



OFFICIAL MANAGING AGENT FOR THE ELISENHEIM HOME OWNERS ASSOCIATION

23 March 2015

Dear Member
Elisenheim Home Owners Association

Dear Member,

CIRCULAR 8 - GENERAL INFORMATION DOCUMENT

We trust that this document will assist all members to better understand –

1. The procedures and operations for the management of Elisenheim
2. Why levies are paid
3. The Do's and Don'ts relative to the rules of the Association

Every owner that bought a property from the developers (Also referred to as the Elisenheim Project Development Company - EPDC) signed a "MEMORANDUM OF AGREEMENT OF SALE" with the EPDC, at that stage the shareholders of the EPDC was Messrs. Swanepoel & Fhereson.

When Trustco bought the shareholding in EPDC from Messrs. Swanepoel & Fhereson it was agreed:

- a) The previous developer – A. Swanepoel and Fhereson- remained responsible for the delivery of houses by Malvirn Construction and the snag lists for approx. 40 houses
- b) Upon the death of Mr. Sorenson the houses that still had to be constructed by Malvirn in Phase 1 were bought out by Sabika, meaning that the responsibility to complete and build the houses in Phase 1 specifically remains the responsibility of Sabika in terms of the agreement between the owners and Malvirn
- c) TRUSTCO has no responsibility for the building of the houses
- d) EPDC was bought by Trustco and it remains the responsibility of the EPDC to establish the lifestyle on the estate, meaning gardens, security fences, water treatment works etc.

1) AGREEMENT TO TRANSFER THE SERVICES TO WHK MUNICIPALITY

When the Municipality extended its borders the Elisenheim Estate became part and fell under the jurisdiction of the Municipality of Windhoek. At the same time all services were transferred to the WHK Municipality in terms of an agreement. This meant that the WHK Municipality became responsible for the maintenance of the services.

In essence this means that the Municipality became and is responsible for the maintenance and upkeep of all the services, including the roads, street lights, water reticulation, electricity connections and infrastructure and sewerage, subject to the agreement that the Municipality

has with the EOA whereby approximately N\$25,000-000 per month is charged to the EOA for sewerage treatment plant.

Many members question why there is an “Owners Association” when the Municipality took over the responsibility for services etc.

This Circular attempts to provide members with a better understanding of the current modus operandi of the estate and why there is an Owners Association.

2) ELSIENHEIM LIFESTYLE & BENEFITS

Part of the commitment that the EPDC made to buyers was to establish a lifestyle concept that would encapsulate an environment with better gardens (open public space), a specific design concept for houses and buildings that will be built within a secure environment with an ultimate view that the environment will enhance property values and create a preferred address in Windhoek.

The developer had the foresight to establish an Owners Association to manage and maintain the Lifestyle Concept subject to the Articles of Association (**Appendix 1**) for the benefit of all owners. Much is said about the lifestyle concept and members are advised to visit the site and to acquaint yourself with the concept.

What separate the Elisenheim Lifestyle from the rest of Windhoek are the following unique aspects:

a) Throughout the Estate:

- i) The developer is committed to establish gardens for the benefit of the owners. The public open space (gardens) should be serviced by the Municipality but we know that the maintenance of the gardens will suffer and may render these gardens as “veld” due to a lack of maintenance.
- ii) The developer is planting indigenous trees. The trees has not/will not be planted by the Municipality and concurrently will not be maintained and/or watered by the Municipality
- iii) Several kilometer walkways/cycle paths are being constructed throughout the Estate and will be continued in future phases. Such walkways would not have been constructed and concurrently will not be maintained by the Municipality
- iv) Road side verges are not cleaned by the Municipality. The EOA will contract a contractor to clean the road side verges.
- v) Security is a priority for the future success of the Estate. Elisenheim is in the favorable position that the Municipality allows the estate to have controlled access to the Estate and that the Estate may be “ring” fenced with security wire. Elisenheim and other home owner associations are unique in so far that we are the only residential “suburbs” that are allowed by the Municipality to control access by the public to the “suburb”.
- vi) Members must build to the specifications of the “Design Manual” that is supervised by the Design Review Committee - meaning that a specific standard of construction must

be adhered to, providing peace of mind that neighbors cannot just build any shack or for those matter plant mealies in their front garden.

