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# **EXHIBIT HH 12.1**

**AFFIDAVIT & ANNEXURES**

**OF**

**MOSES MOREMI**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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**INDEX: EXHIBIT HH 12.1**

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1.	Affidavit of Moses Moremi	01 to 02
2.	Annexure "MM1"	03 to 46
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**IN THE COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,  
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE  
("THE COMMISSION")**

**AN INVESTIGATION INTO THE VREDE DAIRY PROJECT**

**SWORN AFFIDAVIT**

I, the undersigned,

**Moses Moremi**

hereby declare under oath as follows:

1. I am an adult male currently employed as Chief Director of Free State Provincial Treasury, Bloemfontein.
2. The content of this affidavit is true and correct and falls within my own personal knowledge, unless the contrary clearly appears from the context or is otherwise stated.
3. During or about July 2019 I was contacted by investigators associated with the Commission of Inquiry into Allegations of State Capture, Fraud and Corruption in the Public Sector and certain Organs of State ("the Commission") to provide information with regards to my knowledge as to the affairs and matters relating to the Vrede Integrated Dairy project, otherwise known as Estina.
4. In this regard, I have previously drafted and signed an affidavit relating to my knowledge of matters relating to the Vrede Integrated Dairy Farm, a copy of which affidavit I attach hereto as annexure "MM1", and the content of which I once again



confirm.

5. I also attach hereto as annexure "MM2", a copy of the signed lease agreement between The Free State Provincial Government and the Phumelela Local Municipality.
6. This is all I wish to record at this stage.

  
DEPONENT

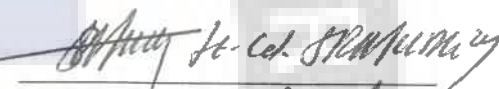
Signed and sworn before me at STATE CAPTIVE VENUE this 23 day of July 2019 after the deponent declared that the deponent is familiar with the contents of this statement and regards the prescribed oath as binding on the deponent's conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS:

FULL NAMES:

CAPACITY:

ADDRESS:

  
Sirandereus L. Mphahlele  
Lt. Col.  
01 Compendium Rd  
SAN Hillbrow  
JHB

"MMI"

---

**AFFIDAVIT**

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I, the undersigned,

**MOSES MOREMI**

Do hereby make oath and say that:

1.

I am an adult male 48 years of age, with ID number 700708 5906 087. I am currently employed as Chief Director at Free State Provincial Treasury. My contact details are 082 809 9046/ 082 041 0108.

2

This affidavit relates my knowledge with regard to Vrede Dairy Project. Due to my position I am duly authorized to depose the affidavit.

3

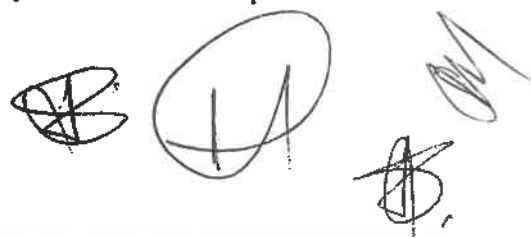
This statement is made to the best of my knowledge and belief, with the knowledge that should it be presented as evidence, I may be prosecuted if I have stated anything that I know to be false, or do not believe to be true.

4

During 2012 May, I was appointed as Municipality Manager of Phumelela Local Municipality and tendered my resignation on the 14 February 2014 to join the Free State Provincial Treasury. When the Vrede Dairy Project initiated, I was still at Phumelela Local Municipality.

5

During the month of June 2012, the team from the Department of Agriculture ("department") led by the Head of Department(HOD), Mr Thabethe, visited the Municipality and made a presentation about Vrede Integrated Dairy Project to municipal councilors, community and commercial farmers. The purpose of the presentation was to create awareness about the project and to request the



Municipality to avail the farm Krynaauwlust for the operation of the Dairy farm production facility. In his presentation the HOD quoted the following "the MEC for Rural development and Agriculture at the time Honorable Mosebenzi Zwane in his departmental budget vote 2012/2013 resolved that a dairy and processing plant would be established in Vrede and a specific amount would be set aside for the project. The project will be one of the biggest in the country as the department will be partnering with a company from India (PARAS) and thus attracting foreign direct investment to the Free State Province. The project during its initial phase will employ 500 permanent employees and the total investment in property, plant and machinery (PPE) at the initial phase is estimated at around five hundred million rand (R 500, 000, 000.00). The project will place Phumelela in an international map and will have massive economic spin offs for the local and neighboring farmers (emerging and commercial ) who will provide raw milk at an attractive prices".

6

On 26 June 2012, I wrote a letter to Mr Thabethe. The letter served to confirm that Phumelela Local Municipality had in principle availed its farm Krynaauwlust 275, district Vrede to Department with a total of 3 368 hectors for the operation of a dairy production facility. I attach the letter addressed to the HOD Marked Annexure **MM 01**.

7

On 3<sup>rd</sup> July 2012 a municipal council meeting took place and draft resolutions were presented to council for adoption. I attach the draft resolution dated 3 July 2012 marked annexure **MM 02**.

8

Subsequent to that council meeting, I wrote a letter to the Head of Department conveying the resolutions of council. I attach the letter dated 6 July 2012 addressed to Mr Thabethe Marked Annexure **MM 03**

9

On 17 July 2012, a meeting that was arranged with the Mayor of Phumelela, Mr Tlokotsi John Motaung took place at the municipal premises with representatives of the new venture Zayna Investment (Pty) Ltd, Nayaran Ashok and the lawyer, Johann

Schalkwyk and a local businessman, Mr Oupa Frans Mokoena. The Mayor introduced the representatives and Mr Schalkwyk thereafter presented a draft lease agreement which he brought along to us. I then perused the agreement in the presence of these representatives and thereafter requested that I be afforded an opportunity to seek a legal opinion on the lease agreement. I attach the lease agreement presented to me marked annexure **MM 04**.

10

On the same date I wrote an email to the State Lawyer advisor, DDG Legal Services, Adv KJC Ditira seeking legal opinion and attached the mentioned lease agreement. I attach copy of the email to Ditira Marked Annexure **MM 05**. On 23<sup>rd</sup> July 2012, Adv Ditira submitted a legal opinion to me for perusal and consideration. I attach the copy of opinion Marked Annexure **MM 06**.

11

On the 1<sup>st</sup> August 2012, Adv AJ Venter, after the meeting he had with both the MEC and HoD of the Department of Agriculture, submitted a legal opinion to me. I attach a copy of second legal opinion Marked Annexure **MM 07**.

12

Subsequent to the second legal opinion, Adv Venter prepared the draft agreement that must be signed by the Department and the Municipality. This agreement was presented in a council meeting that took place on the 10 August 2012. The council approved the agreement and further authorized me as an accounting officer in terms of delegated powers to sign it with the Department of Agriculture, represented by the HOD. I attach the resolution Marked Annexure **MM 08** and signed lease agreement Marked annexure **MM 09**. That all I can say about my role regarding the Vrede Dairy Project.

I read this affidavit before I signed it

I know and understand the contents of the affidavit

I have no objection to talking the prescribed oath

I consider the prescribed oath to be binding on my conscience

  
Signature of Deponent



I certify that, the deponent signed the affidavit in my presence and declared that he knows and understand that contents, that he has no objection to taking the prescribed oath and that he consider the oath to be binding on her conscience. signed at Bloemfontein on the 26 October 2018 at 18:30



Commissioner of Oath

Full Names:

Address:

Rank

MANDCA MTOC  
421 Curator  
Building Pretoria  
Capt.





MM01

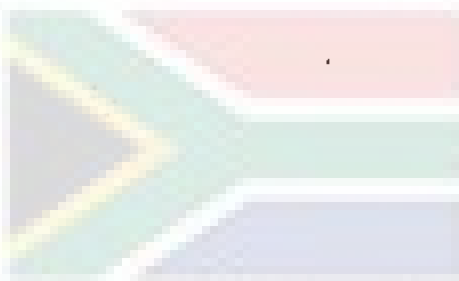
**PHUMELELA LOCAL MUNICIPALITY****MINUTES OF THE NINTH SPECIAL COUNCIL MEETING OF PHUMELELA LOCAL MUNICIPALITY  
HELD ON THE TUESDAY THE 12<sup>TH</sup> JUNE 2012 AT 09H00 IN THE COUNCIL'S CHAMBER, VREDE****A. OPENING**

The meeting was opened by Cllr D.A Wessels with a prayer.

The Speaker welcomed members of Council and delegations from Department of Agriculture and Rural Development present in the meeting

**PRESENT**

1. CLLR T.J. MOTAUNG(MAYOR)
2. CLLR M.I. KOBENI
3. CLLR D.M. NKABINDE
4. CLLR J.M. MOFOKENG
5. CLLR T.N. MASITENG
6. CLLR S.E. TSHABALALA
7. CLLR O.S. TSHABALALA
8. CLLR S.M. ZWANE
9. CLLR D.A. WESSLES
10. CLLR O.A. MOKOENA
11. CLLR T.E. RADEBE
12. CLLR J.M. SITHEBE-NGWENYA
13. CLLR T.R. ZWANE
14. CLLR A.D. RADEBE

**OFFICIALS**

1. MR T.M. MOREMI(MUNICIPAL MANAGER)
2. MR L.J. RALEBENYA(DIRECTOR COOPERATE SERVICES)
3. MR. L.H. MTHEMBU(DIRECTOR TECHNICAL SERVICES)
4. MR. A.S. NYEMBE(ACTING CFO)

**B. ATTENDANCE REGISTER AND LEAVE OF ABSENCE**

That application for leave of absence received from Cllr L.M. Msimanga that he is booked off-sick be approved

**C. OFFICIAL ANNONCEMENTS**

NONE

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#### D. MOTION OF SYMPATHY AND CONGRATULATION

NONE

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#### E. DEPUTATIONS AND INTERVIEWS

The Speaker gave the Mayor the platform whilst waiting the MEC to arrive. The Mayor welcomed the delegation and appreciated the implementation of the project as announced by the Premier. Mr Thabethe the (HOD) for Rural Development will be making the presentation regarding the project. The project is called Vrede Integrated Dairy project and the name might change if the need be. The Department is thinking of doing something in Warden in celebration of its centenary. The project is a result of collaboration between the Department, Estina a South African company and PARAS an Indian Company. The objectives of the project is job creation and improve economic growth. India is the highest milk producer in the world. PARAS is one of the leading milk processing plants in India. 1000 cows will be milked for the dairy(500 in Dairy and 500 cows will be donated to the community. 100 community members to receive 5 cows each. Milk suppliers to be paid for their milk. Then after five years every beneficiary will be asked to give back five calves. Initial processing capacity of the factory to be 100 000 litres per day. The products to be branded Mohoma Mobung. Celebrities and soccer icons to be used as brand ambassadors. Milk will be supplied to Hospitals and Schools. A dairy will be the first phase of the project and the factory will follow. Phumelela will have 4% shareholding, beneficiaries 49% and 47% to Estina and PARAS. The total estimated costs of project will R500 million(R517 million including VAT). The Government will fund the establishment of dairy. PARAS/Estina will fund the processing plant.

