MINUTES OF SPECIAL GENERAL MEETING OF MEMBERS OF LA BELLA VITA PROPERTY OWNERS' ASSOCIATION HELD AT LA BELLA VITA WINE ESTATE SECURITY ENTRANCE, SIMONSVLEI ROAD, PAARL ON 17TH MARCH 2023 AT 13H00

DATE	FRIDAY, 17 MARCH 2023	
MEETING LOCATION	LA BELLA VITA WINE ESTATE SECURITY ENTRANCE, SIMONSVLEI ROAD, PAARL	
CHAIRPERSON	GRAHAM HINDLE	GH
HOME OWNERS PRESENT IN PERSON:	ZANIA KELLERMAN	ZK
	JADRICK COETZEE	JC
	LISE LIEBENBERG	LL
	LAURENT MAUGER	LM
	INGRID HINDLE	IH
	PIETER SCHINCARIOL	PS
	MARK SONIK	MS
HOME OWNERS PRESENT VIA PROXY:	DIETLOF MARE	PROXY TO ZK
	HENNIETTE MARE	PROXY TO ZK
	SAMUEL SEEFF	PROXY TO GH
	EDWARD BELSTEAD	PROXY TO GH
	THEO DU TOIT	PROXY TO RM
	ANDRE VAN DER WESTHUIZEN	PROXY TO RM
	KEVIN DOUGLAS	PROXY TO GH
	KOBUS PIENAAR	PROXY TO GH
	SWBC	PROXY TO IH
	SANTE WINELANDS SPA	PROXY TO IH
HOME OWNERS PRESENT VIA ZOOM:	WILLEM HANEKOM	WH
	MARK SONIC	MS
PRESENT VIA INVITATION:	RIAAN MEINTJIES	RM
	ANTONY ARVAN	AA

WELCOME

The Chairperson welcomed everyone to the La Bella Vita Property Owners' Association SGM of 17th of March 2023. The Notice of the meeting was sent out on the 24th February 2023 giving the required 21 days' notice of the SGM.

ATTENDANCE

Attendance register was circulated and it was noted that there was 94.4% attendance, inclusive of the proxies. The only member not represented was Elsabe van Niekerk.

APOLOGIES

Elsabe van Niekerk

QUORUM

The requirements of a quorum have been met and the meeting is duly constituted.

MEETING DISCUSSIONS

GH acted as Chairman for the SGM with no objections from members.

Various discussions were had by the LBV POA members and legal council representatives (AA and RM) regarding the application made to join the Association as the thirty-fourth defendant in the action instituted by Andre van Der Westhuizen and others, against Akarana and the members thereof in the Western Cape High Court, under case number 11867/2020, in relation to the challenge to the validity of the various Akarana Home Owner's Association Constitutions.
In terms of the abovementioned application, the applicants were seeking an order to join LBV POA as the thirty-fourth defendant in the matter.

After much debate on the resolutions to be voted upon, it was agreed that resolutions would be voted upon as follows :
Resolution 1 – voting as a Special Resolution
Resolution 2 – voting as an Ordinary Resolution
Resolution 3 – voting as a Special Resolution
Resolution 4 – voting as a Ordinary Resolution

Voting took place based on the above.
Voting took place by a show of hands as no Ballot Forms has been prepared.

Results of voting as follows :

Special Resolution 1 :
Proposed and seconded that all defects, if any, in the giving of notice and/or the convening the SGM of the Association be and hereby ratified
Votes For – 7
Votes Against – 1
Abstained – 0
Special Resolution 1 - PASSED

Ordinary Resolution 1 (formally Special Resolution 2)
Proposed and seconded that the Association shall not oppose the application made to join the Association as the thirty-fourth defendant in the action instituted by Andre Van Der Westhuizen and others against Akarana and the members thereof in the Western Cape High Court, under case number 11867/2020, in relation to the challenge to the validity of the various Akarana Home Owner's Association Constitutions
Votes For – 8
Votes Against – 0
Votes Abstained – 0
Ordinary Resolution 1 – PASSED

