

MEMORANDUM OF AGREEMENT ENTERED INTO BY AND BETWEEN

John J. Brown, Manager  
1474 4th Street, Alameda, CA  
McGee's Luck  
Farm

And

Phane Acres (Pvt) Ltd

OF

4108 Garabanda, Buena Vista

IN RESPECT OF THE JOINT VENTURE OPERATIONS ON McGee's Farm

JJB  
L.G.  
J.M.



## WHEREAS

1. The landholder is the registered and lawful occupant of a certain piece of property known as McGee's Luck Farm (subdivision of St Andrews Farm)
2. The parties having agreed to associate together in a Joint Venture (JV) with the main aim of conducting a farming business on McGee's Luck Farm, herein agree to constitute themselves as a Joint Venture.
3. Any reference to (Investor Name) in this agreement shall include any approved manager contracted by (Investor Name) to implement and facilitate compliance with this agreement to the extent that such manager is permitted to undertake the agricultural activities envisaged pursuant to this agreement.
4. Both parties agree that all annexures mentioned in this agreement will be added to the agreement and signed by both parties.

## IT IS HEREBY AGREED AND RECORDED AS FOLLOWS:

### 1. JOINT VENTURE CAPITAL CONTRIBUTIONS:

- a. The parties hereby associate in a Joint Venture for the purposes of conducting a farming business involved in the growing of crops, horticulture or livestock. The parties shall make the capital contributions required by the JV and for all subsequent projects, and their capital amount shall be credited with the appropriate value of such contributions in accordance with the following:
- b. The Landholder's contribution to the JV shall be the use of land for the purposes of Ranching (state farming activities), (Annexure A: Map of the land, Plot and area that is available). The workshops and other structures on the Farm may be utilized by the JV.
- c. The Landholder agrees NOT to enter into a JV of any of this portion of land with any other party for the duration of this Agreement. It is recorded that the area of land to be utilized by (Investor Name) for purposes of this JV is demarcated on the map attached as Annexure A. The Landholder has the right to farm the area excluded from this joint venture on his own account.
- d. The Landholder further grants the JV exclusive rights to the irrigation infrastructure associated with the identified land.
- e. The Landholder further grants the JV the right to use existing staff accommodation and to build accommodation for the employees of the JV, and any other fixed structures that may be of use to the JV.
- f. The Landholder further grants the JV access to the water rights enjoyed by McGee's Farm and in so doing enable the JV to produce irrigated crops.
- g. The Landholder grants the JV permission to clear trees and timber as arable land is opened up and the use of the wood for curing fuel. Both parties will consult on this aspect before any clearing is done.
- h. Both parties agree that there shall be a season's notice, given in writing for the cancellation of this agreement and that consideration will be given for crops already in the ground and recovery of any and all expenses incurred by (Investor Name).
- i. (Investor Name) contribution to the JV will be the provision of management in consultation with the Landholder and sourcing the financial contribution required for the farming operation.

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- j. ~~the financier~~ will supply all the equipment required for the success of the JV provided that the financier shall not use any equipment or assets already at the farm as collateral to raise funding.
- k. The JV shall adhere to and utilize good agricultural practices (GAP).
- l. The JV shall not be liable for historical debts that the farm may have to ZETDC and Tax, ZIMRA, labour wages and gratuities, NSSA, ZINWA and banks. These debts remain the responsibility of the Landholder, unless declared and in his/her Sole and unfettered discretion paid for by ~~the financier~~ and deducted from the sum due to the Landholder by the JV. The Landholder hereby discloses these liabilities and debts and these are disclosed in Annexure B attached hereto and marked B. Repayment plans with all the creditors shall be disclosed. The Landholder shall pay utilities bills during the duration of the JV if not expressly associated with the JV.
- m. The Landholder is fully responsible for his own tax affairs (ZIMRA). Both parties shall be tax compliant with respect to the laws of Zimbabwe.
- n. It is hereby agreed and recorded as a condition precedent that this agreement is subject to the conditional fulfilment of the following: the approval, in writing to the content of this agreement by the Minister of Lands, Agriculture, Water and Rural Resettlement.
- o. Both parties will endeavour to protect the investments in the JV.

## 2. DURATION

The operation of the business of the JV shall formally commence on 1 Apr 2023 and shall continue for a period of 25 years terminating on 31 Mar 2048. Provided there is no breach, the parties may renew the agreement for a further 25 years on the same terms and conditions.

## 3. FARMING OPERATIONS:

- 3.1. The JV partners shall, on or before the 1<sup>st</sup> of September each year, discuss the intended cropping programme for the next 12 months.
- 3.2. The parties will agree on and provide the business and production plans for the duration of the contract to be provided as Annexure C.  
Any variation to be submitted as soon as they have a material impact, or result in more than 20% variation in the business plan.
- 3.3. The parties are to submit an annual return to the Ministry's Monitoring and Evaluation Unit, by 31 August each year for summer crops and 30 November each year for winter crops. Failure to submit a return will attract penalties including withdrawal of approval of the JV.
- 3.4. The Ministry's M and E unit or any other appointed officials shall be allowed reasonable access for inspection for compliance by the parties to the joint venture.
- 3.5. The JV partners shall ensure that all annual lease rentals are up to date. Failure to pay these rentals shall be a material breach of this agreement.

## 4. MANAGEMENT

The JV will aim to operate in the spirit of co-operation and understanding. Whilst ~~the financier~~ is the financial partner in the JV, both parties agree that the JV will employ

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managers to oversee the management of farming operations. The Landholder shall not unduly compete for labour at the expense of the JV's operations and shall endeavour to create a production-oriented and conducive work environment. The JV will aim to operate under a spirit of good will.

