any risk to the Premises or any person.

#### **7. Assignment and subletting**

- (a) The Lessee must obtain the Lessor's written consent, and if required by law, the written consent of the Minister for Lands pursuant to the *Land Administration Act 1997* (WA) before the Lessee assigns, sublets or deals with its interest in the Premises.
- (b) Subject to clause 18, the Lessor may grant or withhold its consent in its discretion.
- (c) In determining whether or not to give consent to a proposed assignment or subletting, it is reasonable for the Shire to take into account the following matters:
  - (i) Whether the proposed tenant will trade in competition with other local businesses;
  - (ii) The effect on other local businesses of the proposed assignment or subletting;
  - (iii) Whether the proposed tenant or sub-tenant will receive an advantage over other local businesses, or be perceived by members of the wider community as receiving an advantage, because of the proposed assignment or sublease;
  - (iv) The credit history and financial viability of the proposed Assignee or sub-lessee.
- (d) The Shire may set reasonable conditions upon the proposed Assignment or sub-letting which may include:
  - (i) Compliance with any legal requirements upon the Shire relating to disposal of Local Government Property to a third party;
  - (ii) A reasonable public advertising period for potential tenants;
  - (iii) Reasonable requirements to establish a commercial market rent; and
  - (iv) Provision of information from the tenant about its financial status and trading record.

## **8. Insurances and indemnities**

### **8.1 Lessee's insurance**

The Lessee must effect & keep effected in respect of the Premises and use of the Premises adequate public risk insurance in any amount not less than \$20,000,000 in respect of any one claim.

### **8.2 Lessee's policies**

All policies under this clause 8 must be acceptable to the Lessor and endorsed to note the interest of the Lessor as Lessor of the Premises.

### **8.3 Proof of insurance policies**

The Lessee must give the Lessor evidence of its insurance if the Lessor asks for it.

### **8.4 Lessee's release and indemnity**

- (a) The Lessee occupies and uses the Premises at its own risk.
- (b) The Lessee releases the Lessor and the Minister for Lands from and indemnifies them against all Claims for damages, loss, injury or death:
  - (i) whether or not it is caused by the Lessee's negligence or default if it:
    - (A) occurs on the Premises;
    - (B) arises from the use of the Services on the Premises; or
    - (C) arises from the overflow or leakage of water from the Premises,except to the extent that it is caused by the Lessor's or Minister for Land's deliberate act or negligence; and
  - (ii) if it arises from the negligence or default of the Lessee or the Lessee's Employees, except to the extent that it is caused by the Lessor's or Minister for Land's deliberate act or wilful negligence.
- (c) The Lessee releases the Lessor and the Minister for Lands from and indemnifies them against any Claim or costs arising from anything the Lessor is permitted to do under this Lease.

### **8.5 Lessor's Insurance**

- (a) The Lessor will insure, at the Lessor's cost, the Premises. The Lessee must pay to the Lessor the sum of \$1,000 for each claim made against the Lessor's insurance policy relating to the Premises during the term of this lease other than where the premises have been damaged and the cause of the damage was not in any way connected to the Lessee's, or the lessee's invitees, occupation of the premises. The Lessor must at its own cost meet all other costs of repair, replacement and reinstatement not met by the insurer in respect of each claim.

## **9. Occupational Safety and Health Act**

- (a) The Lessee acknowledges and agrees that for the purpose of the *Occupational Safety and Health Act 1984* (WA) (**Act**) the Lessee has the control of the Premises and all plant and substances on the Premises.
- (b) The Lessee releases and indemnifies the Lessor from and against any claim against or obligation or liability of the Lessor under any occupational health and safety legislation as defined in the Act, except to the extent that any breach of the Act is contributed to by the Lessor's deliberate act or negligence.

## **10. Default and termination**

### **10.1 Default**

The Lessee defaults under this Lease if:

- (a) the Rent or any money payable by the Lessee is unpaid for 20 business days;
- (b) the Lessee breaches any other term of this Lease and such breach is unremedied within 20 business days of notice of breach having been served on the Lessee;



- (c) the Lessee assigns its property for the benefit of creditors; or
- (d) the Lessee becomes an externally-administered body corporate within the meaning of the *Corporations Act 2001* (Cth).

