



STONEFORD

COUNTRY ESTATE

RESIDENTIAL AGREEMENT OF LEASE

1. Parties

The Parties to this lease are:

1.1

Name :
Identity Number /
Registration No. :
Postal Address :

Physical Address : **Postal Code** :

Cellular number : **Postal Code** :

E-Mail Address :

(hereinafter called "the Lessor ")

and

1.2

Name :
Identity Number /
Registration No. :
Postal Address :

Physical Address : **Postal Code** :

Cellular number : **Postal Code** :

E-Mail Address :

(hereinafter called "the Lessee ")

2 Interpretation

2.1 In this lease, except in a context indicating that some other meaning is intended,

2.1.1 **"Buildings"** means the house and outbuildings on the Property;

2.1.2 **"Day"** means any Day of the week, excluding Saturdays, Sundays and South African public holidays;

2.1.3 **"Lease Period"** means the period for which this lease continues, including any period for which it is renewed;

2.1.4 **"Month"** means a calendar Month, and more specifically:

2.1.4.1 in reference to a number of Months from a specific date, a calendar Month starting on that date or the same date of any subsequent Month; and

2.1.4.2 in any other context, a Month of the calendar, that is, one of the 12 Months of the calendar; and

"Monthly" has the corresponding meaning;

2.1.5 **"Parties"** means the Lessor and the Lessee and Party means either one of them in the context of the lease;

2.1.6 **"Property"** means ERF _____ STONEFORD COUNTRY ESTATE BOTHA'S HILL together with the Buildings and all other improvements to or upon the Property;

2.1.7 **"Rates"** means the levies payable to the Stoneford Homeowners Association and the assessment Rates payable on the Property and includes any other charges payable by the Lessor to the local authority (such as, but not limited to, refuse removal charges or sanitary fees), but not charges for water, electricity or gas;

2.1.8 **"Rent"** means the Rental the Lessee must pay to the Lessor for the lease of the Property;

2.1.9 **"Year"** means a period of 12 consecutive Months starting on the date on which this lease comes into operation or any anniversary of that date;

2.1.10 references to notices, statements and other communications by or from the Lessor include notices by or from the Lessor's agent;

2.1.11 expressions in the singular also indicate the plural, and the other way round;

2.1.12 words and phrases indicating natural persons refer also to juristic persons, and the other way round; and

2.1.13 pronouns of any gender include the corresponding pronouns of the other gender.

2.2 Any provision of this lease placing a restraint, prohibition, or restriction on the Lessee must be interpreted to include the implied term that the Lessee must ensure that everybody occupying or entering the Buildings, or any other part of the Property also complies with them, including the family, guests and domestic worker or other employees of the Lessee.

2.3 Clause headings appear in this lease for purposes of reference only and must not influence the proper interpretation of the subject matter.

2.4 This lease must be interpreted and applied in accordance with South African law.

2.5 A fully executed scanned copy of this lease shall be accepted as an original and this lease may be signed in counterparts and will be effective as such.

2.6 If there are 2 or more Lessee's their liability is joint and several.

3 Lease agreement

The Lessor leases the Property on the terms of this lease to the Lessee.

4 Duration

This lease will start on _____ and will continue for _____ years
and _____ Months from that date, terminating on _____

(Alternatively)

This lease will start on _____ and will continue from Month to Month. Either Party may terminate the lease on one month's notice in writing to the other. This notice may not however be given before _____.

5 Rent

5.1 The Rent will be:

5.1.1 R _____ for each Month of the first year of the Lease Period; and

5.1.2 shall be subject to an escalation of _____% per annum, the first increase being implemented after 12 months.

5.2 Whenever the Rates are increased during the Lease Period, the Lessor may increase the Rent proportionately, by giving the Lessee written notice and the new Rent will be calculated on a Monthly basis. Every such increase in the Rent will take effect on the first day of the Month after the Lessee received notice or the date on which the relevant increase in the Rates takes effect, whichever is the latest.

5.3 The Lessee will pay the Rent Monthly in advance on or before the 1st Day of every Month.

5.4 The first month's Rent is payable 7 days prior to the commencement of the lease.

6 Additional charges

In addition to paying the Rent, the Lessee will reimburse the Lessor for all amounts outstanding related to the use of electricity and water used on the Property by the Lessee, determined at the prevailing municipal tariff of charges. These amounts must be paid to the Lessor Monthly in arrear within 5 days after the Lessor gave the Lessee the account.

