MANAGEMENT AGREEMENT

between

SOUTH AFRICAN NATIONAL PARKS
(“SANPARKS”)
and

(Registration No.)

for the Management of the Restaurant Facility at Geelbek in the West Coast National Park.
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1. DEFINITIONS AND INTERPRETATION

1.1. In this Management Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

1.1.1. “Capital Investment Assets” means the assets provided by the Private Party as part of this Management Agreement and subject to the verification process to be carried out in terms of clause 4.1.3 of this Management Agreement;

1.1.2. “Catering Equipment” – refer 1.1.1

1.1.3. “Commencement Date” means the date stipulated as such in clause 3.1 below and is the date from which this Agreement is considered effective, regardless of the date of signature hereof;

1.1.4. "Companies Act" means the Companies Act, 71 of 2008, as amended;

1.1.5. “Confidential Information” includes, but is not limited to:

1.1.5.1. all information in whatever form and of whatever nature relating to the business, operations and affairs of the Party disclosing such information (“the disclosing Party”), which is directly or indirectly disclosed to, or received by or assessed by the Party receiving such information (“the receiving Party”) in connection with the Management Services; including without limitation any technical, commercial scientific, marketing or business information, any documentation, marketing strategies, processes, technical specifications, development plans, concepts and ideas, any photographs or sketches taken or received, financial information, customer information or records, business plans, customer and vendor lists, products, analysis, descriptions, computer software, programming, systems, materials and / or data and all other information of any kind or nature, proprietary to or a trade mark of the disclosing Party, whether in written, oral, magnetic, or machine-readable or other format;

1.1.5.2. any trade secrets, information, process, technique, algorithm, computer program (source and object code), designs, drawings, formula or test
results relating to any research project, work-in-progress, future development, engineering manufacturing, marketing, servicing, financing or personal matter relating to the disclosing Party, its present of future products, services, sales, suppliers, clients, customers, employees, partners, investors and contractual and financial arrangements;

1.1.5.3. information derived from or based upon information falling within the ambit of clauses 1.1.5.1 and 1.1.5.2; and

1.1.5.4. the details of this Management Agreement and its terms and conditions, the details of the negotiations leading to this Management Agreement, and any information handed over to, or prepared by either Party during the course of the Parties’ engagement, as well as the details of all the transactions or agreements contemplated in this Management Agreement;

but does not include information which –

1.1.5.5. is or subsequently becomes public knowledge, otherwise than by reason of a breach of either Party of their respective undertakings in terms of this Management Agreement; or

1.1.5.6. the receiving Party can establish to the reasonable satisfaction of the disclosing Party was known to it before the date of this Management Agreement and that the receiving Party was not under any fiduciary duty or other similar duty of confidentiality in respect thereof; or

1.1.5.7. the receiving Party can establish to the reasonable satisfaction of the disclosing Party, came to the attention of the receiving Party after disclosure thereof by the disclosing Party, provided that the source of such information was not known by the receiving Party to be bound by or subject to a confidentiality agreement with the disclosing Party, or bound by fiduciary or other similar duties of confidentiality, in respect thereof; or

1.1.5.8. the receiving Party can establish to the reasonable satisfaction of the disclosing Party, was developed by the receiving Party without the benefit of information provided by the disclosing Party; or

1.1.5.9. the Parties agree in writing is not Confidential Information;
1.1.6. “Day” means a calendar day;

1.1.7. “Environmental Act” shall mean the National Environmental Management: Protected Areas Act No. 57 of 2003, as amended from time to time, together with all regulations, rules, norms and standards issued in terms thereof and any legislation as may be promulgated from time to time to repeal or replace the Act;

1.1.8. “Escalation Rate” means the rate negotiated by both Parties proactively and in good faith based on the rate by which the Consumer Price Index, excluding mortgage interest rates ("CPI") for all categories and for the whole of the Republic of South Africa shall have escalated during the 12 (twelve) month period up to the most recent date in respect of which the last published CPI statistics is applicable (that is, by reference to the latest published CPI statistics as at the date upon which the escalation is to come into effect);

1.1.9. "Key Account Manager" means, in respect of the Private Party and SANParks, the person appointed as that Party’s liaison representative in terms of clause 7.1 below;

1.1.10. “WCNP” means West Coast National Park declared as such by the Minister under the now repealed National Parks Act No. 57 of 1976 and recognized and continuing to exist as such under the Act;

1.1.11. “Management Agreement” means this agreement, as amended from time to time in terms of clause 14.6;

1.1.12. “Management Fee” means the monthly management fee to be paid to SANParks by the Private Party in respect of the Management Services as stipulated in clause 7 of this Management Agreement;

1.1.13. "Management Services" means the management of the Catering and Restaurant Facility to be provided to SANParks by the Private Party, which services include:

   1.1.13.1. the Private Party acting as interim operator in respect of SANParks’ catering and restaurant requirements as further elaborated upon in clause 4.1 below; and