Furthermore, the Estate is controlled by “Rules” and an “Environment Management Plan”

For ease of reference we attach:

- Design Manual **Appendix 2**
- EOA Rules **Appendix 3**
- Environment Management Plan **Appendix 4**

3) COST OF THE LIFESTYLE CONCEPT

Unfortunately the unique lifestyle must be administered and maintained and that is where the EOA jumps into action. At the AGM of 14 October 2014 the budget for the EOA was submitted and approved by the Trustees. We attach **Appendix 5** together with the Notes to the Budget to illustrate how the budget is used to cover the expenses.

The EOA remains committed to the lifestyle concept throughout all the phases to be built and all owners should reap the benefits of their contribution in levies to maintain the benefits described above.

4) MEMORANDUM OF AGREEMENT OF SALE SIGNED BY OWNERS

Specific aspects/conditions contained in the agreement were specifically agreed to by every owner and these conditions stand paramount to the Lifestyle concept, the Elisenheim Owners Association (EOA) and the management of the Elisenheim Estate. We attach a copy of the Agreement of Sale for ease of reference as **Appendix 6**.

5) ELISENHEIM CHARTER

We attach a copy of the Elisenheim Charter (**Appendix 7**). The document covers many frequently asked questions and deals with:

- a) Trustees
- b) Levies
- c) Preliminary Rules of the Elisenheim Owners Association (“EOA”)
- d) Board of Representatives
- e) Security
- f) Website (Data base)

Please read the document again to acquaint you with the contents.

6) MANAGEMENT OF ESTATE - Members

The estate is currently in its infant stage and everyone involved is in a steep learning curve. To better appreciate the management style it is important that we picture the scene in 5 years’ time when it is anticipated that up to phase 5 would have been developed.

The architects of the Elisenheim Estate had the foresight that it would be impossible to manage the estate when close to two thousand residents on the estate must agree on the management

of the estate and accordingly created a structure in the Articles of Association for the management of the Estate. Various levels of management were envisaged and enshrined in the Articles of Association to manage the estate.

It is important at the outset to understand:

a) The position of an owner in a Phase/Extension in the Management of the Estate

- i) Each completed phase (Where Erven have registered into the name of owners) in the development is referred to in the Articles of Association as an “extension”.
- ii) Phase 1/Elisenheim Proper is represented by all the owners of Erven numbered 1 to 421
- iii) At an Annual General Approved Extension Meeting (AGAEM) all the members of Phase 1/Elisenheim Proper are invited to the meeting
- iv) The Agenda for the meeting must include:
 - (1) The election of five Representatives for Elisenheim Proper/Phase 1
 - (2) The positions to be held by the representatives shall be
 - (a) Chairperson
 - (b) Vice-Chairperson
 - (c) Finances
 - (d) Security
 - (e) Environment/Building Standards
 - (3) Other Relevant Business
- v) Two representatives shall be elected from the owners of Erven
- vi) Three representatives shall be nominated by the Developer
- vii) The five Representative Board members will represent the interests of owners in Phase1/Elisenheim Proper at an Annual General Meeting that will be called annually.

b) Each new phase will independently operate, meaning:

- i) As soon as 50,0% of Erven in Phase 2 / Extension 2 is transferred into the name of an owner:
- ii) The Chairperson must convene a GEAM meeting within 30 days
- iii) At an Annual General Approved Extension Meeting (AGAEM):
 - (1) All the members of Phase 2/Extension 2 are invited to the meeting (Note that members in Phase 1/Elisenheim Proper are not invited to the meeting)
 - (2) The Agenda for the meeting for the AGAEM will be the same as the Agenda above:
 - (a) The election of five Representatives for Elisenheim Proper/Phase 1
 - (b) The positions to be held by the representatives shall be
 - (c) Chairperson
 - (d) Vice-Chairperson
 - (e) Finances
 - (f) Security
 - (g) Environment/Building Standards
- iv) During the development period (the period that the developer develops the estate up to phase 21) Two representatives shall be elected from the owners of Erven
- v) Three representatives shall be nominated by the Developer
- c) The five Representative Board members will represent the interests of owners in Phase2/Extension 2 at an Annual General Meeting that will be called annually.

