



Tender No. KWS/RFP/MES/137/2010-2011

**CONSTRUCTION, OPERATION & MANAGEMENT OF
TOURIST FACILITIES IN MWALUGANJE ELEPHANT
SANCTUARY**

**Closing Date: - 20TH AUGUST 2010
12.00 noon**

Kenya Wildlife Service

Headquarters, PO Box 40241, Nairobi, Kenya
Tel 600800, 600450, 602697 Fax 603792, 607793, 601416
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INVITATION TO TENDER

CONSTRUCTION, MANAGEMENT AND OPERATION OF TOURISM FACILITIES IN MWALUGANJE ELEPHANT SANCTUARY

TENDER NO.KWS/RFP/MES/137/2010 - 2011

Mwaluganje Elephant Sanctuary in collaboration with Kenya Wildlife Service wishes to invite prospective investors and developers to construct, manage and operate tourism facilities, in the following area: -

Type of Facility	Site	Location	Proposed Lease Yrs	Beds
Eco-lodge	Mwaluganje Elephant Sanctuary – New Manolo site	Matuga division Kwale District	20	40
Restaurant	Mwaluganje Elephant Sanctuary - Manolo lunch hut	Matuga Division Kwale district	8	-
Campsite	Mwaluganje Elephant Sanctuary - campsite	Matuga Division, Kwale District,	3	-

The successful developers will construct and operate the facilities in accordance with KWS regulations on tourist facilities in Protected Areas.

A complete set of Tender documents may be obtained by interested bidders upon payment of a non-refundable fee of Kshs.2,000.00 (Two thousand Kenya Shillings only) per each set at the cash office -payable in cash, or a bankers cheque addressed to the Director, KWS.

Tenders Must be accompanied with a bid security of Kshs 100,000.00 from a bank incorporated in Kenya

Pre-bid meeting will be held on **Tuesday 27th July 2010** at KWS hqs boardroom starting at 10.00am.

Completed Tender Documents in plain, sealed envelopes clearly marked; Tender No. **KWS/RFP/MES/137/2010-2011** and addressed to:-

The Director, Kenya Wildlife Service, P.O. Box 40241, NAIROBI 00100.

The Director, Kenya Wildlife Service, P.O. Box 40241, **NAIROBI 00100.**

Should be returned and deposited in the Tender Box at the entrance of Simba Court on or before **Friday, 20TH August 2010 at 12.00 noon.**

Bids will be opened immediately thereafter in the presence of bidders or their representatives who choose to attend. Kenya Wildlife Service reserves the right to accept or reject any or all tenders without the option to assign reason for such decision.

Head – Supply Chain Management

PROSPECTUS

PROJECT: DEVELOPMENT OF TOURIST FACILITIES IN MWALUGANJE ELEPHANT SANCTUARY

Tender no: KWS/RFP/MES/137/2010-2011 for Construction, Development and Management of Tourist facilities in Mwaluganje Elephant Sanctuary.

1.1 Background

The Kenya Wildlife Service (KWS) has in recent years involved local communities in the management of wildlife resources in their areas. It is invaluable that for local communities to protect their natural resources, they must obtain some benefits from these resources as a means to improving their livelihoods. KWS is keen to assist and partner with communities to identify and develop optimal land uses (those that have high conservation and livelihood values). In a bid to achieve this objective, KWS has been involved in organizing studies and exposure tours for local communities across the country. This has often involved taking members of the local communities to visit and learn from similar successful community based conservation initiatives elsewhere. This has enabled target communities better understand ways of appropriately benefiting from wildlife through initiation of similar projects.

1.2 Mwaluganje Elephant Sanctuary

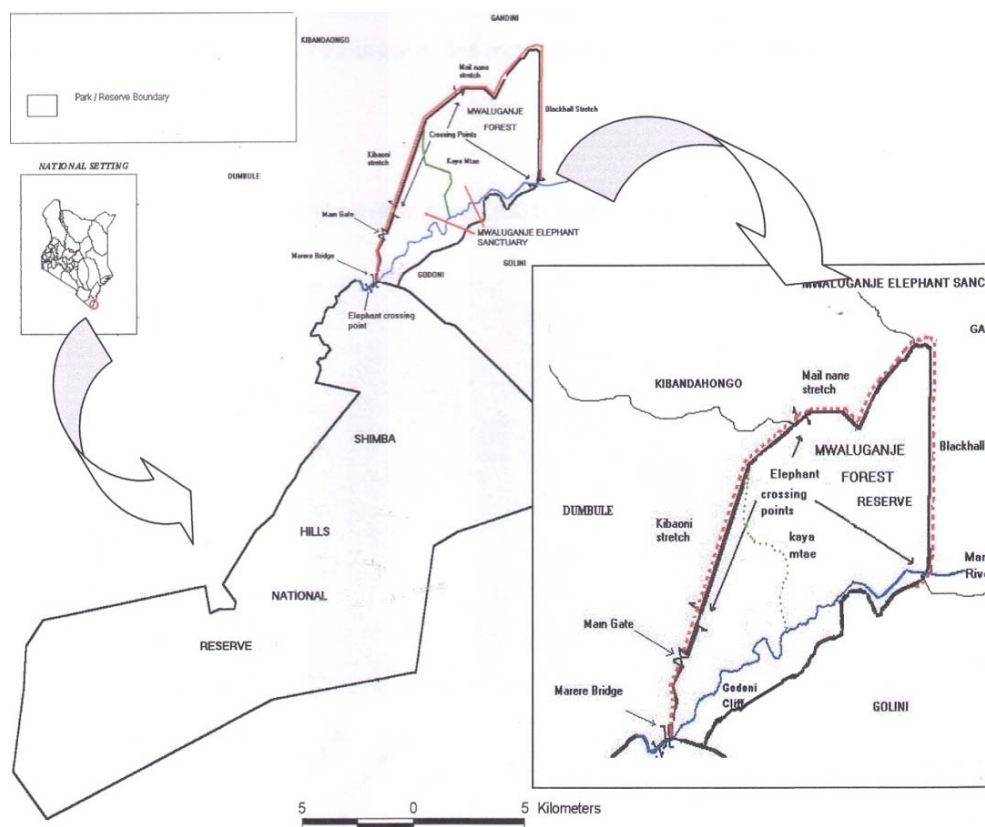
The Golini-Mwaluganje Community Wildlife Conservation Ltd, operating under the name Mwaluganje Elephant Sanctuary, was registered as a company in 1994 and began operations in 1995. The Sanctuary is a northern extension of the Shimba Hills National Reserve and covers an area of 36km². It is also a southern extension of the Mwaluganje forest reserve. The Sanctuary is almost entirely fenced. The area is important at an international, national and local level. It supports threatened lowland coastal forest which contains a rich diversity of flora and fauna including several rare and endemic species. It serves as one of only three coastal refuges for elephants in Kenya; is an important water catchment area; contains a sacred Kaya site; and, is sufficiently close to the coast and can therefore attract large numbers of domestic and international visitors.

Located in Kwale District, Coast Province and approximately 35km south west of Mombasa and north of Kwale town, the Sanctuary lies at an altitude of 440ft a.s.l. The Golini Escarpment serves as a natural and aesthetic eastern boundary, while the Mwaluganje Forest Reserve abuts the Sanctuary to the east – a plateau of approximately 30km² and 500ft a.s.l.

The average annual temperature is 24.2°C, while the rainfall pattern is bimodal with two peaks between April–July (long rains) and in November (short rains). Mean annual rainfall is 1150mm. There is morning mist and fog.

Although elephants are the main mammalian herbivores, others include waterbuck, buffalo, bush buck, warthog, yellow baboon, black and white Colobus monkey, impala, leopard, civet, genet, Serval and striped hyena. In addition, a rich diversity of birds, reptiles and invertebrates occur in and surrounding the Sanctuary, some which have international conservation status and importance. The area also harbours the endangered prehistoric Cycad plant.

1.3 Location of Mwaluganje Elephant Sanctuary



1.4 Proposed eco-lodge

The project proponent will be expected to undertake construction of an eco-lodge, including financing, operation and maintenance thereof. The project proponent will operate the facility over a fixed term during which they will charge a market rate to visitors. At the end of the lease term the ownership of the lodge will revert to the Mwaluganje Elephant Sanctuary. The duration of the lease will be 20 years with the option to renew for an additional 5 years.

