

LOCAL AUTHORITY NOTICE 145 OF 2019**City of Ekurhuleni Metropolitan Municipality****Notice of Expropriation**

Issued by the City of Ekurhuleni Metropolitan Municipality (the Municipality) In terms of Section 9(3) of the Housing Act, 1997 (Act No. 107 of 1997) Read with Sections 1, 6 to 15 and 18 to 23 of the Expropriation Act, 1975 (Act No. 63 of 1975).

TO: Business Venture INV NO 900 (PTY) Ltd.
AD Outpost Building
54 Maxwell Drive
Woodmead
Gauteng
2192

AND TO: All other persons claiming any right to or interest in the land described in this Notice of Expropriation whether by virtue of registration or otherwise, and particularly any lessee, buyer or builder contemplated in Section 9(1)(d) of the Expropriation Act, 1975.

Notice is hereby given in terms of Section 7, read with Section 5(2) of the Expropriation Act No. 63 of 1975 (the Act) that the Municipality, having obtained permission of the Member of the Executive Committee of the Province of Gauteng responsible for Human Settlements on 21 November 2018, hereby expropriates the land described hereunder under powers vested in it by **Section 9(3) of the Housing Act No. 107 of 1997 (the Housing Act) and Section 5 of the Act, for public purposes, in particular for the purposes of a national housing programme as defined in Section 1 of the Housing Act. The land being expropriated is the following:**

PORTION 406 OF THE FARM DRIEFONTEIN 85 IR, MEASURING 33,6847 HECTARES IN EXTENT.

PLEASE NOTE THE FOLLOWING:

- a. The date of expropriation shall be 30 April 2019 with effect from which date, where applicable, ownership of the said land will pass to the Municipality;
- b. The date upon which the Municipality will take possession of the said property shall be 30 April 2019.
- c. Where land is expropriated, with effect from the date of possession of the land by the Municipality, the Owner(s) will be relieved of the obligation to take care of and maintain the land and to pay taxes and other charges thereon, and will no longer be entitled to the use of and any income from the land; a
- d. Where the property has been partially expropriated, at the request of the Owner(s) this notice shall be deemed to include the remainder of the property or part thereof in terms of Section 2 of the Act, provided that the Municipality is satisfied that such remainder has been rendered useless by the expropriation; and
- e. The costs of the survey required and the survey itself will be borne and undertaken by the Municipality.

YOUR ATTENTION is directed to the provisions of Section 9(1) and 12, (in particular sub-sections 3(a) (ii)) of the Act and in particular to the obligations which you must comply with under the said sections. For your convenience, the sections are reproduced here (please read Municipality where it states 'Minister' or 'State').

9. Duties of owner of property expropriated or which is to be used by State. –

- (1) An owner whose property has been expropriated in terms of this Act, shall, within sixty days from the date of notice in question, deliver or cause to be delivered to the Minister a written statement indicating-
 - (a) if any compensation was in the notice of expropriation offered for such property, whether or not he accepts that compensation and, if he does not accept it, the amount claimed by him as compensation and how much of that amount represents each of the respective amounts contemplated in section 12(1)(a)(i) and (ii) or (b) and full particulars as to how such amounts are made up;
 - (b) if no such compensation was so offered, the amount claimed as compensation by him and how much of that amount represents each of the respective amounts contemplated in section 12(1)(a)(i) and (ii) or
 - (c) and full particulars as to how such amounts are made up;
 - (d) If the property expropriated is land and any amount is claimed in terms of paragraph (a) or (b), full particulars of all improvements thereon which, in the opinion of the owner, affect the value of such land;
 - (e) If the property being expropriated is land-
 - (i) which prior to the date of notice was leased as a whole or in part by unregistered lease, the name and address of the lessee, and accompanied by the lease or a certified copy thereof, if it is in writing, or full particulars of the lease, if it is not in writing;
 - (ii) Which, prior to the date of notice, was sold by the owner, the name and address of the buyer, and accompanied by the contract of purchase and sale or a certified copy thereof;
 - (iii) on which a building has been erected which is subject to a builder's lien by virtue of a written building contract, the name and address of the builder, and accompanied by the building contract or a certified copy thereof;
 - (f) Indicate the address to or at which you desire that further documents in connection with the expropriation may be posted or delivered. Provided that the Minister may at his discretion extend the said period of sixty days, and that, if the owner requests the Minister in writing within thirty days as from the date of notice to extend the said period of sixty days, the Minister shall extend such period by a further sixty days.
- (3) You are hereby requested, within sixty (60) days of the date of this notice, to -

- (a) Deliver or cause to be delivered to the Municipality at the address stated hereunder the title deeds of the property hereby expropriated or, if such document is not in your possession or under your control, the name and address of the person in whose possession or under whose control it is;

12. Basis on which compensation is to be determined.

3(a) (ii) if the owner fails to comply with the provisions of section 9 (1) within the appropriate period referred to in the said section, the amount so payable shall during the period of such failure and for the purpose of the payment of interest be deemed not to be an outstanding amount.

COMMUNICATION with the Municipality and in connection with any matter arising from or related to this Notice of Expropriation must be directed to: HoD: Corporate Legal Services, Office 1-047, 1st Floor, EGSC Building, Corner Cross & Rose Streets, Germiston, 1400; Tel. 011 990772 or emailed to expropriation@ekurhuleni.gov.za.

Dr. Imogen Mashazi, City Manager, City of Ekurhuleni

06 February 2019

Notice 1-2019

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

Case No: 44753/19

In the matter between:

BUSINESS VENTURE INVESTMENTS 900 (PTY) LTD

Applicant

and

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

Respondent

SETTLEMENT AGREEMENT

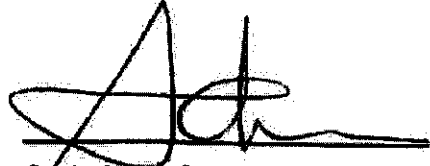
The parties have settle the Applicant's mandamus application on the following terms:

1. The Respondent is to make an offer for the Applicant's property, portion 406 of the Farm Driefontein 85 IR, on or before 17 April 2020, in respect of the Respondent's Notice of Expropriation (no. 1-2019) dated 6 February 2019;
2. The Respondent is to pay R30 000.00 to the Applicant in respect of the costs of this application up to date of signature, such payment to be made within 30 days from date of signature hereof.
3. Either party may make this agreement an order of court, at its cost.



On behalf of the Applicant
(Being duly authorized)

Date: 1 April 2020



On behalf of the Respondent
(Being duly authorized)

Date: 26 March 2020

OFFICE OF THE CITY MANAGER

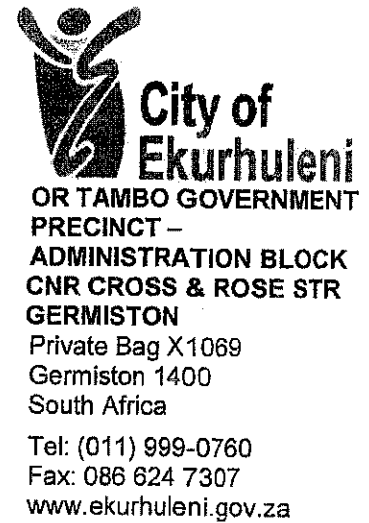
To: MacRobert Incorporated
 MacRobert Building
 Empire & Hillside Road
 PRETORIA
 Email: avniekerk@macrobert.co.za

From: Dr M I Mashazi
 City Manager

Enq: Adv Moeketsi Motsapi
 HOD: Corporate Legal Services
 011 999 0336

E-mail: Moeketsi.Motsapi@ekurhuleni.gov.za

Date: 17 April 2020



AN OFFER: PORTION 406 OF THE FARM DRIEFONTEIN 85 IR

1. INTRODUCTORY REMARKS

1.1. I refer to the settlement agreement between the parties which compelled the City of Ekurhuleni Metropolitan Municipality ("CEMM") to make an offer pertaining to the expropriated property, namely portion 406 of the farm Driefontein 85 IR ("property"). The settlement agreement concluded between the parties is attached hereto and marked as **Annexure ("CEMM1")**. It was agreed that an offer will be made by the CEMM on or before 17 April 2020 and that at an appropriate time, either party is entitled to make the aforementioned settlement agreement an order of court.

1.2. In compliance with the settlement agreement and the expropriation regulatory framework exploited fully hereunder, the CEMM records herein its offer for just and equitable compensation informed by substantive and yet non-exhaustive grounds. In making the offer for just and equitable compensation, the CEMM adopted the following structure:

- 1.2.1. Brief factual background surrounding the Notice of Expropriation;
- 1.2.2. Owner's offer for compensation through a written statement dated 8 April 2019;
- 1.2.3. CEMM's response to the owner's offer;
- 1.2.4. CEMM's substantive grounds for offering a just and equitable compensation; and
- 1.2.5. Conclusion.