With regard to the above – it is at the AGAEM that individual home owners are invited and are given the opportunity to raise concerns, debate on the management of their extension (within the framework of the Articles of Association) and elect Trustees to further represent them for the management of the Elisenheim Owners Association at the Annual General Meeting.

We attach an organizational chart as **Appendix 8** to illustrate the various levels of management of the estate.

PLEASE NOTE:

After the GEAM there will be:

- 5 representative trustees representing phase 1/Elisenheim Proper
- 5 representative trustees representing phase 2/extension 2
- 10 representative trustees will be invited to attend the annual general meeting of the Elisenheim owners association

7) MANAGEMENT OF THE ESTATE

Appointed Trustees, Representatives and Sub Committees

a) TRUSTEES

The current Trustees and Board of representatives are as follows:

Board of Trustees - Elisenheim Owners Association

Name	Position
Sandra Miller	Chairperson
Schalk Kruger	DRC, Environmental & Security
Heleen Steyn	Co-ordination & Correspondence
Hennie Bruyns	Vice- chair
Hanjo De Villiers	Finance

Board of Representatives - Elisenheim Proper

Name	Position
Monica Pienaar	CEO Properties Trustco
Wayne Mc Teer	Group Financial Director Trustco
Ndeshipewa J. Akwenye	Group Risk Officer Trustco
Prof. Elizabeth Amukugo	Prof Unam
J. (Jana) S. De Kock	Admitted Attorney

Any communication with the Trustees must be done via elisenheim@eonproperty.com

To assist the Trustees with the management of the Estate various sub committees were formed:

b) DESIGN REVIEW COMMITTEE (DRC), BUILDING CONTROL and MANAGEMENT

Article 14.1:

For the duration of the development period the committee appointed by the DEVELOPER will be the members of the Design Review Committee

The committee members will be

Name	Representative
Schalk Kruger	EOA Trustee
Andre Human	Managing Agent
To Be elected	Home owner

Home Owners that are willing to serve on this committee should forward their names to elisenheim@eonproperty.com

All matters must be referred to the managing agent – elisenheim@eonproperty.com for further attention and action.

c) DISCIPLINARY COMMITTEE

The disciplinary committee will consist of

- i) A representative from Managing Agent
- ii) An EOA Trustee member that will be an elected member from the home owners
- iii) An independent volunteer from the home owners on the Estate that offered his/her services

The current disciplinary committee:

Name	Representative
Hennie Bruyns	EOA Trustee home owners
Andre Human	Managing Agent
To Be elected	Home owner

Home Owners that are willing to serve on this committee should forward their names to elisenheim@eonproperty.com

All matters must be referred to the managing agent – elisenheim@eonproperty.com for further attention and action.

d) SECURITY COMMITTEE

The Security committee will consist of

- i) A representative from Managing Agent
- ii) An EOA Trustee member that will be an elected member from the home owners
- iii) An independent volunteer from the home owners on the Estate that offered his/her services

Name	Representative
Hennie Bruyns	EOA Trustee home owners
Sjoerd Lohle	Managing Agent
To Be elected	Home owner

Home Owners that are willing to serve on this committee should forward their names to elisenheim@eonproperty.com

All matters must be referred to the managing agent – elisenheim@eonproperty.com for further attention and action.

8) RULES

Appendix 2 provides the rules to the Estate. The rules are entrenched in the Articles of Association and may be legally enforced on members.

The Rules are self explanatory but the following requires comment:

Agents

At the moment there is no specific approved list of Estate Agents meaning that any estate Agent may operate on behalf of members. The Trustees reserve the right to disqualify estate agents that do not have the interests of the Estate at heart.

Fines

Rule 3.1.2:

1.1.1 The Trustees have the right to fine transgressors where any of the Rules have been broken or infringed upon. Such fines shall form part of the levy and shall become due and payable on the due date of payment of the levy.

The fine policy is attached as **Appendix 9**

9) LEVIES

We have elaborated on the validity of levies in Circular 4 to all members. We attach the Circular 4 for easy reference as **Appendix 10**.