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#### RESOLVED

1. That Council note the content of the report on this item.
  2. That the project be accepted and supported.
  3. That the administration and the HOD(Agric. And Rural Development) draft resolutions that will be adopted by Council before the end of next week.
- 

The meeting was concluded at 11H15

Signed by .....

CLLR. T.R. ZWANE(SPEAKER)

.....  
DATE

Cnr Kuhn & Prinsloo

Vrede, 9835

Private Bag X 5

Vrede, 9835



**PHUMELELA**  
LOCAL MUNICIPALITY

Tel: (058) 913 8314

Fax: (058) 913 3601

## OFFICE OF THE MUNICIPAL MANAGER

26 June 2012

The Head of Department  
Department of Agriculture and Rural Development  
Private Bag X2  
GLEN  
BLOEMFONTEIN  
9300

Dear Mr Thabethe

### RE: VREDE INTEGRATED DAIRY AGRI-BUSINESS PROJECT

The above-mentioned matter bears reference.

This letter serves to confirm that Phumelela Local Municipality has availed its farm Krynaauwlust 275, district: Vrede, Province: Free State with a total of 3 368 hectares for the operation of a dairy production facility.

I must indicate that this farm is currently leased to the following local farmers and the lease agreements commenced on the 1<sup>st</sup> October 2011 and expires on the 30 September 2013.

- 1) Mr Leonard Neuman – 889ha; Annual rental: R253 365.00 (VAT inclusive)
- 2) Mr Matthys Johannes Glutz – 700ha; Annual rental: R199 500.00 (Vat inclusive)
- 3) Charfontein Boerdery Trust - 866ha; Annual rental: R246 810.00 (Vat inclusive) and
- 4) H P Nell Boerdery BK – 913ha; Annual rental R260 205.00 (Vat inclusive)

The Speaker will convene the council meeting early next week to table this matter and pass the resolution.

We are also planning to convene a formal meeting with the above-mentioned farmers to discuss the contractual matters due to this latest developments and I will appreciate it if the Department can indicate its availability to be part of this meeting.

I hope you will find the above in order and for further clarity on this matter please contact me at any time.

Regards

  
**T.M. MOREMI**  
**MUNICIPAL MANAGER**

CC : **SPEAKER**  
: **MAYOR**




MM02

**PHUMELELA LOCAL MUNICIPALITY****MINUTES OF THE 1<sup>ST</sup> ORDINARY COUNCIL MEETING OF PHUMELELA MUNICIPALITY HELD ON THE 03<sup>RD</sup> JULY 2012 AT 14H00 IN THE COUNCIL'S CHAMBER, VREDE****A. OPENING**

The meeting was opened by Cllr D.A. Wessels with a prayer. The Chairperson welcomed all members of Council, officials and community members present in a meeting.

**PRESENT**

1. CLLR T.R. ZWANE(SPEAKER)
2. CLLR T.J. MOTAUNG(MAYOR)
3. CLLR M.D. KOBENI
4. CLLR D.M. NKABINDE
5. CLLR J.M. MOFOKENG
6. CLLR S.M. ZWANE
7. CLLR T.E. RADEBE
8. CLLR J.M. SITHEBE-NGWENYA
9. CLLR O.A. MOKOENA
10. CLLR A.D. RADEBE
11. CLLR O.S. TSHABALALA
12. CLLR T.N. MASITENG
13. CLLR. D.A. WESSSELS

**OFFICIALS**

1. MR.T.M. MOREMI(MUNICIPAL MANAGER)
2. MR L.J. RALEBENYA(DIRECTOR CORPORATE SERVICES)
3. MR. L.H. MTHEMBU (DIRECTOR TECHNICAL SERVICES)
4. MR. M.S. MAHLANGU(IDP/PMS MANAGER)

**B. ATTENDANCE REGISTER AND LEAVE ABSENCE**

Both Cllrs L.M. Msimanga and S.E. Tshabalala were absent without and apology

**C. OFFICIAL ANNOUNCEMENTS**

1. That Thabo Mofutsanyana District Municipality will be launching Phumelela Arts and Culture committee in Vrede on the 9<sup>th</sup> July 2012 and Councillors are also invited especially those who are serving on Sports and Culture portfolio committee.
2. That NASHUA mobile donated 15 laptops to Councillors.

MM02

**ITEM 326/2012****RE: LETTER OF CONCERN RECEIVED FROM COMMUNITY MEMBERS OF ZAMANI/MEMEL****RESOLVED**

1. That Council note the content of the report on this item.
2. That the administration should report to the letter and provide the Mayor with a report.
3. The Council will then meet the people once the report is available.

**ITEM 327/2012****RE: VREDE INTEGRATED DAIRY AGRI-BUSINESS PROJECT****RESOLUTION NO. 01- of 19 June-2012**

**RESOLUTION ALLOWING THE DEPARTMENT OF AGRICULTURE AND ESTINA PTY LTD / PARAS DAIRY COMPANY TO USE MUNICIPALITY LAND TO DEVELOP A DAIRY PRODUCTION FACILITIES IN PHUMELELA LOCAL MUNICIPALITY, FREE STATE PROVINCE**

The Department of Agriculture has requested that the PHUMELELA LOCAL MUNICIPALITY adopt a resolution allowing for the ownership and operation of a dairy production facility by ESTINA PTY LTD / PARAS DAIRY COMPANY within the municipality owned agricultural land, because doing so would promote and stimulate economic growth and development within the Municipality; and

**WHEREAS**, the Council believe it is in the best interests of Municipality and its citizens that dairy production facilities be allowed to be developed in Phumelela, by ESTINA PTY LTD / PARAS DAIRY COMPANY, and

**WHEREAS**, the Council take note that the Municipality will hold a stake of four percent (4%) shareholding in the business for the use of the Municipal Land which will be used for the development of infrastructure of different forms in the municipality.

**NOW, THEREFORE, BE IT RESOLVED** that for purposes of this Resolution, the term "Dairy Production Facility" shall be defined as follows: 'Dairy Production Facility' means the land, structures and related equipment used for housing & breeding & raising & feeding or milking dairy cows. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid waste and for isolation of the facility to reasonably protect the confined cows from exposure to disease.

**BE IT FURTHER RESOLVED** that for the purpose of this Resolution, the term "agricultural land" shall be defined as follows: 'Agricultural land' means land suitable for use in farming.

**BE IT FURTHER RESOLVED**, that ESTINA PTY LTD / PARAS DAIRY COMPANY are hereby permitted to USE the 4,400ha of agricultural land located in Phumelela Local Municipality, for use in conjunction with a dairy production facility.

**BE IT FURTHER RESOLVED**, that the Municipal Manager is directed and empowered to publish this Resolution and this Resolution shall take effect thirty (30) days after final publication, unless a valid petition in opposition to the same is filed in accordance with Municipal by laws.

**IN WITNES WHEREOF**, the above and foregoing Resolution was unanimously adopted on this 19<sup>TH</sup> day of June, 2012.

**ITEM 328/2012**

**RE: TABLING OF THE REVISED ORGANOGRAM FOR PHUMELELA LOCAL MUNICIPALITY**

**RESOLVED**

1. That council takes note of the report on this item.
2. That the structure be referred back to Exco with the costing and the name of incumbent in each post.
3. That a workshop with all Councillors be organized with the presence of the service provider.





MM02.

**Vrede Integrated Dairy Agri-Business Project****RESOLUTION NO. XX- of 3 July-2012****RESOLUTION ALLOWING THE DEPARTMENT OF AGRICULTURE AND ESTINA PTY LTD / PARAS DAIRY COMPANY TO USE MUNICIPALITY LAND TO DEVELOP A DAIRY PRODUCTION FACILITIES IN PHUMELELA LOCAL MUNICIPALITY, FREE STATE PROVINCE**

The Department of Agriculture has requested that the PHUMELELA LOCAL MUNICIPALITY adopt a resolution allowing for the ownership and operation of a dairy production facility by ESTINA PTY LTD / PARAS DAIRY COMPANY within the municipality owned agricultural land, because doing so would promote and stimulate economic growth and development within the Municipality; and

**WHEREAS**, the Council believe it is in the best interests of Municipality and its citizens that dairy production facilities be allowed to be developed in Phumelela, by ESTINA PTY LTD / PARAS DAIRY COMPANY, and

**WHEREAS**, the Council take note that the Municipality will hold a stake of four percent (4%) shareholding in the business for the use of the Municipal Land which will be used for the development of infrastructure of different forms in the municipality.

**NOW, THEREFORE, BE IT RESOLVED** that for purposes of this Resolution, the term "Dairy Production Facility" shall be defined as follows: 'Dairy Production Facility' means the land, structures and related equipment used for housing & breeding & raising & feeding or milking dairy cows. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid waste and for isolation of the facility to reasonably protect the confined cows from exposure to disease.

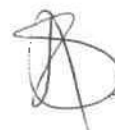
**BE IT FURTHER RESOLVED** that for the purpose of this Resolution, the term "agricultural land" shall be defined as follows: 'Agricultural land' means land suitable for use in farming.

**BE IT FURTHER RESOLVED**, that ESTINA PTY LTD / PARAS DAIRY COMPANY are hereby permitted to USE the 4,400ha of agricultural land located in Phumelela Local Municipality, for use in conjunction with a dairy production facility.

**BE IT FURTHER RESOLVED** that this Resolution is subject to all applicable laws.

**BE IT FURTHER RESOLVED**, that the Municipal Manager is directed and empowered to publish this Resolution and this Resolution shall take effect thirty (30) days after final publication, unless a valid petition in opposition to the same is filed in accordance with Municipal by laws.

**IN WITNESS WHEREOF**, the above and foregoing Resolution was unanimously adopted on this 4<sup>TH</sup> day of July, 2012.





1/11/03.

MM-15

Cnr Kuhn & Prinsloo

Vrede, 9835

Private Bag X 5



**PHUMELELA**  
LOCAL MUNICIPALITY

Tel: (058) 913 8314

Fax: (058) 913 3601

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## OFFICE OF THE MUNICIPAL MANAGER

**06 JULY 2012**

The Head of Department  
Department of Agriculture and Rural Development  
Private Bag X2  
GLEN  
**BLOEMFONTEIN**  
**9300**

Dear Mr Thabethe

**RE: VREDE INTEGRATED DAIRY AGRI-BUSINESS PROJECT – COUNCIL RESOLUTIONS**

The above-mentioned matter and my letter addressed to you dated 26 June 2012 bears reference.

The draft resolutions for the Vrede integrated dairy business project were tabled before council in a meeting that took place on the 3<sup>rd</sup> July 2012 at Vrede.

