



BUILDING AGREEMENT

between

KUNYE PROPERTIES (PTY) LTD
Registration No 2003/021513/07
(the Contractor)

and

(the Employer)



SCHEDULE "A" – Contract Data

A.1 Contractor: Kunye Properties (Pty) Ltd
 Registration number: 2003/021513/07
 Address: Ground floor, NBG House, 42A Saldanha Road, Vredenburg
 Contact details: 082 453-3631 (Cellphone); johan@kunye.co.za (E-mail address)

A.2 Employer:

Employer (full names):

ID / Registration number:

Tax reference number:

Representative:

(if signing on behalf of a legal entity)

Physical address:

Postal address:

Contact no's

Work

Cell

E-mail

Married in/out community of property

Antenuptial contract

Spouse (full names):

Identity number

Tax reference number:

Contact details:

Cell

E-mail

A.3 Property:

Dódeka number

Erf number:

Extent:

m²**A.4 Contract Price:**

Price of the Works (Inclusive of VAT)

R

Upgrade to Specifications & Additional Costs (Inclusive of VAT)

R

Total Contract Price (Inclusive of VAT)

R

A.5 Contract Documents:

Signed contract documents will be held by the Attorney. The Contract documents comprising.....

Description	Marked	Notes
Agreement of Sale		
Building Agreement		

A.6 Attorneys:

Transfer Attorneys:

NBG ATTORNEYS, 42A Saldanha Road, Vredenburg

Ref: Hendrik Brand E-mail: hendrik@nbgattorneys.co.za

Tel : 022 715-1671 Fax: 022 713-5772

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ANNEXURES:

- A:** HOUSE PLAN
- B:** SITE DEVELOPMENT PLAN
- C:** BASIC SPECIFICATIONS
- D:** UPGRADE TO SPECIFICATIONS AND ADDITIONAL COSTS

1. PARTIES

1.1 CONTRACTOR

The Contractor means the Party as more fully described in Schedule A

1.2 EMPLOYER

The Employer means the Party as more fully described in Schedule A

2. INTERPRETATION

2.1 In this Agreement the following terms and expressions shall have the meaning ascribed to them hereunder unless the context specifically required otherwise –

- | | | |
|--------|-----------------------|--|
| 2.1.1 | Agreement: | means the Building Agreement in respect of the Works and as set out in this document between the Employer and the Contractor; |
| 2.1.2 | Agreement of Sale: | means the Agreement of Sale in respect of the Property entered into by and between Kunye Properties (Pty) Ltd Registration Number 2003/021513/07 and the Employer; |
| 2.1.3 | Architect: | means P2 Architects in Vredenburg or another Architect appointed by the Contractor from time to time for the execution of the Works; |
| 2.1.4 | Attorneys: | means the Attorneys stipulated in Schedule A |
| 2.1.5 | Basic Specifications: | means the detailed specifications and finishing schedule annexed hereto as Annexure C and shall comprise the standard specifications and finishes which will be supplied by the Contractor as part of the execution of the Works in terms of this Agreement; |
| 2.1.6 | Business Day: | means any Day except Saturday, Sunday or officially proclaimed public holiday; |
| 2.1.7 | Completion Date: | means the date of the Handover Inspection; |
| 2.1.8 | Contractor: | means the Party as stipulated in Schedule A; |
| 2.1.9 | Contract Sum: | means the cost of the Works as stipulated in Schedule A; |
| 2.1.10 | Day: | means any Day of the week including South African Public Holidays; |
| 2.1.11 | Defects List: | means the list of defects as agreed upon by the Parties during the Hand-over Inspection; |
| 2.1.12 | Development: | means the proposed Development known as Dódeka of which the Property forms part; |
| 2.1.13 | Due Date: | means, for all purposes of this Agreement, 3 (three) Business Days after demand for payment was made by the Contractor from the Employer; |
| 2.1.14 | Employer: | means the party as stipulated in Schedule A; |
| 2.1.15 | Hand-over Inspection: | means an inspection of the Works by the Contractor or it's representative, and the Employer, after completion of the Works, at which inspection the Parties will agree to the Defects List; |
| 2.1.16 | Local Authority: | means the Local Authority having jurisdiction over the property, being the Bergrivier Municipality; |
| 2.1.17 | Normal Wear and Tear: | means the Normal Wear and Tear ascribed to improvements to |

