

MONAGHAN FARM



MONAGHAN FARM NPC

(Registration Number: 2008/001430/08)

PROJECT AGREEMENT

HOW THIS AGREEMENT WORKS

One agreement covers every project at Monaghan Farm, from a new home to repainting. Your obligations scale with your Project Category (A to E - see clause 1.3 and the definition in clause 2.1). For smaller projects (Categories C to E), most construction-period requirements simply do not apply. The shaded boxes through this document highlight the provisions most important to you.

This box is a plain-language guide only and does not replace or vary the numbered clauses of this Agreement.

PARTIES

This Project Agreement is entered into between:

Monaghan Farm NPC, registration number 2008/001430/08, a non-profit company with its offices at The Admin Office, ERF 128, Monaghan Farm, Lanseria, Gauteng, email hoa@monaghanfarm.co.za ("MFHOA"); and

the Property Owner identified below and in Schedule A of the Project Administration Schedules ("the Property Owner"):

Property Owner (full name / registered entity)	
Identity / registration number	
Physical address (domicilium citandi et executandi)	
Email address (domicilium)	

The Principal Contractor and the appointed professionals identified in the execution pages are not parties to the principal agreement between MFHOA and the Property Owner, but bind themselves to MFHOA by the undertakings recorded in clause 14 and the execution pages.

1. PURPOSE, SCOPE AND PROJECT CATEGORIES

1.1 The purpose of this Project Agreement is to record the terms and conditions under which MFHOA grants approval for construction works to be undertaken upon a property within Monaghan Farm, and to establish the contractual relationship between MFHOA and the Property Owner for the administration of the Project throughout the Project Administration Period.

1.2 This Agreement applies to all construction projects undertaken within Monaghan Farm, including, where applicable:

(a) New Residential Dwellings; (b) Renovations; (c) Alterations; (d) Additions; (e) Swimming Pools; (f) Outbuildings; (g) Boundary Walls; (h) Landscaping Works; (i) External Structures; (j) Civil Works;

and any other works requiring approval by the Monaghan Aesthetics Committee ("MAC") and/or MFHOA. It applies irrespective of the nature or scale of the works, from a Category A new dwelling to Category E maintenance and cosmetic works (including repainting and similar minor works undertaken by or for existing occupants). Provisions applicable only to particular categories of work are identified by reference to the applicable Project Category.



- 1.3 Every Project shall be allocated by MFHOA to a Project Category appropriate to its nature, scale and complexity. The applicable Project Category determines the approvals, professional appointments, inspections, fees, deposits, construction periods, reporting obligations and compliance requirements applicable to that Project, as set out in this Agreement and the Project Administration Schedules.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In this Agreement, unless the context indicates otherwise, the following terms have the meanings assigned below; any term not defined has the meaning assigned to it in the Construction Handbook:

- 2.1.1 **Agreement** means this Project Agreement together with the Project Administration Schedules and all schedules and annexures.
- 2.1.2 **Approved Commencement Date** means the commencement date recorded in the Project Administration Schedules or otherwise approved by MFHOA in writing.
- 2.1.3 **Approved Documents** means, collectively and as approved or amended from time to time: the MAC-approved drawings; the approved municipal building plans (where applicable); the approved landscape drawings (where applicable); the approved Site Development Plan and conditions of approval (where applicable); and all approved Variation Orders.
- 2.1.4 **Business Day** means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa.
- 2.1.5 **Certificate of Final MAC Sign-Off** means the certificate issued by MAC on behalf of MFHOA recording Final MAC Sign-Off.
- 2.1.6 **Conditions Precedent** means the requirements contemplated in clause 4.2 applicable to the Project, having regard to the applicable Project Category.
- 2.1.7 **Construction Rules** means the governing documents of MFHOA applicable to construction activities, whether adopted before or after the date of signature of this Agreement and as adopted, amended, replaced or supplemented from time to time, including: (a) the Memorandum of Incorporation of MFHOA; (b) the Rules and Regulations of Monaghan Farm NPC; (c) the Builders' and Contractors' Regulations and Conduct Agreement, until replaced by the Construction Handbook; (d) upon its adoption and publication by MFHOA, the Monaghan Farm Construction Management System, comprising the Monaghan Farm Construction Guide, the Project Agreement framework, the Project Administration Schedules and the Builders' and Contractors' Construction Management Regulations (Construction Handbook); (e) the Architectural and Landscape Regulations; (f) the Fee Schedule; and (g) any further construction-related regulations, guides, procedures or policies published by MFHOA.
- 2.1.8 **Construction Handbook** means the Builders' and Contractors' Construction Management Regulations adopted by MFHOA from time to time governing construction activities within Monaghan Farm.
- 2.1.9 **Contractor Lock-Out** means the suspension of a Contractor's access to Monaghan Farm in terms of clause 8.5 and the Construction Handbook.
- 2.1.10 **Fee Schedule** means the MFHOA Schedule of Fees, Charges and Penalties published from time to time.
- 2.1.11 **Final MAC Sign-Off** means the written confirmation issued by MAC, on behalf of MFHOA, confirming that the Project has been completed in accordance with the Approved Documents, the Architectural and Landscape Regulations and the requirements of the Construction Handbook.
- 2.1.12 **MAC** means the Monaghan Aesthetics Committee, appointed by MFHOA to administer architectural approvals, construction monitoring and project sign-off.
- 2.1.13 **MFHOA** means Monaghan Farm NPC, registration number 2008/001430/08.



- 2.1.14 **Principal Contractor** means the principal contractor appointed by the Property Owner for the Project, and includes all subcontractors, employees, suppliers and persons acting under the contractor's direction or control.
- 2.1.15 **Project** means the construction works described in this Agreement and the Approved Documents, including all associated site establishment, building works, landscaping, rehabilitation and project close-out activities.
- 2.1.16 **Project Administration Period** means the period commencing on the Approved Commencement Date and ending on the date upon which the Certificate of Final MAC Sign-Off is issued.
- 2.1.17 **Project Architect** means the SACAP-registered architectural professional appointed by the Property Owner in terms of clause 6.1, who is responsible for the design of the Project, its compliance with the Approved Documents and all applicable law (including structural coordination and stormwater design in conjunction with any appointed engineer), and the professional oversight of the Project from commencement until Final MAC Sign-Off.
- 2.1.18 **Project Category** means the category allocated to the Project by MFHOA in accordance with clause 1.3 and recorded in Schedule A2 of the Project Administration Schedules, being one of: (a) Category A – new residential construction (typical construction period 21 months); (b) Category B – additions and structural alterations (typical construction period 6 months); (c) Category C – external property improvements (construction period as approved); (d) Category D – internal alterations (typical construction period 6 months); or (e) Category E – maintenance and cosmetic works, including repainting and similar minor works (construction period as approved); in each case as the construction period may be amended by MFHOA having regard to the approved scope of works.
- 2.1.19 **Property** means the erf identified in the parties clause and Schedule A together with all improvements thereon.
- 2.1.20 **Property Owner** means the registered owner of the Property or a duly authorised representative acting on behalf of the registered owner.
- 2.1.21 **Stop Works Instruction** means a written instruction issued by or on behalf of MFHOA requiring the immediate suspension of all or part of the construction activities.
- 2.1.22 **Variation Order** means any proposed amendment or deviation from the Approved Documents requiring prior approval by MAC before implementation.
- 2.2 The singular includes the plural and vice versa; one gender includes the others; references to a natural person include a juristic person where applicable; headings and the shaded guidance boxes do not affect interpretation; references to legislation include amendments and replacements; and any approval or consent required from MFHOA must be in writing.
- 2.3 This Agreement is read together with the Construction Rules. In the event of any conflict, the order of precedence is: the Memorandum of Incorporation; the Architectural and Landscape Regulations; this Agreement; the Project Administration Schedules; the Construction Handbook; the Approved Documents; and other MFHOA policies – provided that, as between this Agreement and the Project Administration Schedules, a Project-specific variation expressly recorded in the Schedules and approved by MFHOA prevails.

3. APPROVAL AND ITS LIMITS

- 3.1 MFHOA grants approval for the Project subject to the Property Owner complying with this Agreement and the Construction Rules. Approval constitutes permission to commence the Project only once the Conditions Precedent have been satisfied and **written** authorisation to commence has been issued under clause 4.
- 3.2 Scope of approval. Any review, approval or acceptance by MAC or MFHOA of plans, drawings, designs, specifications, reports, certificates or any other documentation, and any inspection or monitoring of the Project, relates solely to aesthetic and architectural compliance with the



Construction Rules and the administration of the Project by MFHOA. It does not constitute, and shall not be construed as: (a) approval or confirmation of the structural, engineering, stormwater, drainage, geotechnical or other technical adequacy or safety of the design or the works; (b) confirmation of compliance with the National Building Regulations, any municipal requirement or any other law, policy or regulation; (c) professional certification of any kind; or (d) an assumption by MFHOA or MAC of any duty of care to the Property Owner, any successor in title or any third party in relation to the design, construction or performance of the works. Responsibility for the technical adequacy, safety and legal compliance of the design and the works rests solely with the Property Owner, the Project Architect and the other appointed professionals.

- 3.3 The Property Owner remains solely responsible for obtaining and complying with all statutory approvals, municipal requirements and the obligations imposed by any competent authority. Nothing in this Agreement, and no act or omission of MFHOA or MAC in administering the Project, relieves the Property Owner, the Principal Contractor or any appointed professional of any statutory, contractual or professional responsibility.
- 3.4 The submission or acceptance of documentation shall not constitute confirmation of its accuracy, completeness or legal compliance, which remain the responsibility of the Property Owner and the professional responsible for its preparation.

4. **CONDITIONS PRECEDENT AND COMMENCEMENT**

- 4.1 No construction activities, including site clearance, earthworks or any disturbance of the soil, may commence before MFHOA has issued written authorisation to commence. Commencement without authorisation is a material breach of this Agreement and may result in a Stop Works Instruction, suspension of contractor access, penalties in accordance with the Fee Schedule and any other enforcement measure under clause 11.
- 4.2 The Conditions Precedent may include, where applicable to the Project Category:
- (a) approval of the proposed works by MAC; (b) approval of the building plans by the relevant local authority where required by law; (c) execution of this Agreement by all relevant parties; (d) payment of all deposits, fees and charges applicable to the Project Category; (e) appointment of the Project Architect and other required professionals; (f) appointment of a suitably qualified Principal Contractor; (g) submission and verification of all documentation required by MFHOA; (h) completion of the Contractor Induction process and implementation of the minimum Site Establishment Requirements prescribed by the Construction Handbook, including but not limited to: the approved site hoarding and fencing erected and secure; the health and safety file present on site; ablution facilities provided on site; a covered waste skip on site; and the Project Construction Board installed; (i) completion of all project registration requirements prescribed by MFHOA; and (j) any additional requirements determined by MFHOA having regard to the nature, scope or complexity of the Project, which shall be notified to the Property Owner in writing when the Project is registered or, where the need for them arises only thereafter, as soon as reasonably practicable.
- 4.3 Once all applicable Conditions Precedent have been satisfied, MFHOA shall, within five (5) Business Days, verify satisfaction, including, if necessary, by site inspection of the Site Establishment Requirements, and either issue its written authorisation to commence construction or advise the Property Owner in writing which Conditions Precedent remain unsatisfied and what is required to satisfy them.
- 4.4 Commencement means the bona fide commencement of continuous construction of the approved works. The token breaking of ground, or the performance of isolated or preparatory works not followed by continuous construction, does not constitute commencement of the Project for any purpose, including for the purposes of any levy, penalty or fee treatment under the Fee Schedule or the Memorandum of Incorporation that depends upon construction having commenced.



- 4.5 Should the Project not commence within the period prescribed for the applicable Project Category after authorisation, this Agreement lapses unless MFHOA has approved an alternative commencement date in writing. Where this Agreement has lapsed, MFHOA may require a new Project Agreement, updated documentation, updated statutory approvals and appointments, a further Contractor Induction, and compliance with the requirements, fees and deposits applicable at recommencement.

5. THE PROPERTY OWNER

- 5.1 The Property Owner is and remains responsible to MFHOA for the Project throughout the Project Administration Period and for ensuring that the Project is undertaken in accordance with this Agreement, the Approved Documents and the Construction Rules. The appointment of the Project Architect, the Principal Contractor or any other person does not relieve the Property Owner of any obligation, and every act or omission of the Principal Contractor, the appointed professionals, subcontractors, suppliers, employees, agents, invitees and any other person engaged in connection with the Project is, for the purposes of this Agreement, deemed to be an act or omission of the Property Owner.
- 5.2 The Property Owner warrants that adequate financial provision has been made to complete the Project within the applicable construction period, and acknowledges that the progress, extension and penalty provisions of this Agreement apply regardless of the availability of funds.
- 5.3 All construction works shall be undertaken strictly in accordance with the Approved Documents and any conditions imposed by MFHOA, MAC or any competent authority. No variation to the Approved Documents may be implemented unless the proposed variation has first been approved by MAC in accordance with the Construction Handbook.
- 5.4 The Property Owner shall cooperate fully with MFHOA and MAC, and shall promptly provide such information, documentation and access as may reasonably be required for the administration of the Project.

6. THE PROJECT ARCHITECT AND THE PRINCIPAL CONTRACTOR

- 6.1 Appointments. The Property Owner shall appoint and retain, for the duration of the Project Administration Period and where required by the applicable Project Category, the Architectural and Landscape Regulations or applicable law: (a) the Project Architect; (b) such engineers, landscape architects and other consultants as the Project requires; and (c) a suitably qualified Principal Contractor. Details of all appointments shall be recorded in the Project Administration Schedules and the execution pages, and any change shall be notified to MFHOA in writing before the replacement commences work.
- 6.2 The Project Architect shall provide ongoing professional oversight of the Project and monitor the execution of the works for compliance with the Approved Documents, the Architectural and Landscape Regulations and the external architectural character approved by MAC. Where monthly professional inspections are required by the applicable Project Category, the Project Architect shall undertake not less than one formal site inspection in each calendar month while construction is in progress and shall, on or before the fifteenth day of the following month, submit a written report to MFHOA substantially in the form of the template in Schedule E, confirming the inspection, progress, compliance with the Approved Documents, any deviations or non-compliances observed, the corrective action implemented or proposed, and any matter requiring the attention of MFHOA or MAC.
- 6.3 Continuity and replacement of professionals. Where the appointment of the Project Architect or any required professional terminates for any reason, the Property Owner shall immediately appoint a replacement, acceptable to MFHOA, where such appointment remains applicable to the Project Category, and construction activities may be suspended until the replacement is confirmed. Should the Property Owner fail to maintain a required appointment or the required reports, MFHOA may suspend construction activities, issue a Stop Works Instruction, implement Contractor Lock-Out, withhold inspections or approvals, or take any other enforcement measure under clause 11 until the non-compliance is rectified.



- 6.4 The Principal Contractor is responsible for the day-to-day management, coordination and supervision of the Project and shall ensure that all construction activities are undertaken in accordance with applicable law, this Agreement, the Construction Handbook, the Approved Documents and the governing documents of MFHOA. The Property Owner shall ensure that the Principal Contractor remains suitably qualified and competent, holds all registrations, statutory approvals and insurances required by law and by MFHOA, and implements promptly all lawful notices, directives and instructions issued by MFHOA or MAC.
- 6.5 Before construction commences, and where required by the applicable Project Category, the Principal Contractor shall submit the documentation prescribed by MFHOA, recorded in the Project Compliance Verification Register, which may include: NHBRC registration and project enrolment; a Compensation Fund (COIDA) letter of good standing; public liability and contractors all risks insurance; company registration documents; health and safety documentation; the construction programme; emergency contact details; proof of Contractor Induction; details of subcontractors; and any additional documentation reasonably required. Submission does not constitute acceptance by MFHOA of the adequacy or legal compliance of any document.
- 6.6 A suitably competent site foreman or responsible person shall be present whenever construction activities are undertaken, with details recorded in the Project Administration Schedules; changes shall be communicated to MFHOA without delay. All formal communications regarding approvals, inspections, variations, information requests, extensions and non-compliance shall follow the administrative procedures prescribed by MFHOA. The Principal Contractor remains responsible for coordinating and supervising all subcontractors, suppliers and persons engaged in the execution of the Project, and is responsible for all occupational health and safety matters relating to the Project where applicable.
- 6.7 Replacement of the Principal Contractor. Before a replacement Principal Contractor commences work, the Property Owner shall notify MFHOA in writing, and MFHOA may require updated compliance documentation, completion of the Contractor Induction, revised emergency contact details, amendments to the Project Administration Schedules and satisfaction of any other reasonable administrative requirements. Replacement does not relieve the Property Owner of any obligation.

7. CONSTRUCTION PERIOD, PROGRESS AND COMPLETION

PLEASE NOTE: BUILD CONTINUOUSLY AND FINISH ON TIME

Once you start, you must build continuously - stop-start building disturbs your neighbours and attracts penalties. Delays caused by weather, contractors, suppliers or finances do NOT extend your construction period automatically. Apply in writing for an extension BEFORE the period expires (clause 7.4). Overrunning without an approved extension attracts penalties under the Fee Schedule.

This box is a plain-language guide only and does not replace or vary the numbered clauses of this Agreement.

- 7.1 The Project Administration Period commences on the Approved Commencement Date and terminates only upon satisfaction of all requirements applicable to the Project Category and the issue of the Certificate of Final MAC Sign-Off, where required. Practical completion, beneficial occupation, contractor demobilisation, partial occupation or municipal occupation do not, in themselves, constitute completion of the Project.
- 7.2 The Project shall be completed within the construction period applicable to the Project Category, as recorded in the Project Administration Schedules.
- 7.3 Continuous progress. The Project shall, once commenced, proceed continuously and with reasonable expedition until completion. Should Project activities cease for more than sixty (60) consecutive days without the prior written approval of MFHOA, the Property Owner shall be in default. During any approved suspension the Property Owner shall, on written instruction: secure and make safe the Property; maintain the hoarding, construction board and site establishment; maintain housekeeping and environmental controls; implement temporary rehabilitation or erosion control where required; and provide MFHOA with a written proposal



for recommencement. MFHOA may require periodic inspections until recommencement or termination.

- 7.4 Extensions. The Property Owner may apply in writing for an extension before expiry of the applicable construction period. MFHOA shall consider each application on its merits, in its discretion, having regard to the reasons advanced, the progress achieved and compliance with this Agreement. The following do not extend the construction period automatically: contractor delays or replacement; labour or material shortages; financial constraints; delays in statutory approvals; adverse weather; owner-initiated design changes or Variation Orders; and any other circumstance beyond the administration or control of MFHOA.
- 7.5 Where the Project is not completed within the applicable construction period and no extension has been granted, the Property Owner is in default and MFHOA may implement the enforcement measures in clause 11, including the penalties prescribed by the Fee Schedule.
- 7.6 Completion. The Project is complete only once all requirements applicable to the Project Category have been satisfied, including: completion of the approved scope of works and all approved Variation Orders; completion of all rehabilitation and reinstatement works to the satisfaction of MFHOA; submission of the municipal occupancy certificate or other statutory certification where applicable; completion of all required inspections; and the issue of the Certificate of Final MAC Sign-Off where applicable.
- 7.7 Following a written request accompanied by the required documentation, MFHOA and/or MAC shall undertake the final inspection(s) against the Approved Documents and applicable requirements. Outstanding works or non-compliances shall be recorded in a written schedule of outstanding items and rectified within the period specified, whereafter a further inspection may be undertaken. The Certificate of Final MAC Sign-Off confirms only that the Project has been administratively completed for the purposes of MFHOA, within the limits recorded in clause 3.2.
- 7.8 Transfer of the Property during the Project Administration Period does not interrupt or restart the applicable construction period. The Property Owner shall, before transfer, procure that the transferee concludes a Project Agreement with MFHOA assuming the obligations under this Agreement for the remainder of the Project, and all amounts owing in connection with the Project shall be settled or secured before a levy clearance certificate is issued. Any period allowed by the Rules and Regulations of MFHOA or the Fee Schedule to a transferee of an undeveloped or semi-developed stand before late building penalty levies accrue applies in accordance with its terms, and no penalty for late commencement or late completion shall be imposed on the transferee under this Agreement before that period has expired; the period does not otherwise interrupt, restart or extend the applicable construction period, and all other obligations under this Agreement bind the transferee from the date of transfer.

8. DEPOSITS, FEES, CHARGES AND RECOVERY

IMPORTANT: FEES, DEPOSITS AND PENALTIES

All fees, deposits and penalties are set out in the published Schedule of Fees, Charges and Penalties. Late payment of construction-related charges can lead to suspension of your Project and Contractor Lock-Out (clause 8.5). Keeping the project account current avoids penalties and delays.

This box is a plain-language guide only and does not replace or vary the numbered clauses of this Agreement.

- 8.1 The Property Owner shall pay all deposits, administration fees, inspection fees, contractor charges and other amounts applicable to the Project Category before commencement of the Project, unless otherwise approved in writing. The applicable amounts are determined by the Fee Schedule in force when the Project is approved, unless otherwise determined by MFHOA. Payment of any amount does not relieve the Property Owner or any contractor of any obligation.
- 8.2 Where additional inspections, administration, professional reviews, enforcement actions or other services become necessary as a result of the actions of the Property Owner or any

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contractor, non-compliance or changes to the Project, MFHOA may recover the reasonable costs in accordance with the Fee Schedule. Amendments to the Fee Schedule apply prospectively and do not affect fees already paid.

- 8.3 MFHOA may withhold commencement of the Project, inspections, consideration of Variation Orders, the final inspection, the Certificate of Final MAC Sign-Off or any other Project approval until all amounts due in respect of the Project have been paid in full.
- 8.4 Any amount owing to MFHOA in terms of this Agreement is a debt due and payable by the Property Owner and may be recovered in accordance with this Agreement, the governing documents of MFHOA and any remedies available in law, including through the Property Owner's levy account.
- 8.5 Contractor accounts and Lock-Out. Where contractor accounts are maintained for the applicable Project Category, MFHOA may invoice the Contractor directly for contractor-related fees, Builder's Yard rentals, operational charges, penalties, administration charges and other Project-related costs. Construction-related charges raised in a calendar month are payable on or before the seventh day of the following month. Where any such amount remains unpaid after that date, MFHOA may, on not less than five (5) Business Days' written demand delivered to the Contractor and the Property Owner (save where an immediate risk to safety, security or the environment requires immediate action): suspend the Contractor's access to Monaghan Farm; suspend Project activities associated with that Contractor; withhold inspections, approvals and Final MAC Sign-Off; apply any Builder's Yard deposit held by MFHOA; and recover the outstanding amount by any lawful means. Notwithstanding direct invoicing of the Contractor, the Property Owner remains jointly and severally liable for all Project-related fees, charges, penalties, Builder's Yard rentals and other amounts arising from the Project, and the suspension of a Contractor does not relieve the Property Owner of any obligation.
- 8.6 All overdue amounts bear interest at the prescribed rate of interest in terms of the Prescribed Rate of Interest Act 55 of 1975 from due date to date of payment. A certificate signed by the General Manager or any director of MFHOA constitutes prima facie proof of any amount owing by the Property Owner for all purposes, including judgment. The Property Owner shall pay all legal costs incurred by MFHOA in enforcing this Agreement on the attorney and client scale, including collection commission and tracing charges. The parties consent, in terms of section 45 of the Magistrates' Courts Act 32 of 1944, to the jurisdiction of the Magistrates' Court having jurisdiction over Monaghan Farm in respect of any claim by MFHOA arising from this Agreement, notwithstanding that the claim may otherwise exceed the jurisdiction of that court, without prejudice to MFHOA's right to institute proceedings in the High Court.
- 8.7 Deposits are held by MFHOA as part of its general funds, without investment for the benefit of the Property Owner and without the payment of interest. Following completion of the Project, MFHOA shall reconcile all deposits, fees, charges and penalties; any amount owing becomes immediately payable, and any refundable balance shall be refunded within thirty (30) days after completion of the financial reconciliation.
- 8.8 Levy clearance. All amounts owing to MFHOA in connection with the Project, including fees, charges, penalties and Builder's Yard rentals for which the Property Owner is liable in terms of clause 8.5, form part of the monies owing to the Association for the purposes of any levy clearance certificate required for the transfer of the Property, and MFHOA may decline to issue a clearance certificate until all such amounts have been paid in full or secured to the satisfaction of MFHOA.

9. ACCESS, INSPECTIONS AND RECORDS

- 9.1 The Property Owner grants MFHOA, MAC and their duly authorised representatives reasonable access to the Property during the Project Administration Period for the purposes of administering this Agreement, wherever reasonably practicable during published construction operating hours. Where circumstances require urgent intervention relating to safety, security, environmental protection or the protection of Estate infrastructure, MFHOA may enter the Property without prior notice.

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- 9.2 Inspections are undertaken solely for the administration of the Project, including verifying compliance with this Agreement, the Construction Rules and the Approved Documents; monitoring progress, site establishment, environmental protection and rehabilitation; and recording the status of the Project.

PLEASE NOTE: MFHOA DOES NOT SUPERVISE YOUR BUILD

MFHOA and MAC inspections are administrative only. They do not certify workmanship, materials or structural quality, and they do not relieve your contractor or professionals of their responsibilities (clauses 3.2, 9.3 and 12). Choose and manage your professional team carefully.

This box is a plain-language guide only and does not replace or vary the numbered clauses of this Agreement.

- 9.3 The Property Owner acknowledges that inspections by MFHOA or MAC are administrative only; do not constitute supervision of the works, approval or certification of workmanship, materials or construction quality, or structural, engineering or occupational health and safety inspections; do not relieve the Property Owner, any contractor or any appointed professional of their statutory or contractual responsibilities; do not constitute confirmation of compliance with any law, policy or regulation; and do not create any duty of care or give rise to any liability on the part of MFHOA arising from the design, construction or completion of the Project, save to the extent that such liability arises directly from the gross negligence or wilful misconduct of MFHOA.
- 9.4 MFHOA may maintain administrative records relating to the Project, including inspection reports, photographs, compliance notices, correspondence, approvals and variation records, which may be relied upon in administering this Agreement and enforcing the Construction Rules. The maintenance of records does not constitute supervision of the Project or acceptance of the quality of the works.

10. STORMWATER AND PROTECTION OF THE ESTATE

IMPORTANT: WATER ON YOUR PROPERTY IS YOUR RESPONSIBILITY

Your professional team must design for stormwater on your erf, and you must never block or change the estate's drainage - swales, channels and road reserves. Building materials or works that obstruct drainage cause flooding, and the damage will be for your account (clause 10).

This box is a plain-language guide only and does not replace or vary the numbered clauses of this Agreement.

- 10.1 The management of stormwater on and from the Property is the responsibility of the Property Owner. The Approved Documents shall make adequate provision for stormwater management on the Property, designed by the Project Architect and, where applicable, a qualified engineer, and the Property Owner shall implement and maintain the approved stormwater measures.
- 10.2 Neither the Property Owner nor any person engaged in connection with the Project may obstruct, alter, damage or interfere with the stormwater systems, drainage channels, swales, berms, road reserves or other infrastructure of Monaghan Farm, or place building materials, spoil or any other thing in any road reserve, drainage channel or servitude area.
- 10.3 The Property Owner is liable for all loss or damage caused by stormwater, erosion, silt, slurry or contaminated runoff emanating from or attributable to the Project or the Property, including damage to Estate infrastructure and neighbouring properties, and shall implement such erosion and sediment controls as the works require.
- 10.4 The Property Owner shall have no claim against MFHOA arising from water, stormwater or drainage on, from or affecting the Property or the Project, save to the extent that such claim arises directly from the gross negligence or wilful misconduct of MFHOA. Nothing in this agreement limits any provision of the Memorandum of Incorporation.

11. NON-COMPLIANCE, ENFORCEMENT AND PENALTIES

- 11.1 The Property Owner shall ensure continuous compliance with this Agreement, the Construction Rules, the applicable Project Category and the Approved Documents throughout the Project



Administration Period. Any failure to comply is a non-compliance for the purposes of this Agreement.

- 11.2 Where a non-compliance is identified, MFHOA shall issue a written compliance notice (a "Compliance Notice") identifying the non-compliance, the required corrective action and the period for rectification, and affording the Property Owner an opportunity to respond. Save where an immediate risk to safety, security, the environment or Estate infrastructure requires immediate action, no penalty shall be imposed and no enforcement measure implemented before the Compliance Notice has been given and the response period has expired.
- 11.3 Without limiting any other remedy, MFHOA may:
- (a) require additional drawings, reports or professional certification;
 - (b) require rectification within a specified period;
 - (c) withhold inspections, Variation Orders, the final inspection or the Certificate of Final MAC Sign-Off;
 - (d) suspend all or part of the Project or issue a Stop Works Instruction where construction proceeds contrary to the Approved Documents, unauthorised variations are implemented, the Project presents a material risk to persons, property, Estate infrastructure or the environment, required statutory approvals are absent or lapsed, or continuation would materially prejudice MFHOA or the community;
 - (e) implement Contractor Lock-Out under clause 8.5;
 - (f) impose the fees, charges and penalties prescribed by the Fee Schedule; and
 - (g) recover all reasonable costs arising from the non-compliance, including professional fees, rehabilitation, repairs, cleaning and legal costs.
- Project activities suspended under this clause may recommence only on written authorisation.
- 11.4 The penalties published in the Fee Schedule apply to the Property Owner and the Contractor as agreed contractual penalties for the contraventions there described. The parties agree that they are genuine pre-estimates of the prejudice suffered by MFHOA and are recoverable in addition to, and not in lieu of, any damages, as expressly provided in this clause. The implementation of any enforcement measure does not relieve the Property Owner of the obligation to rectify the non-compliance, and the exercise of any right does not prejudice any other right.

12. LIABILITY, INDEMNITY AND INSURANCE

IMPORTANT: YOUR RESPONSIBILITY AND MFHOA'S LIMITED LIABILITY

You remain responsible for your Project and for everyone you bring onto the Estate (clause 5.1), and you indemnify MFHOA against claims arising from the Project except where MFHOA acts with gross negligence or wilful misconduct (clause 12.2). Please read clauses 3.2, 9.3, 10 and 12 carefully and initial where indicated.

This box is a plain-language guide only and does not replace or vary the numbered clauses of this Agreement.

- 12.1 The Property Owner is liable for all loss of or damage to Estate infrastructure, roads, kerbs, services, common property, landscaping, environmental assets and neighbouring properties arising directly or indirectly from the execution of the Project. MFHOA may require the Property Owner to repair such damage to its satisfaction, or repair it and recover the reasonable costs, or recover the reasonable reinstatement cost by any lawful means.
- 12.2 To the fullest extent permitted by law, the Property Owner indemnifies and holds harmless MFHOA, its directors, committee members, employees, consultants, MAC members and authorised representatives against every claim, action, loss, liability, damage, cost and expense of whatsoever nature arising from or connected with: (a) the execution of the Project; (b) the appointment, acts or omissions of the Project Architect, any professional, the Principal



Contractor or any other person engaged in connection with the Project; (c) the plans, drawings and designs for the Project, as amended from time to time, and any deviation between them and the works as executed; (d) any review, approval, acceptance, inspection, monitoring or other administrative function performed by MFHOA or MAC in relation to the Project; (e) any breach of this Agreement; (f) damage to neighbouring properties, Estate infrastructure or the environment, including by stormwater or erosion; and (g) any statutory non-compliance associated with the Project - except, in each case, to the extent that the loss arises directly from the gross negligence or wilful misconduct of MFHOA.

12.3 The obligations in clauses 8, 10, 11 and 12 survive completion of the Project, the issue of the Certificate of Final MAC Sign-Off, the termination or lapse of this Agreement and, to the extent permitted by law and insofar as they relate to matters arising during the Project Administration Period, the transfer of ownership of the Property; the levy clearance mechanism in clause 8.8 applies on transfer.

12.4 The Property Owner shall ensure that the insurances required by law and by MFHOA, including public liability and contractors all risks insurance and COIDA registration, are in place before commencement and are maintained for the duration of the Project. Nothing in this Agreement excludes liability which cannot lawfully be excluded.

13. TERMINATION AND GENERAL

13.1 Default. The Property Owner is in default where the Property Owner: fails to comply with any material provision of this Agreement or the Construction Rules; undertakes works contrary to the Approved Documents; fails to comply with a lawful instruction, Compliance Notice or Stop Works Instruction; fails to rectify a non-compliance within the specified period; abandons or suspends the Project contrary to clause 7.3; fails to maintain a required professional appointment; proceeds after a required statutory approval has lapsed or been withdrawn; or commits any other material breach.

13.2 MFHOA may terminate this Agreement where the Project has been abandoned and the Property Owner fails to respond to reasonable requests; where the Property Owner remains in material default after reasonable written notice; where the Project cannot lawfully proceed; where the Property Owner requests termination and MFHOA agrees; or where this Agreement has lapsed. Termination does not prejudice accrued rights, and the Property Owner remains responsible for outstanding amounts, damage to Estate infrastructure, environmental rehabilitation, reinstatement, rectification of non-compliant works, securing of the Property and outstanding statutory obligations, which obligations survive termination.

13.3 This Agreement, together with the Project Administration Schedules, the Construction Rules and the Approved Documents, constitutes the entire agreement between the parties regarding the administration of the Project. No amendment or consensual cancellation is effective unless in writing and approved by MFHOA; Project-specific administrative requirements and approved variations may be recorded in the Project Administration Schedules without a new Agreement. No indulgence, relaxation or delay by MFHOA constitutes a waiver of any right. Should any provision be invalid or unenforceable, it is severed and the remainder continues in force.

13.4 This Agreement is governed by the laws of the Republic of South Africa. Nothing in this Agreement prejudices the rights of either party under the Memorandum of Incorporation, the Community Schemes Ombud Service Act 9 of 2011, applicable legislation or the common law; the parties shall, where reasonably practicable, endeavour to resolve disputes amicably before formal proceedings; and nothing prevents MFHOA from acting immediately where necessary to protect persons, property, Estate infrastructure or the environment.

13.5 The Property Owner warrants that they are legally competent to conclude this Agreement, duly authorised where acting for an entity, and that all information provided is true and correct. The Property Owner may not cede, assign or transfer any right or obligation without MFHOA's prior written consent; the appointment or replacement of contractors or professionals is not a cession. Nothing in this Agreement creates a partnership, joint venture, agency or employment relationship, and MFHOA's role is limited to the administration of the Project.

MONAGHAN FARM



- 13.6 Notices and domicilium. Each party chooses, as its addresses for all purposes under this Agreement, the physical address and the email address recorded for that party in the parties clause or, failing such recordal, in the Project Administration Schedules. All notices, including Compliance Notices, demands, Stop Works Instructions and notices of termination, shall be validly given by email to the chosen email address and are deemed received on the first Business Day following transmission, unless the sender receives notification that delivery has failed. Legal process may be served at the chosen physical address. Each party and signatory warrants that its chosen physical address is a street address at which it may be found, and the construction site itself shall not be chosen as a physical address. The Principal Contractor and each professional who signs an acknowledgement chooses, in the same manner, the addresses recorded beneath their signatures. Addresses may be changed on not less than seven (7) days' written notice.
- 13.7 Protection of personal information. The Property Owner acknowledges that MFHOA processes personal information of the Property Owner, the Principal Contractor, appointed professionals, contractor personnel and other persons involved in the Project - including names, identity numbers, contact details and biometric data captured for access control - for the purposes of administering the Project, controlling access to Monaghan Farm, safeguarding persons and property, and complying with the governing documents of MFHOA and with law. Such processing is necessary for the conclusion and performance of this Agreement and for the protection of the legitimate interests of MFHOA, the Property Owner and the residents of Monaghan Farm, as contemplated in the Protection of Personal Information Act 4 of 2013 (POPIA). MFHOA shall process personal information in accordance with POPIA: it shall use the information only for these purposes; implement reasonable safeguards; retain records, including biometric records, no longer than necessary or as required by law, whereafter they are destroyed or de-identified; and conclude written operator agreements with every service provider, including the security service provider, which processes personal information on its behalf. The Property Owner shall ensure that every person engaged in connection with the Project is informed, before entering Monaghan Farm, that biometric registration is a condition of access and that personal information will be processed as described, and shall procure such consents as may be required. Data subjects may direct queries and requests to MFHOA's Information Officer at hoa@monaghanfarm.co.za. Completion of biometric registration constitutes acknowledgement of this clause.

14. ACCEPTANCE AND EXECUTION

- 14.1 By signing this Agreement the Property Owner acknowledges that: this Agreement has been read and understood; the applicable Project Category has been determined and its requirements are understood; the Property Owner accepts overall responsibility for the Project and will procure compliance by every person engaged in connection with it; approvals granted by MFHOA are limited as recorded in clause 3.2; the Project is complete only as provided in clause 7.6; the Project Administration Schedules form an integral part of this Agreement; and clauses 3.2, 9.3, 10 and 12, which limit MFHOA's liability and impose risk and indemnity obligations, have been drawn to the Property Owner's attention and initialled where indicated.
- 14.2 This Agreement becomes binding upon signature by the Property Owner and by MFHOA. Should the Property Owner commence the Project after approval by MAC without having signed this Agreement, such commencement constitutes acceptance by the Property Owner of the terms of this Agreement. Where the applicable Project Category requires a Contractor or professional appointment, the relevant acknowledgements shall be completed before commencement; the absence of a signature by a person whose appointment is not required does not invalidate this Agreement, and the failure of a Contractor or professional to sign does not relieve the Property Owner of any obligation.

Property Owner's initials: _____

EXECUTION

MONAGHAN FARM



PROPERTY OWNER

Property Owner	
ERF Number	
Signature	
Date	

FOR AND ON BEHALF OF MONAGHAN FARM NPC

Authorised Representative	
Designation	
Physical address (domicilium)	
Email address (domicilium)	
Signature	
Date	

PROJECT APPOINTMENTS

(Complete only where applicable to the Project Category.)

PRINCIPAL CONTRACTOR

The undersigned acknowledges appointment as Principal Contractor, confirms receipt of this Agreement and the Construction Handbook, and undertakes in favour of MFHOA to be bound by and to comply with the obligations applicable to the Principal Contractor under this Agreement, the Construction Handbook and the governing documents of MFHOA, which obligations MFHOA may enforce directly against the undersigned, including in terms of clause 8.5.

Company	
Representative	
Physical address (domicilium)	
Email address (domicilium)	
Signature	
Date	

PROJECT ARCHITECT (SACAP-REGISTERED)

The undersigned acknowledges appointment as Project Architect and undertakes in favour of MFHOA to provide the professional services, inspections, certifications and reports required by the applicable Project Category, applicable legislation and this Agreement, and to notify MFHOA immediately should this appointment terminate or be replaced during the Project Administration Period.

Practice / Name	
SACAP Registration Number	
Physical address (domicilium)	
Email address (domicilium)	
Signature	
Date	

MONAGHAN
FARM



OTHER PROFESSIONAL APPOINTMENTS

(Complete where applicable to the Project Category.)

Discipline	Name	Registration No.	Signature
Landscape Architect			
Engineer			
Quantity Surveyor			
Town Planner			
Environmental Consultant			
Other			

MONAGHAN
FARM



SCHEDULE E – MONTHLY PROJECT ARCHITECT REPORT (TEMPLATE)

To be submitted to MFHOA by the Project Architect on or before the 15th day of each month while construction is in progress (clause 6.2).

MFHOA Project Number	
Erf Number	
Reporting month	
Date of site inspection	
Progress achieved this month (summary and estimated %)	
Works compliant with the Approved Documents? (Yes / No)	
Deviations or non-compliances observed	
Corrective action implemented or proposed	
Matters requiring the attention of MFHOA or MAC	
Expected activities next month	
Project Architect (name and SACAP no.)	
Signature and date	