#### **10.2 Forfeiture of Lease**

If the Lessee defaults and does not remedy the default when the Lessor requires it to do so, the Lessor may do any one or more of the following:

- (a) re-enter and take possession of the Premises and by notice to the Lessee, terminate this Lease;
- (b) by notice to the Lessee, convert the unexpired portion of the Term into a tenancy from month to month;
- (c) exercise any of its other legal rights; or
- (d) recover from the Lessee any loss suffered by the Lessor due to the Lessee's default.

#### **10.3 Consequences of Default**

##### **(a) Repudiation**

- (i) If the Lessee repudiates this Lease or breaches an essential term of this Lease the Lessor may recover all money payable by the Lessee under this Lease up to the end of the Term. However, the Lessor must minimise its loss.
- (ii) The essential terms are:
  - (A) to pay Rent (clause 3.1);
  - (B) to pay Operating Expenses (clause 4.1);
  - (C) to use the Premises for only the Permitted Use (clause 5.1);
  - (D) to comply with Official Requirements (clause 5.4);
  - (E) to repair and maintain (clause 6);
  - (F) not to assign, sublet or deal with the Lease without consent (clause 7);
  - (G) not to advantage members over non-members (special condition 10.1);
  - (H) not to allow commercial use by third parties other than in prescribed circumstances (special condition 10.2).

##### **(b) Lessor's Entitlement to Damages**

The Lessor's entitlement to damages is not limited or affected if:

- (i) the Lessee abandons the Premises;
- (ii) the Lessor elects to re-enter the Premises or terminate this Lease;
- (iii) the Lessor accepts the Lessee's repudiation; or
- (iv) the parties' conduct constitutes or may constitute a surrender by operation of law.

##### **(c) Liquidated Debt**

The Lessor may remedy any default by the Lessee and recover its costs of doing so from the Lessee as a liquidated debt.

#### **10.4 Waiver**

- (a) No waiver by the Lessor is effective unless it is in writing;
- (b) Despite the Lessor's knowledge at the time, a demand for Rent or other money owing by the Lessee or the subsequent acceptance of Rent or other money does not constitute a waiver of any earlier default by the Lessee.

## **10.5 Interest on Overdue Money**

The Lessor may charge daily interest to the Lessee on any late payment by the Lessee at a rate of 3% above the rate which would be charged to the Lessor by the Lessor's bank for borrowing the same amount on unsecured overdraft as certified by the Lessor's bank manager.

## **11. Termination of Term**

### **11.1 Termination by Notice**

- (a) The Lessor may terminate this Lease by giving 6 months' written notice to the Lessee, notwithstanding that:
  - (i) the Lessee is not in default; or
  - (ii) that the term of the Lease has not expired.
- (b) The Lessee may terminate this Lease by giving 3 months' written notice to the Lessor notwithstanding that the term of the Lease has not expired.
- (c) In the event of this Lease being terminated pursuant to subclause 11.1(a) or 11.1(b) each Party will retain its rights against the other in respect of any past breach of this Lease.

### **11.2 Lessee's obligations**

On termination the Lessee must:

- (a) vacate the Premises and give it back to the Lessor in good repair and condition in accordance with the Lessee's obligations in this Lease;
- (b) remove all the Lessee's Property from the Premises;
- (c) repair any damage caused by removal of the Lessee's Property and leave the Premises in good repair and condition; and
- (d) return all keys, security passes and cards held by it or the Lessee's Employees.

### **11.3 Failure to Remove Lessee's Property**

If the Lessee does not remove the Lessee's Property at the end of the Term, the Lessor may:

- (a) remove and store the Lessee's Property at the Lessee's risk and expense; or
- (b) treat the Lessee's Property as abandoned, in which case title in the Lessee's Property passes to the Lessor who may deal with it as it thinks fit without being liable to account to the Lessee.

## **12. General**

### **12.1 Notices**

#### **(a) In Writing**

Any notice given under this Lease must be in writing. A notice by the Lessor is valid if signed by an officer or solicitor of the Lessor or any other person nominated by the Lessor.

#### **(b) Notice of Address**

The Lessee must promptly notify the Lessor of its address and telephone number or email address and update the notice if any changes occur.