   1.1.13.2. the management of the catering and restaurant services more fully described in clause 6 below;

1.1.14. “Month” means a calendar month;
1.1.15. "Parties" means the Parties to this Management Agreement, being SANParks and the Private Party;

1.1.16. “Party” means either of the Parties to this Management Agreement;

1.1.17. "Prime Rate" means the prime lending rate as set by the bankers of SANParks from time to time;

1.1.18. "Private Party" means the counterparty to SANParks hereunder, and specifically, Registration number who will be responsible for the Management Services as outlined in this contract;

1.1.19. "Rand" or "R" means South African Rand, the lawful currency of the Republic of South Africa;

1.1.20. “Restaurant Facility ” means the Restaurant Facility as utilised at Geelbek in the West Coast National Park and includes the inside and outside dining areas and kitchen (together with associated office space);

1.1.21. “SANParks” means South African National Parks, a statutory body established in terms section 5 of the now repealed National Parks Act (Act No 57 of 1976) and continuing to exist as a juristic person in terms of the provisions of section 54 of the National Environmental Management: Protected Areas Act, (Act No 57 of 2003), and having its registered office at 643 Leyds Street, Muckleneuk, Pretoria;

1.1.22. “Scope of Management Services” means services that will be rendered by the Private Party and which is agreed between the Parties in respect of the provision of the Catering and Restaurant functions and annexed as Schedule 1 to this Agreement;

1.1.23. "Signature Date" means, when this Management Agreement has been signed by each Party (whether or not in counterpart), the latest of the dates on which this Management Agreement (or any counterpart) was signed by any Party;

1.1.24. "Turnover" For the purposes of this Management Agreement, Turnover shall be defined as:

1.1.24.1. any and all income or revenue received by or accruing to the Private Party, its Subcontractors or its cessionaries and successors-in-title from all activities carried on, at or by virtue of the Management Services, in any
manner, directly or indirectly, as is or would normally be included in gross revenue in terms of GAAP. Without derogating from its generality, the term “gross revenue” shall mean revenue before the deduction of:

1.1.24.2. bad debts (or provisions therefore);
1.1.24.3. commissions or similar consideration paid or payable;
1.1.24.4. cash, credit-card or similar discounts or commissions;
1.1.24.5. costs and expenses other than trade discounts granted in circumstances that are not arm’s-length or to a related party;

1.1.25. and turnover revenue shall include:

1.1.25.1. commissions received or receivable;
1.1.25.2. rentals and other fees received or receivable;

1.1.26. but shall exclude:

1.1.26.1. sales tax, value-added tax and any other similar impost levied on gross revenue (or any of its components) that is normally included in or added onto the tariffs or prices charged to guests or customers and which is not normally included in gross revenue in terms of generally-accepted accounting practice;
1.1.26.2. interest received or receivable;
1.1.26.3. the proceeds of, profit or surpluses on the disposal of non-current assets;
1.1.26.4. transfers from reserves; and
1.1.26.5. bad debts recovered.

1.1.27. "VAT" means Value Added Tax as defined in the Value Added Tax Act (Act No 89 of 1991) (the “VAT Act”) or any similar tax which is imposed in place of or in addition to such tax.

1.2. In this Management Agreement:
1.2.1. references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;

1.2.2. words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;

1.2.3. references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;

1.2.4. references to a "subsidiary" or a "holding company" shall be references to a subsidiary or holding company as defined in the Companies Act;

1.2.5. if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;

1.2.6. any definition, wherever it appears in this Management Agreement, shall bear the same meaning and apply throughout this Management Agreement unless otherwise stated or inconsistent with the context in which it appears;

1.2.7. if there is any conflict between any definitions in this Management Agreement then, for purposes of interpreting any clause of this Management Agreement or paragraph of any Annexe, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in this Management Agreement;

1.2.8. where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;

1.2.9. where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;

1.2.10. any provision in this Management Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Management Agreement shall, as to
such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (ie pro non scripto) and severed from the balance of this Management Agreement, without invalidating the remaining provisions of this Management Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;

1.2.11. the use of any expression covering a process available under South African law (such as but not limited to a winding-up) shall, if any of the Parties is subject to the law of any other jurisdiction, be interpreted in relation to that Party as including any equivalent or analogous proceeding under the law of such other jurisdiction;

1.2.12. references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;

1.2.13. the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (ie the eiusdem generis rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.

1.3. The expiration or termination of this Management Agreement shall not affect such of the provisions of this Management Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

1.4. Each of the provisions of this Management Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of this Management Agreement (ie the contra proferentem rule), shall not apply.

2. INTRODUCTION

2.1. SANParks has identified the need to continue with the restaurant facility however is not in a position to undertake this function internally mainly as it is not its core function. Therefore SANParks requires specialised services for these functions.
2.2. SANParks hereby appoints the Private Party to manage the Restaurant Facility at Geelbek of the WCNP and the Private Party accepts such appointment.