		fixed property in general, including but not limited to touch-up paint of any nature, hairline cracks in the plaster work, any shrinkage/movement and expansion cracks between different
2.1.18	Occupation Date:	means the Completion Date or the date on which the Local Authority issues the Occupation Certificate or the date that the Employer attends the Hand-over Inspection, whichever is the earlier;
2.1.19	Occupancy Certificate:	means the Certificate that the Local Authority issues confirming that the Works have been completed according to the Plan;
2.1.20	Occupational Interest:	means an amount equal to the Prime Overdraft Rate, calculated pro rata per months on the Total Purchase Price as defined in the Agreement of Sale;
2.1.21	Parties	means a collective reference to the Contractor and the Employer and "Party" means one of them;
2.1.22	Prime Overdraft Rate:	means the rate of interest per year, which is equal to Standard Bank's publicly quoted Prime Overdraft Rate;
2.1.23	Plan:	means a copy of which is annexed hereto as Annexure A and shall for the purposes of this Agreement means the signed drawings of the Works, which shall form the basis for drawings to be submitted to the Local Authority for approval. Upon approval thereof, the approved Plan shall substitute the drawings and be deemed to be the Plan selected and approved by the Parties for this Agreement and the execution of the Works in terms hereof;
2.1.24	Property:	means the Erf described in clause A.3 of the Schedule;
2.1.25	SDP:	means the Site Development Plan approved by the Local Authority;
2.1.26	Signature Date:	means the date on which the Contractor signs the Agreement;
2.1.27	Total Contract Price:	means the Contract Price plus the costs of the Upgrade to the Specifications and Additional Costs;
2.1.28	VAT:	means Value Added Tax payable in terms of the VAT Act (Act No 89 of 1991);
2.1.29	Upgrade to Specifications & Additional Costs:	means all costs and the upgrading from the Basic Specifications to the specifications described as per Annexure D hereto, which would be supplied by the Contractor as part of the execution of the Works in terms of this Agreement;
2.1.30	Works:	means the building Works to be conducted on the Property by the Contractor in accordance with the Plan, Basic Specifications and, if applicable, the Upgrade to Specifications.
2.2	Indulgence	
		Any indulgence in respect of time or anything else granted by a Party to the other will not be considered to impair any of the rights of such Party in terms of the Agreement or effect any right of whatsoever PARTY.
2.3	Exclusions of other Agreements	
		This Agreement cancels and supersedes all other contracts entered into by the Parties before the date of this Agreement and any amendment, addition hereto or consensual cancellation thereof will be of no force of effect unless it appears in writing and is signed by the Parties hereto.
2.4	Clause headings	
		The head notes in this Agreement are used only for the purpose of reference and shall in no way effect or govern the construction or interpretation of this Agreement.

3. THE WORKS

- 3.1 The Contractor undertakes in a proper and workmanlike manner to execute the Works against payment of the Contract Sum referred to in clause 4.
- 3.2 The WORKS shall be substantially in accordance with the Plan and Basic Specifications provided that the CONTRACTOR shall be entitled in his discretion to deviate from the Plan and Basic Specifications if, during the building and construction of the Works it appears that such deviation will result in the most significant, practical and economical completion of the Works without essentially deviating from the Plan or having a negative effect on the quality and finishing of the Works.
- 3.3 In the event of any discrepancy arising from the Plan and the Basic Specifications, the provisions of the Basic Specifications shall prevail.
- 3.4 The Employer irrevocably grants a power of attorney to the Contractor to sign and submit the necessary drawings and specifications to the Local Authority for its approval.

4. CONTRACT SUM

- 4.1 The contract sum shall be the amount as set out in Schedule A, which sum is inclusive of VAT.
- 4.2 The Purchase Price of the Property hereby sold, inclusive of VAT at 15% (fifteen percent) is recorded in Schedule A. If, notwithstanding the rate of VAT of 15% (fifteen percent) applicable to this transaction at the Sale Date, the amount of VAT payable on this transaction is increased or decreased then the Purchase Price shall be adjusted upward or downward in accordance with such increase or decrease to take into account the variation in VAT payable above or below 15% (fifteen percent).