2. **BRIEF FACTUAL BACKGROUND SURROUNDING THE NOTICE OF EXPROPRIATION**

- 2.1. On 6 February 2019, the CEMM issued a Notice of Expropriation (No 1 – 2019) expropriating portion 406 of the farm Driefontein 85 IR ("expropriated property") owned by Business Venture Investments No. 900 (Pty) Ltd ("owner"). The property was for all intents and purposes expropriated on 30 April 2019, and thus by operation of law, ownership passed from the owner (Business Venture Investments No. 900 (Pty) Ltd) to the CEMM on the same date. The CEMM has been in lawful possession and ownership of the property since the date of expropriation. The original title deed for the expropriated property was delivered by the owner to the CEMM. A copy of the title deed is attached hereto and marked as **Annexure ("CEMM 2")**.
- 2.2. Of importance, the Notice was issued in terms of the laws of general application, namely Section 9(3) of the Housing Act 107 of 1997 ("Housing Act") read with the relevant provisions of the Expropriation Act 63 of 1975

("Expropriation Act"). The Notice is attached hereto and marked as **Annexure ("CEMM3")**. Although the legality of the Notice is not in dispute, it is important to briefly outline that the Notice was issued in compliance with the provisions of Section 9 of the Housing Act. On 21 November 2018, the CEMM obtained prior approval from the MEC of Housing to expropriate the property. The MEC's requisite approval is attached hereto and marked as **Annexure ("CEMM4")**. Further, the Notice was published within the required six month-period of the date on which the permission of the MEC was granted.

- 2.3. The CEMM's offer for just and equitable compensation and the property owner's offer for compensation is so far apart that the expropriated property could not be purchased through negotiations in the normal course.

3. **THE OWNER'S OFFER THROUGH A WRITTEN STATEMENT DATED 8 APRIL 2019**

- 3.1. Since the offer for compensation was not contained in the Notice, the owner was advised of its rights in terms of Section 9 of the Expropriation Act 63 of 1975 ("Expropriation Act"). Section 9 of the Expropriation Act provides that "an owner whose property has been expropriated in terms of this Act, shall within 60 days from the date of the notice in question deliver a written statement indicating – (*inter alia*) (b) if no such Compensation was offered, the amount claimed as compensation by him and how much of that amount represents each of the respective amounts contemplated in Section 12(1)(a)(i) and (ii) or (b) and full particulars as to how such amounts are made up".

- 3.2. On 8 April 2019 and as advised in the Notice, the owner duly submitted its written statement in terms of Section 9 (1)(b) of the Expropriation Act. The

Section 9(1)(b) written statement is attached herein and marked as **Annexure ("CEMM5")**.

- 3.3. In terms of paragraphs 8 – 12 of the owner's written statement, the owner claims compensation for the amount in the sum of R30 050 000.00 (Thirty Million and Fifty Thousand Rand).

4. THE CEMM'S RESPONSE TO THE OWNER'S OFFER

- 4.1. In response to the owner's offer, the CEMM records herein that it rejects the owner's claim and is not prepared to pay the claimed amount as compensation, as it is of the view that the said amount does not constitute a just and equitable compensation envisaged in Section 25 of the Constitution, 1996.
- 4.2. The provision of Section 10(4) of the Expropriation Act (offers of compensation) provides that "if an owner has in terms of Section 9(1) indicated what amount is claimed by him as compensation and has furnished the relevant information in terms of Section 9 and the Minister is not prepared to pay that amount as compensation, the Minister shall within a reasonable period offer him an amount as compensation and indicate how much of that amount represents each of the respective amounts contemplated in Section 12(1)(a)(i) and (ii) or (b) and furnish full particulars as to how such amounts are made up.
- 4.3. There can be little doubt that the provision of Section 9(3) of the Housing Act, being the expropriating legislation, empowers the City Manager in his/her capacity as the Chief Executive Officer or the Accounting Officer to make the

offer for compensation as contemplated in Section 10 (4) of the Expropriation Act, as the word Minister must be construed as referring to the Chief Executive Officer of the relevant Municipality.

- 4.4. For reasons fully stated hereunder, the CEMM offers Nil compensation being the sum in the amount of R0.00 (Zero Rand). Consequently, the CEMM shall provide hereunder substantive and yet non-exhaustive grounds for making an offer of Nil compensation as a just and equitable compensation.
- 4.5. In terms of Sections 10(4) and 12(1) of the Expropriation Act read with Section 25 of the Constitution 1996, the CEMM offers Nil compensation being the sum in the amount of R0.00 ("Zero Rand").

5. **CEMM'S SUBSTANTIVE GROUNDS FOR OFFERING NIL COMPENSATION AS A JUST AND EQUITABLE COMPENSATION**

- 5.1. As a starting point, it is of immense importance to provide the CEMM's position in respect of matters raised in the owner's offer for compensation dated 8 April 2019. In doing so, the CEMM states as follows:
- 5.1.1. The CEMM notes the information provided by the owner at paragraphs 9 – 12 of the written statement. The CEMM's view in respect of the said paragraphs is that it is fully in agreement with the owner that indeed the property is vacant. As a matter of fact, the property has been vacant for over 30 years;
- 5.1.2. Further, the CEMM is fully in agreement with the owner that there are no improvements on the property. The CEMM's position is that there has not been any improvement on the property for over 30 years;

- 5.1.3. The CEMM disputes the owner's version that there is a security fence surrounding the property. The CEMM's position is that there are remnants of what used to be a security fence scattered around the property;
- 5.1.4. The CEMM is fully in agreement with the owner that the property is currently unoccupied. The CEMM's position is that the property has not been occupied for over 30 years;
- 5.1.5. The CEMM accepts the owner's view that there is no lease agreement entered into with regard to any part of the property. The CEMM's position is that the property, being zoned for farming, has not generated any commercial activity, particularly agriculture – related activity in the past 30 years;
- 5.1.6. The CEMM is fully in agreement with the owner's view that the property has not been sold and no person has any right or claim to take transfer of the property. The CEMM's records show that the property has not changed any ownership since 2005 and that the property has been owned by interrelated entities since 1887 to date. Further particulars with regard to the history of the property shall be provided hereunder when dealing with the history of acquisition and use of the property under the Section 25(3) of the Constitution, 1996; and
- 5.1.7. The CEMM accepts the owner's view that there is no existing builder's lien over the expropriated property.

- 5.2. It shall be evident hereunder as to why the above mentioned factors are a critical – mass in the determination of Nil compensation as a just and equitable compensation contemplated in Section 25 of the Constitution.
- 5.3. With regard to Section 12(1)(a)(i) of the Expropriation Act, the CEMM's decision is that this factor relates to market value and as such it shall be dealt with simultaneously under the Section 25(3) analysis. The provision of Section 12(1)(a)(i) requires the CEMM to offer the amount which the property would have realized if sold on the date of the notice in the open market by a willing Seller to a willing Buyer. CEMM's position is that Section 25 of the Constitution enjoins it to offer just and equitable compensation and not market value or a willing buyer to a willing seller price. It is trite that the Constitution is the supreme law and thus a cardinal point of reference when dealing with Expropriation.
- 5.4. However, even at this stage, it is important to mention that the property has never been sold at a market value. And admittedly by the owner at paragraph 4 of the written statement, the property was not purchased at a true market value during 2005 when it was purchased by the owner from an interrelated entity within a related group of entities. Further, the CEMM shall illustrate herein and in due course, and at an appropriate forum that the property has never been sold at a market value, particularly when it was sold in 1997 to an interrelated entity within a group of related entities. In this regard, the value for the property to be relied upon could be R1 (One Rand) or R1 million or Zero Rand depending on the underlying speculative motives within the interrelated group of entities. As explained, this factor shall be dealt with under the Section 25(3) analysis because ultimately, the compensation which must be paid is not market value or what could be determined as a price between

a willing seller and willing buyer, but it must be just and equitable, taking into account the below detailed Section 25(3) analysis.

- 5.5. Further, Section 10(4) requires CEMM to assess a respective amount in terms of Section 12(1)(b), being an amount to make good any actual financial loss caused by the expropriation. The CEMM's position as articulated hereunder is that the owner suffered no financial loss as a result of the expropriation. Again, the CEMM takes the position that the owner's claimed loss of R50 000 is Nil, taking into account that any amount paid by CEMM to the owner including the claimed actual loss must be just and equitable, and as shown hereunder, the just and equitable amount is Nil.

6. **ANALYSIS OF SECTION 25 OF THE CONSTITUTION IN MAKING JUST AND EQUITABLE COMPENSATION**

- 6.1. It is critical to import the entire provisions of Section 25 of the Constitution. Section 25 of the Constitution provides as follows:

"25 Property

(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property;

(2) Property may be expropriated only in terms of law of general application -

(a) For a public purpose or in the public interest; and

(b) *subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.*

(3) *The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including:*

(a) *the current use of the property;*

(b) *the history of the acquisition and use of the property;*

(c) *the market value of the property;*

(d) *the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and*

(e) *the purpose of the expropriation.*

(4) *For the purposes of this Section:*

(a) *the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and*

(b) *property is not limited to land.*

(5) *The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.*

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36 (1).