Special Resolution 2 (formally Special Resolution 3)
Proposed and seconded that in the event of the Association being joined to the action, instituted by Andre Van Der Westhuizen and others against Akarana and the members thereof in the Western Cape High Court, under case number 11867/2020, in relation to the challenge to the validity of the various Akarana Home Owner's Association Constitutions, the Association shall oppose the relief, which is being claimed in this regard.
Votes For – 2
Votes Against – 5
Votes Abstained – 1
Special Resolution 2 – FAILED

Ordinary Resolution 2 (formally Special Resolution 4)
Proposed and seconded that in the event of the Association being joined to the action, instituted by Andre Van Der Westhuizen and others against Akarana and the members thereof in the Western Cape High Court, under case number 11867/2020, in relation to the challenge to the validity of the various Akarana Home Owner's Association Constitutions and resolving not to oppose the relief, which is being claimed, that the Association shall abide by the court's decision in such action.
Votes For – 4
Votes Against – 0
Votes Abstained – 3
Ordinary Resolution 2 – PASSED

GH thanked everyone for their attendance and closed the meeting.

MEETING ADJOURNS

TRUSTEES OF THE LA BELLA VITA PROPERTY OWNERS' ASSOCIATION

Our Reference:	HR931
Reply to Email:	samantha@themis.co.za
Your Reference:	LBV SGM

By email: ghindle@nuworld.co.za

Date: 2 February 2023

Dear Sirs

SPECIAL GENERAL MEETING OF MEMBERS OF LA BELLA VITA PROPERTY OWNERS' ASSOCIATION – 27 JANAURY 2023

1. The special general meeting of the La Bella Vita Property Owners' Association ("**LBV POA**") held on Friday, 27 January 2023 ("**the SGM**") and Mr Graham Hindle's email concerning the outcome of the SGM sent to the members of the LBV POA on 31 January 2023 ("**the email**") refer.

2. As you are aware, we act on the instructions of Mr André van der Westhuizen, the registered owner of Portion 57 of Farm 791, Simonsvlei, Paarl, a member of the LBV POA.

3. In the email, Mr Hindle informed the members of the LBV POA that he had voted contrary to the instructions of the members who had given him proxies for the SGM with regard to special resolution number 2 and ordinary resolution numbers 1 and 2. As a consequence, he has been advised that the votes taken in regard to these resolutions were invalid. As no voting took place in respect of ordinary resolution number 2, Mr Hindle's statement in regard to this resolution is clearly incorrect.

4. We surmise that the person/s from whom Mr Hindle appears to have taken advice was/were not at the SGM. This may explain why the advice given to him does not address what took place at the SGM and is, we respectfully submit, incorrect.

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5. We need hardly remind the trustees of their fiduciary duties to act in the best interests of the LBV POA and its members as a body and to avoid any potential conflicts of interest.

Voting at the SGM

6. We begin by recording what took place at the SGM.

7. The SGM was chaired by Mr Hindle.

8. It was also attended in person by the following:

   8.1. Lise Liebenburg;
   8.2. Jadrick Coetzee;
   8.3. Elsabe van Niekerk;
   8.4. Mark Sonik;
   8.5. The writer and Samantha Frost (Hayes Incorporated);
   8.6. Zania Kellerman;
   8.7. Kobus Pienaar;
   8.8. Peter Schincariol;
   8.9. Mike Morey (Pam Golding Property Management Services (Pty) Ltd);
   8.10. Willem Hanekom (who attended by video conference).

9. Those entitled to vote and who were present at the meeting were Messrs Hindle, Coetzee, Sonik, Meintjes (as proxy holder), Pienaar, Schincariol and Hanekom and Mesdames van Niekerk and Kellerman (9 persons in total).

10. At the commencement of the SGM, shortly after 15h05, Mr Hindle confirmed that the meeting was quorate and validly constituted. Indeed, the entire membership of the POA was either present in person or represented by proxy. As you know, the writer was present and participated in the SGM as the holder of two proxies, one of which had been given to the writer by our client, who was abroad on the date of the meeting.

11. Before Mr Hindle opened voting on the proposed resolutions, he invited discussion amongst those present at the meeting regarding the proposed resolutions. After extensive and constructive discussions had taken place, at approximately 15h52, Mr Hindle adjourned the SGM for approximately 10 minutes in order to allow him to obtain further instructions from persons who had given him their proxies. Although the writer indicated that he was willing

to agree to a postponement of the meeting, Mr Hindle responded by stating that it would not be necessary to postpone the meeting and that a brief adjournment would suffice.