2.3. The Parties have reached an agreement as to the terms and conditions on which the Private Party will manage the Restaurant Facility at Geelbek in the WCNP as contained herein.

3. DURATION

3.1. The Private Party undertakes with effect from 1 March 2018 for a period of nineteen (19) months to provide Management Services to SANParks at and for the Restaurant Facility at the Geelbek in the West Coast National Park subject to the terms and conditions of this Management Agreement. Notwithstanding the provisions of this clause 3.1, SANParks shall be entitled to terminate this Management Agreement in toto as contemplated in clause 13.1 SANParks shall be entitled at its discretion, to extend the duration of this agreement for a period of more than the twelve months contemplated herein.

3.2. As consideration for the Management Services the Private shall pay to SANParks the Management Fees set out in clause 7 below.

4. PROVISION OF RESTAURANT SERVICES

4.1. The Private Party shall provide the Management Services for the duration of this Management Agreement and in order to enable it to carry out such services in an efficient and cost-effective manner, the Private Party shall, at its cost –

4.1.1. provide office facilities at the Restaurant Facility as the Private Party may reasonably require including, telephone and facsimile facilities; provided, that the use of telephone and facsimile facilities shall at all times be reasonable and shall be limited to the rendering of the Management Services;

4.1.2. have access to the kitchen, services (including the provision of electricity, gas, water and waste removal) storage space and dining areas within the Restaurant Facility;

4.1.3. subject to clause 6.9, the Private Party will provide dishwashing equipment, furniture, food preparation equipment and cutlery, crockery, glassware, metal ware, cleaning equipment and other such articles as the Private Party may require for the performance of its obligations in terms of this Management Agreement (the “Catering Equipment”). As at the date of signature hereto, it is envisaged that the Catering Equipment shall include the
items as outlined in Schedule 4. The Private Party shall give to SANParks an asset register which asset register shall serve as an initial asset register of the Catering Equipment. The Private Party will be responsible to maintain the assets as outlined in the asset register to acceptable standards. The asset register will thereafter be updated and adjusted on a monthly basis by the Private Party as part of its month-end stock-take process and presented to SANParks for sign-off;

4.1.4. maintain the Restaurant Facility infrastructure in accordance with all necessary statutory and/or common law requirements;

4.1.5. the Private Party shall have access to the Restaurant Facility at all reasonable times (including early entry and late departure) as well as the right to so use the Restaurant Facility as may be reasonably required by the Private Party in carrying out its function under this Management Agreement;

4.1.6. maintain the Restaurant Facility in good condition throughout the duration of this Management Agreement and repair and replace such Catering Equipment and furniture as may become necessary through fair wear and tear and breakage resulting from ordinary usage in accordance with the reasonable requirements of the Private Party from time to time; and

4.1.7. where employees may make use of the Geelbek house within the Geelbek Precinct, SANParks will continue to provide the Private Party the house for the operator’s use. The house that will be made available are outlined in Schedule 3. It is recorded that the use of house is interdependent to the Management Agreement between SANParks and the Private Party. The use of the house will terminate in the event that the Management Agreement terminates for whatever reason.

5. **BUYING OF FOODSTUFF, BEVERAGES AND NON-CONSUMABLES**

5.1. The Private Party shall be responsible for the acquisition of all the foodstuffs, beverages and non-consumable items to be used in the provision of the Management Services and in the preparation of meals at the Restaurant Facility.

5.2. The Private Party on a monthly basis all costs incurred in carrying out its obligations in terms of clause 5.1 (the “Operating Expenses”) in accordance with the provisions of this Management Agreement.
5.3. It is recorded that the Private Party has an established procurement infrastructure and the Private Party undertakes, subject to clause 5.6, to use its best endeavours, and its bargaining power, to acquire the foodstuffs, beverages, and non-consumables required for the purposes of the provision of the Management Services at the most favourable prices attainable.

5.4. In carrying out its buying function in terms of this clause 5 and subject to clause 5.6, the Private Party shall act in the interests of SANParks and shall deal with any order placed by it separately from any other order so that there can be no confusion as to the identity of the foodstuffs, beverages, and non-consumables purchased by the Private Party for the purposes of this Management Agreement.

5.5. The Private Party shall be responsible for the payment of all amounts due by it to the suppliers of the foodstuffs, beverages and non-consumables purchased by it for the benefit of SANParks in terms of this Management Agreement and shall be responsible for effecting payment to the said suppliers. Failure by the Private Party to pay suppliers in terms of the clause 5.2 above shall amount to a material breach of the Agreement.

5.6. The Private Party shall be responsible for ensuring that all beverages, foodstuff and non-consumables supplied by the relevant suppliers are of an acceptable quality and standard and underwrite principles of Responsible Tourism and the Private Party’ rights of recourse in this respect shall lie solely against the relevant suppliers. The Private Party shall nevertheless use its best endeavours and its bargaining power to procure that the suppliers provide a good and efficient service and supply goods of an appropriate quality. Should SANParks have reasonable cause to be dissatisfied with a particular supplier and wish to change to another supplier, it shall notify the Private Party thereof and the Private Party, in liaison with SANParks, shall endeavour to find an alternative supplier who is able to meet the reasonable requirements of SANParks.