(9) Parliament must enact the legislation referred to in subsection (6)."

6.2. *Section 25(1): No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.*

6.2.1. Although expropriation is a form of deprivation, the CEMM's position is that it's Notice must be evaluated in terms of Section 25(2) which deals directly with expropriation and also an appropriate approach that has been recently adopted by our courts in dealing with an analysis of Section 25 when dealing with expropriations. As a matter of law, the CEMM has taken over ownership of the owner's property through expropriating it and permanently taking dominion over it, and it has not caused deprivation in the sense that it imposed restrictions

on the owner's right in terms of imposing zoning laws, nuisance laws, health and safety laws or some form of regulations.

6.2.2. However, to an extent that it may be argued that there is a grey area in that the expropriation in question constitutes a deprivation for purposes of Section 25(1), the CEMM maintains that it is compliant in that such deprivation was conducted in terms of the laws of general application, namely the provisions of the Housing Act and the Expropriation Act. Having regard to the current case law on Section 25 of the Constitution, it is trite that both the Housing Act and the Expropriation Act are indeed laws of general application.

6.2.3. Further, both laws, as read in conjunction with the provisions of Section 25 of the Constitution, do not permit for arbitrary deprivation as they pursue a legitimate public interest and public purpose such as the provision of social housing for the historically marginalized, poor and the most vulnerable in society. Further, the said pieces of legislation permit for some form of compensation for the deprivation albeit such compensation must be just and equitable having regard to the provisions of Section 25 of the Constitution. Even at this stage, it is important to state that the contention on whether the expropriation in question also constitutes a deprivation under Section 25(1) is a complex legal question that will be dealt with at an appropriate forum. The CEMM's position is that its expropriation falls squarely within Section 25(2).

6.3. *Section 25(2): Property may be expropriated only in terms of law of general application for public purpose or in the public interest subject to agreed compensation or compensation approved by a court.*

- 6.3.1. As mentioned above and as informed by the current constitutional jurisprudence, both the Housing Act and the Expropriation Act constitute laws of general application. The expropriation is compliant with Section 25 (2) in that it was done in terms of Section 9 of the Housing Act 107 of 1997 read with the Expropriation Act 63 of 1975.
- 6.3.2. The expropriation is for a public purpose and it is in the public interest in that the CEMM expropriated the property in order to fulfill its statutory obligations to develop, amongst others, social housing projects as provided for in terms of Section 9 of the Housing Act.
- 6.3.3. In a nutshell, it is in the public interest or for a public purpose for the CEMM to have expropriated the property in question in order to fulfill its obligations in terms Section 9 of the Housing Act and more importantly, to give effect to the constitutional rights in the Bill of Rights, particularly the rights in terms of Section 10 (Dignity), Section 24 (Environment), Section 26 (Housing), Section 27 (Water) and any other interrelated right in respect of the poor, marginalized and vulnerable people who are residing in 123 different informal settlements (123 squatter camps), and condensed in 11 900 settlement units (Household) within the jurisdiction of the CEMM. Further, the CEMM has over 43 112 poor people living in the City-owned hostels and has a backlog of housing in excess of 427 802.
- 6.3.4. With regard to compensation, there is no agreement with regard to the amount of compensation payable and it is improbable that an agreement would be reached given the sum of **(Thirty Million Rand)** required by the owner and the sum of Nil compensation offered by

the CEMM. The owner's position is that thirty million is fair market value between willing buyer and willing seller whereas the CEMM's position is that Nil compensation constitutes a just and equitable compensation as contemplated in Section 25 of the Constitution. Consequently, the question of compensation is to be approved by court.

7. **STRIKING AN EQUITABLE BALANCE BETWEEN THE PUBLIC INTEREST AND THOSE OF THE LANDOWNER: SECTION 25(3) FACTORS INCLUDING ALL OTHER RELEVANT CIRCUMSTANCES WHICH INCLUDE FACTORS NOT SPECIFICALLY MENTIONED IN SECTION 25(3) OF THE CONSTITUTION**

7.1. The provision of Section 25 (3) requires that the amount of compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interest of those affected (Landowner), having regard to all relevant circumstances, including Section 25(3)(a – e).

7.2. Prior to dealing with factors in Section 25(3), it is opportune for the CEMM to outline that its understanding of Section 25(3) is as follows:

7.2.1. That Section 25(3) is non – exhaustive or that it is open –ended. And as such, the CEMM is entitled to consider all relevant circumstances including factors which are not listed in Section 25(3) (a – e). In other words, the CEMM is entitled to show all factors and circumstances which are relevant and, which have informed it in arriving at Nil compensation;

7.2.2. That Section 25(3) does not limit itself to arithmetic formulae or quantitative quantum but that the provision requires that consideration and substantive value judgment be given to acute socio-economic conditions or lived experiences of those who are landless and subjected to inhuman living conditions in informal settlement as well as the CEMM's constitutional obligations to ameliorate the conditions of those vulnerable and landless;

7.2.3. That Section 25(3) must be considered equally and cumulatively or with everything else, without granting any specific factor the status of a super or superior factor, overwhelming factor, decisive factor or an entry factor; and

7.2.4. That in order to satisfy the constitutional standard in Section 25(3) in offering Nil as a just and equitable compensation, the CEMM's decision must be informed by striking an equitable balance between the public interest and those of the owner, and that relevance is decisive in what ought to be included or excluded as a consideration.

7.3. Section 25(3)(a): the current use of the property

7.3.1. The current use of the property means exactly that, current use. The property is approximately 33.684 ha and is zoned for agriculture or farming. The property is vacant and has been vacant for over 30 years. The land use of the property has not changed for the last 30 years or more. Since acquiring ownership in 2005, the owner has not used the property. And admittedly, at paragraph 9 of the owner's written statement, the owner has not made any investments or improvements in the property.

7.3.2. In this regard, the CEMM is of the strong view that in light of the property being vacant for over 30 years and there being no investments or improvements on the property, the equitable balance favours the public interest over those of the owner. And thus, in taking a cumulative effect of all the relevant factors including current use, it is just and equitable to pay Nil compensation for the property.

7.4. Section 25(3)(b): the history of acquisition and the use of the property

7.4.1. The record from the deeds office shows that on 26 November 1887, Mr. William Knight ceded the property as part of a large property to the Witwatersrand Gold Mining Company ("Gold Mining Company") with registration no: 1910/000032/06. The Cession documents as provided by the deeds office are attached hereto and marked as **Annexure ("CEMM 6")**.

7.4.2. The deeds records show that in 1997, a related entity to the Gold Mining Company was registered as "THE TRUSTEES FOR THE TIME BEING OF THE WITWATERSRAND GOLD MINING REALISATION TRUST N.O. IT 2417/97 ("Gold Mining Realization Trust"), and immediately thereafter, the property being part of a larger property namely THE REMAINING EXTENT of the farm DRIEFONTEIN 85, measuring in extent of 1282, 8256 ha, was purchased by the Gold Mining Realization Trust from the Gold Mining Company under deed of transfer no:T21249/99. The copy of the deeds office's record is attached hereto and marked as **Annexure ("CEMM7")**.

7.4.3. However, what is staggering about the sale of the property between the aforementioned interrelated entities is that the property was sold for the sum of R51 million ("**Fifty-One Million Rand**") and the price included the sale of 14 other properties listed as follows:

7.4.3.1. Remaining Extent of the farm Driefontein 85, Registration Division I.R., Province of Gauteng;

7.4.3.2. Remaining Extent of Portion 1 of the farm Driefontein 87, Registration Division I.R., Province of Gauteng;

7.4.3.3. Remaining Extent of Portion 4 (a portion of Portion 1) of the farm Driefontein 87, Registration Division I.R., Province of Gauteng;

7.4.3.4. Remaining Extent of Portion 9 (a portion of Portion 1) of the farm Driefontein 87, Registration Division I.R, Province of Gauteng;

7.4.3.5. Remaining Extent of Portion 71 (a portion of Portion 1) of the farm Driefontein 87, Registration Division I.R, Province of Gauteng;

7.4.3.6. Portion 72 (a portion of Portion 4) of the farm Driefontein 87, Registration Division I.R. Province of Gauteng;

7.4.3.7. Remaining Extent of Portion 134 (a portion of Portion 1) of the farm Driefontein 87, Registration Division I.R. , Province of Gauteng;

- 7.4.3.8. Portion 6 of the farm Vogelfontein 84, Registration Division I.R., Province of Gauteng;
- 7.4.3.9. Portion 38 (a portion of Portion 5) of the farm Olifantsvlei 327, Registration Division I.R., Province of Gauteng;
- 7.4.3.10. Erf 3457 Piet Potgietersrus Extension 3 Township, Registration Division K.S., Northern Province;
- 7.4.3.11. Erf 5155 Middelburg Township, Registration Division J.S., Province of Mpumalanga;
- 7.4.3.12. Portion 1 of Erf 100 Groblersdal Township, Registration Division J.S., Province of Mpumalanga;
- 7.4.3.13. Portion 2 of Erf 357 Groblersdal Township, Registration Division J.S., Province of Mpumalanga;
- 7.4.3.14. Portion 3 of Erf 357 Groblersdal Township, Registration Division J.R., Province of Mpumalanga;
- 7.4.3.15. Erf 198 Newtown Township, Registration Division I.R., Province of Gauteng;
- 7.4.3.16. Erf 200 Newtown Township, Registration Division I.R., Province of Gauteng;
- 7.4.3.17. Erf 555 Brenton, in the Local Transitional Council of Brenton, Division of Knysna, Province of the Western Cape; and

7.4.3.18. Erf 88456 Cape Town at St James in the Municipality of Cape Town, Province of the Western Cape;

7.4.4. There is a compelling suspicion that when the property was sold together with the other properties listed herein above, the sale was not between the willing seller and willing buyer but was between interrelated entities and was for speculative purposes and was hopelessly below market value. Should the need arise, the CEMM will bring a property specialist that would assist the Court in showing that even in 1997, the property in question and together with other properties were collectively sold below market value and for speculative purposes and/or restructuring purposes.