7 Payments

7.1 All payments due by the Lessee to the Lessor under this lease must be made into the following bank account :

Name of account holder : _____
Bank : _____
Branch code : _____
Type of account : _____
Reference : _____

or to such other person, at such other place, as the Lessor has indicated to the Lessee in writing.

7.2 The Lessee must not withhold, defer, or make any deduction from any payment it owes the Lessor, whether or not the Lessor is indebted to the Lessee or in breach of any obligation to the Lessee.

7.3 The Rent and all other amounts payable by the Lessee under this lease is inclusive of Value-Added Tax (VAT) in so far as it is applicable.

7.4 The Lessee will be liable for interest on all overdue amounts payable under this lease at a rate per annum of 5% above the prime overdraft rate charged from time to time by ABSA BANK, reckoned from the due dates of such amounts until they are respectively paid.

8 Deposit

8.1 On the same date that the Lessee enters into this lease they must pay the Lessor a deposit of R_____. The Lessor can set off this amount against any amount owed to it in terms of this lease.

8.2 If the Lessor sets off the deposit amount against amounts due to it, the Lessee must pay in the amount to make up the difference outstanding in terms of the deposit.

8.3 It is specifically noted that the deposit may not be applied by the Lessee as payment for the last month's Rent or for any other Rent due to the Lessor in terms of this lease, without the prior consent of the Lessor.

8.4 As soon as the Lessee has fulfilled all its obligations in terms of the lease or after the lease has come to an end, the Lessor must, not later than 30 days after the termination of the lease, refund an amount of the deposit that has not been applied in terms of the above clauses, less interest, to the Lessee.

9 Insurance

9.1 The Lessee must not keep or do anything around the Property that may enhance any of the risks against which the Buildings may be insured to the extent that the insurance of the Buildings is rendered void or voidable or the premiums of such insurance are, or may be, increased.

9.2 Without prejudice to any other right of action or remedy the Lessor might have in law or this lease, the Lessor may claim full payment of the increase in insurance premiums from the Lessee for the Buildings because of this breach.

9.3 For the purposes of the above provisions, the Lessee may assume that the Buildings are at all material times insured against risks, on terms, for amounts and at such premiums as are usual in respect of similar Buildings.

10 Assignment and subletting

10.1 The Lessee may not, except with the prior written consent of the Lessor:

10.1.1 cede or assign (transfer) all or any of the rights and obligations of the Lessee under this lease;

10.1.2 sublet the Property in whole or partly; or

10.1.3 give up possession of the Property to any third Party.

10.2 The Lessor must not unreasonably withhold its consent to a subletting of the whole of the Property.

11 Sundry duties and acknowledgements of the Lessee

11.1.1 The Lessee will :

11.1.2 keep the Property and all parts thereof clean, tidy, and liveable;

11.1.3 not use the Property or allow it to be used, in whole or part, for any purpose other than that of a private dwelling;

11.1.4 take all reasonable measures to protect all parts of the Property from abuse, damage, and/or destruction;

11.1.5 not bring anything onto the Property that might cause damage to the Buildings or the Property because of its weight or other characteristics;

11.1.6 not disobey any of the conditions of title of the Property or any of the laws, rules or regulations affecting owners, tenants or occupiers of the Property;

11.1.7 not cause or commit any nuisance on the Property or cause any annoyance or discomfort to neighbours or the public;

11.1.8 not leave refuse or allow it to accumulate in or about the Property except in adequate refuse bins suitably placed;

11.1.9 not interfere with the electrical, plumbing, or gas installations or systems serving the Property, except as may be necessary to enable the Lessee to carry out its obligations of maintenance and repair in terms of this lease;

11.1.10 not allow more than 2 persons per bedroom to reside on the Property at the same time;

11.1.11 not keep any cats on the Property and will apply to the Stoneford Homeowners' Association for permission prior to bringing any other animals, birds, reptiles or pets of any sort on to the Property;

11.1.12 not do or display anything which causes the Property to appear unsightly;

11.1.13 take all reasonable measures to prevent blockages and obstructions from occurring in the gutters, drains, sewerage pipes and water pipes serving the Property. The Lessee, at its own cost, shall clear any blockages where the blockage is due to negligence on its part; and

11.1.14 provide at the Lessee's own expense all electric, fluorescent, and incandescent light bulbs required on the Property.

