



**2010**  
**TENDER DOCUMENTS**  
**Jewel Cave Cafe**  
**Caves Road Deepdene**

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# INVITATION TO TENDER

## JEWEL CAVE CAFE

Tenders are invited for the operation of a café at premises at 35 Jewel Caves Road Deepdene on the basis of a lease of the premises in the form of the lease attached to this invitation and a licence to use the business name "Jewel Cave Café".

The site is Crown land under the care, control and management of the Augusta Margaret River Tourism Association (Inc) and is located in the stunning Leeuwin Naturaliste ridge approximately 20km North of Augusta. The Lessee will be required to maintain the environmental values of the land outside the Café which are included in the leased premises.

The successful invitee will be required to fit out the kitchen (to class 1 standard) and café, to plans approved by the both the Association and the Local Government, The Association anticipates receiving plans for facilities for up to 60 seated cafe. The Jewel Cave as an attraction received 40,000 visitors in the 2008/2009 financial year.

The Association seeks offers to maintain opening hours from 9am to 5pm daily, 7 days a week (closed Christmas day) the successful invitee may open the premises for after hours functions.

The proposed opening will be December 2010. The successful applicant will be able to access the site earlier- date to be advised.

The business name "Jewel Cave Café" is owned by the Association and a licence to operate the Café under that name will be granted to the Lessee for the term of 5years with the option of an additional 4 years.

Services to the site include:

- (a) water supply by water tank only;
- (b) gas by gas bottles only
- (c) on site single phase electricity; and
- (d) telephone points in the premises.

Further particulars and conditions attached to the invitation are as follows:

## CONDITIONS OF LEASE BY TENDER

### 1. INTERPRETATION

#### 1.1 Definitions

In these Conditions of Lease by Tender (**Conditions**), unless a contrary intention appears:

**Acceptance Date** means [TBA];

**Association** means the Augusta Margaret River Tourism Association (Inc);  
**Association's Agent** means [TBA];

**Business Day** means any day upon which trading banks are open for business in Perth;

**Café** means the Jewel Cave Café to be operated by the Tenderer under the Lease;

**Closing Date** means ; **4.00pm on the 22<sup>nd</sup> September 2010, 28 tender process**

**Conditions or Conditions of Lease by Tender** means the terms and conditions of lease by tender comprising these Conditions and all of the Annexures;

**Fitout Plan** means the Tenderer's plans to fitout the Café in the form of a layout plan for the Café including without limitation the kitchen and dining room, counters, storage areas and patios;

**Form of Tender** means the Form of Tender attached as Annexure 1;

**Lease** means the applicable form of lease attached as Annexure 2.

**Lease Date** has the meaning given in clause 5.1;

**Notification of Acceptance** means notice of acceptance of the Tender substantially in the form of Annexure 3 as completed by the Association in accordance with clause 5 of these Conditions;

**Property** means that part of Lot 4174 on deposited plan 208911 specified in the Lease, the land and improvements comprised in Certificate of Crown Land Title LR3146 246;

**Schedule of Finishes** means a schedule of floor coverings and wall finishes and a detailed list of Café plant and equipment, with costings;

**Tender** means an offer made by a Tenderer in accordance with these Conditions;

**Tender Price** means the initial annual rent offered by the Tenderer as inserted at Item 2 in Schedule to the Form of Tender, as reviewed on the dates and using the methodologies inserted at Item 3 in the same Schedule; and

**Tenderer** means the person or persons named in Item 1 of the Schedule to the Form of Tender and includes its or their successors and permitted assigns.

## 1.2 Construction

Unless expressed to the contrary:

- (a) words importing:
  - (i) the singular include the plural and vice versa; and
  - (ii) any gender includes the other genders.

- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions.
- (c) a reference to:
- (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes its legal personal representatives, successors and assigns;
  - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments, under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (iv) a right includes a benefit, remedy, discretion, authority or power;
  - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (vi) provisions or terms of these Conditions or another document, agreement, understanding or arrangement includes a reference to both express and implied provisions and terms;
  - (vii) time is to local time in Perth, Western Australia;
  - (viii) "\$" or "dollars" is a reference to the lawful currency of Australia;
  - (ix) this or any other document includes the documents as varied or replaced and notwithstanding any change in the identity of the parties;
  - (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission;
  - (xi) a clause, subclause paragraph as annexure is a reference to that clause, subclause as annexure of as to these conditions; and
  - (xii) "including" and similar expressions are not words of limitation.