5.7. The Private Party shall attend any price increase negotiations with suppliers from time to time and shall use its best endeavours to keep such increases to a realistic level and to negotiate reasonable notice periods in respect of such increases.

6. **PROVISION OF MANAGEMENT SERVICES**

In addition to the buying services referred to in clause 4.1, in providing the Management Services at the Restaurant Facility, the Private Party shall:
6.1. Not transgress in any way the Environmental Act when rendering the Management Service to SANParks;

6.2. ensure that the preparation and serving of meals to the customers of SANParks at the Restaurant Facility is carried out in an efficient, hygienic, and professional manner;

6.3. ensure that the standard of Management Services conforms to the reasonable requirements of SANParks;

6.4. ensure that the foodstuffs, beverages and other non-consumables purchased on behalf of SANParks in terms of clause 4.1 above are used exclusively in the preparation of the meals for the Geelbek restaurant and use its best endeavours to ensure that the said goods are used efficiently and with a view to avoiding undue wastage, it being recorded that the managerial functions of the Private Party shall include management of the stocks of ingredients which are used by the Private Party in carrying out its obligations in terms of this Management Agreement;

6.5. by agreement with SANParks prepare operating rules relating, *inter alia*, to the hours of operation, meal times, menus, security, selling prices and such other matters as the Private Party and SANParks deem fit for the purpose of governing the operation of the Management Services, which rules the Parties shall use their best endeavours to abide by and enforce;

6.6. use its best endeavours to maintain the Restaurant Facility as well as the Catering Equipment of the restaurant in a good and clean condition throughout the duration of this Management Agreement;

6.7. ensure that all personnel employed for the Management Services are at all times whilst on duty neatly dressed, presentable and hygienic;

6.8. as part of the monthly asset register update and adjustment provided for in clause 4.1.3, maintain a fully updated stock list of all fixed and loose items of Catering Equipment supplied and/or replaced by Private Party;

6.9. use the Catering Equipment solely for the purposes of this Management Agreement, and maintain and repair the Catering Equipment to the reasonable satisfaction of SANParks and pay all costs incurred in this regard;

6.10. shall at no time encumber the Catering Equipment in any manner;
6.11. comply with all relevant laws and by-laws in the carrying out of the Management Services provided, however, that the Private Party shall not be obliged to make any structural alterations to any part of the Restaurant Facility;

6.12. deposit into a bank account in the name of Private Party, forthwith on receipt, all monies received by it in respect of the Management Services rendered at the Restaurant Facility, it being intended and agreed that all cash, cheques, credit or debit card payments by all users of the Restaurant Facility shall be directly deposited and received into a bank account nominated by Private Party; however the Private Party is contractually obligated to deposit into SANParks’ bank account its monthly rental fee and/ or gross percentage of turnover as submitted in the Private Party’s bid submission.

6.13. discharge as soon as is reasonably practicable and in accordance with applicable legislation any employee working at the Restaurant Facility who is guilty of conduct which is prejudicial to the interests of SANParks and/or;

6.14. exercise reasonable care in the use of the Catering Equipment, if any, provided by SANParks and as more fully described in clause 4.1.3 of this Management Agreement and, upon the termination, of the Management Agreement, hand to SANParks its Catering Equipment back to the condition in which it was at the Commencement Date, fair wear and tear excepted.

6.15. establish effective administrative and accounting systems and procedures for the efficient running of the Management Services and liaise with SANParks in regard to such systems and, generally, in regard to the operation. For the purpose of such liaison, SANParks shall attend such meetings as may reasonably be required by the Private Party;

6.16. do all in its ability within reason to ensure that the Restaurant operations are profitable;

6.17. maintain Cost of Sale (COS) figures that are reasonably accepted as the industry standard, i.e. a COS figure of not more than 43% in the restaurant operations. Where deviation occurs, it should be justified and the Private Party and SANParks work together to find ways to address the deviation;

6.18. be under no obligation to implement any changes to the Management Services or to the Scope of Services prior to such change request, including any commensurate pricing changes, being agreed in writing by the Parties.
7. CONSIDERATION

7.1. The Private Party shall pay to SANParks:

7.1.1. the monthly Management Fee, in the amount of x% of turnover (excluding VAT) per month, arrived at and payable on the terms and conditions further stipulated in this clause 7;

7.2. the Private Party shall submit to SANParks:

7.2.1. statements of account;

7.2.2. All invoices submitted to the Private Party by SANParks in terms of clause 7.2 shall be payable to the SANParks within 30 days from capturing of the invoices on the SANParks financial system. The said payments shall be effected by way of electronic funds transfer to SANParks’ bank account and paid by the Private Party.