11.2 The Lessee acknowledges that :

11.2.1 it has inspected the Property and that it is suitable for the purposes for which it is let;

11.2.2 all items brought onto the Property by the Lessee shall be at the sole risk of the Lessee without the Lessor incurring any responsibility relating thereto;

11.2.3 it hereby consents to and authorises the Lessor at all times to :

11.2.3.1 contact, request and obtain information from any persons, business or credit bureau relevant to an assessment of the behaviour, profile, payment patterns and creditworthiness of the Lessee;

11.2.3.2 furnish information concerning the behaviour, profile, payment patterns and creditworthiness of the Lessee to any credit bureau or similar service or to a person or business seeking trade reference regarding the Lessee's dealings with the Lessor;

11.2.4 should it fail to pay the Rent or any other amounts due in terms of this lease on due date, the Lessor shall have the right to have the Lessee blacklisted with a credit bureau.

12 Defects

12.1 The Lessee shall, within 7 days of commencement of this lease, notify the Lessor in writing of any defects on the Property, and the Lessee shall be deemed to have received the Property in good condition except for any defects so notified.

12.2 The purpose of such notification is to have a record of the condition of the Property at the commencement of the lease. The notification shall not be construed as imposing an obligation on the Lessor to remedy the defects noted since the Property has been let in the condition in which it stands. Defects regarding the functionality of the Property will be remedied within 30 days, examples of these are repairs to pool pumps and geysers. Cosmetic defects are not guaranteed to be remedied but will be noted.

OR

12.3 The Lessee acknowledges that it has inspected the Property. Insofar as the Consumer Protection Act ("CPA") governs this lease, the Parties attention is drawn to the fact that Section 55(2) provides that, except to the extent contemplated in subsection (6), every consumer has a right to receive goods that :-

12.3.1 Are reasonably suitable for the particular purpose for which they are generally intended;

12.3.2 Are of good quality, in good working order and free of defects;

12.3.3 Will be usable and durable for a reasonable period of time, having regard to the use of which they would normally be put and to all surrounding circumstances of their supply; and

12.3.4 Comply with any applicable standards set out under the Standards Act 1993 (Act No. 29 of 1993) or any other public relation.

12.4 Section 55(6) of the CPA provides that subsection (2)(a) and (b) do not apply to a transaction if the consumer :-

12.4.1 Has been expressly informed that the particular goods were offered in a specific condition; and

12.4.2 Has expressly agreed to accept the goods in their condition, or knowingly acted in a manner consistent with accepting the goods in that condition.

12.5 The Lessee confirms that it has carefully inspected the Property and hereby expressly agrees to accept the Property in the condition as it stands.

12.6 The Lessee shall within 7 days of commencement of this lease notify the Lessor in writing of any defects on the Property, and the Lessee shall be deemed to have received the Property in good condition except for any defects so notified. It is specifically recorded that the fact that there are items listed with the Lessor shall not place an obligation on the Lessor to repair the Property, the intention being that such notification will only serve to record the state of repair in which the Lessee took occupation of the Property since the Property has been let in the condition in which it stands. Only repairs affecting the functionality of the Property will need to be fixed by the Lessor within 30 days of notification.

12.7 It is agreed that an inspection will again be carried out 3 days before the termination of the lease.

12.8 It is furthermore specifically recorded that save as is otherwise provided in this lease, the Lessor shall not be obliged to effect repairs or to maintain the Property and the Lessee shall not be entitled to withhold the Rent or to claim any refund in respect on Rent paid, by reason of any defect in the Property.