#### **(c) Service of Notice on Lessee**

The Lessor may serve a notice on the Lessee by:

- (i) giving it to the Lessee personally;
- (ii) sending it to the Lessee's email address; or
- (iii) posting it to the Lessee's last known address.

(d) **Service of Notice on Lessor**

The Lessee may serve a notice on the Lessor by leaving it at, or posting or emailing it to the Lessor's office set out in Item 2 of the Reference Schedule.

**12.2 Costs**

The Lessee must pay the Lessor:

- (a) duty (if any) on this Lease; and
- (b) the Lessor's reasonable legal fees and outlays:
  - (i) relating to any assignment or subletting;
  - (ii) arising from any breach of this Lease by the Lessee;
  - (iii) for any Lessor's consent under this Lease.
- (c) half of any of the lessor's reasonable legal expenses associated with any substantial amendments to the Lease that are not requested by either party (for example, if they are required by law or due to a change in circumstances beyond either party's control).

**13. Option of Renewal**

- (a) The Lessor hereby grants to the Lessee the option to renew this Lease for the further term or terms (if any), specified in Item 5 of the reference schedule, so long as the term of the lease plus any option does not exceed 21 years, upon the terms, covenants, conditions and restrictions of this Lease (excepting any exercised right of renewal). The Lessee may exercise such option if and only if:
  - (i) the Lessee has first given to the Lessor written notice of such exercise of option not less than 3 months and not more than 6 months prior to the expiration of the Term; and
  - (ii) the Lessee is not, at the time of giving the notice under this clause in breach of any of the terms, covenants or conditions of this Lease.

**14. Damage and destruction**

**14.1 Definitions**

In this clause 14:

- (a) **abatement notice** means a notice given under clause 14.2(a);
- (b) **reinstatement notice** means a notice given by the Lessor to the Lessee of the Lessor's intention to carry out the reinstatement works; and
- (c) **reinstatement works** means the work necessary to:
  - (i) reinstate the Premises; and
  - (ii) make the Premises fit for occupation and use and accessible by the Lessee.

**14.2 Abatement**

- (a) If at any time the Premises are wholly or partly:
  - (i) unfit for occupation and use by the Lessee; or
  - (ii) inaccessible having regard to the nature and location of the Premises and the normal means of access to them,as a result of destruction or damage then from the date that the Lessee notifies the Lessor of the relevant event, the Rent and any other money payable by the Lessee are to abate according to the circumstances.
- (b) If clause 14.2(a) applies, the remedies for:
  - (i) recovery of the Rent and any other money or a proportionate part falling due after the damage or destruction; or

(ii) enforcement of the obligation to repair and maintain,  
are suspended from the date of the abatement notice until the Premises are reinstated or otherwise made fit for the Lessee's occupation and use and fully accessible.

#### **14.3 Either party may terminate**

If clause 14.2(a) applies, then at any time after 2 months from the date the abatement notice is given either party may terminate this Lease by notice to the other unless the Lessor has within that period of 2 months:

- (a) given the Lessee a reinstatement notice; and
- (b) started to carry out the reinstatement works.

#### **14.4 Lessee may terminate**

If the Lessor gives a reinstatement notice to the Lessee and does not commence the reinstatement works within a reasonable time, the Lessee may terminate this Lease by giving not less than 2 months' notice to the Lessor and, at the expiration of the notice period, this Lease terminates.

#### **14.5 Dispute resolution**

- (a) No party to this agreement will start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this agreement (**dispute**) unless it has complied with this clause.
- (b) A party claiming that a dispute has arisen must notify the other parties, giving details of the dispute.
- (c) During the 21 day period after a notice is given under clause 14.5(b) (or longer period agreed in writing by the parties to the dispute) (**initial period**) each party to the dispute (**disputant**) must use its best efforts to resolve the dispute.
- (d) If the disputants are unable to resolve the dispute within the initial period, each disputant agrees that the dispute must be referred for mediation in accordance with the Mediation Rules of the Law Society of Western Australia, at the request of any disputant, to:
  - i. a mediator agreed on by the disputants; or
  - ii. if the disputants are unable to agree on a mediator within seven (7) days after the end of the initial period, a mediator nominated by the President of the Law Society of Western Australia or the President's nominee.
- (e) The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a disputant unless that disputant has so agreed in writing.
- (f) Any information or documents disclosed by a disputant under this clause:
  - i. must be kept confidential; and
  - ii. may not be used except to attempt to resolve the dispute.
- (g) Each disputant must bear its own costs of complying with this clause and the disputants must bear equally the costs of any mediator engaged.
- (h) After the initial period, a disputant that has complied with clauses 14.5(a), (b) and (c) may terminate the dispute resolution process by giving notice to each other disputant.
- (i) If in relation to a dispute a disputant breaches any provision of clauses 14.5(a) to (f), each other disputant need not comply with clauses 14.5(a) to (f), in relation to that dispute.