### **1.3 Headings**

Headings do not affect the interpretation of these Conditions.

### **1.4 Severability**

If a provision of these Conditions or the application thereof to a particular thing, person or circumstance is or becomes unlawful or unenforceable the remaining provisions of these Conditions shall not be affected thereby, to the intent that each provision of these Conditions is to be enforceable to the fullest extent permitted by law.

## **1.5 Joint and Several**

Each covenant indemnity or agreement in these Conditions made by two or more persons shall be construed as being made jointly and severally by those persons.

## **1.6 Definitions in Lease**

Words and expressions which are separately defined in these Conditions but which are given a defined meaning in the Lease are deemed to have the same meaning when used in these Conditions.

## **1.7 Commercial Tenancy**

The Lease will be subject to the *Commercial Tenancy (Retail Shops) Agreements Act 1985*.

## **2. TENDER PROCEDURE**

### **2.1 Mode or Tender**

Any person or persons desiring to take on lease the Property from the Association must do so by completing and submitting the Form of Tender as provided for in these Conditions.

### **2.2 Completion of Form of Tender**

The Tenderer must complete the Form of Tender by:

- (a)** completing the Tenderer's name, ABN/ACN/ARBN (if applicable), address, telephone, email address and contact person at Item 1 in the Schedule to the Form of Tender;
- (b)** inserting at Item 2 of the Schedule to the Form of Tender the annual rent and annual review formulae for which the Tenderer offers to Lease the Property allocated as set out in Item 3 of the Schedule to the Form of Tender; and
- (c)** attaching to the Form of Tender the Fitout Plan and Schedule of Finishes.
- (d)** dating and signing or otherwise duly executing the Form of Tender in a manner binding upon the Tenderer by law.

## **3. PLACE AND TIME FOR SUBMISSION OF TENDERS**

The Tender Documents should be forwarded to:

Augusta-Margaret River Tourism Association (Inc)  
100 Bussell Highway  
MARGARET RIVER WA 6285

Attention: Jayme Hatcher  
Email: [jaymehatcher@margaretriver.com](mailto:jaymehatcher@margaretriver.com)  
Ph: 08 9757 7411, Mobile: 0427 417 411

so that they are received no later than 4.00 pm on the Closing Date.

## **4. ASSOCIATION'S RIGHTS**

### **4.1 Irrevocable Offer**

Upon lodging the Tender Documents a Tenderer shall be deemed to have made an offer to lease the Property on the terms and conditions contained in these Conditions and the Lease and for the Tender Price inserted by the Tenderer in the Form of Tender and such offer shall remain open for acceptance by the Association until 5.00 pm on the Acceptance Date.

### **4.2 No Withdrawal of Tender**

The Tender shall be irrevocable and incapable of being withdrawn and shall not be affected by or be deemed to have been withdrawn or be capable of being withdrawn by reason of any form of notice or discussions or negotiations that may take place with the Tenderer following the lodgement of the Tender Documents.

### **4.3 Discussions Without Prejudice**

Any negotiations or discussions under clause 4.2 shall be without prejudice to such Tender which shall, notwithstanding such negotiations or discussions, remain open for acceptance until 5.00 pm on the Acceptance Date.

### **4.4 Rejection of Tender**

Unless these conditions are fulfilled by a Tenderer any purported Tender made by such a Tenderer may be rejected. The Association may elect to accept a Tender which is a valid offer capable of acceptance despite:

- (a) the failure of the Tenderer to comply with these Conditions for Lease by Tender; or
- (b) other defects or omissions in the Tender or the Tender Documents.

### **4.5 Not Bound to Accept Highest or any Tender**

The Association reserves the right:

- (a) to withdraw from this Tender at any time prior to the Acceptance Date; and
- (b) not to accept the highest annual rent or any Tender,

and the Tenderer acknowledges having tendered on this basis.

### **4.6 No Redress**

No unsuccessful Tenderer may claim any redress against the Association should the Association:

- (a) permit any addition or amendment to any Tender; or
- (b) Lease the Property to any other person whether a Tenderer or not.