7.3. Any failure on the part of the Private Party to pay its monthly rental or gross percentage of turnover timeously or present a statement of account or any omission of an item in such account or any other similar such error shall not prejudice the Private Party in rectifying the omission, error or failure in any subsequent statement of account.

7.4. Interest will be payable by Private Party on all overdue amounts payable by it in terms of this Management Agreement as from the due date of such payment (i.e. the date that payment should have been made) until the actual payment thereof. The rate of interest shall be equivalent to the prime overdraft rate charged by the Private Party’ bankers from time to time during the said period plus 2% (two per centum). In the event of any statement or tax invoice sent by the SANParks to Private Party containing any error or inaccuracy (including any alleged error or inaccuracy), SANParks shall immediately report same to the Private Party and the Parties shall co-operate with each other with the object of resolving the issue as quickly as possible. In any event, the Private Party shall be obliged to pay to SANParks within 30 days from capturing, the amount which is not in error (that is, the amount properly owing) failing which interest shall accrue on the amount properly owing on the abovementioned basis and at the abovementioned rate notwithstanding the said error/inaccuracy, the object being to obviate the practice of delaying payments whilst querying and otherwise dealing with errors/inaccuracies as manifested in the relevant statements/invoices.
8. RELATIONSHIP MANAGEMENT

8.1. Each of the Parties hereto shall appoint a liaison person as its respective Key Account Manager who will be responsible for the overall monitoring, liaison and management of the relationship between the Parties on an ongoing basis. The Key Account Manager of each Party shall be identified in writing by each Party to the other within 48 (forty-eight) hours of the date of signature hereof.

8.2. Should either Party wish to appoint a new person as its Key Account Manager, or should the contact details of the Key Account Manager change, the Party shall provide the other Party with immediate written notice of such change.

8.3. Nothing in this clause shall preclude the Parties from appointing further persons as liaison persons in respect of the Management Services.

8.4. In carrying out their duties as Key Account Managers, such Parties shall:-

8.4.1. report to each other for the duration of the Management Agreement and shall ensure that any faulty or unacceptable performance of a Party is brought to the attention of the relevant Key Account Manager timeously to enable such Party to take suitable corrective action;

8.4.2. continually review the management information requirements of both Parties and agree on the date of intermediate and annual review meetings in respect of such requirements;

8.4.3. meet regularly to review the relationship and to provide feedback regarding any specific requirements or issues raised by their respective principals;

8.4.4. where any specific action or consent is required by either Party in terms of this Management Agreement:-

8.4.4.1. advise the Key Account Manager of the other Party of such required consent or action;

8.4.4.2. take the necessary steps to ensure that the required action is taken or required consent is given;

8.4.4.3. provide feedback regarding the relationship to their respective principals.
9. INTELLECTUAL PROPERTY: BRANDING, TRADEMARKS

9.1. All trading names, trademarks and brands belonging to either the Private Party or SANParks shall continue to be owned by the relevant owner thereof and nothing in this Management Agreement shall be construed as entitling either Party to utilise the trade names, trademarks, branding and intellectual property of the other save to the extent expressly provided for herein or as otherwise agreed in writing between the Parties.

9.2. To the extent that the Management Services are linked to any specific brands or trademarks owned by or licenced to either Party (which linked intellectual property hereinafter referred to as “the Branded Concept”), the following special provisions shall apply:

9.2.1. the Parties acknowledge that all rights, title and interest in the Branded Concept and the marks and get-up of the other, is and shall remain vested solely in the Party that owns the Branded Concept and each Party disclaims any right to or any interest or the goodwill derived from the Branded Concept of the other;

9.2.2. upon the expiry or earlier termination of this Management Agreement for any reason whatsoever, the Parties shall not have the right to continue to use the Branded Concept of the other and shall immediately discontinue the use of any colour scheme, logo, signage, name, mark, image, get-up or packaging related to the Branded Concept of the other and shall make such other changes as the other Party may reasonably direct in order to effectively distinguish any continued catering at the Restaurant Facility or otherwise from the Branded Concept. In such circumstances the Parties shall have the right to enter the Restaurant Facility or any facility of the other on reasonable notice in order to ascertain whether the Parties have complied with their obligations in terms hereof.

10. HEALTH AND SAFETY

10.1. In carrying out the Management Services, the Private Party shall at all times adhere to its Risk Operations Manual, as amended from time to time, and undertakes that it will comply with the provisions of the Occupational Health and Safety Act, No 85 of 1993, as amended from time to time (OHSA).

10.2. in the event of SANParks requiring the Private Party to implement health and safety processes or procedures, or compliance or certification at a standard higher than that required in terms of OHSA, as amended from time to time, SANParks shall bear all the reasonable costs incurred
by the Private Party in order to achieve such certification or compliance, including, but not limited to, the costs of any relevant training of the Private Party employees, certification or equipment.