The property will consist of an eco-lodge with maximum of 40 beds on a maximum acreage of 25 acres. Operators will be free to offer self-catering or full catering services depending on their target market. The operators will be permitted to run a curio shop in conjunction with the sanctuary members.

The Lunch Banda

The existing facility was a raised restaurant that will need to be re-constructed into a new facility offering meals and services that can be managed together with the above eco-lodge.

Proposals for alternative uses can also be considered. The site overlooks the Manolo River which is frequented by herds of elephant. It also overlooks the steep Golini cliffs.

The Campsite

The existing campsite is popular with visitors looking for a relaxing wilderness retreat. A camp shelter has been constructed and has supporting facilities such as water reticulation, kitchen, washrooms and a store. The campsite is on a central hill and has views of much of the sanctuary.

1.5 Contractual arrangement

The developer(s) will construct and operate the proposed facilities under an agreement with the Sanctuary Management, which guarantees:

- Units to be constructed and operational within 12 months of award date.
- The lease term will run for a minimum of 20 years after which they may be renewed for a further 5 years. Facilities will be under a lease agreement.
- Units to be constructed on one level, out of environmentally friendly materials such as canvas tents, wood, thatch, local stone, etc. but causing minimal impact on the original environment. KWS and Mwaluganje Elephant Sanctuary will monitor the construction to ensure that operators adhere to the agreements. Designs will be provided by individual bidders and approved by KWS technical department and the local council.
- A fixed rent will be charged.
- All the facilities will revert to Mwaluganje Elephant Sanctuary after the end of the term, if the lease is not renewed.
- A maximum of 40 visitor beds will be permitted for the tented camp. This does not include staff houses and drivers' quarters.

Note

Please note that this invitation to submit proposals does not constitute an offer to investors and/or developers and that KWS & Mwaluganje Elephant Sanctuary do not undertake to select any or all applicants should a suitable operator not be found.

2.0 THE SITES

2.1. Location & Background of the sites

The eco-lodge site is located along the Manolo River viewing circuit on a loop. It faces the seasonal Manolo River valley and Golini Cliffs. The restaurant is a raised wooden structure that will require extensive reconstruction (see picture below). It is located on a hill overlooking the Manolo River at an area frequented by the elephants. The campsite is

located on a hill and currently has a large grass thatched shed; store, toilets and a water tank (see pictures below).



The Restaurant



A store at the campsite



The water tank & surrounding vegetation at the campsite

2.2. Access

The Mwaluganje Elephant Sanctuary is accessible along the Kwale/Kinago road.

2.3. Wildlife

The area has unique wildlife and a variety of ecosystems that will be attractive to both domestic and international tourists. The main attraction is the large herds of elephants in such a unique environment close to the Mwaluganje forest and the Shimba Hills national reserve..

2.4. Tourism Infrastructure and Facilities

A number of trails and roads already exist in the Sanctuary. Bidders should note that the site is located in a low rainfall area. The area is rich in culture and history and has several Kaya forests close by.

2.5. Tourism Development Plans

Tourism developers will be expected to attract both domestic and international visitors in affordable tourism facilities. The prospective developers may opt to bid for all three sites, or a combination of them. The overall aim will be to improve the area's tourist product and infrastructure while as far as possible retaining its unique character. The area is mainly natural coastal forest, scrubland, grassland with mixed bush land and all developments should therefore employ low-impact technology in construction and operation.

3.0 SITE USE DEFINITIONS

3.1 Eco-lodge

We define an eco-lodge as a one-level structure on temporary foundation e.g. elevated wooden decks, and with semi-permanent solid walls of natural materials that blend well with the environment. Minimum concrete is recommended.

The successful bidders will undertake to construct and operate the facilities in accordance with the lease terms.

The facilities should clearly aim at benefiting the sanctuary members by such means as providing employment and as an example, markets for their farm produce. Emphasis should be placed on strict adherence to high standards of environmental sensitivity during the facilities construction and subsequent operation. Practicable measures should be taken to avoid undue influence to wildlife, plants and habitat in and around the camp. The developer is free to provide his/her interpretation of a chosen project based on the above guidelines.

4.0 TOURISM & ENVIRONMENTAL MANAGEMENT

We require detailed proposals on sustainable environmental management regarding, but not limited to, the following considerations: NB. The successful developer will be required to carry out an Environmental Impact Assessment.

- Community benefits & involvement
- Effluent disposal
- Natural vegetation conservation
- Sensitivity to wildlife
- Noise and water pollution
- Source of energy & water
- Source of construction material

In addition to these, KWS shall examine how the proposed facility's management will address issues regarding:

- Local community benefits including employment
- Design, construction and development of the facility
- Tourist product design and delivery
- Marketing

We also require proposals to adequately demonstrate a realistic appreciation of the financial resource implication of the facilities' development and management.

Caveat

This Investor portfolio gives relevant information to the bidders on the offer for development, leasing/licensing and subsequent management of the proposed accommodation facilities, to enable them to decide on bidding.

While the information given is believed to be true, KWS and Mwaluganje Elephant Sanctuary do not take responsibility for the accuracy and completeness of the said information. Interested parties are advised to visit the area and to carry out independent inspection and feasibility assessments before submitting their proposals.

5.0 INSTRUCTIONS FOR SUBMISSION OF PROPOSALS

5.1 General Instructions

The Landlords have registered as Golini-Mwaluganje- Community Wildlife Conservation Ltd and are registered proprietors of the land (subject to the Act Charges and Encumbrances) the parcels of land situate AS FOLLOWS:

SANCTUARY	LOCATION/ DISTRICT	SIZE OF AREA (km ²)
Mwaluganje Elephant Sanctuary	Kwale District, Matuga Division, Matuga location	93.5

Mwaluganje-Golini Community Wildlife Conservation Ltd is therefore mandated to accept proposals for development of tourist facilities within their land. Technical and logistical assistance for this process is being provided by KWS with funding from USAID. They seek well-presented proposals with references and evidence of competence, in tourist accommodation and recreation facilities development and management.

Proponents are advised to provide responses that are concise and carefully thought out to enable the joint Mwaluganje/KWS Evaluation Committee consider their proposal fairly and unambiguously. All responses to questions in the questionnaires should be typed and the question numbered to correspond with that set out in the questionnaire. Please include all attachments as required in the questionnaire. **Separate, clearly labelled technical proposals must be made for each site selected. Bidders are free to select all or some sites.**

Applicants will be notified of the results of their questionnaire as soon as the evaluation is complete. All decisions made by the evaluation committee will be final and canvassing will result in immediate and automatic disqualification

CONDITIONS

1 Eligible Proponents

- 1.1 This Invitation is to select an investor for, development, lease and management of tourism facilities in Mwaluganje Elephant Sanctuary.
- 1.2 Proponents shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

2 Cost of Proposals

- 2.1 The bidder shall bear all costs associated with the preparation and submission of its proposal, and neither KWS nor Mwaluganje Elephant Sanctuary, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bids/proposal evaluation process.

3 Clarification of Documents

- 3.1 A proponent requiring any clarification of the proposal invitation documents may notify KWS in writing or by cable (hereinafter, the term cable is deemed to include email and facsimile) at the entity's address indicated in the Invitations. KWS will respond in writing to any request for clarification of the documents, which it receives up to fourteen days (14) days before the deadline for submission of bids, prescribed by KWS. Written copies of the proposing entity's response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective proponents that have received the invitation documents.

4 Amendment of Documents

- 4.1 At any time prior to the deadline for submission of the proposals, KWS, for any reason, whether at its own initiative or in response to a clarification requested by a prospective developer may modify the invitation of proposal documents by amendment.
- 4.2 All prospective candidates that have received the documents will be notified of the amendment in writing or by cable, and will be binding on them.
- 4.3 In order to allow all proponents reasonable time in which to take the amendment into account in preparing their bids, KWS, at its discretion, may extend the deadline for the submission of completed proposals.