**15. Severability**

- (a) As far as possible all provisions of this Lease must be construed so as not to be invalid, illegal or unenforceable.
- (b) If anything in this Lease is unenforceable, illegal or void then it is severed and the rest of this Lease remains in force.
- (c) If any provision cannot be read down, that provision will be void and severable and the remaining provisions of this Lease will not be affected.

**16. Entire Understanding**

This Lease:

- (a) contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Lease; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

**17. Organisations**

- (a) If any organisation ceases to exist, a reference to that organisation will be taken to be a reference to an organisation with similar objects to the original organisation nominated by the Lessor.
- (b) Reference to the president of an organisation will, in the absence of a president be read as a reference to any person fulfilling the duties of a president.

**18. Lessor's Consent**

Unless otherwise stated, if the Lessor's consent or approval is required:

- (a) the Lessor must consider the request promptly and be reasonable in giving or refusing its consent or approval;
- (b) the Lessor may require the Lessee to comply with any reasonable conditions before giving its consent;
- (c) it is not effective unless in writing; and
- (d) any consent or approval is to be given by the CEO ~~save for an assignment or a sub-lease made pursuant to clause 7 in which case the consent or approval is to be given by a resolution of the Shire Council.~~

**19. Property Law Act**

The following sections of the *Property Law Act 1969* (WA) do not apply to this Lease:

- (a) Section 80; and
- (b) Section 82.

## Schedule 1 - Reference Schedule

**1. Lessor/Lessor**

Shire of Denmark  
of 953 South Coast Highway, Denmark, Western Australia

**2. Lessee/Lessee**

Denmark Chamber of Commerce Incorporated [A0824062S] t/as Denmark Chamber of Commerce  
[ABN 62 127 248 004]  
of PO Box 148, Denmark, Western Australia

**3. Land**

**3.1 Reserve**

Portion of Reserve 48198, portion of Lot 501 on Deposited Plan 61023, LR3157/222 as delineated in red at Appendix 1.

**3.2 Purpose**

Community Purposes

**4. Term**

**4.1 Period**

3 years 0 months 0 days

**4.2 Commencing Date**

1 December 2024~~4~~

**4.3 Termination Date**

30 ~~November 2024~~ June 2026

**5. Further term**

**5.1 Period**

Nil

**5.2 Commencing Date**

Not applicable

**6. Rent**

\$1.00 per annum (plus GST)

**7. Permitted Use**

To operate a Tourist Information Centre as per the Service Agreement (Appendix 3), to operate the Denmark Chamber of Commerce office and operational centre, sub-leasing office space and such activities as are undertaken with community and business groups to provide tourism-related activity.

**8. Lessor's Property**

Nil

## **9. Lessee's Property**

Nil

## **10. Special conditions**

The following special conditions (if any) form part of this Lease and in the event of any inconsistency between the foregoing provisions of this Lease and the special conditions, the special conditions prevail:

### **10.1 Not to advantage members**

In providing tourism related activities to the general public and visitor servicing at the leased premises, the Lessee must not conduct those activities or provide those services in a manner that confers an advantage on members of the Lessee that is not equally available to all other persons or entities operating businesses in the region who are not members of the Lessee. However, nothing in this special condition prevents the DCC providing its usual services to its members in accordance with its constitution or providing a discount to members of Discover Denmark.