7.4.5. It appears that after 1997, there was subdivision of THE REMAINING EXTENT of the farm DRIEFONTEIN 85, measuring in extent of 1282, 8256 ha, as a portion of this property became PORTION 406 of the farm Driefontein 85 measuring 33,6847 ha, and it is this 33,6847 that was transferred by the Gold Mining Realization Trust to the owner ("Business Venture Investments No.900 (Pty) Limited") on 23 September 2005 under title deed no: T4960/2005 attached hereto and marked as **Annexure ("CEMM8")**.

7.4.6. The owner purchased the expropriated property for the sum of R1 000 000 (**One Million Rand**). Admittedly by the owner, this amount was not a true market value due to the transaction being concluded amongst the interrelated entities and solely for restructuring purposes. It is important to note that the owner was only incorporated on 24 April 2004 under registration number 2004/010990/07, a period of a year prior to the property being sold for restructuring purposes.

- 7.4.7. At paragraph 4 of the owner's written statement, it is stated that "The Property was transferred to our client from a related entity within the same group of Companies as part of a restructuring of the group. A Purchase price of R1 Million was allocated to the transfer, although this value did not reflect the true market value of the property at the time".
- 7.4.8. It is CEMM's view that even if it could be disputed that the 1997 transaction was not for speculative purposes, there is no doubt that the 2005 transaction between Gold Mining Realisation Trust and Business Venture Investments (interrelated entities) was for speculative purposes.
- 7.4.9. With regard to the use of the property, although the property was historically zoned for farming or agricultural purposes and it remains zoned as such, it was used for mining operations including being used as a mining dump site. At least from 1997 up to date, the property has been vacant and there has been no development or any substantive investment on the property.
- 7.4.10. Since 2005, the property remained vacant despite change of ownership. In this regard, it is important to reiterate the contents of the owner's written statement that the property has been vacant, no improvements on the property, the property is unoccupied, the property did not derive any commercial income in the form of a lease and that there is no *lien* over the property. It simply follows that the property is being held in abeyance for speculative purposes.

- 7.4.11. Should the need arise, the CEMM intends to provide the services of an expert to assist the Court seized with determining just and equitable compensation by giving a full account of the history of this property in the context of mining operations and its impact within the jurisdiction of CEMM. Further, the expert will show that not much commercial value could be derived out of the property given the context of the property dynamics in the area in question.
- 7.4.12. In 2018, the owner's developers lodged an application for land use for purposes of developing a proposed COMET Extension 8 Township, after a period of over 13 years since taking over the property. At the time of expropriation, the owner's application was not finalized due to an Appeal by sections of the residents opposing the owner's land use application. At the time of expropriation, the owner had requested an extension to submit plans for the development in light of the pending Appeal. The owner's letter is attached hereto and marked as **Annexure ("CEMM 9")**.
- 7.4.13. The CEMM's view is that use of the property is use of the property and nothing less, and that is not future based. And a just and equitable determination of Nil compensation must be freed from unwarranted influences of speculative forces such as potential for future township development which will greatly distort the value of what constitutes just and equitable compensation.
- 7.4.14. With regard to Section 25(3)(b), CEMM's view is that considering the history of acquisitions of the property between interrelated companies at below market value and for speculative purposes and/or restructuring purpose, the protracted period of vacancy of the

property and lack of any improvements or investments and lack of any commercial activity or commercial income being derived from the property, requires that the equitable balance between the public interest and those of the owner be struck in favour of the public interest to an extent that compensation be payable at Nil taking into account the cumulative effect of all factors in Section 25(3).

7.5. Section 25(3)(c): The market value of the property

7.5.1. Prior to dealing with the factor of the market value of the property, the CEMM deems it imperative to reiterate what it understands about the constitutional concept of the market value of the property as envisaged in Section 25:

7.5.1.1. That market value of the property is not an entry point or superior factor or overwhelming factor, decisive factor to any of the factors in Section 25(3) including other relevant factors or circumstances not specifically mentioned in the said provision given the open – endedness of the subsection;

7.5.1.2. That market value of the property is to be considered together with all other factors including those that require value judgment and are not arithmetic in nature or easily determinable in rand value but involves a substantive consideration of social justice and the lived experiences of those who are landless and subjected to inhuman living conditions in informal settlement; and

- 7.5.1.3. That what Section 25 requires is the payment of just and equitable compensation and not market value. And that such a determination inherently requires striking an equitable balance (not arithmetic or formulaic balance) between the public interest and those interests of the landowner via a cumulative analysis of all relevant factors.
- 7.5.2. With regard to the market value of the property, at least since 1997, there is no evidence of the property ever being sold at a market value and if anything, there is an admission by the owner that the property has been sold below the market value for speculative purposes and/or restructuring purposes among interrelated entities.
- 7.5.3. The CEMM is of the view that the market value is really an amount similar to the amount contemplated in Section 12 (1)(a)(i) of the Expropriation Act, being the amount which the property would have realized if sold on the date of notice in the open market by a willing seller to a willing buyer. However, in an event of expropriation such as this case in point, what is payable is not market value or a willing seller willing buyer value but a just and equitable compensation.
- 7.5.4. The CEMM's position is that it is improbable to arrive at a fair market value of the property in question. CEMM notes that there are no legally entrenched rules of valuation for market value but the practice has been to use the comparable sales method as the most acceptable norm or measure of market value. This method entails the identification, analysis and application of recent comparable sales involving similar properties in the general proximity of the subject property.

7.5.5. In determining market value for this property, the obvious challenge that arises is that historically, particularly in the last 20 years, the property has not been sold at a market value but was sold below market value and for speculative purposes among interrelated entities. The property has not been used to generate any commercial activity as it has remained vacant for a period of 20 years. The property is zoned for agricultural use and it has not been used for the said purpose for over 30 years or even more. In this regard, there are serious challenges to compare the property in question with other properties due to the uniqueness of the said property given the aforesaid factors.

7.5.6. The CEMM disputes the owner's value of thirty million as market value. The CEMM is of the view that in assessing any market value, the following factors need to be considered:

7.5.6.1. Historical usage of the property as a mine dump;

7.5.6.2. Protracted vacancy;

7.5.6.3. No improvements on the property;

7.5.6.4. No history of sales on market value in the recent past and that the property is being held and/or transacted for speculative purposes;

7.5.6.5. There has been no real commercial value being derived from the property for the protracted period; and

- 7.5.6.6. The challenges that arise in comparing this property with other properties through a comparable sale model in order to arrive at market value.
- 7.5.7. The CEMM is of the view that the aforementioned factors cannot be ignored in trying to attach some form of market value to the property, and that equitable balance favours the interest of the public in ensuring that the owner cannot derive benefit out of a market value of the property when it never purchased the property at market value in the first place.
- 7.5.8. CEMM's position is that in striking an equitable balance between the public interest and those of the owner, the equitable balance favours the public interest for Nil compensation in instances where market value has never been a factor in the purchase of the property.
- 7.6. Section 25(3)(d): The extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property
- 7.6.1. The CEMM is currently investigating evidence to demonstrate that the Apartheid State or the post 1994 Democratic State made any direct State investment or any subsidies in the acquisition and beneficial capital improvement of the property.
- 7.7. Section 25(3)(e): The purpose of the expropriation

Fulfillment of Constitutional and Legislative obligations

7.7.1. The purpose of the expropriation is to give effect to its obligations in terms of Section 9 of the Housing Act and more importantly to give effect to the constitutional rights in the Bill of Rights, particularly the rights in terms of Section 10 (Dignity), Section 24 (Environment), Section 26 (Housing), Section 27 (Water) and any other interrelated right in respect of the poor, marginalized and vulnerable people who are residing in 123 different informal settlements (123 squatter camps), and condensed in 11 900 settlement units (Household) within the jurisdiction of the CEMM. Further, the CEMM has over 43 112 poor people living in the City- owned hostels and has a backlog of housing in excess of 427 802.