5. PAYMENT OF THE CONTRACT SUM

- 5.1 Payment of the contract sum shall be made by the Employer to the Contractor in the following progress payment instalments:
 - 5.1.1 The first instalment being 20% (Twenty percent) of the Contract Sum shall be paid on completion of the first section of the Works, namely:
 - 5.1.1.1 All foundations completed,
 - 5.1.1.2 Brickwork to plinth height, backfilling and floors cast.
 - 5.1.2 The second instalment being 20% (Twenty percent) of the Contract Sum shall be paid on completion of the second section of the Works, namely:
 - 5.1.2.1 Brickwork internal and external completed except gables and beam filling.
 - 5.1.3 The third instalment being 30% (Thirty percent) of the Contract Sum shall be paid on completion of the third section of the Works, namely:
 - 5.1.3.1 Roof trussed and roof covering; and
 - 5.1.3.2 Brickwork gables and beam filling completed, and
 - 5.1.3.3 Internal and external walls plastered, and
 - 5.1.3.4 Ceilings and cornices fixed, and
 - 5.1.3.5 External doors and windows installed, and
 - 5.1.3.6 Electrical tubing fitted, and
 - 5.1.3.7 Plumbing pipes and drainage fitted.
 - 5.1.4 The fourth instalment being 35% (Thirty five percent) of the Contract Sum shall be paid on completion of the fourth section of the Works, namely:
 - 5.1.4.1 Cupboards fitted; and
 - 5.1.4.2 Painting and tiling finished, and
 - 5.1.4.3 Electrical and plumbing work completed, and
 - 5.1.4.4 All remaining work done as per specifications, and
 - 5.1.4.5 All builder's rubble removed and site clean.
 - 5.1.5 The fifth and final instalment being 5% (Five percent) of the Contract Sum shall be paid on completion of the Works prior to the Employer taking occupation of the Works.
- 5.2 The Upgrade to Specifications and Additional Costs will be included in the Contract Sum and be payable as set out above.

- 5.3 Any agreed payments not paid on due date will bear interest in accordance with the provisions of Clause 12 below from due date to date of final payment.
- 5.4 If the Building Works are financed by a Financial Institution, the Employer hereby empowers and authorises the Contractor to receive progress payments from the financial institution as determined by them, the Employer will furthermore be liable for any and all interim interest charges by the Financial Institution.
- 5.5 In the event of an Employer failing or refusing to authorize payment of any interim or final draws, the Contractor shall be entitled without prejudice to any other rights which he may have in terms of this contract in law to discontinue the Works forthwith and all damages arising, costs, including the additional interest accrued, shall be for the account of the Employer.
- 5.6 Should there be any dispute between the Parties pertaining to this Clause 5, the dispute will be referred to the Architect whose determination will be final and binding on the Parties.

6. POSSESSION

- 6.1 The **Contractor** shall be entitled to:
- 6.1.1 receive full possession and occupation of the Property when he is due to commence the Works, and
 - 6.1.2 retain possession of the Works until all agreed amounts owed to him under this Contract and under any other Agreement or arrangement between the Contractor and the Employer in connection with the Works have been paid and all obligations of the **Employer** of this Contract have been fulfilled.

7. COMMENCEMENT AND COMPLETION OF THE WORKS

- 7.1 The Contractor shall not be obliged to commence the Works until:
- 7.1.1 the EMPLOYER has furnished adequate security to the Contractor's satisfaction for the whole of the Contract Sum; and
 - 7.1.2 all necessary consents, approvals, registrations or other authorities have been obtained; and
 - 7.1.3 the Property is registered in the name of the Employer and the Employer's bond (if applicable) has been registered.
- 7.2 If commencement of the WORKS is delayed for longer than a period of ninety (90) Days from the fulfilment of the conditions in Clause 7.1 above for any reason other than a reason attributable to the fault and/or omission of the Contractor, then the Contractor shall be entitled, in its sole discretion, to resign from this Agreement, with neither party having any further claim against one another. Alternatively, the Parties may agree to an amended Total Contract Sum.
- 7.3 Subject to any extensions permitted in terms of Clause 7.4, the Contractor shall complete the Works within 180 (one hundred and eighty) Days after commencement.
- 7.4 If the commencement or completion of the Works is delayed for any cause whatsoever beyond the Contractor's control or if any building industry holidays, whether statutory or recognised generally as customary in the industry fall within the contract period, then the Contractor shall be entitled to a fair and reasonable extension of time for the completion of the Works and the Employer shall not for that reason have any claim against the Contractor for damages or otherwise.
- 7.5 The occurrence of one or more of the events detailed in Clause 7.6 below shall constitute complete proof of the satisfactory completion of the Works by the Contractor and shall determine the completion date and the Contractor shall be discharged completely from all obligations expressed or implied under this contract and any variation thereof or addition thereto and the Employer shall have no further claim on the Contractor, save as specifically otherwise provided herein.
- 7.6 For purposes aforesaid, the occurrence of any one of the following shall constitute the Completion Date:
- 7.6.1 The date of formal handing over of the keys to the Works by the Contractor to the Employer and the signing by the Employer of a handing-over certificate in acknowledgment thereof; or
 - 7.6.2 The date which occupation of the Works is taken by the Employer or his Agent; or
 - 7.6.3 After notice by the Contractor to the Employer that the final section of the Works has been completed and all inspections have been done and tests passed by the Mortgagee or relevant authority and the Works are available for occupation by the Employer; or