10.3. In the event of either Party failing to comply with the provisions of OHSA, as amended from time to time, the other Party shall immediately inform the other and request it to remedy the non-compliance forthwith, and in event by no later than 3 (three) calendar days of being so notified. Should such Party fail to remedy the non-compliance within the period specified in this clause 10.3, the other Party shall be entitled to suspend its obligations in terms of this Management Agreement until such non-compliance has been remedied by the other Party.

11. INDEMNITY

11.1. the Private Party hereby indemnifies SANParks against any loss, damage or inconvenience suffered by the Private Party, attributable to the negligence of the Private Party employees or representatives, or as a result of any defects or deficiencies in the premises, the facilities, the services or equipment which are made available to SANParks by the Private Party at the Restaurant Facility.

11.2. SANParks hereby indemnifies the Private Party against any loss, damage or inconvenience suffered by the Private Party, attributable to the negligence of SANParks employees or representatives, or as a result of any defects or deficiencies in the premises, the facilities, the services or equipment which are made available to the Private Party by SANParks at the Restaurant Facility.

12. TERMINATION AND BREACH

12.1. Notwithstanding the provisions of clause 3 above, either Party may at any time terminate this Management Agreement by giving three (3) calendar months written notice to the other Party of such termination. It is recorded that during the three (3) months’ notice period, the Private Party must first obtain SANParks’ approval to procure goods and services required in terms of this Management Agreement.

12.2. In the event of a material breach of any of its obligations by either Party under this Management Agreement and that Party failing to remedy such breach within a period of 21 (twenty-one) days (or such longer period as may be reasonably required to remedy such breach by the exercise of reasonable diligence and as agreed to between the Parties) of receipt
of written notice from the aggrieved Party calling upon it to do so, the aggrieved Party shall be entitled to cancel this Management Agreement or to claim specific performance, in either event without prejudice to the aggrieved Party’s rights to claim damages or to claim such other remedy to which it might be entitled.

12.3. Should an application be made for the winding-up of either Party, or should an order be-issued, whether provisional or final, for the winding-up of either Party, or should either Party enter into or propose any deed of assignment to any of its creditors for settlement of its debts, or if execution is issued against a Party by virtue of any judgement, or if either Party commits any act of insolvency, or, being a legal entity, is placed under business rescue, pass a resolution to commence business rescue or receive an application from a third party for it to go into business rescue, or commences to be wound up in a liquidation that is not merely a voluntary liquidation for the purpose of reconstruction, then the other Party may, without prejudice to its rights in terms of this Management Agreement or any other prevailing law, forthwith terminate this Management Agreement.

12.4. On termination in terms of clause 12.2 of this Management Agreement for whatsoever reason, the Private Party shall return to SANParks all of their Catering Equipment that belongs to SANParks in the same condition as it was received, fair wear and tear expected, and as recorded in the most recent and up-to-date asset register referred in clauses 4.1.3 and 6.8 the Private Party shall reimburse SANParks for any missing or damaged items of their Catering Equipment, as evidenced by such up-to-date asset register, fair wear and tear excepted, at the market value thereof as within 10 (ten) Business Days of agreeing, in writing, such missing items.

12.5. For purposes of this Management Agreement, should there be any dispute relating to the market value of any of the Catering Equipment on termination in part or in toto of this Management Agreement, the market value shall be determined and ruled on by SANParks’ external auditors and each of the Parties undertakes to be bound by such ruling. The Catering Equipment shall not be more than the market values of such items as recorded in the most recent and up-to-date asset register referred in clauses 4.1.3 and 6.8.

12.6. It is specifically recorded and agreed by the Parties that in the event of termination of this Management Agreement, for whatsoever reason, all employees of the Private Party specified in Schedule 2 to this Management Agreement, as updated from time to time will automatically have their employment transferred to SANParks or to any incoming operator
contracted by SANParks to take over the running of the Restaurant Facility or of any specified part of the Restaurant Facility, as the case may be, in accordance with Section 197(1) of the Labour Relations Act, 1995 (Act No. 66 of 1995), (as amended).

12.6.1. in order to give effect to the Section 197(1) transfer of employment in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), (as amended) as contemplated in clause 12.6 above:

12.6.1.1. SANParks undertakes that it will or shall procure that any incoming operator to the Restaurant Facility or any specified part thereof will assume and discharge all obligations of the Private Party to those of its employees who are transferred to SANParks or to the incoming operator, as the case may be as envisaged in Clause 12.6;

12.6.1.2. SANParks agrees that it will or shall procure that any incoming operator to the Restaurant Facility or any specified part thereof will recognise all previous years of service of such employees of the Private Party who become employed by SANParks from the date of termination this Management Agreement, as well as all previous years of services of such employees with SANParks immediately preceding the effective date of this Management Agreement;

12.6.1.3. in the event of any such employees being entitled to post-retirement medical aid company contributions in accordance with the Private Party’ and/or SANParks’ employment conditions, SANParks shall assume or shall procure that any incoming operator to the Restaurant Facility or any specified part thereof will assume responsibility for ensuring that these Employees will continue to enjoy the benefit of any such post-retirement medical aid contributions as well as the financial and administrative aspects of executing this benefit;