12. At approximately 16h02, Mr Hindle reconvened the SGM and voting on the proposed resolutions commenced. In each instance, voting was conducted by a show of hands.

13. Mr Willem Hanekom was not physically present at the meeting, but participated by video conference. We could hear his voice which emanated from an external speaker connected to Mr Hindle's laptop, but no-one other than Mr Hindle could see Mr Hanekom as the screen of Mr Hindle's laptop was facing towards him. Each time Mr Hanekom cast his vote, we could hear that he had voted in favour of each of the resolutions in respect of which voting was conducted as he also confirmed his vote verbally in each instance.

14. There appears to be no dispute that special resolution number 1 was passed unanimously.

15. We then voted on special resolution number 2. Once again, everyone who was present at the SGM and entitled to vote raised their hands in favour of the resolution and we could hear that Mr Hanekom also voted in favour thereof as he also confirmed his vote verbally.

16. After the voting on special resolution number 2 had been completed, Mr Hindle moved to open the voting on special resolution number 3. At that point Mr Hanekom interjected and requested that Mr Hindle announce the outcome of the votes taken on special resolutions 1 and 2. Mr Hindle then counted the votes which had been cast. He was assisted in the counting of the votes by Mr Michael Morey of Pam Golding Property Management Services (Pty) Ltd, who was sitting on his right, and Ms Lise Liebenburg, who was sitting on his left.

17. After counting the votes, Mr Hindle declared that special resolution numbers 1 and 2 had been passed unanimously. He erroneously declared that 18 votes had been cast in favour of each of these resolutions, but no objections were raised in respect of this declaration. As a fact, each of the resolutions had been passed unanimously, however.

18. Mr Hindle then opened the voting on special resolution number 3. The following persons raised their hands in favour of adopting the resolution:

    18.1. Mr Sonik;
    18.2. Ms Kellerman;
    18.3. Mr Meintjes;
    18.4. Mr Schincariol;

18.5. Mr Pienaar; and

18.6. Mr Hanekom.

19. After counting the hands that had been raised in favour of the resolution, including that of Mr Hanekom, Mr Hindle declared that 10 votes had been exercised in favour of the resolution and 8 votes had been exercised against it. He declared that special resolution number 3 had accordingly not achieved the requisite 75% support and was not passed by the meeting. Although his count of the votes was erroneous, no objections were raised against his declaration of the outcome of the voting in respect of the resolution.

20. Mr Hindle then declared that special resolution number 4 had fallen away in view of the fact that special resolution number 3 had not been passed.

21. We then voted on ordinary resolution number 1. All those present at the meeting, other than Mr Sonik (who abstained from voting on this resolution) raised their hands in favour of this resolution and Mr Hindle declared that the resolution had been passed.

22. No voting was conducted with regard to ordinary resolution number 2 in view of the fact that Mr Hindle had declared that special resolution number 3 had not been passed and that special resolution number 4 had fallen away.

23. After the completion of the voting process, it was agreed that Mr Sonik would consult attorneys regarding the transfer of the common property portions to the LBV POA and would then liaise with the trustees of the POA to make the necessary arrangements to effect the transfer. Mr Sonik and Mr Kobus Pienaar expressed the view that our client should be refunded for the costs he had incurred in arranging to have Fundeals Sixteen (Pty) Ltd (in liquidation) reregistered by CIPC. It was agreed that this would be given further consideration.

The Legal Position

24. As you are undoubtedly aware, the constitution of the LBV POA is a contract which imposes obligations and confers rights on the POA and its members.