It is important to note that levies are payable free of other charges, meaning that cash deposit fees etc. remains payable by the member to the EOA – Section 6.15 of the Articles of Association states:

“The levies (and any other debt) shall be payable to the ASSOCIATION free of exchange, deduction or commission at Windhoek”.

Appendix 11 Provides extracts from the sales agreement that specifically refers to levies payable to the EOA and which agreement all members entered into with the EPDC

APPENDIX 11

Preamble (paragraph c):

AND WHEREAS it is anticipated that the aforesaid Township will be managed and administered in certain limited respects by an Owners Association subject to certain Architectural and Town Planning guidelines and such further terms and conditions as may be determined by the SELLER and the Association from time to time.

Paragraph 2.1

The SELLER hereby sells to the PURCHASER, who hereby purchases, the property –

2.1.4

subject to the provisions of the Memorandum of Articles of Association and Constitution of the Elisenheim Owners Association and the Architects and Town Planning Design Manual referred to in clauses 9.8.1.1 and 9.8.1.3 hereof;

Occupation, Risk and Possession

Paragraph 5.4

The PURCHASER shall be liable for a pro rata share of levies, rates, taxes and other proprietary charges payable in respect of the property with effect from the occupation date, the PURCHASER shall upon request of the SELLER'S Conveyancers pay such pro rata share of levies, rates, taxes and other proprietary charges.

Paragraph 6.6

Any resale shall be effected in terms of a standard Deed of Sale or Alienation or Disposition Agreement embodying the terms and conditions contained herein and such other terms as the Owners Association may impose and shall in particular contain the following:

6.6.1 an undertaking by a new Purchaser or Transferee to abide by the terms and conditions of such agreement, the Estate Rules, the Memorandum and Articles of Association of the Owners Association and its Constitution as may be applicable from time to time;

Paragraph 8.2

The PURCHASER shall not be entitled to resell unless prior written approval has been obtained from the SELLER or the Elisenheim Owners Association. Any such sale by the PURCHASER without the aforesaid consent shall ipso facto constitute a breach of this Agreement entitling the SELLER to cancel this Agreement in terms of the provisions of clause 10 hereof.

Paragraph 8.7

The PURCHASER shall within 2 (two) years after registration of transfer, erect and complete a dwelling house on the property in compliance with the architectural guidelines in accordance with plans and specifications approved by the Elisenheim Owners' Association.

Paragraph 8.8

Should the PURCHASER fail to comply with the provisions of clause 8.7, the SELLER shall be entitled to give the PURCHASER 60 (sixty) days notice in writing to commence the erection of such dwelling house and if the PURCHASER fails to comply with such notice the SELLER shall forthwith be entitled (but not obliged) to repurchase the property from the PURCHASER at the same original price at which the property is sold to the PURCHASER in terms of this agreement and to claim retransfer thereof into the name of the SELLER at the cost of the PURCHASER. To this end the PURCHASER hereby grants to the SELLER an irrevocable Power of Attorney to sign all such documents and agreements necessary to give effect to the said re-registration.

Paragraph 8.9

Should the SELLER elect not to exercise his/her rights in terms of clause 8.8 above, the PURCHASER shall be obliged and hereby irrevocably agree to pay triple the charges and levies as determined by the Elisenheim Owners' Association plus such penalties as the Owners Association may determine.

Paragraph 9

ELISENHEIM OWNERS ASSOCIATION

9.1

It is recorded that the SELLER intends establishing the Elisenheim Owners Association the purpose of which is to manage and administer the Township, services and amenities and to promote control and service the communal interests of registered owners of properties insofar as such services are not performed and/or provided for by the Local Authority.