12.6.1.4. the Private Party undertakes to procure that the actuarially valued balance of all such employees’ retirement fund entitlements (whether the pension, provident or other), including any surplus or accumulated benefits, shall be transferred to the SANParks’ pension fund or to the pension fund of other retirement funding scheme of the incoming operator/caterer, as the case may be, without delay Section 197(1) transfer of employment in terms of
the Labour Relations Act, 1995 (Act No. 66 of 1995), (as amended) as contemplated in clause 12.6 above. SANParks or the incoming caterer, as the case may be, will have the right to appoint its own actuary for the purpose of verifying the value of each member’s share of the Private Party’s retirement fund (the same applies when the staff is transferred from the current operator to the Private Party on commencement of the Management Agreement);

12.6.1.5. the existing housing subsidy scheme and / or transport arrangements operated by the Private Party in respect of the employees will be assumed by the incoming caterer, as the case may be; and

12.6.1.6. SANParks shall ensure that in any tender process to be conducted by it in respect of the provision of catering services at the Restaurant Facility or any part thereof, it shall make the award of any contract to any incoming operator / caterer subject to the automatic transfer of employment in terms of section 197(1) of the Labour Relations Act, 1995 (Act No. 66 of 1995), (as amended) of the employees from the Private Party to the incoming caterer as provided for in this clause 12.6.

12.7. Notwithstanding any provision to the contrary contained in this Management Agreement, neither SANParks nor the Private Party shall be entitled to indirect, incidental, consequential or punitive damages, including, inter alia, damages for loss of profits arising from any cause whatsoever which may be suffered by the other Party.

13. NATIONAL PARK

13.1. It is hereby recorded that the Premises is part of the West Coast National Park and the Private Party undertakes to comply with the provisions of the National Environmental Management: Protected Areas Act 53 of 2003, as amended and the regulations in terms of that Act as well as any written directives of SANParks in connection of all activities under this Agreement;

13.2. The Private Party shall ensure that its employees, contractor, users as well as clients also comply with the provisions mentioned in clause 14.1 above and takes full responsibility for any action by such employees, contractor, users or clients;

13.3. SANParks’ representatives, agents, servants and contractors may at all reasonable times, without thereby giving rise to any claim or right of action on the part of the Private Party or any
other occupier or user of the Premises, enter the Premises in order to inspect any part of it, to carry out any necessary repairs, replacements or other works, or to perform any other lawful function in the bona fide interests of SANParks, but the Lessor shall ensure that this right is exercised with due regard for, and a minimum of interference with, the beneficial enjoyment of the Premises by the Private Party.

14. MISCELLANEOUS MATTERS

14.1. Postal Address

14.1.1. Any written notice in connection with this Management Agreement may be addressed:

14.1.1.1. in the case of SANParks to:

address: 643 Leyds Street
            Muckleneuk
            Pretoria

and is marked for the attention of the Chief Executive Officer

14.1.1.2. in the case of the Private Party to:

address: <To be Completed>

and is marked for the attention of General Counsel.

14.1.2. The notice shall be deemed to have been duly given:

14.1.2.1. 5 Business Days after posting (14 Business Days if the address is not in the Republic of South Africa), if posted by registered post (airmail, if available) to the Party's address in terms of sub-clause 14.1.1;

14.1.2.2. on delivery, if delivered to the Party's physical address in terms of either sub-clause 14.1.1 or sub-clause 14.2.1 between 07h30 and 16h00 on a Business Day (or on the first Business Day after that if delivered outside such hours);
14.1.2.3. on despatch, if sent to the Party's then fax number or e-mail address between 07h30 and 16h00 on a Business Day (or on the first Business Day after that if despatched outside such hours);

unless the addressee is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

14.1.3. A Party may change that Party’s address or fax number or e-mail address for this purpose by notice in writing to the other Party, such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.

14.1.4. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to that Party notwithstanding that it was not sent to or delivered at that Party’s chosen address in 14.1.1.

14.2. Address for Service of Legal Documents

14.2.1. The Parties choose the following physical addresses at which documents in legal proceedings in connection with this Management Agreement may be served (i.e. their domicilia citandi et executandi):

14.2.1.1. in the case of SANParks:

address : 643 Leyds Street

Muckleneuk

Pretoria

and is marked for the attention of the Chief Executive Officer

14.2.1.2. in the case of the Private Party:

address : <To be completed>

and is marked for the attention of General Counsel.
14.2.2. A Party may change that Party's address for this purpose to another physical address in the Republic of South Africa by notice in writing to the other Party such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.

14.2.3. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate service of such written notice or communication to that Party notwithstanding that it was not sent to or delivered or served at that Party's chosen domicilium citandi et executandi.

14.3. **Entire Contract**

This Management Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Management Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Management Agreement.