13. Maintenance and repairs

13.1 The Lessee will at its own expense and without recourse to the Lessor:

13.1.1 throughout the Lease Period maintain in good order and condition the interiors of the Buildings, including all windows and doors;

13.1.2 promptly repair or make good all damage occurring in or to the interior of any of the Buildings during the Lease Period, whatever the cause of such damage, and including damage to any window or door and replace same (as well as any keys) which have been broken, lost or destroyed, the onus being on the Lessee to prove that the damage was not caused by it. In no way detracting from the generality of the aforesaid, it is specifically recorded that :

13.1.2.1 The Lessee shall carry out such repainting and other redecoration (without change of the colour-scheme) if the repainting or redecoration is required because of damage caused by the Lessee; and

13.1.2.2 The Lessee shall be responsible for maintaining the carpets, other floor coverings and tiles, it being understood that same shall be replaced completely at the expense of the Lessee should they be damaged beyond reasonable wear and tear;

13.1.3 take good and proper care of the garden on the Property, including all lawns, plants, shrubs, trees and hedges, replacing all such as may die or be damaged (taking seasonal factors into account), carrying out such watering, cutting, trimming, mowing, pruning, fertilising and other gardening activities as may reasonably be required and supplying all the fertiliser and other substances necessary for these purposes;

13.1.4 take good and proper care of the swimming pool on the Property, if applicable, causing it to be filled, cleaned and treated with chemicals when needed and supplying all chemicals and other substances necessary for such purpose;

13.1.5 when the lease terminates return the Property and all parts thereof, together with the Lessor's fittings and all keys to the Lessor in good order, condition and repair, fair wear and tear excepted. Failure to return any of the keys or remotes to the Lessor on the first business day following termination of the lease will result in the Lessee being liable for the cost to change the Property's locks and to reprogram remotes and any costs associated with this ;

13.2 The Lessor is responsible for the maintenance of, and for all repairs and replacements becoming necessary to, the roofs and outside walls of the Buildings, and the Lessor's obligations in this respect will include the maintenance and repair of the structure of the Buildings, and all systems, works and installations contained in it, and in particular the burglar alarm or security system, if applicable.

13.3 The Lessor may not, however, be in breach of clause 13.2 if those obligations are not or cannot be fulfilled because of any *vis maior* (act of God or nature) or the acts or omissions of others over whom the Lessor has no direct authority or control. Where the Lessor is indeed in breach of clause 13.2, the Lessee's only remedy against the Lessor is a right of action for specific performance.

13.4 If the Lessee fails to carry out any of its obligations under this lease with regard to any maintenance, repair, or replacement, the Lessor may, without prejudice to any of its other rights or remedies, undertake the maintenance, repair, or replacement and to recover the cost of it from the Lessee on demand.

14 Alterations, additions and improvements

14.1 The Lessee may not make any alterations or additions to any of the Buildings, the Property or any part of it without the Lessor's prior written consent. The Lessor must not withhold its consent unreasonably to any such alteration or addition which is of a minor nature and not structural.

14.2 If the Lessee does alter, add to, or improve the Buildings, the Property or any part of it in any way, the Lessee must, if the Lessor requires it in writing, restore the Buildings and/ or the Property to its original condition after the lease terminates. The Lessor's request for restoration must be given no later than 7 days after the Lessee has given the Property back to the Lessor after termination of this lease. This clause must not be interpreted to exclude any other remedy which the Lessor may have for a breach by the Lessee of clause 14.1.

14.3 Except for any improvement which is removed from the Property as required by the Lessor in terms of clause 14.2, all improvements made on or to the Property will belong to the Lessor and may not be removed from the Property. The Lessee will never have any claim against the Lessor for compensation for any improvement or repair to the Property or a right of retention in respect of any improvements.

14.4 Should the Lessee fail to comply with a demand made by the Lessor in terms of clause 14.2 the Lessor shall be entitled, in addition to any other remedy or right available to it in terms of this lease, to have the relevant improvement and/or addition removed and to recover the cost thereof from the Lessee, including the cost of repair of all damage and/or defects caused by such removal.

15 Exclusion of lessor from certain liability and indemnity

15.1 The Lessee will have no claim for damages against the Lessor and may not cancel the lease or withhold or delay any payment due to the Lessor by reason directly or indirectly of:

15.1.1 a breach by the Lessor of any of its obligations under this lease;

15.1.2 any act or omission of the Lessor or any agent or servant of or contractor to the Lessor, whether or not negligent, or otherwise actionable at law, and including (without limiting the generality of the above) any act or omission of any cleaner, maintenance person, handyman, artisan, labourer, workman, watchman, guard, or commissionaire (uniformed worker);

15.1.3 the condition or state of repair at any time of the Property, the Buildings, or any part of the Property or the Buildings;

15.1.4 any failure or suspension of, or any interruption in, the supply of water, electricity, gas, air-conditioning, heating, or any other amenity or service to the Property or any of the Buildings, whatever the cause;

15.1.5 any breakdown of, or interruption in the operation of, any machinery, plant, equipment, installation and/or system in or on, or serving, the Property or any part of it or any of the Buildings, including the swimming pool, plant or any geyser, boiler, burglar alarm, or security installation or system.