5. **OPERATING COSTS**

All costs associated with the farming operation shall be for the account of the JV, including land tax, tax/council rates, ZETDC, ZINWA fees for the duration of the JV period. ZETDC bills for the Landholder's private business shall be paid by the landholder. Historic bills shall be to the Landholder's account.

6. **REPAIRS AND MAINTENANCE**

Phane Acres (Pvt) Ltd shall undertake all repairs and maintenance of the farm facilities belonging to it, that is required for the operation of the JV e.g. borehole, barns and sheds.

7. **SHARING OF INCOME**

a. Fifteen (15) % of Gross value from production will be the Landholders' share of income.

b. Any debts or liabilities to be declared by the Landholder, as in Annexure B.

8. **IRRIGATION EQUIPMENT, FARMING MACHINERY**

a. All moveable machinery, plant and equipment brought into business by Phane Acres (Pvt) Ltd shall remain the sole and exclusive property of Phane Acres (Pvt) Ltd.

b. The Landholder will have the right of first refusal to purchase the equipment provided he is prepared to offer fair market related prices that take into consideration depreciation and wear and tear.

c. The Landholder has no moveable assets being used in the JV.

9. **ACCOUNTS**

The Financial year of the JV will be 1<sup>st</sup> August to 31 September. The JV may engage Auditors from a reputable firm of chartered accountants. The JV will keep records of all production and sales of farm produce. These records will be able available to both partners for inspections.

10. **BREACH**

If either Party should commit a breach of any of the provisions of the Memorandum of Agreement and remain in default for a period of 30 days after receipt of written notice from the other party calling on it to rectify the breach then the aggrieved party shall have the right (but shall not be obliged) to cancel this agreement by written notice to that effect to the defaulting party and claim any damages suffered. The cancellation of this agreement shall be without prejudice to all other rights which the aggrieved party may have at law, including the right to recover damages from the defaulting Party or to seek an interdict against it.

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11. **LEGAL STATUS**

The agreement shall be governed by, construed and interpreted in accordance with the laws of Zimbabwe. For the avoidance of doubt, this agreement shall not be construed as constituting a lease or agency agreement.

12. **GENERAL**

- a. This agreement constitutes the sole record of the understanding between the Parties in regard to the subject matter thereof.
- b. Neither Party shall be bound by any representation, warranty, undertaking, promise not recorded in this agreement.
- c. No addition to, variation or consensual cancellation of this Memorandum shall be of any force or effect unless affected in writing and signed by or on behalf of all the Parties.
- d. Any indulgence, which any Party may show any other in terms of or pursuant to the provisions contained in the agreement, shall not constitute a waiver of any of the rights of the party which granted such indulgence.
- e. The provisions of this agreement shall be binding upon the successors-in-title and assigns of the Parties. Accordingly, the rights and obligations of each arising out of this Agreement shall devolve upon and bind its legal and personal representatives successors-in-title and permitted assigns.
- f. Save as otherwise expressly provided in this Agreement, this Agreement is personal to the parties and the parties shall not be entitled to cede, assign, transfer or otherwise make over any of their rights or delegate any of its obligations hereunder without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

13. **CONFIDENTIALITY**

The Parties shall keep confidential and shall not disclose to any person, except as permitted in writing by the other, nor shall any party use for its own benefit any and all information, material and data, whether of a business, technical, financial, operational, administrative, marketing or other nature in respect of the other party or its operations which is disclosed to it by the other party or any third party or it has acquired (whether before or after the date of this agreement) in connection with or in the course of this agreement (collectively referred to as "Confidential Information").

14. **ARBITRATION**

In the event of any dispute or difference arising between the parties, hereto relating to or arising out of this Agreement, including the implementation, execution, interpretation, rectification, validity, enforceability, termination or cancellation of this Agreement, the Parties will forthwith meet and use their best endeavors to attempt to settle such dispute or difference. Should the Parties fail to reach an agreement, they agree to consult and

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involve the Ministry of Lands, Agriculture, Water and Rural Resettlement in an attempt to resolve any issue swiftly and amicably.

Failing such settlement within a period of 30 (thirty) days prior to the institution of any other form of proceedings, the said dispute or difference shall be dealt with by arbitration in terms of the Arbitration Act.

#### 15. COSTS

Each party shall bear its own legal costs and expenses associated with the negotiation, setting and execution of this Agreement.

Dated at PLUM TREE this 21 February day of 2023 JBN  
EMC  
LG

#### WITNESSES

1. DAVIS D. CUTHE
2. REINSHAW NCUBE (EMC)

JOHN KILUWA NCUBE

#### WITNESSES

1. Kudzani Gangezi (EMC)
2. Bokang Mthupha (EMC)

Chunahle Gangezi  
for Phisoa Agri (Pty) Ltd

Approved and signed by the Permanent Secretary for and on behalf of the Minister of Lands, Agriculture, Water and Rural Resettlement

Joint Venture Number: .....

Farm Name: .....

Allocated Monitoring and Evaluation Officer: .....

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Approved and signed by the Permanent Secretary for and on behalf of the  
Minister of Lands, Agriculture, Fisheries, Water and Rural Development

  
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Joint Venture Number: \_\_\_\_\_

Farm Name: -----S/D 1 of SD/A of St Andrews A Ptn of McGeers Luck, Bulilima-Mangwe

Allocated Monitoring and Evaluation Officer: \_\_\_\_\_