## **5. ACCEPTANCE**

### **5.1 Deemed Lessee**

Any person whose Tender is accepted shall be notified of such acceptance by the Association sending Notification of Acceptance to that person no later than 5.00pm on the Acceptance Date. Upon Notification of Acceptance of the Tender being so given, that person shall be the Lessee of the Property upon the terms and conditions contained or implied in the Lease deemed to be dated the date of the Notification of Acceptance (**Lease Date**) (whether in fact the parties execute a further copy of the Lease or not), and containing a Commencement Date being 7 days following the date of the Notification of Acceptance.

### **5.2 Notification of Acceptance**

- (a) The Notification of Acceptance of any the Tender shall be sent to the successful Tenderer by email or post or shall be delivered to the address of the Tenderer, in each case as specified in the Form of Tender submitted by that Tenderer.
- (b) On the same day that Notification of the Acceptance is given to a Tenderer, the Association shall deliver or send to the Tenderer by post two copies of the Lease to the address of the Tenderer which:

  - (i) includes the relevant details from the Form of Tender; and
  - (ii) which is dated the Lease Date.
- (c) Upon receipt of the Lease referred to in sub-clause (b) above Tenderer must sign or otherwise duly execute the Lease in duplicate and return all copies to the Association within 2 Business Days of receipt of same by the Tenderer.

The Association shall promptly execute the Lease in duplicate, apply for the approval of the Lease to the Minister for Lands, and then deliver an originally executed copy of the executed dated Lease to the Tenderer.

### **5.3 Deemed Receipt**

The Notification of Acceptance shall be deemed to have been received in the case of a notification given or served by post or facsimile on the day of dispatch and in the case of a notification given or served by hand at the time of delivery.

### **5.4 Contract Deposit**

A successful Tenderer must, within 48 hours of receiving the Notification of Acceptance, pay an amount to the Association's Agent which represents the security deposit payable under the Lease. Failure to pay means that the Lease is voidable at the discretion of the Association.

## **6. MINISTERIAL CONSENT**

### **6.1 Application**

Forthwith upon the execution of the Lease by the Association under clause 5.2(d), the Association will apply for and use its best endeavours to obtain the Consent of the Minister for Lands to that Lease.

### **6.2 Refusal**

If the Consent of the Minister for Lands to the Lease to the successful Tenderer is refused or not given within 30 days of the application for then the Lease between the Association and the Tenderer is at an end without any requirement for notice by either Party to the Lease to the other Party and:

- (a) the amount paid under clause 5.4 will be refunded by the Association to the Tenderer without any deduction and together with any interest on the Tender Price;
- (b) no Party will have any claim or right of action arising from termination except in respect of any matter which arose before the application.

## **7. INSPECTION OF PROPERTY**

The Property may be inspected by appointment on Wednesday 8<sup>th</sup> September between 11.00am and 4.00pm with a representative of the Association's Agent. Please register your interest by contacting:

**Name: Jayme Hatcher**

**Email: [jaymehatcher@margaretriver.com](mailto:jaymehatcher@margaretriver.com)**

**Address: 100 Bussell Highway Margaret River**

**Telephone: 9757 7411, or Mobile: 0427 417 411**

## **8. EXTENSION OF CLOSING DATE**

The Association reserves the right to extend the Closing Date for any period which, and as often as, the Association may determine.

## **9. AMENDMENT OF TENDER**

### **9.1 Amendment of Contract of Sale**

Any Tenderer is at liberty to discuss with the Association any amendment to the Lease, which amendment may be subsequently adopted by the Association at its discretion whereupon the Conditions of Lease by Tender, as amended, shall form the basis of the agreement for which the Tender is made.

### **9.2 Written Notice of Amendment Required**

Any such amendment shall only be effective and binding on the Association where the Association has given written notice to the Tenderer that the relevant Lease is so amended.

**10. WARRANTIES**

**10.1 Inspection**

The Tenderer warrants that it has made the Tender after making its own enquiries and its own examination, investigation and inspection of the Property in all respects and the Tender documents.

**10.2 No Representation**

The Tenderer has not relied upon any brochure, advertisement, representation, search, advice or other information made or provided by the Association, the Association's Agent or any other person acting or purporting to act on behalf of the Association at or prior to the lodgement of the Tender.

