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 27TH JANAURY 2023 AT 15H00

DATE	FRIDAY, 27 JANUARY 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
	ELSABE VAN NIEKERK	EV
	KOBUS PIENAAR	KP
	PETER SCHINCARIOL	PS
	MARK SONIK	MS
HOME OWNERS PRESENT VIA PROXY:	DIETLOF MARE	PROXY TO ZK
	HENNIETTE MARE	PROXY TO ZK
	ANDRE VAN DER WESTHUIZEN (AV)	PROXY TO RIAAN MEINTJIES (RM)
	SAMUEL SEEFF	PROXY TO GH
	DOUGLAS FAMILY TRUST (44/791)	PROXY TO GH
	DOUGLAS FAMILY TRUST (45/791)	PROXY TO GH
	EDWARD BELSTEAD	PROXY TO GH
	THEO DU TOIT	PROXY TO RM
	LAURENT MAUGER	PROXY TO PS
	SWBC	PROXY TO GH
	SANTE WINELANDS SPA	PROXY TO GH
HOME OWNERS PRESENT VIA ZOOM:	WILLEM HANEKOM	WH
PRESENT VIA INVITATION:	SAMANTHA FROST	SF
	MIKE MOREY (PAM GOLDING)	MM

WELCOME

The Chairperson welcomed everyone to the La Bella Vita Property Owners' Association SGM of 27th of January 2023. The Notice of the meeting was sent out on the 21st of December 2022 giving the required 30 days' notice of the SGM.

ATTENDANCE

Attendance register was circulated and it was noted that there was 100% attendance, inclusive of the proxies.

APOLOGIES

None.

QUORUM

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

MEETING DISCUSSIONS

GH opened the floor to anybody who would like to discuss or address the meeting prior to the voting.

RM requested to address the meeting:
RM gave some background with regards to some of AV's issues including incorrect property boundaries, positioning of roads and the approval of as built building plans.
The 3 properties which are common properties are still registered in Fundeals, which is in liquidation and which has also been deregistered resulting in the ownership of the common property basically sitting with the State.
It is RM and AV's opinion that the transfer of the common property had to be dealt with as part of sorting out the issues mentioned above as the common property boundaries would also have to be corrected as part of the whole exercise.

RM confirmed that Fundeals has been reregistered.

With regards to the property being transferred into the LBV HOA, RM noted the following:

- LBV is supposed to be an HOA of its own and was supposed to operate as an autonomous HOA. This is supported by access requirements, water requirements and sewage requirements which should all be controlled by LBV.
- The current discussion has nothing to do with the pending action that's due to be heard in March
- If the members don't vote to transfer the property to the LBV HOA the "proxy is going to stay with the liquidators"
- It was in everyone's interest and especially the trustees of the LBV HOA to bear in mind that they have a fiduciary duty towards the LBV HOA to make sure that its affairs are conducted in its best interest. He stated that the common property has to go the LBV HOA.
- RM also noted that if members came to a different agreement at a later stage this could always be changed.

LL brought up the fact that the voting in LBV HOA is each of the Villas have a vote and the SWBC has one vote. The implications of this was discussed.
GH stated that the new approved 2020/2021 Akarana Master Homeowners Constitution (AMHOA) specifically states that the common property must be transferred into an SPV controlled by both the SWBC and the LBV Property Owners Association. He also stated that they were fully supportive of what was trying to be done, but had a problem with the proposed vehicle that the property was being transferred to.

RM response was:

- Firstly – it can't be done as matters stand because its against the conditions of approval
- Secondly if you create an SPV, that SPV doesn't bind anyone.
- He also stated that once the property was in LBV it would at least be out of the liquidators hands and they could walk away from it. One could then either amend the constitution of LBV or you can transfer it out of the LBV HOA if everyone agrees.
- He also noted that the difficulty with the company structure is that shareholders aren't bound by the MOI, they stand outside the company. They owe the company no fiduciary duty.