### **10.2 Short-term Licenses to use part of premises**

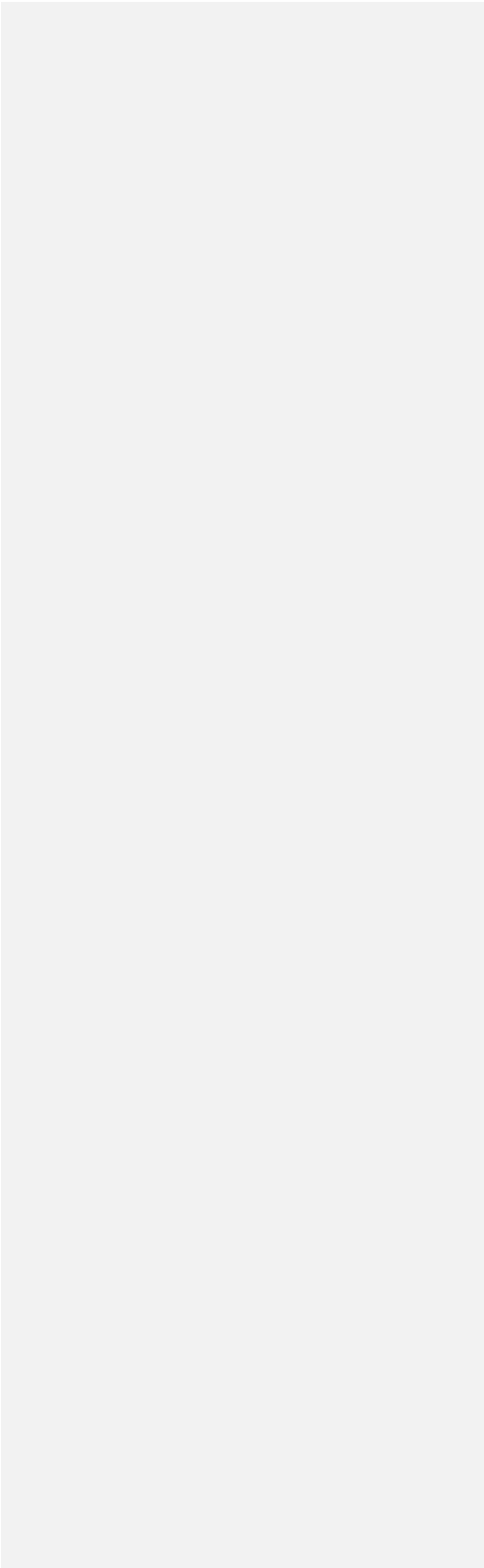
The Lessee must not permit third parties to use the premises to trade or engage in commercial activity other than:

- (a) pursuant to a sublease made pursuant to clause 7 and 18; or
- (b) where the use is part of a service provided by the DCC to its members or the general public in accordance with the DCC's constitution; or
- (c) where:
  - (i) the use is for a continuous period of no more than six months and for the purposes of this sub paragraph, "a continuous period" means use of the premises, or part of the premises on a regular basis or in a recurring and predictable manner; and
  - (ii) the activities of the third party are not conducted in such a way which creates, in the reasonable opinion of the CEO, a perception that the third party is receiving an unfair advantage in competing with other local businesses; and
  - (iii) The Lessee notifies the Lessor prior to the third-party using the premises giving the following details:
    - (A) the name of the person or entity including any business or trading name;
    - (B) the type of activity they will be engaged in;
    - (C) details of the commercial arrangement between the Lessee and the third party; and
    - (D) the expected duration of the arrangement; and
  - (iv) the Lessor has not notified the Lessee of any objection to the third party's use of the premises, or of any conditions to be complied with, which may be given at any time including after the use has commenced; and
  - (v) The commercial arrangement between the Lessee and the third party makes it clear that the third party must:

- (A) comply with any conditions set by the Lessor on the third party's use of the premises; and
  - (B) come to an end as soon as reasonably practicable should the Lessor object to the third party's use of the premises; or
- (d) where the CEO has approved the ongoing use of the premises by the third party, and:
- (i) the CEO's consent is not to be unreasonably withheld, and for the purpose of this special condition the factors mentioned in sub clause 7(c) and (d) are reasonable factors for the CEO to consider in determining whether or not to consent to the arrangement; and
  - (ii) in seeking the CEO's consent, the Lessee must provide the details referred to in special condition 10.2(c)(iii).



**Appendix 1 – Leased Premises (as delineated in red)**



**Appendix 2 – Ministerial Consent**

**TO BE OBTAINED**

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**Appendix 3 – Service Agreement**

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