7.7.2. In terms of Section 2 of the Housing Act, the CEMM must amongst others undertake the following:

7.7.2.1. respect, protect, promote and fulfil the rights in the Bill of Rights in Chapter 2 of the Constitution;

7.7.2.2. give priority to the needs of the poor in respect of housing development;

7.7.2.3. ensure that housing development –

7.7.2.3.1. provides a wide choice of housing and tenure options as is reasonably possible;

7.7.2.3.2. is economically, fiscally, socially and financially affordable and sustainable;

- 7.7.2.3.3. encourage and support individuals and communities, including, but not limited to, co-operatives, associations and other bodies which are community based, in their efforts to fulfil their own housing needs by assisting them in accessing land, services and technical assistance in a way that leads to the transfer of skills to, and empowerment of, the community;
- 7.7.2.3.4. promote the establishment, development and maintenance of socially and economically viable communities and of safe and healthy living conditions to ensure the elimination and prevention of slums and slum conditions;
- 7.7.2.3.5. promote the process of racial, social, economic and physical integration in urban and rural areas;
- 7.7.2.3.6. promote the effective functioning of the housing market while levelling the playing fields and taking steps to achieve equitable access for all to that market;
- 7.7.2.3.7. implement measures to prohibit unfair discrimination on the ground of gender and other forms of unfair discrimination by all actors in the housing development process;

- 7.7.2.3.8. ensure higher density in respect of housing development to ensure the economical utilization of land and services;
 - 7.7.2.3.9. ensure the meeting of special housing needs, including, but not limited to, the needs of the disabled; and
 - 7.7.2.3.10. ensure the provision of community and recreational facilities in residential areas.
- 7.7.3. Further and in terms of Section 9(1) of the Housing Act, the CEMM is obligated to undertake the following:
- 7.7.3.1. As part of its integrated development, planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to –
 - 7.7.3.1.1. ensure that the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis;
 - 7.7.3.1.2. ensure that the conditions not conducive to the health and safety of the inhabitants of its area of jurisdiction are prevented or removed;
 - 7.7.3.1.3. ensure that services in respect of water, sanitation, electricity, roads, stormwater

drainage and transport are provided in a manner which is economically efficient;

7.7.3.1.4. set housing delivery goals in respect of its area of jurisdiction;

7.7.3.1.5. identify and designate land for housing development;

7.7.3.1.6. create and maintain a public environment conducive to housing development which is financially and socially viable;

7.7.3.1.7. promote the resolution of conflicts arising in the housing development process; and

7.7.3.1.8. initiate plan, co – ordinate , facilitate, promote and enable appropriate housing development in its area of jurisdiction.

7.7.4. Further, the purpose of the expropriation is to avail the property to enhance amongst others, the CEMM's meaningful participation in the NATIONAL HOUSING PROGRAMME: UPGRADING OF INFORMAL SETTLEMENTS, wherein through the exploitation of the expropriated property, the CEMM aims to transform the lives of people living in informal settlement by ensuring that, on a progressive basis, such people have access to permanent and dignified residential structures with secure tenure, provision of sustainable and adequate sanitary facilities including portable water and energy supply.

- 7.7.5. Further, the CEMM aims to exploit the expropriated property in order to bring to a progressive realization the development of health and securing safe living environments through the sustainable provision of scalable, affordable municipal engineering infrastructure to the residents in order to restore the dignity of the urban poor, vulnerable and marginalized people living in informal settlement.
- 7.7.6. Further, the expropriated property is well located for the use of social residential township (social housing) particularly for higher density due to its proximity to major routes, easy access to public transport. In this regard, expropriation aims to provide social housing for people to reside in proximity to economic opportunities such as work, education and better health care in an era where pandemics such as the Coronavirus may have fatal effects in areas such as informal settlement.

Alleviate the Continuing unsustainable Financial Obligations from the CEMM

- 7.7.7. Further, the CEMM is of the view that the purpose of expropriating this property for housing development must be understood in the context where there is unavailability of suitable land due to the legacy of extensive mining in the area and substantial amount of dolomitic land which is unsuitable for housing development, particularly multi-story development given the lack of suitable land.
- 7.7.8. Furthermore, the purpose of the expropriation is to ensure the provision of permanent social housing settlement in order to alleviate

the CEMM's ongoing financial burden in providing temporary sanitary, water and other services at the 123 informal settlements.

- 7.7.9. Currently, the CEMM's public finances have been strained by the provision of temporary services to informal settlements, and the cost could be significantly reduced when the expropriated property is fully exploited for the development of social housing. The CEMM is unable to provide permanent infrastructure in dolomitic areas where some of the informal settlements are based and also in areas where it does not own the land.
- 7.7.10. In 11 900 settlement units (a unit being a single household), the CEMM is spending R5 712 000, 00 (**Five Million Seven Hundred and Twelve Thousand Rand**) per month at a rate of R48 (**Forty-Eight Rand**) per unit, which amounts to the sum of R68 544, 000.00 (**Sixty-Eight Million Five Hundred and Forty-Four Thousand Rand**) per annum. The aforesaid amount, with the necessary inflation adjustment, has been spent by the CEMM going back many years.
- 7.7.11. In addition, the CEMM is currently incurring a further cost of R35 million per month for the provision of emergency services of water and sanitation in informal settlement, which cost equates to over R420 million (**Four Hundred and Twenty Million Rand**) per annum. The said amount has been spent going back many years.
- 7.7.12. The CEMM finds itself in a desperate situation wherein its expenditure on temporary services to informal settlement is in excess of half a billion rand per annum, simply because there is inadequate

suitable land to construct permanent and sustainable social housing development to accommodate the residents of informal settlement.

7.7.13. In this regard, as long as there is unavailability of land, the CEMM will continue to incur the aforementioned cost of temporary services given that the CEMM is constitutionally obligated to provide alternative accommodation and temporary services even in cases of evictions of people residing in informal settlements. The CEMM's peremptory obligation is informed by the case of *Occupiers of Erven 87 288 Berea v De Wet No and Another 2017(5) 346 (CC)*, which was decided on 8 June 2017.

7.7.14. The CEMM is currently receiving a huge number of requests for alternative accommodation on a monthly basis, and the alternative accommodation is accompanied by the obligation to provide temporary services at a huge cost to the Municipality and ratepayers. In recent times, the CEMM was forced to incur an unbudgeted amount of over twenty million rand in respect of an eviction matter involving eviction of residents of informal settlement, namely "Glen Marikana". The lack of suitable land within the jurisdiction of the CEMM has resulted in a situation wherein those with properties such as the owner in question, exploit the CEMM for each square meter in order to make obscene profits.

7.7.15. As already mentioned, CEMM shall avail an expert to explain the unique circumstances of CEMM with respect to unavailability of land due to the peculiar history of mining, dumping sites and dolomitic nature of land in the area, in order to assist in determining just and equitable compensation for the property in question. The lack of

suitable property within the CEMM is to be considered in the context of the owner being in possession of unused land for a protracted period and having kept such land for speculative purposes and/or restructuring purposes for long period of time and the area deriving no commercial value from the property for the longest of times.

7.7.16. In considering the purpose of expropriating the property in question, the CEMM had regard to the following legal issues confronting it:

7.7.16.1. That there is a clear public interest in housing the landless and the marginalized currently residing in informal settlements;

7.7.16.2. That the expropriated property is being expropriated for a public purpose, namely provisions of social housing to residents of informal settlements;

7.7.16.3. That any monies required by owners of unused properties kept for speculative purposes, ultimately emanate from the public purse which in CEMM's case is already strained by the cost of half a billion rand yearly expenditure on the provision of temporary services in informal settlement. And as such, it would not be just and equitable to compensate owners of unused land held for speculative purposes handsomely, the object of Section 25 is not to reward property speculators;

- 7.7.16.4. That a Bill of rights value judgment is to be made when dealing with the purpose of the expropriation in determining what is a just and equitable compensation;
- 7.7.16.5. That the ratepayers and the CEMM's finances must not be frustrated by unjustifiable compensation claims in respect of unused land held for speculative purposes;
- 7.7.16.6. That the purpose of expropriation must be viewed in the context of the CEMM's social and political history which created an acute socio – economic disaster of unequal spatial development planning and the creation of the urban poor residing in informal settlement due to landlessness;
- 7.7.16.7. It is the purpose of expropriation which ultimately guards against the question of just and equitable compensation being left to market forces, particularly in respect of compensation for unused land held for speculative purposes;
- 7.7.16.8. That giving effect to the purpose of expropriation being the provision of social housing, regard must be had to the gross inequality in relation to health and access to land resources by the residents of informal settlements and their continuing disastrous conditions;
- 7.7.16.9. That the lack of well-situated land to provide urban settlement for the resident of informal settlement within the CEMM remains a stark legacy of Apartheid planning

and discrimination, and the untold damage created by the legacy of mining operations in the area;

7.7.16.10. CEMM's view is that the purpose of expropriation enquiry is not mathematical or formulae based but rather it is value based considering the purpose to be achieved by the expropriation and substantive issues of social justice and the fulfillment of rights in the Bill of rights; and

7.7.16.11. The application of any sort of arithmetic calculation model is not applicable when dealing with the purpose of expropriation because by its nature, the purpose of expropriation is a counter – weight to market value or market forces. The enquiry into the purpose of expropriation is fact based or lived experienced based and not arithmetic based.