5 Proposal Language

- 5.1 The bid prepared by the prospective developer, as well as all correspondence and documents relating to the bid exchanged by the bidder and the KWS, shall be written in English language, provided that any printed literature furnished by the bidder may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the bid, the English translation shall govern.

6 Currencies

- 6.1 Prices, rates referred to in the proposal shall be quoted in Kenya Shillings, US Dollars or the Euro at an exchange rate prevailing at the time of opening the proposals.

7 Format and Signing of bid

- 7.1 The original and all copies of the completed proposal questionnaires shall be typed or written in indelible ink and shall be signed by the bidder or a person or persons duly authorised to bind the bidder to the lease. The person or persons signing the proposal shall initial all pages of the returned documents, except for unamended printed literature.
- 7.2 The proposals shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the bidder, in which case such corrections shall be initialled by the person or persons signing the bid.

8 Submission of Proposals

8.1 Sealing and Marking of Proposals

The proponent shall submit 3 copies of questionnaire responses clearly marked

“Proposal For Construction, Development and Operation Of Tourist facilities in Mwaluganje Elephant Sanctuary ” as appropriate in envelopes sealed in one outer plain envelope marked " Tender No. KWS/RPF/MES/137/2009-2010, DO NOT OPEN BEFORE **Friday,20TH August 2010** and addressed to

The Director
Kenya Wildlife Service
P.O Box 40241
NAIROBI 00100

The outer envelope should not have the name or the identity of the proponent indicated.

8.2 If the outer and inner envelopes are not sealed and marked as required by paragraph

8.3 Both KWS and Mwaluganje Elephant Sanctuary will assume no responsibility for the proposal’s misplacement or premature opening. Original should be marked “ORIGINAL” and the copies should be marked “COPY”.

In the event of any discrepancy between the copies of the proposals, the original must govern.

9 Deadline for Submission of Proposals

9.1 Bids must be received by the KWS at the address specified under paragraph 8.1 not later than, 12.00 noon on **Friday, 20th August 2010**.

9.2 KWS may, at its discretion, extend this deadline for the submission of bids by amending the bid documents in accordance with paragraph 4, in which case all rights and obligations of the KWS and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

10 Modification and Withdrawal of Proposals

10.1 The proponent may modify or withdraw its proposal after submission, provided that written notice of the modification, including substitution or withdrawal of the bid is received by KWS prior to the deadline prescribed for submission of proposals.

10.2 The proposal modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 10.1. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of proposals.

10.3 No proposals may be modified after the deadline for submission.

11 Opening and Evaluation of Proposals

11.1 KWS will open all bids in the presence of proponents’ representatives who choose to attend, at its, Headquarters in Langata.

11.2 The bidders’ representatives who are present shall sign a register evidencing their attendance

11.3 The bidders' names, bid modifications or withdrawals and such other details as KWS, at its discretion, may consider appropriate, will be announced at the opening.

11.4 Kenya Wildlife Service will prepare minutes of the proposals opening.

12 Clarification of Tenders

12.1 To assist in the examination, evaluation and comparison of proposals KWS may, at its discretion, ask the proponent for a clarification of its bid. The request for clarification and the response shall be in writing and no change in the prices or substance of the bids shall be sought, offered, or permitted.

12.2 Any effort by a proponent to influence the Evaluation Committee of KWS/Mwaluganje Elephant Sanctuary bid evaluation, comparison or lease award decisions may result in the rejection of the bidders' proposal.

12.3 Subject to paragraph 12.1, no prospective developer shall contact KWS/Mwaluganje Elephant Sanctuary on any matter relating to its bid, from the time of the bids opening to the time the lease award.

13 Preliminary Examination

13.1 KWS will examine the proposals to determine whether they are complete, whether any computational errors have been made, whether the documents have been properly signed, and whether the bids are generally in order.

13.2 KWS may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any bidder.

13.3 If a proposal is not substantially responsive, it will be rejected by KWS/Mwaluganje Elephant Sanctuary and may not subsequently be made responsive by the bidder by correction of the nonconformity.

14 Evaluation and Comparison of Proposals

14.1 The investors are invited to complete and submit questionnaire responses for the project described in the prospectus

14.2 The questionnaire responses should be carefully thought out and provide sufficient detail to enable the Evaluation Committee to consider the proposals fairly. A two-stage procedure will be adopted in evaluating the proposals. A technical and financial evaluation will be carried out based on the criteria as specified in the prospectus.

14.3 The evaluation committee will carry out the evaluation of proposals on the basis of their responsiveness to the terms and conditions of development and management of tourist facilities in KWS Parks. Applying a point system, each proposal will be ranked and the best selected

14.4 The determination will take into account the bidder's financial, technical development, and management capabilities. It will be based upon an examination of the documentary evidence of the bidder's qualifications submitted by the bidder as such other information (from the detailed questionnaire responses) as KWS & Mwaluganje Elephant Sanctuary deems necessary and appropriate.

15 Award of the Lease

- 15.1 An affirmative determination will be a prerequisite for award of the lease to the bidder. A negative determination will result in rejection of the proposal, in which event KWS will proceed to the next best-evaluated proposal to make a similar determination of capabilities to perform satisfactorily
- 15.2 KWS reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to lease award, without thereby incurring any liability to the affected bidder(s) or any obligation to inform the affected bidder(s) of the grounds for KWS's action.
- 15.3 At the same time as KWS notifies the successful bidder that its bid has been accepted, it will send the bidder the "offer of lease". The successful bidder shall then be invited for negotiations of specific non-financial lease terms based on the Draft lease agreement.

16 Corrupt Fraudulent Practices

- 16.1 KWS requires that proponents observe the highest standard of ethics during the bidding process and execution of lease. In pursuance of this policy, Kenya Wildlife Service:-
- (a) Defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "Corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the bidding process or in lease execution; and
 - (ii) "Fraudulent practice" means a misrepresentation of facts in order to influence a bidding process or the execution of a lease to the detriment of KWS, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive KWS of the benefits of free and open competition.
 - (b) Will reject a proposal for award if it determines that the proponent recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question; and
 - (c) Will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded any lease if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a lease/contract.

17. Bid Security

- 17.1 The Bidder shall furnish KWS as part of the Bid, an original Bid Security of Kshs 100,000/- (One Hundred Thousand shillings only) from a reputable commercial bank incorporated in the Republic of Kenya. The Tender Security will be submitted in the format and manner attached to the tender document as a bank guarantee or paid in cash to the Kenya Wildlife Service, Licensing Office in Chui court. The Bid Security must be valid for 30 days beyond the validity of the bid.

17.2 Any bid not accompanied by the tender security shall be rejected and treated as Non-responsive.

17.3 Bid Security of unsuccessful bidder will be returned at the time of notifying bidders of the outcome of the bid.

17.4 Bid security of successful bidder will be discharged when the contractor signs the agreement

17.5 Bid security may be forfeited if:

- i. The bidder withdraws the bid after opening during the period of its validity.
- ii. In the case of a successful bidder if it fails within the time limit to sign the contract.

18. Bid Validity

18.1 Bids will be valid for 120 days after the date of submission

18.2 KWS may request a bidder to extend the period of validity of the bid. This request and response from the bidder shall be made in writing or by cable. The bidder may refuse to grant the request without forfeiting its bid security.

18.3 The Bidder granting this request may not be required or permitted to modify the bid but will be required to extend the validity of the Bid Security for the period of extension.

19.0 Documents

19.1 The complete set of proposal invitation document comprises the following:

- a) Bid invitation
- b) Prospectus
- c) Proposal instructions
- d) Technical and Financial Questionnaire
- e) Evaluation criteria
- f) Standard lease document

The final decision of the award rests solely with the Golini-Mwaluganje Community Wildlife Conservation Ltd. The lease will be signed and executed subject to successful proponent being issued with an Environmental Impact Assessment license by the National Environmental Management Authority (NEMA) and meeting the conditions specified in the license or lease.