As indicated in my letter dated 26<sup>th</sup> June 2012 and email dated 4<sup>th</sup> July 2012, council resolved that the farm Krynaauwlust 275, measuring: 3 368 ha must be made available for the operation of a dairy facility by Estina (Pty) Ltd/Paras Dairy Company in order to promote and stimulate economic growth and development within the municipality.

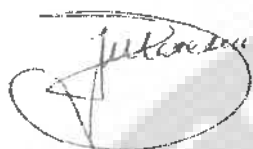
The council further resolved that the farm property should still remain the property of the municipality and must only be leased to the private company/consortium on terms and conditions to be negotiated between all parties. As indicated in my letter dated 26<sup>th</sup> June 2012, the entire farm measuring 3 368 ha is currently leased to different farmers in the area at a total annual rental of R959 880.00 (excluding escalations) and the contracts expires on the 30<sup>th</sup> September 2013.

The proposed 4% allocated shareholding to Phumelela in a private company is a matter that must first be discussed with both COGTA and National Treasury from a compliance point of view and council therefore resolved not to accept the 4% shares pending the outcome of these discussions.

Based on council decisions indicated above, I request that specific highlighted sections in the draft resolutions be amended and send to my attention for final sign-off by the Speaker.

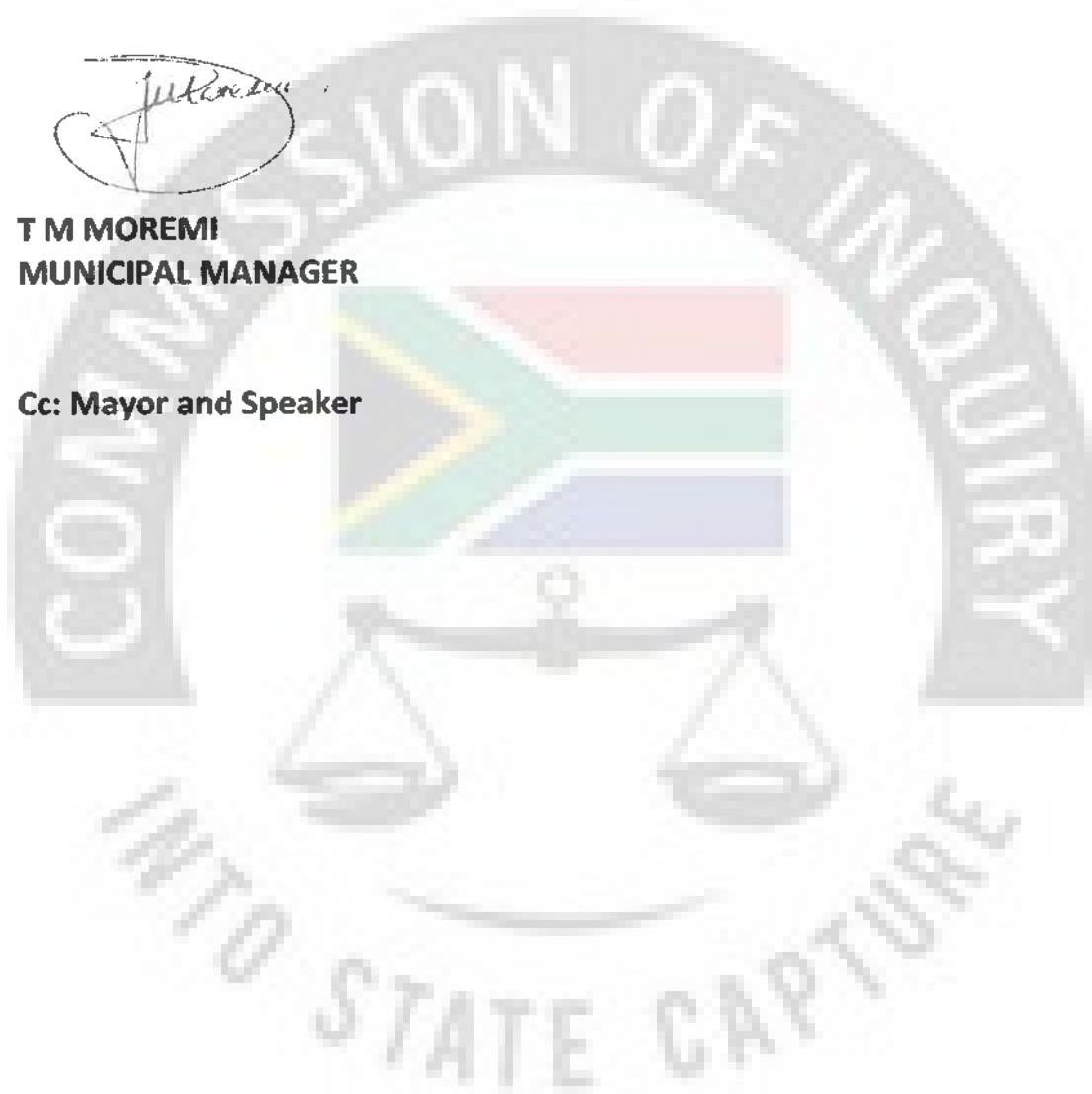
For further enquiries on the matter please feel free to contact me on my cellphone number 082 809 9046.

Regards



**T M MOREMI**  
**MUNICIPAL MANAGER**

**Cc: Mayor and Speaker**



MM04.



PHUMELELA  
LOCAL MUNICIPALITY

Cnr Kuhn &amp; Prinsloo

Vrede, 9835

Private Bag X 5

Tel: (058) 913 8314

Fax: (058) 913 3601

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### OFFICE OF THE SPEAKER

**EXTRACT FROM THE MINUTES OF THE 1<sup>ST</sup> SPECIAL COUNCIL MEETING OF PHUMELELA LOCAL MUNICIPALITY HELD ON THE 19<sup>TH</sup> JULY 2012 AT 14H00 IN THE COUNCIL CHAMBER, VREDE**

#### ITEM 02/2012

#### RE: PROGRESS REPORT ON THE VREDE INTEGRATED DAIRY AGRI-BUSINESS PROJECT

The item with a detailed background of this project was provided to council during the meeting which was held on the 3<sup>rd</sup> July 2012.

Subsequent to that council sitting the resolutions were communicated to the Head of the Department as per the letter attached as **annexure "D"**. There have been numerous continuous discussions between the municipality and the Department on this project. On the 17<sup>th</sup> July 2012 a meeting was held with the project representative and its lawyer wherein the proposed lease agreement was tabled to the municipality and it is attached as **annexure "E"**

The proposed lease agreement has been forwarded to the state law advisors and National Treasury for perusal and the final decision on the matter will be informed by the outcome of the legal opinion and National Treasury advice on the compliance issues.

#### RESOLUTIONS:

1. That council takes note of the content of the report;
2. That the legal opinions from the State Law Advisors and National Treasury be obtained prior to the signing of the lease agreement;
3. That an ordinary council meeting be convened upon receipt of the legal opinions on this project.

Certified as true extract by:



**MRS T R ZWANE  
SPEAKER**

**DATE: 20 JULY 2012**



MM04

## AGREEMENT OF LEASE

ENTERED INTO BY AND BETWEEN



PHUMELELA  
LOCAL MUNICIPALITY

**THE PHUMELELA LOCAL MUNICIPALITY**

**HEREIN REPRESENTED BY:**

**[herein after referred to as the "LESSOR"]**

and



**ZAYNA INVESTMENTS (PTY) LTD**

**t/a MOHOMA MOBUNG DAIRY PROJECT**

**REGISTRATION NUMBER: 2012/037526/07**

**[hereinafter referred to as the "LESSEE"]**

## PREAMBLE

(A) WHEREAS the Lessor is the registered owner of the property known as **Krynaauwlust 275 consisting of 3368ha situated in Vrede, Free State Province.**

(B) AND WHEREAS the Lessee desires to hire from the Lessor the said land.

[hereinafter called the **"LEASED PREMISES"**]

### 1 INTERPRETATION:

1.1 The headings and clauses are used for reference only and are in no way deemed to explain, modify, amplify or aid in the interpretation of this agreement.

1.2 Unless inconsistent with, or otherwise indicated by the context, words importing the masculine gender shall include the feminine and vice versa and words importing the singular shall include the plural and vice versa, and the following terms shall have the meaning assigned to the hereunder:

1.2.1 "the Lessor" – **THE PHUMELELA LOCAL MUNICIPALITY**

1.2.2 "the Lessee" – **ZAYNA INVESTMENTS (PTY) LTD t/a  
MOHOMA MOBUNG DAIRY PROJECT  
REGISTRATION NUMBER: 2012/037526/07**

1.2.3 "the Leased Premises" – The property known as Krynaauwlust 275 consisting of 3368ha situated in Vrede, Free State Province.

1.2.4 "the Effective Date" – The date of execution of this agreement.

1.2.5 "the Shares" – 4 % (FOUR PERCENT) of the entire issued ordinary shares of the Lessee.

1.2.6 "the Shareholders Agreement" – A shareholders agreement to be concluded between the Lessor and the Lessee within a period of 3 (THREE) years after the effective date.

## 2. THE LEASE

The Lessor hereby lets to the Lessee, who hires from the Lessor the leased property with effect from the effective date.

## 3. PERIOD OF LEASE

3.1 This lease is for a period of 99 (NINETY NINE) years commencing on the effective date and terminating 99 (NINETY NINE) years later.

3.2 The Lessee shall have the right to renew the lease period for a further term to be mutually agreed upon in writing by the Lessor and the Lessee prior to the expiry of the period referred to in clause 3.1;

## 4. RENTAL

4.1 There shall be no monthly rental payable by the Lessee to the Lessor.

4.2 The Lessor will receive shares in the Lessee as being the agreed upon rental for the lease period.

- 4.3 The shares will be non-transferable and non-negotiable.
- 4.4 The Lessee will transfer the shares to the Lessor upon signature of the shareholders agreement.
- 4.5 The Lessor will only be entitled to the payment of dividends in the Lessee after the Lessee becomes profitable.

## 5. NON CANCELTATION

This lease cannot be cancelled by either party for the duration of the lease period unless such cancellation is mutually agreed upon by the Lessor and Lessee in writing prior to cancellation.

## 6. NO ASSIGNMENT, SUB LETTING ET CETERA:

The Lessee will not cede any of its rights or delegate any of its obligations, or mortgage, pledge or encumber any of his rights under this lease without the Lessor's prior written consent save as contemplated under Clause 7.2;

## 7. LESSEE'S RIGHTS AND OBLIGATIONS

7.1 Save for raising of the necessary finance for the development herein contemplated, the Lessee shall not without the prior written consent of the Lessor first being had and obtained, which consent shall not be unreasonably withheld.

7.1.2 contravene, or permit the contravention of, any law, by-law or statutory regulation or the conditions of any licence relating to or affecting the occupation of the leased premises of the carrying on of the Lessee's business



therein and shall pay any penalty of fine imposed or levied on the Lessor or the Lessee consequent upon the use of the leased premises otherwise than as set forth herein or consequent upon any contravention of any law or regulation;

7.1.3 contravene any of the conditions of the title deeds under which the Lessor holds the title or any laws which the Lessor is required to observe by reason of his ownership of the land.