**10.3 Only Arrangement**

The Tender shall constitute the entire and only arrangement between the Association and the Tenderer in connection with the Tender and any lease that results from the Association's acceptance of the Tender.

**10.4 Release**

The Tenderer releases and discharges each person referred to in clause 10.2 from all liability in connection with any brochure, advertisement, representation, advice or other information made or provided by any one or more of them.

**SCHEDULE**

**1. Details of Tenderer**

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**2. Rent**

Annual Rent (payable monthly on the first day of each month)      \$

**Rent review method**

First Anniversary of the lease commencement date

(\_\_\_\_\_)

Second Anniversary of the lease commencement date

(\_\_\_\_\_)

Third Anniversary of the lease commencement date

(\_\_\_\_\_)

Fourth Anniversary of the lease commencement date

(\_\_\_\_\_)

Fifth Anniversary of the lease commencement date (if lease renewed)

(\_\_\_\_\_)

Sixth Anniversary of the lease commencement date

(\_\_\_\_\_)

Seventh Anniversary of the lease commencement date

(\_\_\_\_\_)

Eighth Anniversary of the lease commencement date

(\_\_\_\_\_)

Ninth Anniversary of the lease commencement date

(\_\_\_\_\_)

Dated

2010

Execution

Execution by each Tenderer who is a natural person.

SIGNED by the Tenderer )  
in the presence of: )  
)

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness name:

\_\_\_\_\_  
Witness address:

\_\_\_\_\_  
Witness occupation:

SIGNED by the Tenderer )  
in the presence of: )  
)

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness name:

\_\_\_\_\_  
Witness address:

\_\_\_\_\_  
Witness occupation:

Execution by Tenderer who is a Company

EXECUTED by (ACN ) )  
in accordance with Section 127 of the )  
Corporations Act 2001 by authority of its )  
directors: )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary\*

\_\_\_\_\_  
Name of Director (block letters)

\_\_\_\_\_  
Name of Director/Secretary\* (block letters)  
\* delete whichever is not applicable

## ANNEXURE 1

### (Form of Tender)

TO: **Attractions Manager  
Augusta-Margaret River Tourism Association (Inc)  
100 Bussell Highway  
MARGARET RIVER WA 6285**

For Attention Jayme Hatcher

- **Offer to Lease**

The Tenderer/s described in Item 1 of the Schedule below (**Tenderer**) **HEREBY OFFERS TO LEASE** from the Association the Property on the terms of specified in the attached lease and at the rent specified in Item 2 of the Schedule and as reviewed on the dates and methodology specified in Item 3 of the Schedule.

- **Payment and Completion**

The Tenderer agrees that, if this offer is accepted, in accordance with the Conditions of Lease by Tender the Tenderer will:

- (a) pay the Association by bank cheque an amount equal to one quarter of the Annual Rent specified in Item 2 being the security deposit as required by clause 5.4 of the Conditions of Lease by Tender;
- (b) complete all the lease and other documentation required by the Conditions and the Lease.

- **Binding Agreement**

In consideration of the Association undertaking to investigate and take into account this Tender, the Tenderer agrees to be bound by the Conditions of Lease by Tender, and if this Tender is accepted, to be bound by the Lease.

- **Interpretation**

Words and expressions which are defined in the Conditions of Sale by Tender or in the Lease have the same meaning when used in this Form of Tender.

**ANNEXURE 2**  
**(Lease)**

**ANNEXURE 3**

**(Notification of Acceptance)**

**To:** [Name and address of successful Tenderer/s]

**Re:**

You have submitted the Form of Tender as contained in the Conditions of Lease by Tender for the above Property.

I give notice that your Tender for the lease of the Property pursuant to your Tender is accepted.

A Lease between the Association and you (in the form of Annexure A, of the Conditions of Lease by Tender) will be deemed to exist as at the date of this Notification with the term commencing 7 days from the date of this notification.

In accordance with clause 5.4 of the Conditions of Lease by Tender you are required to pay the amount due as payment toward the Security Deposit under the Lease within 48 hours after the date of notification of this acceptance.

Thank you for tendering for the Property.

Yours faithfully

\_\_\_\_\_  
Association

\_\_\_\_\_  
Date