- 7.6.4 The date of issue of a certificate signed by a practising Architect nominated by the Contractor stating that the Works have been satisfactorily completed, whichever of these dates shall be the earliest.
- 7.7 Notwithstanding anything elsewhere provided for in this Agreement, all amounts owing in terms of this Agreement which have not already been paid in terms of the provisions of this Agreement shall be forthwith payable on the completion date.
- 7.8 The Employer must within 7 (Seven) Days after the completion date notify the Contractor in writing of any visible defects, which will be rectified within the one month permitting access. This list shall be regarded as a final and complete defect list but shall not constitute the right to withhold final payment
- 7.9 The risk in the Works shall pass wholly and entirely to the Employer as from the completion date.

8. DEFECTS

- 8.1 It is recorded that the Contractor will be registered with the National Homebuilders Registration Council (NHBRC) and will also register the development with the said council. The registration levy to be payable to the NHBRC arising from the registration shall be paid by the Contractor.
- 8.2 In addition to the obligation of the Contractor in Clause 7.8 to remedy defects, the Contractor shall in terms of the NHBRC requirements be obliged to:
- 8.2.1 remedy any material latent defects in the Works due to faulty workmanship and materials, manifesting itself within 90 (Ninety) days of the Completion Date, provided that the Employer notifies the Contractor thereof in writing within the said 90 (Ninety) Days; and
- 8.2.2 at its own expense repair any roof leaks that occur in respect of the Works within the first 12 (Twelve) months of the Completion Date, provided that the Employer notifies the Contractor thereof in writing within the period of 12 (Twelve) months; and
- 8.2.3 rectify any structural defect that occur in respect of the Works for a period of 5 (Five) years of the Completion Date, provided that the Employer notifies the Contractor thereof in writing within the said 5 (Five) year period.

9. VARIATIONS

- 9.1 Should the Employer, after signature of this Agreement, require that any aspect of the Works be varied, and/or any extra work be carried out by the Contractor, then such request shall be made in writing whereupon the Contractor must submit a written quotation in respect of the cost of such variation/extra. On signature of the quotation by the Employer this Agreement will be deemed to be accordingly varied. All costs arising from such variation/extra shall be paid by the Employer to the Contractor within 24 (Twenty-Four) hours after acceptance of the quotation, failing to do so, the Contractor will not be obliged to perform such extra work or variations

10. RIGHTS AND OBLIGATIONS OF THE CONTRACTOR

- 10.1 The Contractor shall reasonably insure against public liability on or around the Works from the commencement of building operations until the risk in the Works has passed to the Employer.
- 10.2 Notwithstanding anything to the contrary herein contained, ownership of all materials used in the execution of the Works shall remain vested in the Contractor until such time as all the amounts due in terms of the Agreement have been paid in full.
- 10.3 Copies of the following documentation will be supplied by the Contractor to the Employer on the Completion Date:
- 10.3.1 Electrical Compliance Certificate;
- 10.3.2 Roof Certificate (A19)
- 10.3.3 Approved Plan
- 10.3.4 Occupation Certificate issued by the Local Authority
- 10.3.5 Plumbing Certificate
- 10.3.6 Gas Certificate (if applicable)
- 10.3.7 NHBRC certificate
- 10.3.8 Guarantees from third parties (if applicable)
- 10.4 The Contractor may appoint any third party to execute any of the Works provided that the rights of the Employer in terms of this Agreement against the Contractor shall not be affected in any way by such appointment.