QUESTIONNAIRE

SELECTION OF A DEVELOPER FOR CONSTRUCTION, OPERATION AND MANAGEMENT OF TOURISM FACILITIES IN MWALUGANJE ELEPHANT SANCTUARY

1.0 Company Details

NAME OF COMPANY / FIRM _____

POSTAL ADDRESS _____ TOWN _____

TELEPHONE _____ FAX _____

E-MAIL (where applicable) _____

WEBSITE (where applicable) _____

2.0 Company Structure

2.1 Legal status of your business...

Limited Liability Company Sole proprietorship Partnership

2.2 Is the company locally or foreign owned?

Local Foreign Both

List of major shareholders (Local and foreign).....

2.3 Date of registration of your Organisation _____

2.4 Names, experience and qualifications of company directors and senior Managers
(Attach current CVs)

3.0 Financial Details

3.1 Name and full address of the company's Bankers

Names	Full Address
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3.2 Experience in operating and management of upmarket tourist accommodation facilities and any awards, citations, eco-rating etc received from recognized institutions.

Name(s) of facilities	Bed capacity	yearly Av. Occupancy (%)
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3.2 Indicate the business turnover of the company in United States Dollars or Kenya Shillings (Kshs.) for the last 3 years, ending 2008/9.

3.3 Profit & Loss and, Balance Sheet for the last 3 years
(Attach copies of these audited accounts)

4.0 Evidence of experience In Developing, Managing, Marketing, Operating similar facilities

- 4.1 Give a summary of any previous facility you have developed or operated, that is similar to this proposed.
Among others you should indicate:
- Location of the facility
 - Period of operation
 - Nature of operation: Franchise, Lease or ownership
 - Your direct involvement /role in the development, operations and management of this company

5.0 Proposed Site Development Plans and Conservation Policy

- 5.1 Briefly, in no more than 3 pages, describe your initial plans for the facility, addressing the following topics:
- 5.1.1 Proposed name of the establishment.
 - 5.1.2 Overall construction and development concept (e.g. Sanctuary theme, target market, time frame)
 - 5.1.3 Environmental and Waste Management Plans.
 - 5.1.4 In your own words, describe your understanding of the term “Wildlife Conservation”.

6.0 Declaration

I _____(State name)
on behalf of _____(State
Company)as _____(State
Position) hereby confirm that the information provided in this proposal is correct.
Signature _____
Date _____

(Affix Company Stamp)

EVALUATION CRITERIA:

**SELECTION OF A DEVELOPER FOR CONSTRUCTION, DEVELOPMENT AND
OPERATION OF ECO-TOURISM FACILITIES IN MWALUGANIE ELEPHANT
SANCTUARY**

Part C	Preliminary Evaluation (Mandatory Documents)	Maximum Score
	Completeness of Documentation <ul style="list-style-type: none">• Current Trade License• Business Registration Certificate• Valid Tax compliance certificate• PIN Certificate.• List of major shareholders	MANDATORY DOCUMENTS

Part D	Detailed Technical and Financial guideline and Evaluation Criteria	Maximum Score
	<p>Environmental Issues</p> <p>The prospective developer should adequately demonstrate that he/she has undertaken an initial Site and Environment appraisal to access the proposed project site's Topography, Climate, Vegetation, soil, hydrology and general scenery.</p> <p>His/her proposal should address the proposed lodge's waste disposal considering;</p> <ul style="list-style-type: none"> • Gray water disposal • Combustible waste • Non – biodegradable waste <p>The investor is required to clearly indicate the project's water requirements (in construction and operation) and show where the lodge intends to obtain water for its guests and staff usage. Here important considerations include;</p> <ul style="list-style-type: none"> • Source of water; bore hole/ river intake etc • Water conservation measures • Plumbing; type of reticulation and size • Waste disposal vis a vis water sources <p>Impact of lodge development on vegetation and wildlife</p> <ul style="list-style-type: none"> • If vegetation will be cleared and the extent of this clearing • Use of resources in construction • Use of resources for fuel • Sound/ noise pollution 	15
	<p>Design, construction and development of the facility</p> <p>In design, construction and development of the facility, the investor is expected to provide sound proposals on the following considerations;</p> <ul style="list-style-type: none"> • Lodges' design concept and its interpretation of local cultural and environmental themes (provide only architectural sketches) • Materials used • Type of structures to be built • Number of units/ bed capacity • Staff accommodation, Number of units and size 	15
	Tourist product design and delivery	15

Part D	Detailed Technical and Financial guideline and Evaluation Criteria	Maximum Score
	<p>The developer is expected to provide information outlining how the facility is to improve the 's Tourist Product offering. The proposal should clearly demonstrate to KWS facilities Development evaluation committee how it will address provide quality;</p> <ul style="list-style-type: none"> • Landscaping and general ambiance, • Accommodation Service provision • Food and Beverage offering, • Additional Tourist activities /experiences 	

Part D	Detailed Technical and Financial guideline and Evaluation Criteria	Maximum Score
	<p>Marketing strategy and Plans</p> <p>The Investor should demonstrate a clear understanding of the area current tourism trend in terms of supply and demand of the product to offer, and the targeted tourist market. This is to enable him clearly identify the facility's target market and how to maximise on this market.</p> <p>The evaluation committee will be examining your responses on the basis of the following:</p> <ul style="list-style-type: none"> • Marketing objectives/ or general strategy • Policy on domestic Tourism • Emphasis on local community benefits • Marketing Mix; <ul style="list-style-type: none"> – Product i.e. Themes and unique points of sale, – Promotion and launch program – Pricing strategy – Distribution i.e.; evidence of relation with retailers e.g. tour operators 	15
	<p>Construction/ renovation and Development</p> <p>The questionnaire responses should prescribe satisfactory approaches to be adopted in the project's implementation during the construction and development stage. The investor should be able to propose a realistic and feasible;</p> <ul style="list-style-type: none"> • Construction costs • Constriction schedule • Roads and access maintenance • Size of workforce • Fire control measures • Impact on environment and measures to minimise • Construction waste disposal and water to be used etc 	15
Part D ii	Financial proposal guideline and Evaluation Criteria	Maximum Score
	<p>Financial Projections</p> <p>The questionnaire responses should enable the evaluation committee appreciate the developers assumption regarding the project's implementation on:</p>	25

Part D	Detailed Technical and Financial guideline and Evaluation Criteria	Maximum Score
	<ul style="list-style-type: none"> • Bed occupancy and bed nights per year • Projected tariffs (residents and non-residents) • Inflation rate and trend • Exchange rates through the period • Rent payable to Mwaluganje <p>From these assumptions, the proposal bases its projections on the facilities’;</p> <ul style="list-style-type: none"> • Revenue from Room and other services • Key Operational factors Costs • Initial construction and development costs • Costs of capital for investment • Depreciation etc <p>The evaluation committee will examine the facility’s projections over the project’s duration:</p> <ul style="list-style-type: none"> • Balance sheet • Cash flow forecast • Source of equity & debt • And projected internal rate of return • The Developers will be required to provide 2 Years most recent audited Accounts <p>Financial Proposal</p> <ul style="list-style-type: none"> • Rent payable to Mwaluganje 	

Note: Only bidders who score 65% and above shall be deemed to be responsive

PART E

BID SECURITY

Whereas.....(name of the Tenderer) (hereinafter called “ the Tenderer) has submitted its tender dated(date of submission of tender) for Lease Development and Management of Tourist Facilities at In Mwaluganje (hereinafter called “the Tender”).....

KNOW ALL PEOPLE by these presents that; Weof..... having our registered office at (Hereinafter called “the Bank”), are bound unto Kenya Wildlife Service in the sum of Kshs. 100,000/= for which payment well and truly to be made to the said Kenya Wildlife Service, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this _____ day of _____ 2010.

THE CONDITIONS of this obligation are:

1. If the Tenderer withdraws its Tender during the period of tender validity specified by the Tenderer on the Tender Forms; or
2. If the Tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:
 - a) Fails or refuses to execute the lease agreement, if required

We undertake to pay to Kenya Wildlife Service up to the above amount upon receipts of its first written demand, without Kenya Wildlife Service having substantiate its demand, provided that in its demand Kenya Wildlife Service will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above date.

Bank seal and authorized signature: _____

APPENDIX 1

STANDARD LEASE

DATED _____ **2009**

GOLININ-MWALUGANJE

TO

[TENANT]

TENTED CAMP

.....