14.4. **No Stipulation for the Benefit of a Third Person**

Save as is expressly provided for in this Management Agreement, no provision of this Management Agreement constitutes a stipulation for the benefit of a third person (ie a stipulatio alteri) which, if accepted by the person, would bind any Party in favour of that person.

14.5. **No Representations**

A Party may not rely on any representation which allegedly induced that Party to enter into this Management Agreement, unless the representation is recorded in this Management Agreement.

14.6. **Variation, Cancellation and Waiver**

No contract varying, adding to, deleting from or cancelling this Management Agreement, and no waiver of any right under this Management Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.
14.7. Indulgences

The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Management Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

14.8. Cession and Delegation

Except as provided for elsewhere in this Management Agreement, a Party may not cede any or all of that Party's rights or delegate any or all of that Party's obligations under this Management Agreement without the prior written consent of the other Party.

14.9. Applicable Law

This Management Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

14.10. Jurisdiction of South African Courts

The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa for any proceedings arising out of or in connection with this Management Agreement.

14.11. Costs

14.11.1. Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Management Agreement.

14.11.2. Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.

14.12. Signature In Counterparts

This Management Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

14.13. Independent Advice

Each of the Parties hereby respectively agrees and acknowledges that:
14.13.1. it has been free to secure independent legal advice as to the nature and effect of each provision of this Management Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

14.13.2. each provision of this Management Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Management Agreement.


The Parties shall at all times act in good faith towards each other and shall not bring any of the other Parties into disrepute.

14.15. Co-Operation

Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Management Agreement.

Signed at _____________________________ this ________ day of __________________________ 20____.

As witnesses:

For and on behalf of:

SOUTH AFRICAN NATIONAL PARKS

1

Name:

Capacity:

who warrants that he / she is duly authorised thereto

2
Signed at _____________________________ this ________ day of __________________________ 20____.

As witnesses: For and on behalf of:
THE PRIVATE PARTY

1
   _____________________________
   Name:
   Capacity:
   who warrants that he / she is duly authorised thereto

2
   _____________________________
SCHEDULE 1 – SCOPE OF SERVICES

The following aims to outline the scope of services that will be expected from the Private Party:

**Restaurant:**
- Compilation of Menu to provide decent dining offering to SANParks’ guests
- Serving of three meals per day – breakfast, lunch and dinner (except if agreed otherwise with SANParks where feasibility of the operation dictates changes)
- Performing all Supply Chain processes, i.e. supplier relationships, price negotiation, ordering, checking of stock with delivery, paying of suppliers, etc. in order to ensure availability of menu items
- Implement control measures to reflect optimal cost of sales (COS) levels – no higher than 43% (except if valid reasons for this exist)

**Staff:**
- Management of restaurant staff including management of their morale, salaries, UIF, pension monies, etc.
- Training of staff to ensure optimal service and product to customers
- Ensure that staff portray a professional image at all times and look uniform

**Administration:**
- Invoice SANParks for services rendered as outlined in this management agreement
- Compile monthly financial Profit and loss statement (refer Schedule 5 for an example)
- Monthly meetings with Park Management to discuss finances and areas to address to improve profitability (including communication with SANParks to ensure seamless operation)
- Manage, maintain and control assets and catering equipment on behalf of SANParks

**Other:**
- Ensure that food served are prepared hygienically
- Grow turnover optimally through agreed initiatives

- Maintain customer satisfaction levels on dining at levels above 70% (electronic customer survey)

- Implement initiatives to optimise product

- Comply with all legislation in relation to the operation of restaurants outlets

- Drive and address risk minimisation for SANParks, i.e. inform SANParks about potential areas that could be detrimental to SANParks’ image and take steps to correct this (specifically with relation to the Restaurant operations)
SCHEDULE 2 – EMPLOYEES

List of Employees at Geelbek:

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<th>Employee Number</th>
<th>Name and Surname</th>
<th>Job Title</th>
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## SCHEDULE 3  STAFF OF THE PRIVATE PARTY / NA

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<th>Name and Surname</th>
<th>Job Title</th>
<th>Cost to Company</th>
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SCHEDULE 4 – ASSETS

Geelbek:

Assets to be confirmed within 7 days from Commencement Date.

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<th>Item</th>
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## Profit and Loss Statement

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<th>PRIOR PERIOD</th>
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<th>CURRENT PERIOD</th>
<th>% CHANGE FROM PRIOR PERIOD</th>
<th>% CHANGE FROM BUDGET</th>
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<td><strong>Sales Revenue</strong></td>
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<td><strong>Operating Expense: Sales and Marketing</strong></td>
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<td>Advertising</td>
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<td>Direct marketing</td>
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<td>Wages and salaries</td>
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<td>Outside services</td>
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<td>Real estate taxes</td>
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<td>Other taxes (specify)</td>
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<td>Total</td>
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<td><strong>Gross Margin</strong></td>
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<td><strong>Return on Sales</strong></td>
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