- 10.5 The Contractor is exempted from liability for making good damage caused to the Property by surface water, storms or rainwater, ground containing clay or other shifting soil, settlement or cracking, earth tremors, geological disturbances and/or subsidence, the nature of the subsoil or terrain and the moisture content of the subsoil and shall under no circumstances be responsible for any consequential damage there from.
- 10.6 The Contractor will be liable for the payment of all water and electricity consumption accounts received from the Local Authority as from the date of commencement of the Works by the Contractor until the Completion Date

11. RIGHTS AND OBLIGATIONS OF THE EMPLOYER

- 11.1 The Employer undertakes to become and remain the registered owner of the Property until the Completion Date.
- 11.2 Neither the Employer or any person acting on his behalf shall issue any instructions or orders to any person in the employment of the Contractor or any Subcontractor on the building site.
- 11.3 The Employer acknowledges that there will be construction work near the Property and that certain inconvenience may be caused thereby. The Contractor shall not be held liability for such inconvenience or any damages that flow there from and shall be entitled, (where necessary) to enter upon the Property for purposes of obtaining access to adjacent erven during such construction work.
- 11.4 If more than one Employer signs this Agreement, the Employers will be jointly and severally liable for the due performance of the terms and conditions of this Agreement. The Signatory shall in his personal capacity be liable for the due fulfilment of all the terms and conditions of this Agreement.

12. INTEREST

- 12.1 Any agreed amount due by the Employer to the Contractor not paid on due date shall bear interest at the Prime Overdraft Rate plus 2% (Two percent), from the Due Date the date of payment thereof.

13. BREACH

- 13.1 If any Party commits a breach of any of the provisions of this Agreement and fails to remedy such breach within 14 (Fourteen) Days, or within 7 (Seven) Days after receipt of written notice from the other party calling upon it to remedy such breach, then the innocent party shall be entitled, without prejudice to any other rights which it may have in terms of this Agreement and or at Law to:
- 13.1.1 cancel this Agreement and claim such damages as it may have sustained from the defaulting party; or
- 13.1.2 claim immediate performance by the defaulting party of all its obligations in terms of this Agreement whether the due date for performance shall otherwise have arrived.

14. ARBITRATION

- 14.1 Notwithstanding the provisions in the breach clause above, if any dispute or difference shall arise between the Employer and the Contractor, during the progress and before completion of the Works or after the termination of the employment of the Contractor under this contract, abandonment or breach of the contract, as to the construction of the contract, or as to any matter or this arising thereunder, or as to the withholding by the Bank of any draw to which the Contractor may claim to be entitled, then the parties will jointly appoint an Architect or Quantity Surveyor or any other professional person involved in the Building Industry to determine such dispute or difference.
- 14.2 The Arbitrator shall have power to disclose, review and revise any certificate, opinion, decision, requisition or notice, and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given as aforesaid, in the same manner as if no such certificate, opinion, decision, requisition or notice had been given, upon every or any such reference, the costs of and incidental to the reference and award shall be in the discretion of the arbitrator, who may determine the amount thereof, or direct the same to be taxed as between attorney and client or as between party and party and shall direct by whom and to whom and in what manner the same shall be borne and paid.
- 14.3 The Employer and the Contractor may refer any dispute related to the structure of the Work to the NHBRC for mediation.

15. MAGISTRATE'S COURT JURISDICTION

- 15.1 For the purposes of all or any Court proceedings herein, the **Employer** and **Contractor** hereby consent to the jurisdiction of any Magistrate's Court having jurisdiction over the intended Defendant.

16. SUSPENSIVE CONDITIONS

- 16.1 The Agreement is subject to the conclusion of the Agreement of Sale and the fulfilment of all conditions precedent thereto.

16.2 _____

16.3 _____

16.4 _____

17. ADDRESSES FOR SERVICE AND DELIVERY OF LEGAL DOCUMENTS

- 17.1 The Parties choose their addresses as set out in Schedule A of this Agreement above to serve as their addresses for service and delivery of legal documents for all purposes of the Agreement, which includes the giving of notice and the serving of documents or process.

- 17.2 Any notice given in terms of the Contract shall be delivered by hand, sent by e-mail or sent by registered post, in which event it shall be deemed to have been received if e-mailed or hand-delivered within one (1) **Day** of e-mailing and/or delivery and if posted within three (3) **Days** of posting.

18. WHOLE CONTRACT

- 18.1 This document constitutes the entire Agreement concluded between the Parties and no warranties or undertakings or representations other than those specifically recorded herein may be relied on by either of the Parties. This document may furthermore not be modified, varied or consensually cancelled other than in writing, duly signed by both Parties.

- 18.2 This Building Agreement is undividable from the Agreement of Sale.

- 18.3 The Agreement shall not be binding upon the Parties until the Contractor has confirmed acceptance thereof by his signature hereto.

SIGNED at _____ on this _____ day of _____ 20 _____

AS WITNESSES:

1. _____

2. _____

CONTRACTOR

SIGNED at _____ on this _____ day of _____ 20 _____

AS WITNESSES:

1. _____

2. _____

EMPLOYER