PLAINTIFF'S PARTICULARS OF CLAIM (AMENDED 4 JUNE 2021)

1.

The plaintiff is **BUSINESS VENTURE INVESTMENTS 900 (PTY) LTD**, a company duly incorporated and registered in terms of the company laws of the Republic of South Africa, with its registered address at Ad Outpost Building, 54 Maxwell Drive, Woodmead, Gauteng.

2.

The defendant is the **CITY OF EKURHULENI METROPOLITAN MUNICIPALITY**, a metropolitan municipality established in terms of the Local Government: Municipal Structures Act, 1998, with its head office at 15 Queen Street, Germiston, Gauteng, and its administrative office at EGSC Building, corner of Cross and Rose Streets, Germiston, Gauteng, care of the Head of Department: Corporate Legal Services in office number 1-047.

3.

3.1 At all times relevant hereto, the plaintiff was the owner of Portion 406 of the farm Driefontein 85 situated in registration division I.R., Gauteng and measuring approximately 33,6847ha in extent as indicated on SG Diagram No. 6038/2004, by virtue of Deed of Transfer No. T165522/05.

3.2 By notice of expropriation, published in the Provincial Gazette of 6 February 2019, the defendant expropriated the said property from the plaintiff in terms of section 9(3) of the Housing Act 107 of 1997 ("the Housing Act").

3.3 The defendant's power to expropriate property under section 9(3)(a) of the Housing Act is subject to, and may only be exercised, in accordance with the provisions of the Expropriation Act 63 of 1975 ("the Expropriation Act"), as provided in section 5(1) of the Expropriation Act.

3.4 In terms of section 9(3)(b) of the Housing Act, the provisions of sections 1, 6 to 15 and 18 to 23 of the Expropriation Act apply, with the changes required by the context, in respect of the expropriation of the plaintiff's said property by the defendant in terms of section 9(3)(a) of the Housing Act.

In consequence of the said expropriation by the defendant, the plaintiff became entitled to compensation as contemplated in section 25(2)(b) of the Constitution, 1996 ("the Constitution") as read with section 9(3) of the Housing Act and the relevant provisions of the Expropriation Act *alternatively* in terms of section 25(2)(b) of the Constitution.

4.

4.1 The plaintiff and the defendant did not agree on the amount of compensation to which the defendant is entitled in consequence of the said expropriation.

4.2 In the premises of the aforegoing, the plaintiff is entitled, in terms of section 25(2)(b) of the Constitution, 1996 as read with section 14(1) of the said Expropriation Act

alternatively in terms of section 25(2)(b) of the Constitution, to have the amount of compensation to which it is entitled determined by this Honourable Court.

5.

The amount of compensation to which the plaintiff is entitled in terms of the Expropriation Act by virtue of the said expropriation, is not less than R30 055 000.00, made up and calculated as follows:

5.1	In terms of section 12(1)(a)(i) of the said Expropriation Act, the amount which a willing buyer would have paid to a willing seller in the open market on the date of notice of expropriation, being not less than	R30 000 000
5.2	In terms of section 12(2) of the said Act	R55 000,00

6.

Upon a proper interpretation and application of section 12(1) and 12(2) of the Expropriation Act in line with the Constitution, as contemplated in section 39(2) of the Constitution,

6.1 market value and solatium as set out above with reference to section 12(1)(a)(i) and 12(2) of the Expropriation Act 63 of 1975 are relevant factors in determining

just and equitable compensation as contemplated in section 25(3) of the Constitution and constitute the maximum amount to which the plaintiff is entitled; and

6.2 no other relevant factors as contemplated in section 25(3) of the Constitution, 1996 justifies a downwards adjustment of the said amount.

In the premises, the aforementioned amount of R30,055,000.00 constitutes just and equitable compensation as contemplated in section 25(3) of the Constitution.

6A.

In the alternative to paragraphs 5 and 6 above, the amount of compensation which is just and equitable in the circumstances and to which the plaintiff is entitled in terms of section 25(3) of the Constitution is not less than R30,055,00.00 having regard to the following relevant factors:

6A.1 the property is unoccupied, well-located land with potential to be used for township establishment and the plaintiff had taken steps and incurred expenses to realise that potential;

6A.2 the defendant had approved an application for township establishment by the plaintiff and, but for the expropriation, the plaintiff would have developed housing on the property;

6A.3 the plaintiff acquired the property at a discount from a related company but was entitled to sell it at market value to a third party but for the expropriation;

6A.4 the market value of the property as at the date of expropriation was not less than R30 million;

6A.5 the defendant charged the plaintiff rates on this property in terms of the Local Government: Municipal Property Rates Act 6 of 2004 based on a value of R26,438,000.00 which is entered in its General Valuation Roll for the period 1 July 2017 to 30 July 2021;

6A.6 there was no direct state investment or subsidy in the acquisition or beneficial capital improvement of the property;

6A.7 the purpose of the expropriation is for the development of housing which will not be of any benefit to the plaintiff;

6A.8 the defendant has full ownership and possession of the property whilst the plaintiff has suffered a total loss of its property and all expenses incurred in regard to its development and preservation;

6A.9 it is just and equitable that where an expropriation is solely for a public purpose and in the public interest as in the present instance it should be paid for from the public purse to spread the burden equally amongst taxpaying citizens;

6A.10 it is not just and equitable that the plaintiff as an individual company should carry the full burden of the defendant's acquisition of the property in order to comply with its constitutional mandate to provide housing as it would place a disproportionate and inequitable burden on the plaintiff.

6A.11 in attaining a just and equitable balance between the public interest and the interest of the plaintiff, the capital value of what was lost by the plaintiff in consequence of the expropriation must be taken into account."

7.

7.1 The defendant took possession of the expropriated property on 30 April 2019.

7.2 In terms of section 12(3) of the said Expropriation Act, the plaintiff is entitled to interest on the outstanding amount of compensation calculated in terms of section 80 of the Public Finance Management Act 1 of 1999 from the said date of possession being 30 April 2019 to date of payment of compensation.

WHEREFORE THE PLAINTIFF PRAYS FOR AN ORDER AS FOLLOWS:

1. An order in terms of which the amount of compensation to which the plaintiff is entitled by virtue of the said expropriation is determined at not less than R30 055 000,00.

2. Payment of the amount of compensation as determined by the Honourable Court.

3. Interest on the outstanding amount of compensation at the rate contemplated in section

80 of the Public Finance Management Act from 30 April 2019 until date of payment of the compensation determined by the Honourable Court.

4. An order of costs as contemplated in section 15 of the said Expropriation Act.

THUS DATED AT PRETORIA ON THIS _____ DAY OF FEBRUARY 2021.

_____
G L GROBLER SC

_____
J L GILDENHUYS SC

_____
I HLALETHOA
COUNSEL FOR THE PLAINTIFF

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