7.2 The Lessee shall be entitled, from time to time both prior to the effective date and during the period of the lease, to-

7.2.1 erect on the leased premises such fixtures, fittings, structures, buildings, plant and machines as may be required or necessary for the carrying on of the Lessee's business or the business of any of its sub-lessee's thereon as determined in consultation with the Phumelela Local Municipality;

7.2.2 sub-let parts of the leased premises to entities required for and/or necessarily and incidental to the primary operation to be conducted by the Lessee on the leased premises;

7.2.3 place any third person in occupation of the leased premises or a part thereof as the Lessee may in its sole and absolute discretion determine provided that such third party is required or necessary for and/or necessarily incidental to the primary operation to be conducted on the leased premises by the Lessee.

7.3 The Lessee shall keep and maintain at its own cost all buildings and structures erected by it on the leased premises in good order and condition, fair wear and tear excepted.

7.4 The Lessee shall use the leased premises for the purpose of conducting thereon an integrated dairy project and the development of agricultural related



products and ancillary business and operations for any purpose related thereto provided that the Lessee shall be entitled to use the leased premises for any other purpose provided that the consent of the Lessor is first had and obtained, which consent shall not be unreasonably withheld.

- 7.5 All buildings fixtures, fittings and additions of a permanent nature, installed or made by the Lessee on the leased premises, shall remain the property of the Lessee, provided however, that the Lessor shall have the right upon termination of their lease to either provide compensation to the Lessee for the value of the Buildings, fixtures and additions of a permanent nature at the then prevailing market value thereof, or to extend the lease for a further period as mutually agreed between both parties in terms of clause 3.2;.

## 8. DEVELOPMENT

The parties expressly record that the Lessee is to develop an integrated dairy project and develop agricultural products and ancillary structures and businesses and to install the necessary infrastructure thereof on the leased premises and beneficial occupation in terms of this agreement shall mean the erection and operation of dairy project and ancillary structures and business on the leased premises from time to time in terms of this agreement and notwithstanding any of the other terms of this lease, the Lessee shall be granted occupation of the leased premises rent free from date of signature of this agreement by the last signing of the parties hereto until the effective date.

## 9. ELECTRICITY, WATER, GAS AND REFUSE

- 9.1 The Lessee shall arrange, maintain to the extent necessary, and pay for –

- 9.1.1 all electricity, water and gas used by the Lessee in or on the leased premises and shall make such deposits and enter into such agreements as the supplier

and/or municipality and/or local authority may require in respect of the supply of such services;

9.1.2 the cost of removing the Lessee's refuse in or on the leased premises;

9.1.3 any charges made by any supplier and/or municipality and/or other authorities in respect of sewerage and trade effluents and for the disposal thereof,

In each case direct to the supplier and/or municipality and/or local authority concerned provided that should the Lessor be required in law to make payment of any such amounts to the supplier municipality and/or local authority, then the Lessee shall refund the same to the Lessor on demand.

## 10. LESSEE'S AGENTS

The Lessee shall at all times ensure that its servants, agents, customers and other invitees do not cause damage to the leased premises save as expressly provided or contemplated in terms of this lease and particularly but without derogating from the generality of the foregoing in regard to the development to be undertaken on the leased premises.

## 11. INTERRUPTION OF SUPPLY, DAMAGES AND INSURANCE

11.1 The Lessee shall have no claim of any nature whatsoever for damages against the Lessor for any interruption in the supply of water, gas, electricity or other services to the leased premises.

11.2 The Lessee shall have no claim of any nature whatsoever against the Lessor for any accident, injury or damage cause to the Lessee, its employees, invitees or any other third person through or while using any portion of the

leased premises and the Lessee hereby indemnifies the Lessor against any claim of this nature against the Lessor by any person who is not party to this lease, the cause of which arose during the period of this lease.

11.3 The Lessee shall be obligated, at its own cost expense, to take out such Lessee's public liability insurance to the Lessor's reasonable satisfaction and maintain such insurance in full force throughout the currency of this lease and to bear and pay the cost of all premiums under such policy from time to time punctually as and when they fall due for payment. The policy of insurance shall note the Lessor's interest and record that the policy shall not be lapsed or altered without the insurance company first notifying the Lessor. Should the Lessee fail to effect such insurance or to make payment of any premium payable thereunder on the due date therefor, then without prejudice, and in addition to his other rights hereafter arising from such breach/es, the Lessor shall have the right to effect such insurance on behalf of the Lessee or, as the case may be, to pay such premium/s on the Lessee's behalf and, in the latter case, to recover the amount so paid from the Lessee. Under no circumstances shall the Lessor be held liable for any injury to the tenant or to third parties arising from any cause whatsoever and the Lessee hereby indemnifies the Lessor against any claim of this nature made against the Lessor by any person who is not a party to this lease.

11.4 The Lessee shall be obliged to insure all of the buildings and/or structures erected on the leased premises and to maintain such insurance during the entire period of this lease and to pay all premiums in respect of such insurance on due date and not allow such policy of insurance to lapse.

## 12. CLEANING AND REPAIR

12.1 The Lessee shall be responsible for the management and upkeep of the leased premises.

- 12.2 The Lessee shall replace or make good and repair, as the case may be, at the Lessee's own expense and as soon as reasonably possible buildings, structures, fixtures, fittings or other installations which may become damaged or broken or destroyed, from time to time, during the currency of this lease as and when the same may be so destroyed or may become so damaged.

### 13. LESSOR'S OBLIGATIONS

#### 13.1 The Lessor –

- 13.1.1 shall not unnecessarily or unreasonably interfere with the carrying on the Lessee's business or that of the sub-lessees on the leased premises.

#### 13.2 The Lessor –

- 13.2.1 or its agent shall be entitled to inspect the leased premises at all reasonable times;
- 13.2.2 warrants and represents to the Lessee that the leased premises are fit for the purpose for which they will be occupied by the Lessee, but does not warrant that the Lessee will obtain any license or permit required by the Lessee although the Lessor does undertake to do all that may be required of it to assist the Lessee in seeking any licence or permit.

### 14. RELAXATION WITHOUT PREJUDICE

No relaxation which the Lessor may give at any time whatsoever in regard to the carrying out of the Lessee's obligations in terms of this lease -

- 14.1 shall prejudice any of the Lessor's rights under this lease in any manner whatsoever;
- 14.1.2 shall be regarded as a waiver of any of the Lessor's rights in terms of this lease;
- 14.1.3 shall be regarded as a waiver of the Lessor's lien.

#### 15. LESSOR'S CONSENT

Wherever in this lease the landlord's consent or agreement is required such consent or agreement shall not be unreasonably withheld.

#### 16. LEASE VARIATIONS

No alteration hereof shall be of any force and effect unless it is recorded in writing and signed by both the Lessor and the Lessee.

#### 17. DOMICILIUM CITANDI ET EXECUTANDI

- 17.1 Lessor- **PHUMELELA LOCAL MUNICIPALITY  
CNR KUHN & PRINSLOO  
VREDE  
9835  
FREE STATE PROVINCE**
- 17.1.2 Lessee - **ZAYNA INVESTMENTS (PTY) LTD  
t/a MOHOMA MOBUNG DAIRY PROJECT  
144 KATHERINE STREET  
SANDTON  
JOHANNESBURG  
GAUTENG PROVINCE**

17.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing and addressed to the parties' relevant address referred to in clause 17.1 hereto.

17.3 Any party may by notice to the other party change its *domicilium citandi et executandi* to another physical address in the Republic of South Africa provided that the change shall become effective on the 14<sup>th</sup> (FOURTEENTH) day after the latest receipt of the notice.

17.4 Any notice to a party contained in a correctly addressed envelope and –

17.4.1 sent by prepaid registered post to its *domicilium citandi et executandi*;

17.4.2 delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi* ;

17.4.3 sent by telefax to the telefax number of the respective parties, as the case may be, in terms of clause 17.1.1 and 17.2.2 hereto;

Shall be deemed to have been received, in the case of clause 17.4.1 hereto on the 7<sup>th</sup> (SEVENTH) business day after posting (unless the contrary is proved) and, in the case of clause 17.4.2 hereto, on the day of delivery provided such day is a business day or otherwise on the next following business day.

17.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium*.



## 18. RIGHT TO ENCUMBER

18.1 It is expressly agreed between the parties that the Lessee may encumber and/or pass a bond over the leased premises in order to fund the development on the leased premises referred to in clause 8 hereto in its sole and absolute discretion and shall notify the Lessor thereof in writing at its *domicilium citandi et executandi* in terms thereof.

18.2 The Lessor hereby undertakes to sign upon demand by the Lessee all documents and to give all consents necessary to give effect to the provisions of clause 18.1 hereto.

## 19. ARBITRATION

19.1 Should any dispute arise between the parties to this agreement in regard to –

19.1.1 the interpretation of; or

19.1.2 the carrying into effect of; or

19.1.3 any of the parties' rights and obligations arising from; or

19.1.4 the termination of or arising from the termination of; or

19.1.5 the rectification of this agreement

then the dispute shall be submitted to and decided by arbitration.

19.5 The arbitration shall be held –

19.5.1 in Johannesburg;

- 19.5.2 with only the parties and their representatives present thereat;
- 19.5.3 otherwise in terms of the Arbitration Act 42 of 1965; it being the intention that the arbitration shall, where possible, be held and concluded within 21 (TWENTY ONE) working days after it has been demanded.
- 19.6 The arbitrator shall be, if the matter in dispute is principally –
- 19.6.1 a legal matter, a practising attorney of not less than 15 (FIFTEEN) years standing or a practising advocate of not less than 10 (TEN) years standing;
- 19.6.2 an accounting matter, a practising chartered accountant of not less than 10 (TEN) years standing;
- 19.6.3 any other matter, any independent person agreed to between the parties.
- 19.7 Should the parties fail to agree on an arbitrator within 14 (FOURTEEN) days after the arbitration has been demanded then the arbitrator shall be nominated by the President for the time being of the Law Society of Transvaal.
- 19.8 Should the parties fail to agree whether the dispute is of legal, accounting or other nature within 7 (SEVEN) days after the arbitration has been demanded then it shall be considered a matter as referred to clause 19.7 hereto.
- 19.9 The arbitrator shall have the fullest and freest discretion with regard to the proceedings and his award shall be final and binding on the parties to the dispute. Furthermore, the arbitrator –
- 19.9.1 may dispense wholly, or in part, with formal submissions or pleadings;



- 19.9.2 shall determine the applicable procedure;
- 19.9.3 shall not be bound by strict rules of evidence;
- 19.9.4 shall take into account the practicality or otherwise of ordering the continuance of any legal relationship between disputants; and
- 19.9.5 shall include such order as to costs as he deems just and the parties shall be entitled to have the award made an order of any court of competent jurisdiction.