7.7.17. Therefore, in considering an equitable balance between the public interest and those of the landowner, the equitable balance favours the public interest considering the purpose of expropriation being to give effect to the fundamental rights in the Bill of rights, Housing Act, National Housing Programme for Informal Settlement, reduction of the CEMM's financial burden of over half a billion per annum in the provision of temporary services to over 11900 settlement units in 123 different informal settlement and addressing over 400 000 backlog in housing.

7.7.18. The equitable balance favours the public interest taking into account the unavailability of suitable land for housing due to legacy of Mining

operations and Apartheid spatial development patterns, and that the expropriated land has not been used for a protracted period of time and it has been held for speculative purposes. It is in the aforesaid context that the CEMM's decision that the purpose of expropriation warrants an offer of Nil compensation.

7.8. THE OTHER RELEVANT FACTORS

7.8.1. The CEMM is of the view that Section 25(3) envisages that beyond the Section 25(3)(a – e) factors, there must be a consideration of all relevant circumstances and that Section 25(3) is open – ended in that any relevant factor is to be considered when determining what constitutes just and equitable compensation. That the additional factors are to be considered in a manner that satisfies the constitutional standard in Section 25(3) by striking an equitable balance between the public interest and those of the landowner. In other words, the CEMM's approach is that relevance determines inclusion or exclusion of any additional factor.

Debt owed to the CEMM by the Owner in respect of rates and taxes

7.8.2. In this regard, the CEMM is of the view that there is a debt that was incurred by the expropriated property prior to the expropriation. As a result, the CEMM has included the sum of R 3 358 101.71 (**Three Million Three Hundred and Fifty-Eight Thousand One Hundred And One Rand Seventy-One Cents**) being the debt owed. The amount is in respect of the following accounts:

7.8.2.1. Account No 220 935 7167 (R3 284 448.65); and

7.8.2.2. Account No 220 975 1971 (R73 653.06).

7.8.3. The aforesaid accounts have not been paid by the owner in respect of the expropriated property for over many years. In this regard, the owner has failed to comply with its legal obligations as a responsible owner of the property.

Potential Expenditure to be incurred by the CEMM in making the land suitable for constructing a social housing development

7.8.4. As already mentioned, CEMM is faced with a unique problem of unsuitability of land due to historical legacies of mining operations and a plethora of mining dump sites in the area. Any land expropriated by the CEMM has to be subjected to extensive geo – technical studies in order to ensure its suitability. Within the jurisdiction of the CEMM, it is really a matter of turning the desperate and worse situation and making the best out of what is there in terms of available land due to the scarcity of suitable land.

7.8.5. The property in question was historically used as a Mining dump site despite it being zoned for agricultural purposes. Prior to expropriating the property, the CEMM conducted desktop feasibility studies which revealed the following:

7.8.5.1. Costs will be incurred by CEMM in respect of Geo – hydrological studies to determine existing levels of soil and groundwater pollution;

- 7.8.5.2. Costs will be incurred by CEMM in respect of toxicity of chemicals contained in slime dams and the potential impact on proposed social development housing;
 - 7.8.5.3. Improvement on land use since the expropriated property falls within a radio – active gold mine residue area;
 - 7.8.5.4. That near surface soils may be either compressible or expansive, which need to be taken into consideration for the foundation structures and road pavement layers;
 - 7.8.5.5. That housing structures must be designed to accommodate the potential seismic loading associated with the Area;
 - 7.8.5.6. That Mine dumps and slimes buffer make the eastern portion of the property unsuitable for development; and
 - 7.8.5.7. That mitigating measures such as proper surface drainage or localized sub – soil drainage measures will need to be implemented to accommodate potential problems associated with shallow seepage or ground water levels.
- 7.8.6. The Feasibility Report is attached hereto and marked as **Annexure “CEMM10”**. At this stage, the CEMM will be commencing with the necessary Geo – technical studies in order to quantify the cost to ensure the suitability of the expropriated property for social housing.
- The relevant report detailing potential expenditure by the CEMM shall

be made available in due course in order to assist in determining a just and equitable compensation in respect of the property. The CEMM's position is that whatever cost revealed by the envisaged report must be included as a relevant factor in making an equitable balance between the public interest and the interests of the owner.

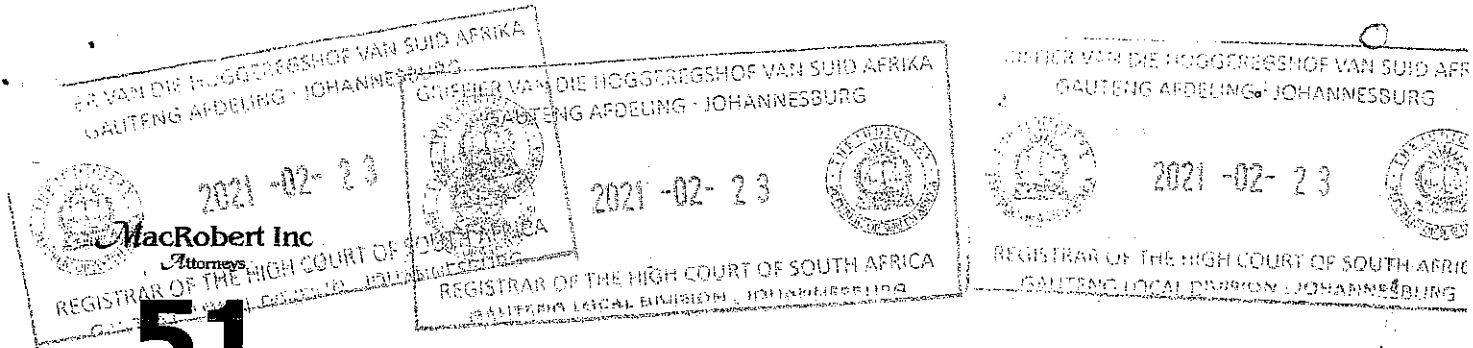
8. In Conclusion, the CEMM believes its offer of Nil compensation is just and equitable and was arrived at after having shown that the equitable balance favours the interest of the public, especially after taking into consideration all of the above mentioned grounds and which grounds are non – exhaustive, and will be supplemented at an appropriate forum.
9. In the event that the owner rejects this offer, the owner is at liberty to refer this matter to Court in accordance with the applicable legislative regime for the Court to finally determine what is just an equitable compensation.

Kind Regards



DR M I MASHAZI
CITY MANAGER

17/04/2020
DATE



51

(012) 425-3400

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

Case No:
21/8866

In the matter between:

BUSINESS VENTURE INVESTMENTS 900 (PTY) LTD Plaintiff
(Registration number 2004/010990/07)

And

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY Defendant



TO: The Sheriff or his deputy:

INFORM:

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY, a metropolitan municipality established in terms of 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 (hereinafter referred to as the "Defendant"),

THAT:

BUSINESS VENTURE INVESTMENTS 900 (PTY) LTD a company with limited liability duly incorporated in terms of the company laws of the Republic of South Africa, with the registration number 2004/010990/07 and its principle place of business and/or registered address at **Ad Outpost Building, 54 Maxwell Drive, Woodmead, Gauteng.** (hereinafter called the "the Plaintiff"), hereby institutes action against the Defendant as set out in the particulars of claim.

INFORM the Defendant further that if the Defendant disputes the claim and wishes to defend the action, the Defendant shall –

Within **20 (TEN)** days of the service upon the Defendant of this summons, file with the registrar of this Court at **Pritchard St &, Kruis St, Johannesburg, 2001**, notice of the Defendant's intention to defend and serve a copy thereof on the Attorneys of the Plaintiff, which notice shall give an address (not being a post office or poste restante) referred to in rule 13(3) for the service upon the Defendant of all notices and documents in the action.

INFORM the Defendant further that if the Defendant fails to file and serve notice as aforesaid, Judgement as claimed may be given against the Defendant without further notice to the Defendant.

AND immediately thereafter serve on the Defendant a copy of this Summons and return the same to the Registrar with whatsoever you have done thereupon.

DATED AT Pretoria ON THIS THE 16th DAY OF FEBRUARY 2021.