LAND REFERENCE NO

Alfonso Wadeyua
Advocate
P. O. Box 40241
Nairobi
00100

REPUBLIC OF KENYA
THE REGISTRATION OF TITLES ACT
(CHAPTER 281)

TITLE NUMBER:1

LEASE

1 Particulars

- 1.1 Date** :
- 1.2 the Landlord** : Golini-Mwaluganje Community Wildlife Conservation Ltd a body corporate established under the companies Act (Chapter 486) of the Laws of Kenya and of Post Office Box -----, Kwale.
- 1.3 The Tenant** : of Post Office Box , Nairobi .
- 1.4 the** : That piece or parcel of land situate in the Municipality in District containing by measurement hectares or thereabouts known as Land Reference Numbermore particularly known as comprised in a Grant dated ... day of, registered in the Land Titles Registry at Nairobi as Number the dimensions abutments and boundaries of which are delineated and described on Plan Number annexed to the said Grant and more particularly on Land Survey Plan Number.....deposited in the Survey Records Office at Nairobi and thereon bordered red which land is held by the Landlord as lessee from the Government of Kenya under the provisions of the said Grant subject to the annual rent of shillings peppercorn (if demanded) and to such charges and other matters as are referred to in the said Grant and the Memorandum endorsed hereon.
- 1.5 the Premises** : The portions of the referred to as Tented camp Site and more particularly described in the First Schedule.
- 1.6 the Term** : The period of years from and including the Commencement Date subject to any extension of the lease as provided for in sub-clause 7.16.
- 1.7 the Commencement Date** : The date of commencement of this lease as set out in sub-clause 1.1.

- 1.8 **the Initial Rent** : Fixed ground rent of Kshs payable quarterly in advance PROVIDED THAT a minimum rent of Kshs ...
..... shall be payable monthly as aforesaid.

2 **Definitions**

- 2.1 The terms defined or explained in clauses 1, 2 and 3 and paragraphs 1 of the fifth schedule and the sixth schedule shall for all purposes of this lease have the meanings specified.
- 2.2 “**the Additional Covenants**” means the covenants set out in the fourth schedule.
- 2.3 “**Common Parts**” means those parts of the Conveyance other than the Premises and other designated areas, which are from time to time during the Term provided by the Landlord for common use by the tenants, occupiers, licensees and invitees of the Sanctuary and all persons expressly or by implication authorised by them.
- 2.4 “**Insured Risks**” means the risks set out in the sixth schedule and insured in the manner thereunder set out, and any risk against which the Tenant shall at the time of the damage or destruction in question have effected insurance.
- 2.5 “**Pipes**” means all pipes, sewers, drains, mains, ducts, conduits, gutters, watercourses, wires, cables, channels, flues, and all other conducting media including any fixtures, louvers, cowls, and other ancillary apparatus.
- 2.6 “**Rent**” means the Initial Rent and the increased rents ascertained in accordance with the fifth schedule.

3 **Interpretation**

- 3.1 The expressions “the **Landlord**” and “the **Tenant**”, wherever the context so admits, include respectively the person for the time being entitled to the reversion immediately expectant on the determination of the Term and the Tenant’s successors in title.
- 3.4 References to “the **Premises**”, in the absence of any provision to the contrary, include any part of the Premises.
- 3.5 References to “the **last year of the Term**” include the last year of the Term if the Term shall determine otherwise than by effluxion of time and references to “the **expiration of the Term**” include such other determination of the Term.
- 3.6 References to any right of the Landlord to have access to the Premises shall be construed as extending to any superior landlord and all persons authorised by the Landlord and superior landlord.

- 3.7 References to “**consent of the Landlord**” or words to similar effect mean consent in writing signed by or on behalf of the Landlord.
- 3.8 References to any clause, sub-clause, or schedule without further designation shall be construed as a reference to the clause, sub-clause, or schedule of this lease so numbered.
- 3.9 The clause and schedule headings do not form part of this lease and shall not be taken into account in its construction and interpretation.
- 3.10 Words importing the singular number shall include the plural and *vice versa* and words importing the masculine shall include the feminine and neuter and *vice versa*.

4 Grant of Lease

The Landlord leases to the Tenant for the Term the Premises together with the rights specified in the second schedule but excepting and reserving to the Landlord the rights specified in the third schedule subject to all rights, easements, privileges, restrictions, covenants and stipulations of whatever nature affecting the Premises and subject to payment to the Landlord of the Rent, payable without any deduction by equal monthly payments at the times specified in sub-clause 1.8 and the fifth schedule, on the first day of every month and proportionately for any period of less than a month PROVIDED THAT the Initial Rent shall first become due on the first anniversary of the Commencement Date.

5 The Tenant covenants with the Landlord:

- 5.1 To pay the Rent on the days and in the manner set out in clause 4 of this lease, and not to exercise or seek to exercise any right or claim to withhold Rent or any right or claim to legal or equitable set off and, if so required by the Landlord, to make such payments by banker’s order to the bank and account which the Landlord may from time to time nominate.
- 5.2 To pay and indemnify the Landlord against Value Added Tax or any tax of a similar nature which may be substituted for it or levied in addition to it chargeable in respect of any payment made by the Tenant under any of the terms of or in connection with this lease or in respect of any payment made by the Landlord where the Tenant agrees in this lease to reimburse the Landlord for such payment, and unless otherwise expressly stated, all references to Rent or other sums payable by the Tenant are exclusive of Value Added Tax.
- 5.3 To pay to the suppliers and to indemnify the Landlord against all charges for electricity, water, telephone, telex, and facsimile services consumed or used at or in

relation to the Premises, including meter rents and installation charges, if any, and to observe and perform all regulations and requirements of such suppliers.

- 5.4 To repair and keep the Premises in good and tenantable repair excepting damage caused by an Insurable Risk, other than where the insurance money is irrecoverable in consequence of any act or default of the Tenant or anyone at the Premises expressly or by implication with the Tenant's authority.
- 5.5 To clean the Premises and keep them in a clean condition.
- 5.6 To permit the Landlord to enter on the Premises for the purpose of ascertaining that the covenants and conditions of this lease have been observed and performed and to carry out forthwith all work required to comply with any notice given by the Landlord to the Tenant specifying any repairs, maintenance, cleaning or decoration which the Tenant is required to do in accordance with the terms of this lease PROVIDED that:
 - (a) the Landlord shall give to the Tenant reasonable notice of his intention to enter on the Premises;
 - (b) such entry on the Premises shall be during normal working hours;
 - (c) the Landlord or any agent of the Landlord shall produce proper identification documents to the Tenant or a member of the Tenant's staff to enable entry on the Premises;
 - (d) the Tenant or a member of the Tenant's staff shall accompany the agent of the Landlord at all times where the latter enters on the Premises pursuant to the provisions of this sub-clause.
- 5.7 If within fourteen (14) days of a notice given by the Landlord under sub-clause 5.6, the Tenant shall not have commenced and be proceeding diligently with the execution of the work referred to in the notice, to permit the Landlord to enter the Premises to execute such work as may be necessary to comply with the notice, and to pay to the Landlord the cost of so doing and all expenses incurred by the Landlord (including legal costs and surveyor's fees), which costs and expenses shall be a debt due from the Tenant to the Landlord and shall be forthwith recoverable by action.
- 5.8 To permit the Landlord and the agents of the Landlord, with or without workmen, and with all necessary appliances, at all reasonable times, and at any time with or without notice in the case of fire, defective lavatory fittings, water pipes, and electric services, to enter on the Premises for the purpose of executing any repairs for which the Tenant may not be liable under the covenants given by the Tenant in this lease, or to carry

out any maintenance, repairs, cleaning, examination, testing, alterations, additions, improvements, or renewals of, to either the Premises or any adjoining premises or land or to the electricity or water supply or drainage in, or under the Premises and also for the purpose of painting or treating the outside of all doors or window frames and the exterior of the Premises in such colour and in such manner and at such times as the Landlord may desire or direct provided that the Landlord shall make good any damage caused thereby to the Premises but shall not be liable to the Tenant for any inconvenience or otherwise howsoever in relation to such works or things done as aforesaid.

- 5.9 To install in the Premises, at the Tenant's own expense, such fire fighting equipment and appliances as shall be required and approved by the Landlord.
- 5.10 Not to use or permit or suffer the Premises to be used for any illegal or immoral purpose.
- 5.11 Not to do or permit to be done anything by which the policy or policies of insurance on the Premises or any part of the Premises may become void or voidable or by which the premium on such policy or policies may be increased and to immediately notify the Landlord of the destruction of or any damage to the Premises or any part of the Premises.
- 5.12 Not to assign, transfer, sublet, charge or part with possession of the Premises or any part of the Premises without the prior written consent of the Landlord. Upon any breach by the Tenant of the terms of this sub-clause, the Landlord may thereupon, at any time, re-enter the Premises and if the Landlord shall do so, the Term created by this lease shall terminate absolutely.
- 5.13 Not to make any alterations or additions to the Premises or to cut, maim, or injure any of the timbers, walls, floors, ceilings, doors, windows, fixtures, or fittings of the Premises, or to permit any of the aforesaid things to be done without the prior written consent of the Landlord. If the Tenant requires any partitions, installations, alterations, or additions to the Premises to suit the Tenant's requirements, then the Tenant shall submit to the Landlord drawings, plans, and specifications, and the quality of material to be used in respect of such partitions, installations, alterations, or additions. The drawings, plans, and specifications, and the quality of material to be used in respect of such partitions, installations, alterations, or additions submitted by the Tenant to the Landlord shall be subject to the approval of the Landlord and the Landlord's architects.

- 5.14 Not to do or to permit or suffer upon the Premises anything which in the opinion of the Landlord may be or tend to be a nuisance, annoyance, disturbance, or source of damage to the Landlord, other tenants of the Landlord, or the owners or occupiers of adjoining or neighbouring premises.
- 5.15 Not to do or to permit or suffer any act which shall amount to a breach or non-observance of any negative or restrictive covenant or special condition contained in any lease or grant or other instrument under which the Sanctuary is held by the Landlord or to which the Landlord is otherwise subject.
- 5.16 Not without the previous written consent of the Landlord, which consent shall not be unreasonably withheld, to permit to be introduced into any part of the Premises any safe, or heavy machinery, or equipment, and not to overload the floors of the Premises beyond the margin of safety from time to time prescribed by the Landlord's architect, which margin of safety it shall be the sole responsibility of the Tenant to ascertain from the Landlord's architects, and to indemnify the Landlord against all actions, claims, and demands arising out of any breach of the provisions of this sub-clause.
- 5.17 To comply with all recommendations of the insurers and the local fire authorities as to fire precautions relating to the Premises.
- 5.18 To indemnify the Landlord against any actions, claims or demands arising out of leakage or overflow of water from the Premises.
- 5.19 To indemnify the Landlord against all damage, loss, or injury occasioned to the Premises or to any adjoining or neighbouring premises or to any person or persons caused by any act, default, negligence, or omission of the Tenant or the servants, agents, licensees, or invitees of the Tenant.
- 5.20 To observe the Additional Covenants in the fourth schedule.
- 5.21 That in the event of the Premises or any part or parts of the Premises, including any fixtures, fittings, electrical installations, and equipment being damaged or destroyed by any Insured Risk, and the insurance money under any insurance policy or policies against the Insured Risk being wholly or partially irrecoverable by reason solely or in part of any act or default of the Tenant or of any servant, licensee, or invitee of the Tenant then, and in every such case, to indemnify and pay to the Landlord the whole, or as the case may require, a fair proportion of the cost of completely rebuilding and reinstating the Premises or any part or parts of the Premises. Any dispute as to the proportion to be so contributed by the Tenant, or otherwise in respect of, or arising

out of, this sub-clause to be referred to arbitration in accordance with the provisions of the Arbitration Act, 1995, or any Act or Acts of Parliament amending or replacing the same.

- 5.22 At all times during the continuance of the Term to comply with all laws, Acts of Parliament, rules, regulations, or by-laws now or hereafter enacted, passed, made, or issued by the Government of Kenya or any municipal, township, local, or other authority, in relation to the occupation, conduct, or user of the Premises.
- 5.23 Within seven (7) days of receipt, to produce to the Landlord any notice, direction, order, or proposal for the Premises made, given, or issued to the Tenant under any Act of Parliament, rule, regulation, order, or direction under such Act of Parliament, or under the by-laws of any competent authority.
- 5.24 During the last three (3) months of the Term to permit persons with written authority from the Landlord, or the agents of the Landlord, at all reasonable times of the day, and upon previous appointment having been made, to view the Premises and to permit the Landlord or the Landlord's agents to enter on the Premises and to affix on any suitable part of the Premises, a notice board for re-letting or selling the Premises.
- 5.25 To pay on demand all costs, charges, expenses (including advocate's costs and surveyor's fees) incurred by the Landlord for the purpose of or incidental to the preparation and service of a notice requiring the Tenant to remedy a breach by the Tenant of any of the terms of this lease.
- 5.26 To yield up the Premises at the expiration of the Term with the fixtures and fittings (other than and except such of the Tenant's fixtures as the Tenant shall have previously removed) in good and tenantable repair and condition and in accordance with the terms of this lease and with all locks, keys, and fastenings of the Premises complete.
- 5.27 To pay the fees and disbursements of the Landlord's advocates and all other costs and expenses incurred by the Landlord in relation to the preparation, execution, and registration of this lease and the stamp duty thereon.
- 5.28 Not to use or suffer the use of any lavatories and water closets for the disposal of refuse or for any purpose which may cause a stoppage in the pipes connecting the lavatory basins and water closets with the waste water pipes and soil pipes or in such waste water pipes and soil pipes.
- 5.29 Not to hold or suffer to be held any sale by auction on the Premises.

- 5.30 To take all necessary steps to prevent any encroachment on the Premises or the acquisition of any new right of light, passage, drainage, or other easement over, upon, or under the Premises and will give notice to the Landlord of any threatened encroachment or attempt to acquire any such easement.
- 5.31 To ensure that the agents, servants, employees, invitees and licensees to the Premises comply in particular with the Wildlife (Conservation and Management) Act, the Environmental Management and Co-ordination Act, and generally with any other Act of Parliament regarding the use of National Sanctuaries and Reserves and/or the Premises.

6 The Landlord covenants with the Tenant:

- 6.1 To pay all rates, taxes, charges, head rents, and outgoings whatsoever, which now are or hereafter may become payable in respect of the Premises or any part thereof.
- 6.2 To pay the rent (if any) reserved by, and to perform and observe the covenants and conditions contained in, the grant, lease, or other instrument under which the Sanctuary and the Premises are held, and to indemnify the Tenant from and against all actions, proceedings, costs, damages, claims, and demands in respect of the rent under this sub-clause.
- 6.3 That the Tenant, paying the Rent under this lease, and observing and performing the covenants and stipulations on the part of the Tenant contained or implied under this lease, shall peaceably hold and enjoy the Premises during the Term without any interruption or disturbance by the Landlord or any person rightfully claiming under or in trust for the Landlord.

7 Provisos

- 7.1 If, and whenever, during the Term the Rent or any part of the Rent is outstanding for fourteen (14) days after becoming due, whether formally demanded or not, or there is a breach by the Tenant of any covenant or other term of this lease, the Landlord shall give to the Tenant fourteen (14) days' notice in writing specifying the default and requiring the Tenant to remedy such breach before the expiration of such notice and if the Tenant shall fail to comply with such notice then, and in such case, it shall be lawful for the Landlord at its option at any time thereafter to re-enter the Premises in the name of the whole by any action or proceeding or by force or otherwise and to hold, repossess, and enjoy the Premises in their former estate and terminate the Term of this lease without prejudice to any claim by the Landlord in respect of any

antecedent breach of any covenant or provision contained in this lease and of claims and/or damages against the Tenant AND the Tenant hereby waives any right to notice of re-entry or forfeiture under any law for the time being in force.

7.2 If the Tenant shall make default in paying any Rent, such sum shall be recoverable (whether formally demanded or not) as if rent in arrears AND the power of the Landlord to distrain upon the Premises for rent in arrears including any such sum as aforesaid, shall extend to and include any Tenant's fixtures and fittings not otherwise distrainable by law which may from time to time be on the Premises.

7.3 If:—

(a) the Premises are so damaged by fire or otherwise as to render them unfit for occupation or use for the purpose for which they are let, and if the policy or policies of insurance shall not have been vitiated or payment of the policy moneys refused in whole or in part in consequence of any act or default of the Tenant, or of any servant, employee, agent, licensee, or visitor of the Tenant, then this lease shall not be terminated but the Tenant shall not be liable for the payment of any Rent during the period in which the Premises are unfit for occupation or use, and the Tenant shall proceed diligently with the work of rebuilding or reinstating the Premises.

7.4 The Tenant shall not have any such right of termination of the Term as is contemplated by Section 108 (e) of the Indian Transfer of Property Act, 1882.

7.5 If the Premises are damaged as in sub-clause 7.3, but to an extent which does not render them unfit for occupation, the Tenant shall rebuild or reinstate them as expeditiously as possible and shall be entitled to a reduction of rent during the period of rebuilding or reinstatement. The reduction shall be *pro rata* to the extent to which the Tenant is deprived of the use and occupation of the Premises. The reduction shall be calculated by the Landlord, which calculations shall be final and binding on the Tenant. If the damage is due to the fault or neglect of the Tenant or the Tenant's servants, employees, agents, visitors, or licensees.

7.6 No vaults, space, or spaces outside the property line of the Premises is leased under this lease notwithstanding anything contained elsewhere in this lease or in or indicated on any sketch, blueprint or plan.

7.7 The Landlord shall not be liable to the Tenant, the employees, servants, agents, invitees, or licensees of the Tenant or the property of any such persons caused by:—

(a) any defects in the Premises or of any defect of electrical wiring or of the insulation of such wiring, gas pipes or steam pipes, or from broken stairs, or from the bursting, leaking, or running over of any tank, tub, washstand, water

closet, or waste pipe, drain, or any other pipe or tank in, on, or about the Premises, or from the escape of steam or hot water from any boiler or radiator;

- (b) any defective or negligent working construction or the lighting or equipment or other part of the structure of the Premises;
- (c) any lack or shortage of electricity, water, or drainage;
- (d) any act or default (negligent or otherwise) of any servant of the Landlord in or about the performance of any duty relating to the provision of services or care, maintenance, or upkeep of the Premises;
- (e) any act or default of any other tenants of the Sanctuary including the servants, agents, or licensees of such other tenants;
- (f) any burglary, theft, or office break-in; or
- (g) any fire, explosion, falling plaster, steam, rain, or leaks from any part of the Premises or from the Pipes, appliances, or plumbing works or from the roofs or from any other place or by dampness, howsoever occurring.

The Tenant shall indemnify the Landlord against all claims, actions, and proceedings by the Tenant's employees, servants, licensees, agents, and others claiming through the Tenant in respect of such loss, damage or injury.

- 7.8 Notwithstanding anything contained in this lease, the Landlord shall not be liable to the Tenant nor shall the Tenant have any claim against the Landlord in respect of any interruption in any of the services mentioned in this lease, by reason of repair or maintenance of any installations or apparatus or damage to or destruction of the Premises by fire, water, Act of God, or other cause beyond the Landlord's control or by reason of mechanical or other defect or breakdown or frost or other inclement conditions or unavoidable shortage of fuel, materials, water, or labour.
- 7.9 The Tenant shall not be entitled to any right of access of light or air to the Premises which would restrict or interfere with the free use of any adjoining or neighbouring property.
- 7.10 The Landlord shall have the right at any time, without the same constituting actual or constructive eviction or interference with the Tenant's right to quiet enjoyment, and without incurring any liability to the Tenant therefore, to change the arrangement and/or location of entrances, passageways, gates, and driveways or other public parts of the Sanctuary and to change the name, number, and designation by which the Sanctuary or the Premises is commonly known.
- 7.11 The Landlord and the Landlord's agents make no representations or promises with respect to the Premises, and in particular, as to the suitability of the Premises for the

conduct of the Tenant's business, save and except as expressly set forth in this lease. The taking of possession of the Premises by the Tenant shall be conclusive evidence as against the Tenant that the Tenant accepts the same as they are, that the Premises, all fixtures and fittings, all equipment and apparatus in the Premises were in a good and satisfactory condition at the time such possession was so taken.

- 7.12 Each and every of the Tenant's covenants contained in this lease shall remain in full force both at law and in equity, notwithstanding that the Landlord shall have waived or released, in any way whatsoever, a similar covenant or similar covenants affecting other tenants of other premises in the Sanctuary or in any other National Sanctuary or Reserve.
- 7.13 The Tenant shall indemnify and hold the Landlord indemnified from and against any or all claims arising from any breach or default in the provisions, or any obligation, on the part of the Tenant to be performed or observed under this lease, or arising from any act of negligence of the Tenant or any of the Tenant's agents, contractors, employees, and against all costs of advocates' charges, expenses, and liabilities incurred by the Landlord in defending or prosecuting any such claim or any action or proceedings.
- 7.14 There is expressly reserved to the Landlord unfettered power and authority to lease other parts of the Sanctuary to such other persons, company, or corporations as the Landlord in its sole discretion shall deem fit and upon such terms and conditions and for such purpose as the Landlord in its sole discretion may from time to time think fit.
- 7.15 The Landlord's advocates' costs and disbursements, registration fees, and surveyor's fees (if any) in connection with the preparation and completion of this lease and a counterpart or counterparts, shall be paid by the Tenant.
- 7.16 If the Tenant shall make written request to the Landlord three (3) months before the expiration of the Term, and if there shall not at the time of such request be any existing breach or non-observance of any of the covenants on the part of the Tenant as contained in this lease, the Landlord shall grant to the Tenant at the expense of the Tenant a new lease of the Premises for a further term of five (5) years (the "**renewed term**") from the expiration of the Term, at such rent as is hereinafter mentioned and containing the like covenants and provisions (with the exception of the present covenant for renewal). The rent for the renewed term shall be ten per centum (10%) more than the rent payable in respect of the last year of the Term. Such rent shall be payable in the same manner and at the same time as mentioned in this lease.
- 7.17 This lease embodies the entire understanding of the parties relating to the Premises and to all matters dealt with by any of the provisions of this lease.

- 7.18 Any notice or communication under or in connection with this lease shall be in writing and shall be delivered personally or by post to the addresses shown on page 1 of this lease or to such other address as the recipient may have notified to the other party in writing. Proof of posting or despatch shall be deemed to be proof of receipt:
- (a) in the case of a letter, on the fourth business day after posting;
 - (b) in the case of personal service, on the day on which such service is effected.
- 7.19 Section 108 of the Indian Transfer of Property Act of 1882 or any statutory modification or re-enactment of that section shall not apply to this lease.

8 Acceptance

The Tenant accepts this lease subject to its covenants, agreements, restrictions, stipulations and provisions.

IN WITNESS WHEREOF this lease has been duly executed on the day and year first above written.

FIRST SCHEDULE *The Premises*

“**The Premises**” means that portion or parcel of land within the Sanctuary approximately to the right from the Gate entrance, which portion or parcel of land is known as Site and comprises an area containing by measurement approximately acres, and is more particularly described in the plan annexed hereto as Annex 1 and therein coloured and having the dimensions denoted thereon in the area.

SECOND SCHEDULE **Rights Granted**

- 1** The right in common with the Landlord and all other persons having a like right, to the free and uninterrupted passage and running, subject to temporary interruption for repair, alteration or replacement, of water, sewage, electricity, telephone and other services or supplies to and from the Premises in and through the Pipes which are laid in, on, over or under the Premises.
- 2** The right of support and protection for the benefit of the Premises as is now enjoyed from all other parts of the Sanctuary.
- 3** The right to display in the reception area of the Premises and immediately outside the entrance to the Premises a name-plate or sign in a position and of a size and type specified by the Landlord showing the Tenant’s name and other details approved by the Landlord.

THIRD SCHEDULE

Rights Reserved

- 1 The right to the free and uninterrupted passage and running of water, sewage, electricity, telephone and other services or supplies from and to other parts of the Sanctuary in and through the Pipes which are laid in, on, over or under the Premises.
- 2 The right to construct and to maintain in, on, over or under the Premises any Pipes for the benefit of any other part of the Sanctuary.
- 3 The right, at reasonable times and on reasonable notice except in the case of emergency, to enter or in the case of emergency to break into and enter the Premises in order to:
 - (a) inspect, cleanse, connect to, repair, remove, replace, alter or execute any works whatever to or in connection with the Pipes or services referred to in paragraphs 1 and 2 of this schedule;
 - (b) carry out work or do anything whatever comprised within the Landlord's obligations in this lease;
 - (c) take schedules or inventories of furniture and other items (if any) to be yielded up on the expiry of the Term;
 - (d) exercise any of the right granted to the Landlord by this lease.
- 4 The right of light, air, support, protection, shelter and all other easements and rights now or after the date of this lease belonging to or enjoyed by any parts of the Sanctuary.
- 5 The right in cases of emergency only to break into and have a right of way over the Premises in order to gain access to any fire escapes accessed through the Premises.

FOURTH SCHEDULE

Additional Covenants

- 1 Not to use the Premises for any purpose other than as a Tented camp or any other business to which the Landlord has given his consent.
- 2 Not to leave the Premises continuously unoccupied for more than thirty (30) days without notifying the Landlord and providing such caretaking and security arrangements as the Landlord and the insurers shall require in order to protect the Premises from vandalism, theft, damage, or unlawful occupation.
- 3 Not to install or use in or upon the Premises any instrument, equipment, apparatus or machinery which will cause noise or vibration which can be heard or felt in nearby premises or outside the Premises or which may cause structural damage to the Premises or other premises or disturbance to wildlife.
- 4 Not to permit to be discharged into the Pipes serving the Premises any oil or grease or any deleterious, objectionable, dangerous, or poisonous matter or substance and to take all reasonable measures to ensure that any effluent discharged into the Pipes will not be corrosive or otherwise harmful to the Pipes or cause obstruction or deposit in them.
- 5 Not to bring or permit to remain on the Premises any safes, machinery, goods, or articles

which may strain or damage the Premises or any part of them and, before bringing onto the Premises any such safes, machinery, goods or articles, to obtain from the Landlord written confirmation of any floor or roof loading specifications applicable to the Premises.

- 6 (a) Not to cause the Common Parts to become untidy or in a dirty condition;
- (b) Not to stand, place, deposit, or display outside any part of the Premises any goods, materials or articles nor cause any obstruction of the Common Parts and if any goods, materials or articles are stood, placed, deposited or displayed outside any part of the Premises or any obstruction is caused in the Common Parts, then the Landlord shall have the right to remove them and the Tenant shall reimburse the Landlord any costs and expenses incurred in so doing.
- 7 Not to convey any goods or materials into or from the Premises except through entrances and by means of any tracks or roads designated for such purposes.
- 8 To comply with all laws, rules, regulations and by-laws relating to the use or occupation of the Premises and the Sanctuary and to maintain and renew all necessary licenses and authorities.
- 9 To install at its own expense within twelve (12) months from the Commencement Date and in accordance with plans first approved by the Landlord all such fixtures, fittings, and decorations as may be necessary to enable the Tenant to use, occupy and trade from the Premises all such works to be executed in a good and workmanlike manner with good quality materials (which materials shall meet the minimum standards set by the Kenya Bureau of Standards) in accordance with the approved plans and, for the purposes of the fifth schedule, such works shall be disregarded in determining the rental value of the Premises.
- 10 To keep the Premises open for business and to trade actively during normal trading hours and not to close the Premises for business for a period exceeding thirty (30) consecutive days.
- 11 To keep the interior of the Premises attractively laid out and furnished and with goods well displayed and to keep any showcases in the Premises clean and attractively dressed at all times.
- 12 Not to display any flashing lights in the Premises nor to display any other lighting arrangement if the Landlord shall consider such lighting to be undesirable and shall give notice to the Tenant to that effect.
- 13 To maintain in force throughout the Term insurance against damage of all plate glass in the Premises and to produce to the Landlord on demand the policy of such insurance and evidence of payment of the current premium.
- 14 Not to load or unload any goods or materials from any vehicles except in any designated loading bay.

FIFTH SCHEDULE

Rent and Rent Review

- 1 **“Rent Review Dates”** means the dates of the annual anniversary of the Commencement Date PROVIDED that the first Rent Review Date shall be the second annual anniversary of the Commencement Date.
- 2 On each Rent Review Date, the Rent will be increased by 4% of the Rent applying before that date.
- 3 Rent schedule

Type of Facility	Site	Location	Proposed Lease Yrs	beds	Initial rent US\$ p.a
Eco-lodge	-	Mwaluganje Elephant Sanctuary	20	40	12,816

Type of Facility	Site	Location	Proposed Lease Yrs	beds	Initial rent US\$ p.a
Restaurant	-	Mwaluganje Elephant Sanctuary	8	-	10% of gross income
Campsite	-	Mwaluganje Elephant Sanctuary	2	-	Ground rent and per guest fees to be determined

- 4 The increased rent may be agreed in writing between the parties.
- 5 Whenever the Rent has been increased in accordance with this schedule, memoranda to this effect will be endorsed on this lease and executed by the parties and the Tenant will pay any stamp duty, registration fees, and the legal costs of the Landlord in connection with the memoranda.

SIXTH SCHEDULE

Insurance

- 1 “**Insured Risks**” means fire, lightning explosion, aircraft (including articles dropped from aircraft), riot, civil commotion, malicious persons, earthquake, storm, tempest, flood, bursting and overflowing of water pipes, tanks, and other apparatus, impact by road vehicles and such other risks as the Landlord may from time to time in his absolute discretion think fit.
- 2 The Tenant will insure the Premises and maintain the insurance in the joint names of the Landlord and Tenant.
- 3 The insurance will be effected against damage or destruction by the Insured Risks with such reputable insurance company as the Tenant, with the prior consent of the Landlord, may from time to time decide for such sum as the Tenant may from time to time be advised as being the full cost of rebuilding and re-instating the Premises including architects’, surveyors, and other professional fees, the cost of debris removal, demolition and site clearance;
- 4 If, and whenever, during the Term the Premises or any part of it are damaged or destroyed by any of the Insured Risks so that the Premises are unfit for occupation and use and payment of the insurance money is not refused in whole or in part by reason of any act or default of the Tenant or anyone at the Premises expressly or by implication with the Tenant’s authority:
 - (a) the Rent or a fair proportion of the Rent, according to the nature and extent of the damage sustained will cease to be payable until the Premises or the affected parts have been rebuilt or re-instated so that the Premises or the affected parts are made fit for occupation or use;
 - (b) the Tenant will immediately apply all moneys received in respect of the insurance in rebuilding or reinstating the Premises so destroyed or damaged.

- 5 The Tenant agrees with the Landlord:
- (a) to comply with all the requirements and recommendations of the insurers;
 - (b) not to do or omit to do anything which could cause any policy of insurance on or in relation to the Premises to become void or voidable wholly or in part nor anything by which additional insurance premiums may become payable;
 - (c) to keep the Premises supplied with such fire fighting equipment as the insurers may require and to maintain such equipment in efficient working order;
 - (d) to give notice to the Landlord immediately on the happening of any event which might affect any insurance policy on or relating to the Premises.

Signed, sealed and delivered by)
 in the presence)
 of:)
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 Advocate)

Sealed with the common seal of)
 in the)
 presence of:)
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 Advocate)

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MEMORANDUM OF CHARGES
NIL

Drawn by:—
Alfonso Wadeyua
 Advocate
 P. O. Box 40241
 Nairobi
00100

MEMORANDUM

In accordance with paragraph 4 of the fifth schedule it is confirmed that the Rent has been increased as follows:

- (a) Fixed ground rent of US\$_____per month with effect from _____.
- (b) Variable rent per bed night of US\$_____provided that a minimum of US\$_____shall be payable per month.

Signed, sealed and delivered by)
JULIUS KIPNG'ETICH in the presence)
of:)
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Advocate)

Sealed with the common seal of)
in the)
presence of:)
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