## 20. INDIVISIBILITY

This agreement shall be indivisible with, and suspensive upon signature of the Shareholders' Agreement to be entered between the Lessor and the Lessee in respect to the development by the Lessee on the leased premises.

## 21. COSTS

Each party shall pay its own costs necessary and incidental to the negotiation, preparation and implementation of this agreement save for the stamp duty hereon which shall be paid by the Lessee.

## 22. REGISTRATION

The Lessee shall be solely responsible to have this lease registered against the Title Deed of the property at the appropriate Registrar of Deeds and shall pay any stamp duty payable in order to do so and the Lessor shall upon demand by the Lessee sign all documents necessary an incidental to give effect to the above.

**23. COMPLIANCE WITH LAW**

The Lessee shall be bound to comply with all legislation, regulations, and/or bye-laws in force from time to time in regard to the leased premises.

**24. LOCAL LABOUR**

The Lessee hereby undertakes to the Lessor to use its best endeavours to ensure that subject to the availability of skills in the area local labour is employed both in the construction and operational stages of the developments on the leased premises.

**25. GOVERNING LAW**

This agreement shall in all respects be construed and governed by the laws of the Republic of South-Africa.

**26. VALIDITY OF AGREEMENT:**

This Agreement remains valid even if any portion hereto is void and not enforceable due to any reason whatsoever and will the remainder of this Agreement exist as if such clauses were separable.

## 27. SIGNATURES

Signed hereto by the duly authorized signatories of both parties.

DATED AT \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2012, in  
the presence of the undersigned witnesses.

### AS WITNESSES

1. \_\_\_\_\_

2. \_\_\_\_\_

For and on behalf of

**ZAYNA INVESTMENTS (PTY) LTD**

**t/a MOHOMA MOBUNG DAIRY PROJECT**

**Name:** \_\_\_\_\_

**Designation:** \_\_\_\_\_

### AS WITNESSES

1. \_\_\_\_\_

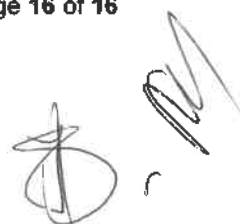
2. \_\_\_\_\_

For and on behalf of

**PHUMELELA LOCAL MUNICIPALITY**

**Name:** \_\_\_\_\_

**Designation:** \_\_\_\_\_



MMOS

Moses Moremi

**From:** Moses Moremi <mosesmail123@gmail.com>  
**Sent:** Tuesday, July 17, 2012 4:02 PM  
**To:** Kuni Ditira (kuni@premier.fs.gov.za); 'Jo Ann Petterson' (joann@premier.fs.gov.za); 'AJ Venter' (venterb@premier.fs.gov.za)  
**Cc:** Kumaran Nair (Kumaran.Nair@treasury.gov.za); Thabethe Peter (thabethe@fs.agric.za); fkoena@gmail.com; tjmotaung@phumelela.gov.za  
**Subject:** RE: REQUEST FOR CLARITY ON FEW ISSUES  
**Attachments:** Lease Agreement MMDP & Phumelela Municipality v1607.12 final.doc; image001.jpg

Hallo Advocate

We had a meeting this morning with a representative from the new venture Zayna Investment (Pty) Ltd and their lawyer where the attached draft lease agreement was presented to the Municipality Accounting Officer and the Mayor. It was decided in that meeting that a special council sitting must be convened on Thursday, 19 July to obtain a resolution for the signing of the lease agreement. All parties unanimously agreed that the municipality must obtain a legal opinion on the matter and from a cost saving point of view, it is advisable that we must use the state law advisors and thus the reason for this email.

#### Challenges:

- 1) Currently 3 368ha of the Krynaauwlust 275 farm is leased to four different farmers at an approximately R1m rental per annum and the lease period expires on the 30<sup>th</sup> September 2013.
- 2) The total hectares of this farm according to the town planning department is 5 119 ha and 1 222ha of these hectares is rezoned for residential, landfill sites and other developments as per the Spatial Development Framework and the Town Planning Scheme which means only 3 897ha is now available for the dairy project.
- 3) The conclusion of the lease agreement between the municipality and Zayna is very critical and it is considered very urgent in order to commission the Planning and Technical teams to identify the suitable area for the construction of the dairy plant and processing plant and to perform IEA and other studies. The estimated period for the full establishment of the dairy plant is 6 months after the date of signing of the lease agreement while processing plant is expected to be established one (1) year after the construction of the dairy plant. It is for that matter that a special council sitting is convened for Thursday, 19 July 2012 to finalize the lease agreement and allow the other processes to take place.

#### Reasons for legal opinion on this matter

- (a) In order to expedite this process, avoid vandalizing, imminent illegal invasion emanating from early termination of current farmers lease agreements, and legal battle with farmers for early terminations, **it was suggested that Zayna Investments and Phumelela must enter into a lease agreement and Zayna to sublet the 3 368ha to these farmers at the same terms and conditions as contained in the lease agreement between Phumelela and these farmers i.e. same rental and contract expiry date. Zayna Investments would then pay over the rental to Phumelela until expiry of the contract and then continue with the lease.**
- (b) The reason behind this suggestion is that any long-term leasing of a farm property for longer than 10 years must be registered on this farm's title deed at the regional/provincial deeds office.
- (c) An opinion is needed on clauses 1.2.5, 1.2.6, 3.1 and 4.5. The in-principle advice from National Treasury is that a municipality cannot directly own shares in a private company and the establishment of a municipal entity is a recommended approach.
- (d) The cautious approach from the municipality is that the value of the offered 4% shares or the methodology applied in arriving at that percentage is not very clear. Phumelela is a very small municipality with a very low tax

base and forfeiting R1m annual income (excluding escalations) from the renting of this farm as it is the case now will have negative impact on its future cash flow and ability to provide basic services (maintenance of roads etc). In terms of clause 1.2.5 the type of shareholding proposed is "ordinary shares" (preferable instrument is cumulative or participating preference shares at a fixed rate) and clause 4.5 clearly states that dividends would only be declared once the project becomes profitable and since this is a new venture it is extremely difficult to predict when will sufficient profits be realized and dividends declared and distributed to all shareholders in terms of their shareholding percentage (earnings per share).

Due to the urgency of this matter I will appreciate it if the legal opinion and proposed inputs/amendments can be forwarded to me before close of business tomorrow, 18 July 2012 for circulation during the special council sitting on the 19<sup>th</sup> July. I am aware that the 18<sup>th</sup> July is a very important date in the calendar "Mandela Day" but please assist us as we need to wrap-up this matter and allow the project implementation to take place.

Regards

Moses Moremi  
Municipal Manager

**From:** Kumaran Nair [mailto:Kumaran.Nair@treasury.gov.za]  
**Sent:** Tuesday, July 17, 2012 8:09 AM  
**To:** Moses Moremi  
**Subject:** RE: REQUEST FOR CLARITY ON FEW ISSUES  
**Importance:** High

Good Morning Moses

Hope you Good.

I advise that due to legal issues that arise from this enquiry, the matter is currently receiving the necessary attention at our MFMA Help Desk. A reply would be forwarded to you very shortly.

In the interim, in line with the questions you have raised, I advise that –

- A municipality is prohibited from acquiring shares in a private company
- No sections in the LG Acts and or regulations allow for a municipality to acquire shares in a private company.
- No types of shares can be acquired by the municipality
- The municipality can create a Municipal Entity but not a Trust

I would ensure that a complete reply is forwarded to you by the MFMA Help Desk

Kind regards

**Kumaran Nair**  
MFMA Implementation Unit  
Telephone Number : 012 395 6710  
Fax Number : 012 315 5230



**From:** Moses Moremi [mailto:mosesmail123@gmail.com]  
**Sent:** 16 July 2012 04:13 PM  
**To:** 'Kuni Ditira'  
**Cc:** 'AJ Venter'; 'Jo Ann Petterson'; Kumaran Nair  
**Subject:** RE: REQUEST FOR CLARITY ON FEW ISSUES

Hallo Advocate

The reference to listed company was the one with JSE but this new dairy project will just be a normal private company not listed with JSE.

I have taken note of your advice below and I am still awaiting National Treasury (Mr Kumaran) to give the view on the shares matter.

Regards

Moss

**From:** Kuni Ditira [mailto:kuni@premier.fs.gov.za]  
**Sent:** Monday, July 16, 2012 12:45 PM  
**To:** 'Moses Moremi'  
**Cc:** 'AJ Venter'; 'Jo Ann Petterson'  
**Subject:** RE: REQUEST FOR CLARITY ON FEW ISSUES

Mr Moremi

We are of the view that a municipality cannot have shares in a company unless there is a legislation allowing that. We are not sure what you mean by "listed company". Do you mean listed at the JSE?

Please be careful on the approach to the negotiations with the farmers lest they say that you have repudiated the lease agreements when you inform them that you are going to cancel the leases. It is better to find out whether what Estina is going to do cannot be done whilst the farmers are still on the farm(s). What can then be discussed is the consent for those studies whilst the farmers are still occupying the land. After all it is only 14 months before the lease expires. Whatever is discussed state it is without any prejudice and no decision has been taken yet.

We think the idea of a lease is better than the shares. However, be aware not to bind the municipality to a very long lease.

Kuni Ditira

**From:** Moses Moremi [mailto:mosesmail123@gmail.com]  
**Sent:** 16 July 2012 09:12 AM  
**To:** Kuni Ditira  
**Subject:** FW: REQUEST FOR CLARITY ON FEW ISSUES

Hallo Advocate.

The email below explains everything.

Regards



Moss

**From:** Moses Moremi [<mailto:mosesmail123@gmail.com>]  
**Sent:** Monday, July 16, 2012 12:04 AM  
**To:** Elzabe Rockman ([elzabe.rockman@gmail.com](mailto:elzabe.rockman@gmail.com))  
**Subject:** FW: REQUEST FOR CLARITY ON FEW ISSUES

Hallo DG

Below please find some clarity seeking questions raised with National Treasury. The department of Agriculture will be visiting us on Tuesday, 17 July 2012 to meet with farmers currently leasing our farm identified for the dairy project to explore other alternatives, especially due to the fact that there is no escape clause in the signed rental agreements that expire end of September 2013.

I must indicate that we are fully behind this project and I have asked the town planner to perform deeds search on this krynaauwlust farm to determine the exact hectares as the department requires 4 400 ha for this project. The proposed collective decision is that the 4 400 ha farm must be leased to the company on a 99 year lease but I just wanted National Treasury to provide clarity on the acquisition of shares as the company is offering Phumelela 4% stake in this multi-million rand project.