9.2

The PURCHASER agrees that it will be a condition of this Agreement that:

9.2.1 immediately on becoming the registered owner of the property the PURCHASER will automatically become and remain a member of the Elisenheim Owners Association and thereafter will be and remain bound, for so long as the PURCHASER is a registered owner, by its Memorandum and Articles of Association and/or Constitution as well as the said Association's Conduct Rules and Regulations adopted by it;

9.2.2 should the PURCHASER sell the property the PURCHASER will ensure that the subsequent PURCHASER is made fully aware of the existence of the Elisenheim Owners Association and the fact that such successor PURCHASER shall be obliged to become and remain a member thereof and to comply with the aforesaid rules and regulations and remains bound to it;

9.2.3 The property may not be sold, transferred, leased or disposed of in any manner whatsoever to any person without the prior written approval of the Elisenheim Owners Association which approval shall only be given once:-

9.2.3.1 the prospective PURCHASER has agreed in writing that he will, upon registration of transfer automatically become a member of the said Association and be and remain bound by their rules and regulations for so long as he is and remains the registered owner of the property; and

9.2.3.2 the Elisenheim Owners Association has certified in writing that:

9.2.3.2.1 the provisions of clause 9.2.3.1 above have been complied with; and

9.2.3.2.2 the provisions of clauses 8.7, 8.8 and 8.9 hereinbefore have been complied with or incorporated into the new Sales Agreement;

9.2.3.2.3 that the new Sales Agreement conforms with the standard Deed of Sale or Alienation or Disposition Agreement approved by the Developer and/or the Association incorporating the terms and conditions as hereinbefore referred to and such conditions registered as conditions of title including the condition that any transfer will be effected by the SELLER'S Conveyancer;

9.2.3.2.4 levies for a period of not less than three months after the date of the certificate in question have been paid or secured to the satisfaction of the said Association; and

9.2.4 For purposes hereof sale, transfer or dispose of, shall include any sale or transfer of shares or members interest or beneficial interest by the PURCHASER in the event of it being a Company with share capital, Close Corporation or Trust respectively, having the effect of changing the composition of shareholders, members or beneficiaries respectively from that date as at the date of signature hereof.

9.3

Notwithstanding the provisions of 9.2 above registration of transfer of the property to any other person shall automatically and ipso facto constitute that person to be a member of the Elisenheim Owners Association and to be bound by the said Association's Memorandum and Article of Association or Constitution as well as its Conduct Rules and Regulations.

9.4

The SELLER shall be entitled to procure that in addition to all other conditions of title and/or subdivision and/or conditions of establishment referred to therein that the following conditions will be inserted in the deed of transfer in terms of which the PURCHASER takes title to the property, and shall be registered against the title deed of the property in the following form or in such other form as may be acceptable to the Registrar of Deeds, all of which are imposed as conditions in favour of the SELLER and/or Developer and/or the Elisenheim Owners Association as the case may be and the PURCHASER hereby agrees to such amendment as may be required;

9.4.1 "the owner of the property or any subdivision thereof or any interest therein or unit thereon and his successors in title of the property, or of any interest therein or thereto, ("the owner") shall not be entitled to sell or

transfer the property, or to apply for any subdivision or consolidation thereof or if the property is registered in the name of any corporate entity, the owner or holder of such interest, shares or rights in and to such entity shall not be entitled to sell or transfer such interest, share or rights without the Elisenheim Owners Association's prior written consent which will not unreasonably be withheld, and which consent will only be given once the Association has satisfied itself that all conditions imposed by the Elisenheim Owners Association and specifically the conditions referred to in clause 9.2.3.1 and 9.2.3.2 have been met and complied with and that all amounts due to it by the owner have been paid and/or secured”;

9.4.2 “every owner of the erf or any subdivision thereof or any interest therein or unit thereon and his successors in title shall automatically upon registration of transfer become and remain a member of the Elisenheim Owners Association and become and remain bound by its Memorandum and Articles of Association and/or Constitution and by any Management and/or Conduct Rules and Regulations adopted by the said Association until the owner ceases to be an owner as aforesaid. Neither the property nor any subdivision or consolidation thereof, nor any interest therein or thereto, shall be transferred to any person who has not agreed to become a member of the Elisenheim Owners Association and to remain bound by its Memorandum and Articles of Association or Constitution as well as the Management and/or Conduct Rules or Regulations adopted by it; and who has not secured payment by way of a debit order or such other method of payment acceptable to the said Association of the monthly levy due to them”.

9.4.3 In terms of the Articles of Association and the Rules and Regulations of the Elisenheim Owners Association, there are certain Architectural and Town Planning standards and guidelines for the design of buildings and no person shall be entitled to construct any building or other structure on the property until such drawings and specifications relating thereto have been approved by the SELLER and the Owners Association in terms of the