15.2 The Lessor is, however, not excused from specific performance of any of its obligations under this lease, whether express or implied. This particularly refers to its obligations to give the Lessee occupation and enjoyment of the Property and to do maintenance and repairs as set out in this lease and, if the Lessor fails to carry out any such obligation of maintenance or repair with reasonable speed or efficiency and persists in such default after receiving reasonable notice in writing to do so, the Lessee may do or cause the necessary maintenance or repair (including any incidental or necessary replacement) and may then recover the reasonable cost of this from the Lessor on demand.

16 Lessor's rights of entry and carrying out of works

16.1 The Lessor's representatives, agents, employees and contractors may at all reasonable times, without it giving rise to any claim or right of action on the part of the Lessee

or any other occupier of the Property, enter the Property in order to inspect it, carry out any necessary repairs, replacements, or other works, or to perform any other lawful function in the *bona fide* (good faith) interests of the Lessee or any of the occupiers of the Property or carry out any necessary repairs, replacements or other works elsewhere in the Buildings or on the Property, but the Lessor must ensure that this right is exercised with regard for and a minimum of interference with the beneficial enjoyment of the Property by those who occupy it.

16.2 The Lessor may not, however, cause or allow any major building works to be carried out anywhere on the Property for longer than 1 month from the date on which the building starts unless such works are necessary and do not merely involve additions to the Buildings, the construction of additional buildings, or redecorations which are merely aesthetic (visual) or the Lessee has consented otherwise in writing.

17 Rules – Stoneford Homeowners’ Association

The Lessee, by its signature hereto, confirms that it has familiarised itself with the terms and conditions of the House Rules of the Stoneford Homeowners Association, a copy of which is attached as Annexure A and signed by the Lessee, and agrees to be bound and abide by the terms and conditions thereof.

I have read and understand the provisions of this clause 17

Initial:

18 Damage to or destruction of Buildings

18.1 If the Buildings are destroyed or so damaged that they can no longer be beneficially occupied, this lease will terminate when that happens, unless the Parties agree in writing otherwise.

18.2 If the Buildings are significantly damaged but can still be beneficially occupied, this lease will continue and the Lessor must repair the damage without delay. The rent must then be abated (lessened) to compensate the Lessee fairly for the effects on the enjoyment of the Buildings of the damage and repair work.

18.3 If there is no agreement about the abatement or application of clause 18.2 to any particular circumstances, the Parties must refer the matter to an expert appointed by the Parties jointly. If, however they cannot agree on the appointment of a person, the President of the Institute of Estate Agents of South Africa will appoint one and the decision of such expert will be final and binding. The expert’s fees and disbursements, including any inspection costs, will be paid by the Parties in equal shares.

18.4 Pending determination of the abatement the Lessee must continue to pay the full rent for the Property as if it had not been damaged and as soon as the matter has been resolved the Lessor must make the appropriate repayment to the Lessee.

18.5 If either of the Parties caused any damage or destruction to the Buildings, the other may still pursue another alternative or additional action or remedy, despite clauses 18.1 and 18.2.

19 Special remedy for breach

19.1 If the Lessee defaults in any payment due under this lease or breaches any other terms, and fails to remedy such default or breach within 7 Days after receiving a written demand that it be remedied, the Lessor may, without further notice, cancel this lease with immediate effect, take back possession of the Property and recover damages from the Lessee for the default or breach and the cancellation of this lease. This will not affect any other rights or remedies the Lessor might have.

19.2 Clause 19.1 does not exclude the ordinary lawful consequences of breach (except those that are expressly excluded by any of the other provisions of this lease) and in particular any right of cancellation of this lease on the ground of a material breach going to the root of this lease.