Regards

Moss

**From:** Moses Moremi [<mailto:mosesmail123@gmail.com>]  
**Sent:** Sunday, July 15, 2012 11:47 PM  
**To:** Kumaran Nair ([Kumaran.Nair@treasury.gov.za](mailto:Kumaran.Nair@treasury.gov.za))  
**Cc:** [vinodh@ubac.co.za](mailto:vinodh@ubac.co.za); Sello Nyapholi <[sellonyapholi@ymail.com](mailto:sellonyapholi@ymail.com)> ([sellonyapholi@ymail.com](mailto:sellonyapholi@ymail.com)); Sabata Mokhele ([Mokhele.Sabata@treasury.fs.gov.za](mailto:Mokhele.Sabata@treasury.fs.gov.za)); [tjotaung@phumelela.gov.za](mailto:tjotaung@phumelela.gov.za)  
**Subject:** REQUEST FOR CLARITY ON FEW ISSUES

Hallo Kumaran

As an expert at National Treasury, I need clarity on the following issues:

- 1) Can a municipality (not municipal entity) acquire shares in a non-listed private company
- 2) What section/provision in the local government acts ( structures, Systems, Financial etc) allows a municipality to acquire shares in a non-listed private company
- 3) What type of shares is a municipality allowed to subscribe to i.e. equity or preference shares (cumulative or participating)
- 4) If a municipality is prohibited to acquire shares in a private company, can a municipality establish "SPV" (special purpose vehicle) in a form of Trust or Pty limited to acquires shares in a non-listed private company on behalf of the municipality.

I need answers on the abovementioned questions ASAP as I am expected to give EXCO advice on this matter tomorrow in the afternoon.

Regards

Moses Moremi  
 Municipal Manager

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**Tracking:**

Two handwritten signatures are visible in the bottom right corner of the page. The first signature is a stylized, circular mark, and the second is a more fluid, cursive signature.



MM06.



the premier  
DEPARTMENT OF AGRICULTURE  
FREE STATE PROVINCE

OUR REF.: LS/C/12/43

Mr M Moremi  
Municipal Manager  
Phumelela Municipality

## LEASE AGREEMENT BETWEEN ZAYNA INVESTMENT AND PHUMELELA MUNICIPALITY

1. We refer to your email of 17 July 2012.
2. We have been requested to advise on the lease agreement to be concluded between ZAYNA Investment and Phumelela Municipality. The main clauses of the agreement are the following:
  - 2.1 The lease is supposed to be for a period of ninety nine (99) years with an option to renew.
  - 2.2 No rental will be payable but the municipality will be given 4% ordinary shares in ZAYNA.
  - 2.3 A shareholder agreement will be signed within three years from the day the agreement becomes effective.
  - 2.4 The municipality will be entitled to dividends only after ZAYNA becomes profitable.
  - 2.5 The municipality will not be able to cancel the lease during the ninety nine years.
  - 2.6 All improvements on the land will be the property of ZAYNA.
3. At the outset we have been requested to advise whether or not the municipality could hold shares in a private company. We were able to determine that ZAYNA was registered on 24 February 2012 and commenced business on the same day. The Director is one Jaffer Abdul Wahab and their registered office is 577 Carl Street in Pretoria (see certificate issued by the Registrar of Companies and Close Corporations). From the information we obtained earlier whilst assisting the Department of Agriculture with an agreement between Estina and that Department, Estina will hold 49% shares in ZAYNA and community members to be identified by the Department of Agriculture will hold 51%. We were not able to verify the current shareholding of ZAYNA as it does not appear on the certificate from the Registrar of Companies and Close Corporation. However, if Estina holds 41% shares in ZAYNA then Estina will be the minority shareholder. We are of the view that the minority shareholder cannot enter into contracts which will bind ZAYNA. We do not have information as to how far the process of identifying the community members who are to hold 51% shareholding is.

Legal Services

PO Box X517, Bloemfontein, 9300

Lebohang Building, 6th Floor, Cnr St Andrews and Markgraaff Streets, Bloemfontein

Tel: (051) 405 5489/4815 Fax: (051) 405 4121-mail: [polette@premier.fs.gov.za](mailto:polette@premier.fs.gov.za)

[www.fs.gov.za](http://www.fs.gov.za)



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4. Chapter 8A of Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) ("Systems Act"), provides for the establishment of municipal entities. Section 86B (2) of the Systems Act states that no municipality may establish, or participate in the establishment of, or acquire or hold an interest in, a corporate body including a trust except where such corporate body is a private company established by a municipality, or in which one or more municipalities hold interest in terms of the System Act, Chapter 8A Part 2. Part 2, section 86C states that a municipality may acquire or hold a lesser interest in a private company only if all other interests are held by another municipality or municipalities, national or provincial organs of state. Further a municipality may hold an interest in a private company which is an investor only if effective control in the private company vests in the municipality. Section 86E states that a municipality may establish a private company or acquire an interest in a private company, only for the purpose of utilising the private company as a mechanism to assist it, in the performance of any of its functions or powers. The conditions mentioned in section 86(C) and 86 (E) are not applicable to ZAYNA. It is therefore our opinion that the 4% share to the municipality will not comply with the Systems Act. ZAYNA is not established by the municipality.
5. Chapter 10 (ten) of the Municipal Finance Management Act, 2003 (Act No 56 of 2003) ("MFMA") regulates the establishment of municipal entities. In terms of section 84 of the MFMA, the municipality must determine the function or service of the entity and assess the impact of shifting the function or service to the entity on the municipality's staff, assets and liabilities. For purpose of section 84 of the MFMA, establishment includes acquisition of interest in a private company that would render that private company a municipal entity. Section 1 of the Systems Act defines municipal entity as –
  - (a) a private company referred to in section 86(B)(1)(a).
  - (b) a service utility; or
  - (c) a multi-disciplinary service utility.
6. ZAYNA is not a municipal entity as defined as it will not be doing a function or service of the municipality. We are therefore of the view that Phumeleka Municipality cannot own 4% shares in ZAYNA.
7. The Local Government: Municipal Finance Management Act (56/2003); Municipal Asset Transfer Regulations, R 878 in *Government Gazette* 31346 of 2 February 1998 regulates the transfer of municipal assets. Chapter 4 of these Regulations prescribes requirements for circumstances in which a municipality *inter alia* grants a right to use, control or manage its capital assets, without actually transferring or disposing of the ownership of the assets to the other party. "Right to use, control or manage" is defined as a right to use control or manage the capital assets for a period exceeding one calendar month without ceding legal ownership of the asset. A municipality may grant a right to use, control or manage a capital asset only after following a prescribed process which includes conducting a public participation process and the council has in principle approved that the right be granted (Regulation 34(1)).

Legal Services

PO Box X517, Bloemfontein, 9300

Lebohang Building, 6th Floor, Cnr St Andrews and Markgraaff Streets, Bloemfontein  
Tel: (051) 405 5489/4815 Fax: (051) 405 4121 -email: [nqalatha@premier.fs.gov.za](mailto:nqalatha@premier.fs.gov.za)

[www.fs.gov.za](http://www.fs.gov.za)



the premier  
OFFICE OF THE PREMIER  
FREE STATE PROVINCE

8. The municipality must first determine if the proposed right will exceed three years and if the value of the asset exceed R10m. Public participation is held only where the value of the asset is in excess of R10m and a long term right is proposed to be granted in respect of the capital asset. We do not know what the value of the land is but are aware that the lease is for a long term. The municipal council must take into consideration certain specified matters mentioned in Regulation 36 before granting approval. These include whether the asset may be required for the municipality's own use during the period for which the right is granted, compensation for use of the asset, management of risk, stakeholder comments and recommendation and the impact on its own strategic, legal and economic interests. Further the municipality must follow its disposal management system. Regulation 41(4) states that before granting the right to use, control or manage a capital asset the municipality must be satisfied that the private sector party to whom the right is granted can demonstrate the ability to adequately maintain and safeguard the asset. Regulation 45 prescribes the terms and conditions that must be contained in the agreement. It therefore follows that the municipality must comply with the Regulations and the Supply Chain Management before it can lease the land.
9. As advised in our email of 16 July 2012, we suggest that the Department of Agriculture (Estina) be allowed to do the necessary studies and Environmental Impact Assessment on the land with permission of the farmers. At the moment it may be apparent but not obvious as to specifically which piece of land will be suitable for the project envisaged. When the studies are complete it may be that the whole farm is required or only a certain portion. Further, the actual building of the land may not happen within the next six months or more. Cancelling the current leases at this moment may have bigger detrimental effects than cancelling a few months later. Time is a factor which will mitigate the damages of the current tenants.
10. We also advise that the Municipality consult Provincial Treasury and the Department of Corporative Governance and Traditional Affairs so that they are aware of the transaction the Municipality intends to enter into. Further Regulation 35 provides inter alia that the accounting officer must 60 days before the meeting of the municipal council solicit the views and recommendations of the National Treasury and the relevant provincial treasury.
11. In conclusion, we are of the view that the decision to lease the land to ZAYNA must comply with legislation. The question whether or not the current shareholders of ZAYNA can bind the company to the lease agreement is also important. Alternatively, we suggest that the Municipality make the land available to the Department of Agriculture to build a dairy and enter into a lease agreement with the identified community members (cooperative?). Estina can then obtain a piece of land outside the Municipal land and build the processing plant. This will not pose as many legal challenges as the proposed transaction.
12. We are available to provide any further clarity.

*Kosh*  
Adv KJC Ditira  
DDG: Legal Services

23 July 2012

Legal Services

PO Box X517, Bloemfontein, 9300

Lebohang Building, 6th Floor, Cnr St Andrews and Maritzburg Streets, Bloemfontein  
Tel: (051) 405 5489/4815 Fax: (051) 405 4321-mail: nolette@premier.fs.gov.za

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*[Handwritten signature]*

MM07



the premier  
Department of  
the Premier  
FREE STATE PROVINCE

Our Ref.: 3/3/4/6/1 & 3/2/2/4/3 (LS/C/12/52)  
Your Ref.:  
Enquiries: MR A J VENTER

Date: 01 August 2012

TO: Mr M MOREMI  
Municipal Manager  
Phumelela Municipality

Fax: 058 - 913 3601

Dear Mr Moremi

**LEGAL OPINION:  
LEASE AGREEMENT BETWEEN ZAYNA  
INVESTMENT & PHUMELELA MUNICIPALITY**

1. I refer to the legal opinion by Adv KJC Ditira of 23 July 2012. I had a meeting today with the MEC and the HOD of the Department of Agriculture regarding the proposed structure of this project and it was agreed that I should amplify the remarks in paragraph 11 of the opinion by Adv Ditira, regarding the alternative proposal. Adv Ditira is currently on leave and, given the urgency of this matter, I undertook to do so.
2. The proposal that Estina should obtain land outside the Municipal land to build a processing plant was premised on the principle that should Government land be made available to a private concern for their commercial gain, it would inevitably be regarded as a public private partnership, which will have to comply with Section 120 of the MFMA as well as the provisions of the Municipal Public Private Partnership Regulations.