MACROBERT INC

Plaintiff's Attorneys

First Floor, Building B,

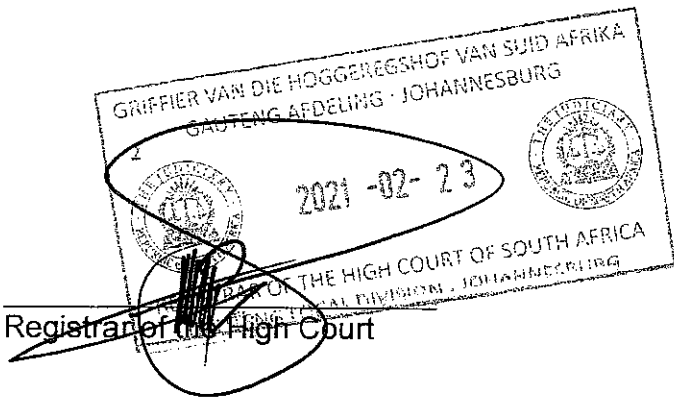
Cnr Empire and Hillside Roads

Parkton, Johannesburg

Tel: 012 425 3586

Email: avnierk@macrobert.co.za

Ref: AVN/00045667



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 foregoing, 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

MACROBERT INCORPORATED

PLAINTIFF'S ATTORNEY

First Floor, Building B,
Cnr Empire and Hillside Roads
Parktown, Johannesburg

Tel: 012 425 3690

Ref: AVN/45667

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 8866/21

In the matter between:

BUSINESS VENTURE INVESTMENTS 900 (PTY) LTD

Plaintiff

and

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

First Defendant

**MINISTER OF AGRICULTURE, LAND REFORM AND
RURAL DEVELOPMENT**

Second Defendant

FIRST DEFENDANT'S ADJUSTED PLEA IN TERMS OF RULE 28(8)

The First Defendant pleads to the Plaintiff's Particulars of Claim as set out hereunder.

1. **AD PARAGRAPHS 1 – 2**

The contents hereof are admitted.

2. **AD PARAGRAPHS 3 – 3.1**

The contents hereof are admitted.

3. **AD SUBPARAGRAPHS 3.2; 3.3; 3.4 and 3.5**

- 3.1 It is admitted that the First Defendant has expropriated the Plaintiff's property, in terms of the notice of expropriation, published in the Provincial Government Gazette of 6 February 2019. It is correct that the expropriation was carried out in terms of Section 9 (3) of the Housing Act 107 of 1997 ("the Housing Act"), read with Section 25 of the Constitution of the Republic of South Africa, and the Expropriation Act 63 of 1975 ("the Expropriation Act").
- 3.2 The First Defendant pleads that on a proper construction and interpretation of Section 25 of the Constitution, the State, of which the First Defendant is, in appropriate circumstances, when expropriating for a public purpose or in the public interest, may not offer compensation, or the compensation offered may be Nil compensation.
- 3.3 What this means in simpler terms is that in appropriate circumstances such as in this matter, the State may expropriate without compensation, because the effect of a Nil compensation is tantamount to no compensation.
- 3.4 It is denied that the Expropriation Act entitles the Plaintiff, as the owner of the expropriated property, to compensation.
- 3.5 The Plaintiff understands compensation to mean a monetary compensation or compensation with monetary value and based on a market value of the property on a willing seller- willing buyer basis.

3.6 To the extent that it is so, or it is found that the Expropriation Act obliges the State to pay compensation of monetary value and/or of a market related value of the expropriated property, then it is pleaded that the Expropriation Act is unconstitutional and invalid, as it is in conflict with Section 25 of the Constitution and should be struck down as unconstitutional and invalid as prayed for in the counter - claim foreshadowed hereunder. To this effect, the Minister of Agriculture, Land Reform and Rural Development is cited herein as the Second Defendant for purposes of the constitutional challenge.

4. **AD PARAGRAPH 4.1**

4.1 It is correct that the Plaintiff and the First Defendant did not agree on the amount of compensation, because the First Defendant's contention is that on the facts and circumstances of this expropriation, the nature of the property, the intended use, what the Plaintiff used it for, and what it intended to use it for, the history of the property, when and how it was acquired by the Plaintiff, and the purchase price paid if it was acquired through purchase, the Plaintiff is entitled to a Nil compensation, or that the First Defendant was lawfully permitted to expropriate the property without compensation.

4.2 It is therefore denied that the Plaintiff was entitled to compensation beyond what was offered by the First Defendant.

5. AD PARAGRAPH 4.2

- 5.1 It is so that Section 14 (1) of the Expropriation Act confers jurisdiction on the court to adjudicate the dispute where the parties do not agree on the compensation.
- 5.2 The First Defendant admits to the jurisdiction of this court. This court is also empowered to determine first, whether or not the Plaintiff is entitled to compensation before it could consider the compensation amount the Plaintiff may be entitled to, if any.
- 5.3 The First Defendant pleads that Section 25(2)(b) of the Constitution cannot be read in isolation with Section 25(3) of the Constitution.
- 5.4 If the court finds that there is no compensation to be paid to the Plaintiff, then it is the end of the matter. If the court finds that there is some compensation to be paid to the Plaintiff, then it would explain the basis for such finding and the calculation of the compensation.
- 5.5 It will also determine whether it should be market related based on willing buyer - willing seller principle or based on some other constitutional rationale.
- 5.6 In the result, should the court conclude that the compensation entitlement arises from the Expropriation Act, then in that event, as

pleaded, the Expropriation Act is inconsistent with Section 25 of the Constitution, and therefore unconstitutional and invalid.

5.7 The court will be called upon, as pleaded in the counter-claim hereunder, to rule that the Expropriation Act is unconstitutional and should be struck down as such by the court.

5.8 However, the First Defendant pleads that a proper reading of Sections 10(4) and 12 (1) of the Expropriation Act read with Section 25 of the Constitution permit, in appropriate circumstances and in appropriate cases, taking into account the factors set out in Section 25(3) of the Constitution, a Nil compensation.

6. AD PARAGRAPH 5

It is denied that the Plaintiff is entitled to compensation of not less than R30 055 000,00. Firstly, this amount is way above the market value of the property, based on a willing seller - willing buyer basis. Secondly, the amount is inflated. Thirdly, the amount is in conflict with Section 25(3) of the Constitution.

7. AD SUBPARAGRAPHS 5.1 – 5.2

7.1 The contents of these subparagraphs are denied. It is denied that a willing buyer would have paid a willing seller in the open market on the date of the notice of expropriation, an amount not less than R30 000 000,00.

7.2 Section 12 of the Expropriation Act does not entitle the Plaintiff with the compensation based on the market value of the property and on a willing buyer - willing seller basis. If it does, then, Section 12 of the Expropriation Act is unconstitutional and invalid.

8. **AD PARAGRAPHS 6 – 6A**

8.1 The contents of these paragraphs are denied. The amount of R30 055 000,00 is not just and equitable in terms of Section 25 of the Constitution. It is inflated and unjustified, unfair to the State and the public purse and ignores the purpose of the expropriation in Section 25(2) of the Constitution, which is for the public purpose and in the public interest. Further, it ignores the factors postulated in Section 25(3) of the Constitution.

8.2 A market value of the property is not an entry point or superior factor or overwhelming factor nor a decisive factor to any of the factors listed in Section 25(3) of the Constitution, including other relevant factors or circumstances not specifically mentioned in the said provision given the open-endedness of its subsection.

8.3 What Section 25 of the Constitution requires is the payment of just and equitable compensation and not a market value.

8.4 In considering the purpose of expropriating the property in question, the First Defendant had regard to the following legal issues confronting it:

8.4.1 That there is a clear public interest in housing the landless and the marginalized currently residing in informal settlements within the area of the First Defendant;

8.4.2 That the expropriated property is being expropriated for a public purpose, namely provisions of social housing to residents of informal settlements within the area of the First Defendant;

8.4.3 That any monies required by owners of unused properties kept for speculative purposes, ultimately emanate from the public purse which in the First Defendant's case is already strained by the cost of half a billion rand yearly expenditure on the provision of temporary services in informal settlement. And as such, it would not be just and equitable to compensate owners of unused land held for speculative purposes handsomely, the object of Section 25 of the Constitution is not to reward property speculators;

8.4.4 That a Bill of Rights value judgment is to be made when dealing with the purpose of the expropriation in determining what is a just and equitable compensation;

- 8.4.5 That the rate payers and the First Defendant's finances must not be frustrated by unjustifiable compensation claims in respect of unused land held for speculative purposes;
- 8.4.6 That the purpose of expropriation must be viewed in the context of the First Defendant's social and political history which created an acute socio-economic disaster of unequal spatial development planning and the creation of the urban poor residing in informal settlement due to landlessness;
- 8.4.7 It is the purpose of expropriation which ultimately guards against the question of just and equitable compensation being left to market forces, particularly in respect of compensation for unused land held for speculative purposes; and
- 8.4.8 That giving effect to the purpose of expropriation being the provision of social housing, regard must be had to the gross inequality in relation to health and access to land resources by the residents of informal settlements and their continuing disastrous conditions.
- 8.5 The First Defendant pleads that the purpose of expropriation enquiry is not mathematical or formulae based but rather it is value based, considering the purpose to be achieved by the expropriation and substantive issues of social justice and the fulfillment of rights in the Bill of Rights.