- KP questioned whether Fundeals could be taken over as a subsidiary of the LBV HOA. This was discussed and according to RM this would be exceptionally difficult to achieve as the company had already been liquidated and deregistered.
- The issue of potentially needing to change the relevant clauses in the Akarana 2020/2021 constitution was raised by LL and GH.
- RM responded by saying that one would not need to even do this, "you can leave it there and it can be regarded as pro non scripto. Its just verbiage that has no legal impact"

MM questioned as to whether it was possible to do a back to back transfer of the property from Fundeals to LBV to the NPV.
RM responded by saying that this could be done but would be complicated and that only the people who agree to the SPV would be bound by the SPV, and that this did not make sense.
A discussion was held around the potential shareholding of the NPV and the obligations of members and shareholders.

LL raised the issue of members rights, with particular reference to the farm owners. RM stated that servitudes could be registered and there were all kinds of ways to protect members rights, whether the property was in LBV HOA or any other entity.

A further discussion was held around the urgency to get the property transferred out of the liquidated company

into a third party. MM stated that " I am hearing today that there is only one option. It has to go to LBV HOA".

RM confirmed this.

RM questioned again the intent of the Body Corporate and their reasoning for wanting to have more say over the way that the common property is dealt with. He suggested that this was linked to the six farm owners also wanting to have access rights to the common property.

MM confirmed that this was the case, and was why it had been included into the amendments to the master homeowners association constitution.
RM responded that it was not so simple to do and that he was concerned that you end up with an SPV which can't enforce its rights against anyone. He stated that there were umpteen dozen ways to address those concerns, even with the properties in the LBV HOA, including servitudes. He also stated that the body corporate should be particularly happy with the situation as their exposure to the properties would be one eighteenth as opposed to something much bigger.
RM went on to explain how the LBV members would potentially be negatively influenced on the potential sale of their property if the common property was not transferred into the LBV HOA.

KP questioned whether they were able to transfer the property to the LBV HOA given that the constitution said something different.

RM replied that it was actually the other way round as the provision in the Akarana constitution is unenforceable because it is contrary to the existing conditions of approval. He went on to state that one would not even have to change the constitution – the provision could just be ignored – its pro non scripto – like it hasn't even been written because you can't do anything with it.

After a brief further discussion GH requested that the meeting be adjourned for 10 minutes discussion.

PROCEEDINGS ADJOURN
ON RESUMPTION:

GH restarted the meeting.

GH advised that there were two small changes on the Notice circulated:

a) "Special resolution 3".
Relating to the portion number 62, should be 63.

b) Resolution 1 where it said 62, should be 63.

So those were the small changes that were made to the notice. GH registered all the proxy votes that he has received.

GH stated that we need to do the voting of the people by show of hand of people present.

GH proceeded to read out the Resolutions so that voting could be counted.

"**Special Resolution 1:** Resolve that all defects, if any, in the giving of notice and/or to the convening the Special General Meeting of the Association be and hereby rectified."

Voting took place.

"**Special Resolution 2:** To resolve that the Association shall acquire for nominal value and take transfer or portions 60, 61 and 63 of Farm Simonsvlei 791, Paarl Division, Western Cape Province, from Fundeals Sixteen (Pty) Limited in liquidation."

Voting took place.

"**Special Resolution 3:** To resolve that the Association may enter into and implement a loan agreement with Andrè van der Westhuizen (or his duly appointed nominee) on the terms set out in the draft loan agreement circulated to members as Annexure B to the Notice convening the Special General Meeting, in terms whereof Andrè van der Westhuizen or his nominee advances a loan to the Association for purposes of the following costs on behalf of the Association."

"(a) The cost of reinstatement of the registration of Fundeals Sixteen (Pty) Limited.

(b) The transfer costs necessary to procure the registration of portions 60, 61 and 63 of the farm Simonsvlei 791.