Head: Corporate Administration  
PO Box 517, Bloemfontein, 9300  
Lebohang Building, 4th Floor, Room 403, Cnr St Andrew- and Markgraaff Streets, Bloemfontein  
Tel: (051) 405 4926 Fax: (051) 405 4955 e-mail: joann@premier.fs.gov.za  
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3. For this very reason it was proposed that Estina should obtain land outside the boundaries of the Municipal land, that the Municipality make the land available to the Department of Agriculture to build a Dairy and to make grazing available to the emerging farmers who will be part of the project.
4. The earlier opinion suggested that a Lease Agreement may be entered into with the identified community members, but other options are also available. These are:
  - The Municipality may grant the Department of Agriculture an option to enter into a Lease Agreement with the Municipality on the expiry of current Lease Agreements with farmers at a rental amount and term to be agreed upon by the Municipality and the Department of Agriculture; or
  - assign the current rights and obligations of the Municipality in terms of the Lease Agreements with the farmers to the Department of Agriculture provided that the Department should pay over to the Municipality either the rent collected from the farmers or an equal amount, which will place the Department of Agriculture immediately in a position to proceed with processes to ensure that the Dairy is established as soon as possible. Once the current Lease Agreements expire, the Municipality can enter into a new Lease Agreement with the Department of Agriculture, the rental and the term to be agreed upon.
5. Last mentioned option is preferred by the Department of Agriculture.

Head: Corporate Administration

PO Box 517, Bloemfontein, 9300

Lebohang Building, 4th Floor, Room 403, Cnr St Andrew- and Markgraaff Streets, Bloemfontein

Tel: (051) 405 4926 Fax: (051) 405 4955 e-mail: joann@premier.fs.gov.za

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6. It shall be appreciated if you would kindly consider the options and, should you deem it viable, present it to the Council to obtain a resolution in this regard.
7. Should you have any further enquiries, kindly do not hesitate to contact me.

Yours faithfully



**A J VENTER**  
Head: Corporate Administration

Head: Corporate Administration  
PO Box 517, Bloemfontein, 9300  
Lebohang Building, 4th Floor, Room 403, Cnr St Andrew- and Markgraaff Streets, Bloemfontein  
Tel: (051) 405 4926 Fax: (051) 405 4955 e-mail: [joann@premier.fs.gov.za](mailto:joann@premier.fs.gov.za)  
[www.fs.gov.za](http://www.fs.gov.za)



Cm: Kuhn &amp; Prinsloo Street

VREDE, 9835

Tel: 058 913 8300



**EXTRACTS FROM THE MINUTES OF THE THIRD SPECIAL COUNCIL MEETING OF  
PHUMELELA LOCAL MUNICIPALITY HELD ON THE 10<sup>TH</sup> AUGUST 2012 AT  
11H00 IN THE COUNCIL CHAMBER, VREDE**

**ITEM 12/2012**

**RE: VREDE INTEGRATED DAIRY AGRI BUSINESS PROJECT**

The background of this project has been provided on previous council sittings and this time it is of utmost importance to cover the advantage of this project in Phumelela (Vrede, Warden and Memel). The MEC for Rural Development and Agriculture, Honourable Mosebenzi Zwane, indicated in his 2012/13 departmental budget vote that a dairy and processing plant would be established in Vrede and a specific amount was set aside by his department for this project. This project will be one of the biggest in the country as the department will be partnering with a company from India and thus attracting foreign direct investment to the Free State. The project during its initial phase will employ 500 permanent employees and the total investment in property, plant and machinery (PPE) at the initial phase is estimated at around R500m. This project will place Phumelela in an international map and will have massive economic spin-offs and the local and neighboring farmers (emerging and commercial) will provide raw milk at an attractive price to this company.

In response to the resolutions of the 1<sup>st</sup> Special Council sitting, item 02/2012, we have approached the State Law Advisor and National Treasury to provide us with legal opinions on this project and the extract and opinions are attached as Annexure B, C and D. Mr Wayne from National Treasury indicated to me that the DDG from the Premier's office (Advocate Kuni Ditira) asked inputs from them and thus no reason to give a separate legal opinion.

**RESOLVED**

1. That council takes note of the report on this item;
2. That council approves the option stated in the revised legal opinion which read as follows " The municipality to assign its current rights and obligations in terms of the lease agreement with farmers to the Department of Agriculture provided that the latter pays over to the municipality the rent collected from the farmers or an equivalent amount which decision will place the Department to in a position to immediately proceed with the necessary processes to ensure that the dairy is established as soon as possible. When the lease agreement expires on the 30<sup>th</sup> September 2013, the municipality must enter into a new lease agreement with the department";

16

*[Handwritten signatures]*



3. That council authorizes the Accounting Officer (Municipal Manager) in terms of delegated powers to conclude and sign the lease agreement with the Department of Agriculture on behalf of the council;
4. That the Accounting Officer must arrange a meeting with the farmers currently renting the Krynaauwlust farm to communicate the resolution number 2 above.

Certified as a true extract of the Council minutes by

*T.R. Zwane*

**CLLR T.R. ZWANE**  
**SPEAKER**

**DATE: 10 AUGUST 2012**



*[Handwritten signatures]*

**ASSIGNMENT AGREEMENT ENTERED INTO  
BETWEEN:**

**THE FREE STATE PROVINCIAL GOVERNMENT  
REPRESENTED BY:**

**MP THABETHE**

**HOD: Agriculture**

**(duly assigned in terms of Section 5 of the Free State Land Administration Act)**

**(Hereinafter referred to as the PROVINCIAL GOVERNMENT) as the**

**one party**

**AND**

**PHUMELELA LOCAL MUNICIPALITY**

**REPRESENTED BY:**

**Moses Moremi**

**In his capacity as**

**MUNICIPAL MANAGER**

**(Herein after referred to as the MUNICIPALITY) as the other party.**

**WHEREAS** - the Municipality has a Lease Agreement with the farmers.

**And WHEREAS** - the municipality is desirous to assigns its rights, interest and obligation to Provincial Government.

It is agreed as follows:

### 1. PARTIES:

1.1. The parties to the agreement are –

1.1.1. Free State Provincial Government

1.1.2. Phumelela Local Municipality

### 2. DEFINITIONS AND INTERPRETATIONS:

2.1. In this agreement, except in a context indicating that other meaning is intended, the following words have the meanings assigned to them hereunder:

2.1.1. "Farmers" are:

Mr Leonard Neuman – 889ha  
Mr Matthys Johannes Glutz – 700ha  
Charfontein Boerdery Trust – 866ha  
H P Nell Boerdery BK – 913ha

2.1.2. "Property"

Krynaauwlust 275  
District Vrede  
Free State Province

2.1.3. "Termination date"

30 September 2013

### 3. ASSIGNMENT:

3.1. The Municipality assigns its current rights and obligations in terms of the Lease Agreements signed with the farmers to the Provincial Government.

3.2. The Provincial Government accepts the assignment.

PROVINCIAL GOVERNMENT:  
MUNICIPALITY:

..... Witness: (1) ..... Witness: (2) .....  
..... Witness: (1) ..... Witness: (2) .....

INITIAL ONLY:

SSD

3.3. The Municipality authorizes the Provincial Government to notify the farmers of this assignment.

3.4. The Provincial Government shall pay over to the Municipality the rent collected from the farmers or an equal amount being the following:

Mr Leonard Neuman	R253 365.00	pa
Mr Matthys Johannes Glutz	R199 500.00	pa
Charfontein Boerdery Trust	R246 810.00	pa
H P Nel Boerdery BK	<u>R260 205.00</u>	pa
Total	<u>R958 880.00</u>	

50% of which is payable on 31 March and another 50% on 30 September of each year.

#### 4. DURATION OF THE ASSIGNMENT:

4.1. The assignment shall commence on 1 September 2012 and terminate on 30 September 2013.

#### 5. OPTION TO RENEW:

5.1. On the termination date of the assignment the Provincial Government shall have an option to lease the property on the rental and terms to be agreed upon.

#### 6. PAYMENTS:

6.1. The rent shall be payable on or before 15 April 2013 and 15 October 2013 by the Provincial Government to the Municipality.

6.2. All payments due by the Provincial Government to the Municipality under this agreement shall be made to the Municipality into the bank account specified in clause 6.3 below or at such other address in the Republic of South Africa as the Provincial Government given notice of in writing in terms of this agreement by the Municipality.

6.3. The LESSOR's bank details are as follows:

PROVINCIAL GOVERNMENT:  
MUNICIPALITY:

INITIAL ONLY:  
Witness: (1) *TSM* Witness: (2) *SSA*  
Witness: (1) *[Signature]* Witness: (2) *[Signature]*

BANK: ABSA  
 ACCOUNT NAME: PHUMELELA LOCAL MUNICIPALITY  
 ACCOUNT NUMBER: 2260940190  
 BRANCH: VREDE  
 BRANCH CODE: 632005  
 REFERENCE NUMBER: RENTAL

- 6.4. The Provincial Government must supply the Municipality with proof of payment by sending a copy to the Municipality if and when required to do so by the Municipality.
- 6.5. The Provincial Government shall not withhold, defer, or make any deductions from any payment due to the Municipality, whether or not the Municipality is indebted to the Provincial Government or in breach of any obligation to the Provincial Government.
- 6.6. Should the Provincial Government default in payment of rental or any other amount payable by the Provincial Government on or before the due date, interest shall accrue thereon for the benefit of the Municipality as prescribed in terms of section 80 of the Public Finance Management Act, 1999 (Act 1 of 1999), and at the rate prescribed and announced by the Minister in the Government Gazette.

## 7. DISPUTES:

- 7.1 Any disputes that may arise between the Parties regarding any matter pertaining to their co-operation, as set out in the MOA, including disputes pertaining to any payment adjustments contemplated in clause 8 shall be resolved in good faith, by the Parties respective relationship managers.
- 7.2 Should the dispute remain unresolved for a period of 30 (thirty) days either party may declare such dispute a formal intergovernmental dispute by notifying the other party of such declaration in writing, in which event the Parties will follow the procedure as outlined in section 42 of the Intergovernmental Relations Framework Act, 2005 (Act No.13 of 2005).

PROVINCIAL GOVERNMENT:  
 MUNICIPALITY:

INITIAL ONLY:  
 Witness: (1) *TS M* Witness: (2) *SSB*  
 Witness: (1) Witness: (2)

**8. TERMINATION:**

- 8.1. Subject to clause 5, this agreement terminates on the termination date and the Provincial Government shall vacate the leased premises and leave it in a proper and clean condition unless the option in clause 5 is exercised.

**9. WHOLE AGREEMENT:**

- 9.1. This agreement constitutes the entire agreement between the parties, including the schedule attached hereto.
- 9.2. Neither parties relies in entering into this agreement on any warranties, representations, disclosures or expressions of opinion which have not been incorporated into this agreement as warranties or undertakings
- 9.3. No variation or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by both parties.
- 9.4. This agreement renders all contracts or agreements that previously might have been entered into by the parties in relation to these premises null and void and to be of no force and effect.