25. The material provisions of the LBV POA constitution, relevant to this correspondence, are as follows:

25.1. A special resolution is defined to mean a resolution passed at a special general meeting of which not less than 21 clear days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for its (*sic*), and passed, <u>on a show of hands</u>, by not less than three-fourths of the total number of members <u>present at the meeting</u> who, at a minimum, for (*sic*) a quorum for a general meeting (clause 2.1);

25.2. The necessary quorum for the holding of any general meeting shall be such of the Members entitled to vote, as together for the time being, represent one half of the total votes of all Members of LBV POA entitled to vote, save that not less than 3 members must be personally present (clause 18.1);

25.3. At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Unit Erf registered in his name provided that a Unit erf (*sic*) is registered in more than one person's name, then they shall jointly have one vote (clause 22.1);

25.4. At any general meeting a resolution put to the vote of the meeting <u>shall be decided on a show of hands</u>, unless either prior to or on the declaration by the Chairman of the results of the show of hands, a poll is demanded by any person entitled to vote at such meeting (clause 22.3);

25.5. Notwithstanding the provisions of clause 22.3, voting on the election of the Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members <u>present in person or by proxy</u>, and entitled to vote (clause 22.4);

25.6. Unless any member present in person or by proxy at a general meeting shall, before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety of validity (*sic*) for the procedure at such meeting, such declaration by the Chairman <u>shall be deemed to be a true and correct statement of the voting</u>, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted and an entry in the minutes to the effect that any motion has been carried or lost, with or without record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting (clause 22.7).

26. The constitution of the LBV POA was adopted in 2001 at a time when the previous Companies Act 61 of 1973 ("**the Act**") was still in force. Although the POA is not a company, the voting provisions of the POA's constitution to which we have referred above are similar to the voting provisions of the articles of association of companies which had been constituted under the Act and the provisions of the Act itself concerning the voting of members in general meeting. When interpreting the provisions of the POA's constitution, guidance can therefore be obtained from the interpretation by our courts of similar provisions in the articles of association of companies which had been constituted under the Act and the provisions of the Act concerning the voting of members in general meeting.

27. In the matter of ***Vrede Gold Exploration Co Ltd v Lubner and Others*** 1973 (2) SA 331 (C), the Court dealt with a dispute concerning the validity of a vote which had been held by a show of hands for the adjournment of a company's annual general meeting. The annual general meeting was attended by four people in person, each of whom also held numerous proxies given to them by shareholders of the company. The company was a public company with a share capital of two million shares. In the case of a poll, each shareholder present and entitled to vote at a general meeting of the company would therefore be entitled to vote in accordance with the number of shares held by the shareholder and any proxies given to the shareholder.

28. The chairman of the annual general meeting proposed a vote for the adjournment of the meeting at the outset of the meeting. The chair and one other person voted in favour of the adjournment and the other two persons voted against the adjournment by a show of hands. The chair then used his casting vote to pass the motion for the adjournment of the meeting. The two persons who voted against the adjournment contended that the motion for the adjournment had been defeated as they held more votes, through the proxies which had been given to them, than the votes held by the chairman and the other person who had voted in favour of the adjournment.

29. The company's articles provided that a vote on the proposed adjournment of a general meeting was to be conducted by a show of hands and that it was not competent to demand a poll on the question of an adjournment. Article 82 of the company's articles of association was helpful in that it expressly provided that if voting was conducted by a show of hands,

every person present and entitled to vote at the meeting would have one vote only, but on a poll would have one vote for every share held or represented by him.

30. The Court nevertheless went on to analyse the general legal position regarding voting conducted at general meetings by a show of hands. The Court referred with approval to several prominent authors who had written on the issue, each of whom held the view that the general position is that where voting is conducted by a show of hands, each person so voting was only entitled to a single vote, irrespective of the number of shares or proxies held by that person at the time of the vote. The authors were in agreement that if voting was to be conducted on a controversial resolution, it was preferable for such voting to be conducted by means of a poll.

31. Clause 22.1 of the POA's constitution provides that each member of the POA shall have one vote for each Unit Erf registered in his name at every general meeting, provided that joint owners will have a single joint vote.

32. Clause 22.3 of the POA's constitution draws a clear distinction between voting conducted by a show of hands and voting conducted by means of a poll. There would be no cause for such distinction to be drawn if the manner in which votes are to be counted is the same in both instances. This is emphasised by the fact that a poll may be demanded by any person entitled to vote at the meeting prior to or on the declaration by the Chairman of the results of the voting by show of hands. If votes were to be counted in the same manner, whether voting by show of hands or by poll, no purpose would be served by calling for a vote by poll if a member was dissatisfied with the outcome of a vote by show of hands.