19.3 If the Lessor cancelled this lease justifiably but the Lessee remains in occupation of the Property, with or without disputing the cancellation, and continues to pay Rent and any other amounts which would have been payable to the Lessor if it was not for the cancellation, the Lessor may accept these payments without prejudice to and without affecting the cancellation, as if they had been payments on account of the damages suffered by the Lessor by reason of the Lessee's unlawful occupation.

20 Option of renewal

20.1 The Lessee will have the right to renew this lease on the terms set out below.

20.2 The period for which this lease may be so renewed is 12 Months starting on the date immediately following the date of expiry of the initial term of this lease.

20.3 All the terms of this lease will continue to apply during the renewal period, except that the rent will be _____ per month and there will be no further right of renewal.

20.4 The Lessee must exercise its right of renewal by giving the Lessor written notice at least **2 Months** before the date on which the renewal period starts, and will lapse (fall away) if not so exercised.

20.5 If the right of renewal is properly exercised, this lease will be renewed automatically and without the need for any further act of the Parties.

20.6 The Lessee may not, however, exercise the right of renewal while in breach or default of any of the terms of this lease.

20.7 If this lease does not endure the full term for which it is initially contracted, the right of renewal will lapse and any notice of exercise of the right given before lapsing will be of no force.

21 New tenants and purchasers

The Lessee must at all reasonable times :

21.1 during the Lease Period, allow prospective purchasers of the Property or of any shares or other interests in the Lessor; and

21.2 during the last 2 Months of the Lease Period, allow prospective tenants or purchasers of the Property,

to enter and view the interior of the Property.

22 Costs

22.1 The legal costs for the preparation this lease shall be borne by the Lessee.

22.2 Any costs, including attorney and own client costs, incurred by the Lessor arising out of a breach by the Lessee of any of the provisions of this lease, shall be borne by the Lessee.

23 Domicilia and notices

23.1 The Parties choose as their *domicilium citandi et executandi* (addresses for legal notices) for the purposes of the giving of any notice, the payment of any sum of money due in terms of this lease, the serving of any process and for any other purpose arising from the lease, at any of their respective addresses (which shall include an e-mail address and cellular telephone number) stipulated in clauses 1.1 and 1.2 of this lease, provided that such domicilium may be changed by written notice from either of the Parties to the other with effect from the date of receipt of or deemed receipt by the other Party of such notice;

23.2 All notices, demands, or communications shall be made or given at such Party's domicile for the time being;

23.3 A notice sent by one Party to the other Party shall be deemed to be received :

23.3.1 On the same day, if delivered by hand;

23.3.2 On the same day of transmission if sent by e-mail or short message service (SMS); and

23.3.3 On the 7th (Seventh) day after posting, if sent by pre-paid registered mail;

23.4 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to such Party notwithstanding that it was not sent to or delivered at the chosen domicile citandi et executandi.

24 Whole agreement

24.1 This is the entire agreement between the Parties on the subject.

24.2 Neither Party relies in entering into this lease upon any warranties, representations, disclosures or expressions of opinion which have not been incorporated into this lease as warranties or undertakings.

24.3 No variation or consensual cancellation of this lease will be of any force or effect unless reduced to writing and signed by both Parties.

25 Non-waiver

25.1 No extension of time or indulgence must be interpreted as a waiver (giving away) of any right in terms of this lease that one Party may have against the other.

25.2 The failure of either Party to comply with any non-material provision of this lease will not excuse the other Party from performing its obligations fully and on time.

26 Warranty of authority

The persons signing this lease on behalf of the Lessor and/or the Lessee expressly warrants their authority to do so.

27 Sale of Property

27.1 The validity of this lease will not in any way be affected if the Lessor sells the Property.

27.2 The lease will remain in full force, upon registration of transfer of the Property into the name of the purchaser, except that the purchaser will be substituted as lessor and acquire all rights and responsibilities

28 Commission

28.1 It is specifically recorded that this lease constitutes a Procurement Agreement between the Lessor and (‘‘the Agent’’). The Agent will provide services and be paid commission by the Lessee. Commission shall be _____% of the first year’s rental excluding VAT.

28.2 It is specifically recorded, and the Lessor hereby acknowledges that the Agent has been the effective cause in introducing the Property and the Lessor to the Lessee. Should the Lessee at any time during or after his tenancy, purchase the Property, then the agency shall be deemed to have been the selling agent and shall be entitled to, and the Lessor shall be liable for, payment of