**10. NON-WAIVER:**

- 10.1. Neither party shall be regarded as having waived, or be precluded in any way from exercising, any right under or arising from this lease by reason of such party having at any time granted any extension of the time for, or having shown any indulgence to, the other party with reference to any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement or, any right of action against the other party.
- 10.2. The failure of either party to comply with any non-material provision of this lease shall not excuse the other party from performing the latter's obligations hereunder fully and within the time.

**11. CONCESSIONS:**

PROVINCIAL GOVERNMENT:  
MUNICIPALITY:

Witness: (1) 73M Witness: (2) SSD  
Witness: (1) \_\_\_\_\_ Witness: (2) \_\_\_\_\_

INITIAL ONLY:

*[Signature]*  
*[Signature]*

11.1. Any concessions granted by one party to the other which are at variance to the terms and conditions of this agreement, shall be reduced to in writing and signed by both parties.

## 12. DOMICILIA AND NOTICES:

12.1. For all purposes of and arising out of this agreement, including (but by no way of limitation) the giving of any notice, the making of any communication, the payment of any monies and serving of any processes, the parties hereby choose as domicilia citandi et executandi the addresses as stipulated in clause 24.2 below.

12.2. The chosen addresses are as follows:

12.2.1. The Municipality:

Cnr Kuhn and Prinsloo Street  
Vrede

12.2.2. The Provincial Government:

Room 310, Lebohang Building  
St Andrew Street  
Bloemfontein

12.3. Any notices given in terms of this agreement shall be in writing.

12.4. Each of the parties, by notice to the other party, shall be entitled from time to time to vary its domicile to any other address within the Republic of South Africa, provided that such other address shall include a physical address for hand deliveries: Provided that such change of domicile shall only become effective on receipt of the relevant notice by the addressee.

12.5. Any notice, communication or payments made by one party to the other shall be deemed to have been properly given, in the absence of proof to the contrary,-

12.5.1. If delivered by hand, on the date of delivery

12.5.2. If sent by prepaid registered post, seven (7) days after the date on which the notice is posted.

PROVINCIAL GOVERNMENT:  
MUNICIPALITY:

INITIAL ONLY:  
Witness: (1) *TSM* Witness: (2) *SSD*  
Witness: (1) Witness: (2)



12.5.3. If sent to the addressee at its telefax number, on the date of transmission where is transmitted during normal business hours of the receiving instrument, and on the next business day where it is transmitted outside those business hours in either event provided that it has been confirmed by registered letter posted no later than the business day immediately following the date of transmission.

THUS SIGNED AT BLOEMFONTEIN ON THIS 12 DAY OF SEPTEMBER 2012.  
WITNESSES:

1. \_\_\_\_\_


2. \_\_\_\_\_

  
MUNICIPAL MANAGER  
PHUMELELA MUNICIPALITY

THUS SIGNED AT BLOEMFONTEIN ON THIS 12 DAY OF SEPTEMBER 2012.  
WITNESSES:

1.  \_\_\_\_\_

2. \_\_\_\_\_

  
MP THABETHE (HOD: Agriculture)  
FREE STATE PROVINCIAL GOVERNMENT

In consultation with:

\_\_\_\_\_  
ES MABE (MEC: Public Works)  
FREE STATE PROVINCIAL GOVERNMENT

PROVINCIAL GOVERNMENT:  
MUNICIPALITY:

INITIAL ONLY:  
..... Witness: (1) IM ..... Witness: (2) SSA .....  
..... Witness: (1) ..... Witness: (2) .....



"MM2.1"

**LEASE AGREEMENT**

Memorandum of agreement of lease made and entered into by:

**Phumelela Local Municipality**

VAT no. 4720193293

Herein represented by

**Lethuxolo Hope Mthembu**

and

**Tlokotsi John Motaung**

In their respective capacities as acting Municipal Manager and speaker/Mayor and duly authorised thereto by virtue of a resolution of the Phumelela Local Municipality

(Hereinafter referred to as the "Lesser")

and

**H.P. Nell Boerdery BK**

VAT No. 4900232358

Herein represented by

**Jan Nell**

In his capacity as duly authorised member of H.P.Nell Boerdery BK

(Hereinafter referred to as the "Lessee")

Handwritten signature and initials, including "T.S." and "W.A.M."

Subject to the following terms and conditions:

### 1. Subject Matter

The Lessor leases, and the Lessee rents a portion of the Remainder of the Farm **Krynaauwslust 275**, district Vrede, Free State Province

**In extent** 913(nine hundred and thirteen ) hectares as indicated by the

lessor to lessee and depicted on the attached diagram- annexure A .  
(hereinafter referred to as the property)

### 2.Period of Lease

The lease shall be for 2(two) years, commencing on 1 October 2011 and terminating on 30 September 2013

### 3.Rental

3.1 The rental payable by the lessee to the lessor shall be R228250.00(two hundred and twenty eight thousand two hundred and fifty rands) plus vat of R31955.00 (thirty one thousand nine hundred and fifty five rands)being in total R260205.00(two hundred and sixty thousand two hundred and five rands) **per annum**

3.2.The rental shall be paid directly to the Lessor, on signature of this Agreement, at commencement of the lease free of Bank exchange.

3.3.The rental shall be payable half yearly in advance

"MM2.2"

**LEASE AGREEMENT**

Memorandum of agreement of lease made and entered into by:

**Phumelela Local Municipality**

VAT no. 4720193293

Herein represented by

**Lethuxolo Hope Mthembu**


and

**Tlokotsi John Motaung**

In their respective capacities as acting Municipal Manager and speaker/Mayor and duly authorised thereto by virtue of a resolution of the Phumelela Local Municipality

**(Hereinafter referred to as the "Lessor")**

and

**Leonard Neuman****(ID.no.5701175027083)**VAT No. ~~4391083772~~ 455 011 2777 **(Hereinafter referred to as the "Lessee")**

Subject to the following terms and conditions:

Subject to the following terms and conditions:

### 1. Subject Matter

The Lessor leases, and the Lessee rents a portion of the Remainder of the Farm **Krynaauwslust 275**, district Vrede, Free State Province

**In extent** 889 ha (eight hundred and eighty nine) hectares as indicated by the

Lessor to lessee and depicted on the attached diagram- annexure A.

(hereinafter referred to as the property)

### 2. Period of Lease

The lease shall be for 2 (two) years, commencing on 1 October 2011 and terminating on 30 September 2013

### 3. Rental

3.1 The rental payable by the lessee to the lessor shall be R222250.00 (two hundred and twenty two thousand two hundred and fifty rands) plus vat of R31115 (thirty one thousand one hundred and fifteen rands) being in total R253365.00 (two hundred and fifty three thousand three hundred and sixty five rands) **per annum**

3.2. The rental shall be paid directly to the Lessor, on signature of this Agreement, at commencement of the lease free of Bank exchange.

3.3. The rental shall be payable half yearly in advance

① Department took over rental.

① INVOICE RME  
SEPT 2 MAR 2012

YEAR 1 { OCT 2011 = R 126 682,50  
APR 2012 = R 126 682,50  
PAYMENT DATE R253 365,00

① YEAR 2 { OCT 2012 = R 126 682,50  
APR 2013 = R 126 682,50

"MM2.3"

**LEASE AGREEMENT**

Memorandum of agreement of lease made and entered into by:

**Phumelela Local Municipality**

VAT no. 4720193293

Herein represented by

**Lethuxolo Hope Mthembu**

and

**Tlokotsi John Motaung**

In their respective capacities as acting Municipal Manager and speaker/Mayor and duly authorised thereto by virtue of a resolution of the Phumelela Local Municipality

**(Hereinafter referred to as the "Lesser")**

and

**Charfontein Boerdery Trust**

VAT No. 4160144996

Herein represented by

**Andries Greyling**

In his capacity as duly authorised trustee of Charfontein Boerdery Trust

**(Hereinafter referred to as the "Lessee")**

Subject to the following terms and conditions:

### 1. Subject Matter

The Lessor leases, and the Lessee rents a portion of the Remainder of the Farm **Krynaauwslust 275**, district Vrede, Free State Province

**In extent** 866 ha(eight hundred and sixty six) hectares as indicated by the

lessor to lessee and depicted on the attached diagram- annexure A.

(hereinafter referred to as the property)

### 2. Period of Lease

The lease shall be for 2(two) years, commencing on 1 October 2011 and terminating on 30 September 2013

### 3. Rental

3.1 The rental payable by the lessee to the lessor shall be R216500.00(two hundred and sixteen thousand five hundred rands) plus vat of R30310 (thirty thousand three hundred and ten rands) being in total R246810.00(two hundred and forty six thousand eight hundred and ten rands) **per annum**

3.2. The rental shall be paid directly to the Lessor, on signature of this Agreement, at commencement of the lease free of Bank exchange.

3.3. The rental shall be payable half yearly in advance

### 4. Use of the Property



"MM-60"

**LEASE AGREEMENT**

Memorandum of agreement of lease made and entered into by:

**Phumelela Local Municipality**

VAT no. 4720193293

Herein represented by

**Lethuxolo Hope Mthembu**

and

**Tlokotsi John Motaung**

In their respective capacities as acting Municipal Manager and speaker/Mayor and duly authorised thereto by virtue of a resolution of the Phumelela Local Municipality

(Hereinafter referred to as the "Lesser")

and

**Matthys Johannes Glutz**

(ID.no.6607285028086)

VAT No. 4391083772

(Hereinafter referred to as the "Lessee")

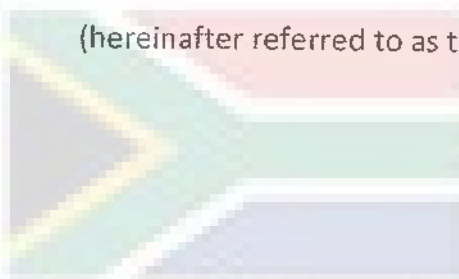
Subject to the following terms and conditions:

Subject to the following terms and conditions:

### 1. Subject Matter

The Lessor leases, and the Lessee rents a portion of the Remainder of the Farm **Krynaauwslust 275**, district Vrede, Free State Province

**In extent** 700(seven hundred ) hectares as indicated by the Lessor to lessee and depicted on the attached diagram- annexure A.  
(hereinafter referred to as the property)



### 2.Period of Lease

The lease shall be for 2(two) years, commencing on 1 October 2011 and terminating on 30 September 2013

### 3.Rental

3.1 The rental payable by the lessee to the lessor shall be R175000.00(one hundred and seventy five thousand rands) plus vat of R24500.00 (twenty four thousand five hundred rands)being in total R199500.00(one hundred and ninety nine thousand five hundred rands) **per annum**

3.2.The rental shall be paid directly to the Lessor, on signature of this Agreement, at commencement of the lease free of Bank exchange.

3.3.The rental shall be payable half yearly in advance

### 4.Use of the Property

Handwritten signatures and initials are present at the bottom of the page, including a large signature on the left, a signature in the center, and initials on the right.