33. Clause 22.4 is also instructive. It provides that voting on the election of the Chairman (if necessary) or on any question of adjournment shall be decided only on a show of hands by a majority of the <u>members present in person or by proxy</u> and entitled to vote. This is a clear indication that where voting is conducted by a show of hands, each person who is present and entitled to vote and who raises their hand, may only exercise a single vote when doing so.

34. Whether Mr Hindle voted in accordance with the instructions given to him by the members who had given their proxies to him is entirely irrelevant in view of the fact that all voting at the SGM was conducted by a show of hands. Each person present at the meeting and entitled to vote at the meeting raised their hands in favour of special resolutions 1 and 2 and ordinary resolution number 1 (save for Mr Sonik, who abstained from voting on ordinary

resolution number 1). Those resolutions were accordingly passed unanimously, as declared by Mr Hindle at the meeting.

35. In accordance with the provisions of clause 22.7 of the LBV POA constitution, the declarations made by Mr Hindle at the SGM as to the results of the tabled resolutions are deemed to be a true and correct statement of the voting conducted at the meeting until the contrary has been proven.

36. Attached to the email was a notice dated 31 January 2023, purporting to convene a further special general meeting of members of the LBV POA, to be held at 15h00 on Friday, 17 February 2023, to consider and vote upon the same resolutions which were voted on at the SGM ("**the Notice**").

37. It is incompetent to vote again on resolutions which have already been adopted by the members of the POA. If the LBV POA wishes to modify or revoke a previously passed special resolution, it must do so by means of passing a new special resolution that is properly proposed and passed in accordance with the provisions of its constitution.

38. The Notice is materially defective for another reason: It fails to provide 21 clear days' notice of the proposed meeting at which special resolutions have been tabled, as prescribed by clause 2.1 of the LBV POA constitution.

39. In the circumstances, our client hereby demands that the trustees withdraw the Notice and furnish the members of the LBV POA with their irrevocable written undertaking to give effect to the resolutions that were unanimously passed at the SGM by no later than **Wednesday, 8 February 2023**.

40. If the trustees fail to adhere to our client's aforesaid demand, our client will have no alternative but to declare a dispute with the trustees and to refer the dispute to arbitration in accordance with the provisions of clause 29 of the constitution of the POA. Should this

prove necessary, our client will seek a punitive award for costs against each of the trustees, jointly and severally.

Yours sincerely

RIAAN MEINTJES
HAYES INCORPORATED

Graham Hindle

From: Graham Hindle
Sent: 31 January 2023 01:55 PM
To: dzhcmare@gmail.com; fransjohan@fjd.co.za; dzhcmare@gmail.com; zania.kellerman@gmail.com; Andre van der Westhuizen; mmckinnon@seeffadmin.co.za; cwitbooi@seeffadmin.co.za; Samuel Seeff; Kevin Douglas; Guy Doug; Belstead, Edward; Elsabe; Breda van Niekerk; breda@vanfam.co.za; Kobus Pienaar; theoinsa@gmail.com; Laurent Mauger; Laurent Mauger; peter@aldera.co.za; Mark Sonik; willem@rukou.co.za; lise; Lise Liebenburg; Jadrick Coetzee; Ingrid Hindle
Subject: RESULTS OF SPECIAL GENERAL MEETING OF MEMBERS OF LBV POA - 27TH JANUARY 2023

Dear Members

Further to the SGM held last Friday, 27 January 2023, on the request of Andre van der Westhuizen, assisted by Hayes Inc., I have been advised that the vote taken at the meeting in regard to special resolution 2, as well as ordinary resolutions 1 and 2, as a consequence, is invalid.

To this end, me as the holder of various proxies had been instructed, in writing, to vote in accordance with members' wishes as indicated on the proxy form provided as part of the notice, and not as the proxy holder deemed fit.

As a consequence of the above, the votes exercised by the proxy holder, contrary to the instructions given, are invalid, and the outcome of the vote is that the aforementioned resolutions fail.

A new SGM, on urgent notice, will be called to attend to the above resolutions – a new SGM Notice will be sent out shortly.

Should you have any questions, or wish to inspect the records of the SGM held, you are welcome to contact me.

Yours faithfully
Graham Hindle