(c) The legal costs associated with the advice given and services rendered by Bowmans Attorneys to the liquidators of Fundeals Sixteen (Pty) Limited concerning the reinstatement of Fundeals Sixteen (Pty) Limited and the transfer of common properties.

(d) The legal costs associated with the advice given and services to be rendered to Andrè van der Westhuizen by Hayes Incorporated in regard to the reinstatement of Fundeals Sixteen (Pty) Limited, the preparation of the loan agreement between the associations and Andrè van der Westhuizen or his nominee, and the transfer of the common property."

MS requested to interject for a moment.
MS stated that he had independently spent certain costs and legal fees, together with the advice given, only to be included in the minutes, that's it and then you have a reference point because effectively the attorneys I appointed had of watching brief to make sure that RM remained honest.

Prior to voting on Special Resolution 3, WH requested the results of Special Resolution 1 and 2.

GH announced the results of Special Resolution 1:
18 votes for, no against, no abstained. Therefore Special Resolution 1 passed.

Results of Special Resolution 2:
18 votes for, no against, no abstained. Therefore Special Resolution 2 passed.

Voting for Special Resolution 3 took place.

Results of Special Resolution 3:
Votes for 10 votes, votes against 8 votes, no abstentions. As it's a Special Resolution it doesn't have the requisite 75%. So Special Resolution 3 is not passed.

Special Resolution 4:
To resolve that the Trustee Committee of the Association is authorised and directed to raise a special levy on the members of the association in an amount sufficient to fund the repayments by the association of the loan advanced by Andrè van der Westhuizen or his nominees, in accordance with the terms of the loan agreement referred to in special resolution 3.
GH confirmed that as Special Resolution 3 was not passed, it's not necessary to vote on Special Resolution 4.

Ordinary Resolution 1:
To resolve that Mark Sonik be and is hereby authorised to sign all transfer documents on behalf of the Association and to do all such things as may be necessary or requisite to give effect to the transfer of portion 60, 61 and 63 of Farm Simonsvlei 791 to the association and all such acts taken by MS for this purpose be and hereby approve and ratified.

Voting for Ordinary Resolution 1 took place.

GH announced the results of Ordinary Resolution 1:
Votes for 17, no votes against and one abstention. So Ordinary Resolution 1 is passed.

GH confirmed that Ordinary Resolution 2 falls away as Special Resolution 3 was not passed.
MS requested that his papers be included in the minutes.
GH requested that these papers be emailed to him to be included in the minutes.

GH thanked everyone for attending the meeting and voting.

WH requested that the following be noted in the minutes:

That AV spent close to R 130 000, which was fees that was incurred to stop Akarana from taking transfer of the LBV common property.

MM stated that in practical terms when money needs to start coming in, does anyone have an objection to Pam Golding doing the raising of levies and the collection of levies.

Nobody had any objection with Pam Golding doing the administration of the raising and collection of levies.

GH thanked everyone for their attendance and closed the meeting.

MEETING ADJOURNS

PURPORTED TRUSTEES OF THE LA BELLA VITA PROPERTY OWNERS' ASSOCIATION

Our Reference: R Meintjes / HR931
Reply to Email: samantha@themis.co.za
Your Reference: LBV POA

Date: 24 November 2022

By Email: lise@bugz.co.za

Dear Sir / Madam

LA BELLA VITA PROPERTY OWNERS' ASSOCIATION: REQUISITION OF A SPECIAL GENERAL MEETING

1. The above matter refers.

2. As you know, we act on the instructions of Mr Andre van der Westhuizen, the registered owner of Portion 57 of Farm 791, Simonsvlei. By virtue of his ownership of Portion 57, we confirm that our client is a member of the La Bella Vita Property Owners' Association (**"LBV POA"**).

3. By way of background, we confirm that on 21 August 2001, the Drakenstein Municipality approved the subdivision of Portion 39 of the Farm 791,Simonsvlei, Paarl Division, in accordance with the provisions of section 25 of the Land Use Planning Ordinance No. 15 of 1985 (**"LUPO"**). The subdivisional approval gave rise to the creation of 18 new erven and the establishment of the La Bella Vita Winelands Estate (**"LBV"**). Included in the new erven created by the subdivision of Portion 39 were Portions 60, 61 and 63 of the Farm 791, Simonsvlei, consisting of two servitude roads and a dam situated within LBV (**"the common property"**). In addition, it was a condition of the subdivisional approval that a property owners association be stablished to manage and administer LBV.

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4. The developer of LBV, Fundeals Sixteen (Pty) Ltd ("**Fundeals**"), was placed into final liquidation before it had transferred the common property to the LBV POA. The common property continues to be held under transfer deed number T19783/2001.

5. It is common cause between our client and the liquidators of Fundeals that the liquidators are required to transfer the common property to the LBV POA.

6. As a result of its failure to file its annual returns, Fundeals was deregistered by the Companies and Intellectual Property Commission ('**CIPC'**). This was an error on the part of CIPC as Fundeals was in final liquidation. Nevertheless, in order to arrange for the transfer of the common property to the LBV POA, our client engaged with the liquidators of Fundeals and funded the costs of having Fundeals reregistered as a company by the CIPC.

7. On or about 30 June 2022 Fundeals was reregistered with the CIPC. The necessary costs expended by our client in arranging for Fundeals to be reregistered was the sum of R186 597.94 as detailed in the list of attendances attached hereto and marked "**A**". We have further been advised that an additional amount of R45 000 plus VAT is to be paid to the attorneys of the liquidators, Bowmans Incorporated, in respect of their attendances in advising the liquidators with regard to their obligations concerning the transfer of the common property. A pro-forma invoice in respect of Bowman's aforesaid attendances is attached hereto and marked "**B**". We are informed that they are willing to reduce the costs of their attendances to the aforesaid sum of R45 000 plus VAT. There is no money in the insolvent estate of Fundeals to pay these costs.

8. Subsequent to the exchange of numerous correspondence between our office and the representatives of the liquidators (copies of which are attached hereto and marked "**C**" for your information), the liquidators of Fundeals have now confirmed that they concur with our client's view that they are obliged to transfer the common properties to the LBV POA.

9. Our client has received a quotation from our firm in respect of the estimated transfer costs which will be incurred in transferring the common properties to the LBV POA. A copy of this quotation is attached hereto and marked "**D**".

10. Our client is willing to tender payment of the transfer costs of the common properties, subject to the terms of the pro-forma loan agreement, attached hereto and marked "**E**".

11. Without prejudice to our client's position in respect of the action instituted in the Western Cape High Court under case number 11867/2020, and without conceding that you have the authority to do so, our client hereby requests that you convene a special general meeting of members of the LBV POA in order to consider and vote upon the proposed resolutions annexed to the proposed notice of a special general meeting of LBV POA members, attached hereto and marked "**F**".

12. You will of course be aware of your fiduciary obligation to conduct yourselves in the best interests of the members of the LBV POA insofar as you claim to have been duly elected as the trustees of the LBV POA.

13. Please let us have a resolution, duly passed by those who purport to be the current trustees of the LBV HOA to convene the special general meeting of the members of the LBV POA sought by our client in terms hereof **by no later than close of business on Friday, 2 December 2022**, failing which our client be obliged to avail himself of the dispute resolution provisions contained in the constitution of the LBV POA.

14. We trust that this will not be necessary and thank you, in anticipation, for your kind assistance in the matter.

Yours sincerely

<u>RIAAN MEINTJES</u>
HAYES INCORPORATED

progressive
administration

Progressive Administration (Pty) Ltd • Reg. No.: 1995/011542/07

20 September 2022

TO ALL INTERESTED PARTIES

Our Ref: CPVZ
Email: chris@progressiveadmin.co.za

Dear Sir/Madam

FUNDEALS SIXTEEN (PTY) LTD (IN LIQUIDATION)
MASTER'S REFERENCE: C502/2005

1. I address you on behalf of the joint liquidators of Fundeals Sixteen (Pty) Ltd (in liquidation) (**Fundeals**).

2. Fundeals was placed in provisional liquidation on 25 November 2005 and was placed in final liquidation on 20 December 2005. Mlamli Baliso and I were appointed as the joint liquidators of Fundeals on 16 May 2006. I attach a copy of our certificate of appointment.

3. On 16 July 2010, the Companies and Intellectual Property Commission (**CIPC**) deregistered Fundeals due to its failure to file annual returns. This took place notwithstanding the fact that Fundeals was already in liquidation and the liquidators were not required to file annual returns.

4. Earlier this year, the liquidators applied to CIPC to rectify the issue and on 30 June 2022, CIPC changed the status of Fundeals to "in liquidation".

5. The liquidators are now in a position to continue the winding-up of Fundeals, and in particular, to deal with the transfer of the immovable properties still owned by it, being Portions 39, 60, 61 and 63 of the Farm Simonsvlei No. 791, Division Paarl (**the Properties**).

6. To date, I have had several engagements with attorney Riaan Meintjes, representing Mr Andre van der Westhuizen, the owner of Portion 57 of the Farm Simonsvlei, who has advised that the Properties must be transferred to the La Bella Vita Homeowners Association.

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7. Mr Meintjes has further advised that his client is disputing the validity of the constitution in respect of the Akarana Master Homeowners Association (**Akarana Master HoA**) adopted on 15 January 2021 and approved by the Drakenstein Municipality on 28 May 2021 (**the Constitution**). The Constitution *inter alia* provides for the common property not currently registered in the name of the Akarana Master HoA (which would include the Properties) to be transferred to and registered in the name of a non-profit company established for the sole purpose of taking transfer of the common property.

8. We understand that a non-profit company has indeed been registered as Akarana Master Homeowners Association NPC (**the NPC**).

9. The Constitution records that per the relevant title deeds, the owners of the sub-divided portions of Portion 27 are members of the Akarana Master HoA and will thus be subject to the Constitution; and that the owners of the sub-divided portions of Portion 39 would be subject to the constitutions of the La Bella Vita Homeowners Association and the Constitution.

10. Mr Meintjes has recently provided us with a copy of redacted Minutes of a meeting of the Trustees of the Akarana Master HoA held on 16 May 2022 (**the Minutes**), which appear to suggest that the Properties must be transferred to La Bella Vita Homeowners Association and Sante Winelands Body Corporate.

11. We also point out that the Title Deed in respect of Portion 39 provides that Fundeals would be obliged to become a member of the Akarana Master HoA and that this property would not be sold without the prior written consent of the Akarana Master HoA having been obtained.

12. As is apparent from the above, the provisions of the Constitution appear to conflict with the position as stated by Mr Meintjes and recorded in the Minutes. To properly assess the position, ensure that all competing views are considered, and ensure that the Properties are correctly transferred, the liquidators invite interested parties to provide written submissions as to which entity is legally entitled to transfer of the Properties, including full reasons.

13. Written submissions are to be provided by no later than **Friday, 30 September 2022**. Should any representatives of the various homeowners' associations involved make submissions they are to provide documentary proof that they are authorised to make such submissions on behalf of the relevant association.

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14. Please note that only two representations were made, both on behalf of behalf of La Bella Vita Estate to the extent that La Bella Vita Homeowners Association should take transfer.

15. We however wish to inform you that no further submissions were received and in particular nothing was received from the Akarana Master Homeowners Association.

16. It must be noted that the Title Deed in respect of Portion 39 provides that the property cannot be transferred without the Akarana Master Homeowners Association's consent so it may well be proved difficult if they oppose the transfer in due course.

If anybody would like to comment on these additional points would you please do so by 30 September 2022 failing which the liquidators will instruct attorneys to proceed with the transfer to La Bella Vita Homeowners Association.

Yours faithfully

C P VAN ZYL
JOINT LIQUIDATOR