8.6 Therefore, the First Defendant pleads that the amount of zero compensation is just and equitable under the circumstances.

9. **AD PARAGRAPH 7.1**

The contents of this paragraph are admitted.

10. **AD PARAGRAPH 7.2.**

10.1 It is pleaded that Section 12 of the Expropriation Act is unconstitutional and invalid. As such, no interest can be levied on the strength of it.

10.2 Accordingly, the contents of this paragraph are denied.

WHEREFORE, the Plaintiff's claim should be dismissed with costs inclusive of costs of two Counsel.

THE FIRST DEFENDANT'S COUNTER CLAIM

1. The Plaintiff in reconvention is the First Defendant in convention.
2. The First Defendant in reconvention is the Plaintiff in convention.
3. The parties are referred to as in convention.
4. The Minister of Agriculture, Land Reform and Rural Development is cited in the counter-claim as the Second Defendant and joined as such in terms of Rule 10A of the Uniform Rules of Court because of the constitutional challenge of the Expropriation Act, a legislation which resides under the administration of the Minister. A Rule 10A notice accompanies this counter-claim and was served accordingly on the State Attorney to this effect.
5. A Rule 16A is also issued calling upon interested parties to participate as *amici* if they so wish.
6. The Minister is served care of the State Attorney, 10th Floor, North State Building, 95 Albertina Sisulu Street, Johannesburg and is joined as the Second Defendant in terms of Rule 10A as the National Executive Authority responsible for the administration of the Expropriation Act.

7. The First Defendant (Municipality) repeats paragraphs 3.1 to 3.6; 4.1 and 4.2; 5.1 to 5.7; 7.1 and 7.2; and 8 of the plea hereinabove and prays that they be read as if herein incorporated. A copy of the offer dated 17 April 2020, from the First Defendant to the Plaintiff is annexed hereto and marked as **Annexure "A"**. The contents of annexure "A" must be read as if herein specifically incorporated.
8. Section 12(1)(a)(i), of the Expropriation Act is inconsistent with Section 25(3) of the Constitution and thus unconstitutional.
9. The provision of Section 12(1)(a)(i) requires the First Defendant to offer the amount which the property would have realized if sold on the date of the notice in the open market by a willing Seller to a willing Buyer.
10. To the contrary, Section 25 of the Constitution postulates a just and equitable compensation, taking into account the factors in Section 25(3) and the purpose of expropriation in Section 25(2) of the Constitution.
11. Section 25 of the Constitution does not oblige the State to pay a market value nor a price based on a willing seller - willing buyer principle in the open market. Properly construed, Section 25 of the Constitution permits Nil compensation in appropriate cases and/or expropriation without compensation in other appropriate circumstances taking into account all factors listed in Section 25 (3) which are not exhaustive.

12. The Expropriation Act is at odds with the Constitution and should be struck down as unconstitutional. It serves no legitimate purpose. Any law that is inconsistent with the Constitution as contemplated by Section 2 of the Constitution is invalid.
13. The obligations imposed by the Constitution must be fulfilled. The Expropriation Act is also in conflict with Sections 1(c); 3(1)(2); 7; 8; 9; 10; 12 and 24 of the Constitution.
14. Further, the Expropriation Act infringes on the rights of the vulnerable groups of society, the poor and the landless, the historically disadvantaged population of the society who, due to past discriminatory laws, are landless, homeless and largely unemployed and who, by and large, are dependent on the State to provide housing for purposes of Section 26 of the Constitution, a healthy environment to the needy and the vulnerable by providing accommodation that enable the State to provide water and sanitation in an environment where they enjoy security of tenure, housing which gives them dignity and services which the State is obliged to provide on an equal and equitable basis irrespective of their status in society, an environment which offers them freedom and security and for their children to play safely and receive education.
15. The State should provide and fulfill these rights within its available means and resources. Expropriation of property on a market related value and on willing seller-willing buyer is beyond the means of the State, thus making the fulfilment of the rights in Section 26 of the Constitution an illusion.

16. Accordingly, the Expropriation Act is unconstitutional and invalid.
17. The offer made by the First Defendant to the Plaintiff is just and equitable in terms of Section 25 of the Constitution.

WHEREFORE, the First Defendant prays for relief in the following terms:

- a) It is declared that the Expropriation Act 63 of 1975 is unconstitutional and invalid;
- b) Alternatively, it is declared that Section 12 of the Expropriation Act 63 of 1975 is unconstitutional and invalid.
- c) Parliament is afforded 24 months to remedy the defect in the impugned legislation;
- d) In terms of Section 172(1)(b) of the Constitution, the court fashion a just and equitable remedy including the reading in and or reading down of words in the legislation during the period of 24 months when Parliament is required to remedy the defect aforesaid;
- e) It is declared that the First Defendant's offer as contained in the offer dated 17 April 2020, is just and equitable in terms of Section 25 of the Constitution.
- f) Costs including costs of two Counsel in respect of opposition of the relief herein.

DATED AT SANDTON ON THIS THE 14th DAY OF JULY 2021.



JOHN MASHIANE

First Defendant's Attorney with the right of appearance in the High Court in terms of Section 4(2) of Act 62 of 1995.



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Ref: Mr Maphakela/Mr. Jwankie/mz/CIT1-0014

Care of: THE DOCUMENT EXCHANGE

5th Floor, Carlton Centre

Cnr Von Weilligh & Commissioner Streets

JOHANNESBURG

**TO:
THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
JOHANNESBURG**

**AND TO:
MACROBERT INCORPORATED**
Plaintiff's Attorneys
First Floor, Building B,
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Tel: 012 425 3690
Fax: 012 425 3600
Email: avnierkerk@macrobert.co.za
Ref: AVN/45667

Service By Email

AND TO:
THE STATE ATTORNEY
Second Defendant's Representative
10th Floor, North State Building
95 Albertina Sisulu Street
Cnr. Kruis Street
Johannesburg

Received a copy hereof on this
the day of July 2021

For: Second Defendant's Representative

"X"

[Signature] 26-1
DNH MOSTERT
27 MAY 2025

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**BEFORE THE HONOURABLE JUSTICE MOSTERT AJ
ON THIS 27TH DAY OF MAY 2025
MATTER NO.: 26**

CASE NO.: 8866/2021

In the matter between:

BUSINESS VENTURE INVESTMENTS 900 (PTY) LTD

APPLICANT

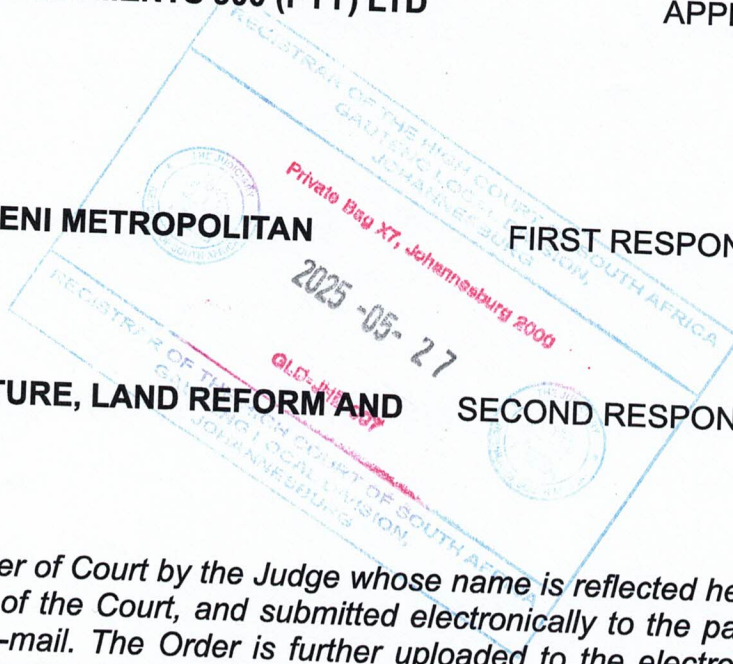
and

**THE CITY OF EKURHULENI METROPOLITAN
MUNICIPALITY**

FIRST RESPONDENT

**MINISTER OF AGRICULTURE, LAND REFORM AND
RURAL DEVELOPMENT**

SECOND RESPONDENT



This order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court, and submitted electronically to the parties/their legal representatives by e-mail. The Order is further uploaded to the electronic file of this matter on CaseLines by the Judge's secretary. The date of this Order is deemed to be 27 MAY 2025.

~~DRAFT~~ ORDER

[Signature]

HAVING read the papers filed of record and having heard counsel for the applicant, an order is granted in the following terms:

