



P. L. LYONS, INC.
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www.pllyons.com

**Home Builders
Association of Louisville
Certification #
General Contractor License #**

**Member:
National Association
of Home Builders**

CONSTRUCTION AND PURCHASE AGREEMENT

THIS AGREEMENT made this **24th** Day of **March 2006**, by and between: **P. L. Lyons, Inc.** herein referred to as "Builder," and _____, herein referred to as "Buyer."

- 1) Builder agrees to sell and buyer agrees to purchase the following described "Residence" to be constructed thereon by Builder:

Lot:
Subdivision:
Address:
County: Jefferson
City: Louisville, KY 40023
Lot Frontage (approx) See attached plot plan
Lot Depth (approx.) See attached plot plan

- 2) Builder shall furnish all labor and materials required for the construction of the Residence in accordance with the signed Preliminary plans dated 3-7-2006, and specifications dated 3-23-2006, which are made a part of this Agreement. Unless otherwise agreed, Builder shall determine the location and elevation of all improvements on the lot. Builder shall supply all materials and labor needed to complete the Residence. Builder shall be responsible for any materials or labor supplied by Buyer. Except for structural integrity of the Residence, Builder is not responsible for the accuracy of plans supplied by Buyer.

Buyer's Initials: _____

Builder's Initials: _____

- 3) Purchase price shall be the sum of **TWO HUNDRED FORTY EIGHT THOUSAND SEVEN HUNDRED EIGHTY SEVEN DOLLARS AND 60/100 (\$248,787.60), \$24,878.76** cash including the deposit; balance, if any, of **\$223,908.84** to be financed by Buyer on a **CONVENTIONAL** loan plan for a term of **30** years, with interest at the prevailing rate. AGREEMENT IS NOT CONTINGENT ON FINANCING ONCE CONSTRUCTION HAS STARTED. As a sign of good faith binding this Agreement, Buyer gives a deposit of **\$20,000** to the Builder, which shall be applied to the purchase price, upon the delivery of the residence.
(For construction draws if any, see addendum)
- 4) Unless otherwise stated the purchase price does not include unusual excavation or grading costs resulting from ground terrain, rock, underground springs, relocation of utility lines, lack of sufficient soil on site, removal of trees stumps, rock or other such conditions. If such work is required or if additional soil is needed, Buyer shall pay the extra cost with cost based on **Invoice + 22%**.
- 5) Builder shall commence construction of the Residence as soon as practical after signing of this agreement and adequate financial arrangements satisfactory to Builder have been made by Buyer.
- 6) Builder estimates completion of construction within **150** working days from the start of construction, except for delays caused by changes or acts of Buyer, or persons employed by Buyer, acts of arbitration, failure of any subcontractor or material man, fires, strikes, acts of public authority, inclement weather, allocation of materials priorities, delays or defaults by public or private carriers, shortages of materials or labor, acts of God, or other work stoppages, casualties, or other causes beyond the control of Builder. Builder reserves the right to make changes and substitutions in the construction as may be necessary because of the unavailability of materials through Builder's ordinary and usual sources of supply or as may be required by law, provided the changes or substitutions are of equal or better quality.
- 7) Buyer agrees that direction and supervision of construction personnel, including subcontractors, rests exclusively with Builder or its duly designated agent, and Buyer agrees not to issue any instructions or to otherwise interfere with same.
- 8) Buyer shall not negotiate for additional work with Builder's subcontractors or engage another contractor or other subcontractors except with Builder's prior written consent and then only in such manner as will not interfere with Builder's completion of work under this Agreement.
- 9) All changes in or departures from the plans and specifications, shall be agreed upon in writing and Buyer shall pay Builder in advance before commencement of said change, or as billed by the Builder. Changes requested by Buyer shall be billed to Buyer at Builder's **Invoice and/or cost + 22% or per stated change order.**

Buyer's Initials: _____

Builder's Initials: _____

- 10) The closing date shall be within 7 days after substantial completion of the Residence, with the date and place of closing to be specified by Builder. After final payment by Buyer, Builder shall provide Buyer with an affidavit stating that all labor, materials and equipment used in the construction have been paid for or will be paid in full by builder unless otherwise noted. At the closing, Builder shall convey to Buyer an unencumbered marketable title, by general warranty deed subject to easements and restrictions of record at the time of closing and applicable regulations imposed by governmental agencies, or if the subject lot is already deeded in the Buyer's name, a closing shall occur to release the second mortgage, to be held by Builder (See paragraph 20 Item C).
- 11) All property taxes on the lot shall be prorated date of deed between Buyer and Builder and all taxes thereafter shall be paid by Buyer.
- 12) At the time of transfer of title of the lot, and or closing of the contract for the Residence to Buyer, Builder shall execute and deliver to Buyer a home owners limited warranty in the form attached as **Exhibit A**. WHICH LIMITED WARRANTY SHALL HAVE NO EFFECT UNLESS AND UNTIL BUYER HAS PAID TO BUILDER THE PURCHASE PRICE DESCRIBED IN PARAGRAPH 3 ABOVE, INCLUDING ANY AND ALL THEN CURRENT PAYMENTS DUE UNDER PROMISSORY NOTE OR OTHER INDEBTEDNESS TO BUILDER IN CONNECTION WITH THE PURCHASE OF THE RESIDENCE. BUILDER'S PERFORMANCE UNDER THE LIMITED WARRANTY IS CONDITIONED UPON PAYMENT OF THE PURCHASE PRICE BEING MADE BY BUYER WHEN DUE AND BUILDER SHALL HAVE NO OBLIGATION UNDER THE LIMITED WARRANTY IF BUYER HAS NOT MADE ALL PAYMENTS WHEN DUE REGARDLESS OF THE REASONS FOR BUYER'S FAILURE TO MAKE SUCH PAYMENT(S). THE FAILURE TO PAY ANY PORTION OF THE PURCHASE PRICE, WHEN DUE, SHALL BE DEEMED A MATERIAL FAILURE BY THE BUYER UNDER PERIOD OF THE LIMITED WARRANTY (12 MONTHS AFTER COMMENCEMENT DATE) SHALL NOT BE EXTENDED OR ENLARGED BECAUSE OF ANYTHING DESCRIBED IN THIS PARAGRAPH.

Builder disclaims and Buyer waives, unless otherwise expressly provided for in Builder's limited warranty, all warranties, express or implied, including but not limited to the warranties of habitability, merchantability, and fitness of purpose, and including any warranties that could be construed to cover the presence of radon or other environmental pollutants. BUYER AND BUILDER AGREE THAT SUCH LIMITED WARRANTY SHALL CONSTITUTE THE SOLE WARRANTY FROM BUILDER TO BUYER AND THE LIMITED WARRANTY IS GIVEN IN LIEU OF OTHER WARRANTIES. Builder reserves the option to replace with equal quality, repair or pay reasonable sums for any limited warranty items. If defects are claimed by Buyer, Buyer and Builder shall comply with the claim procedures in the limited warranty, including but not limited to the notice requirements.

If Builder fails to comply with the claim procedures in the limited warranty or if the parties are unable to mutually resolve any question with respect to the performance of this Agreement, Buyer must contact the Home Builders Association of Louisville, and

Buyer's Initials: _____ Builder's Initials: _____

request conciliation, unless Builder in writing waives the conciliation procedure. Buyer will submit \$50.00 for administrative costs, along with complaint forms. Registered Builder/Remodeler will be billed \$200.00 when a team is assigned for conciliation. If, by agreement of Builder and Buyer, any part of the purchase price (including approved change orders) is withheld during construction or at closing, such amount must first be placed in the Association's escrow account or in a mutually agreeable third party escrow account whose fee shall be paid by said Buyer before the conciliation meeting will be held. At the conciliation meeting, only Buyer, Builder and the conciliators appointed by the Registered Builder Committee of the Association shall be present. If a conciliation agreement is not signed by the Builder and Buyer, Association may refund the escrowed funds. Following completion by Builder of the remedial steps contained in any Conciliation Agreement signed by the Buyer and Builder within the time periods indicated, if any, Association may distribute funds held in escrow to Builder; provided, however, if in the sole opinion of Association, Builder has not performed the remedial steps set forth in the Conciliation Agreement as intended by Buyer, Builder and the Conciliators, Association may refund escrowed funds to Buyer. Association provides the conciliation procedure only as a service to its members and the home buyer and does not undertake or guarantee, expressly or impliedly, to perform any obligation of Builder resulting from such procedure. The provisions of this paragraph shall not apply unless Builder is at all times during the conciliation procedure a member of the Home Builders Association of Louisville.

If the parties are unable to mutually resolve any controversy or claim through the conciliation procedure, or if parties agree to waive the conciliation, then any controversy or claim arising out of relating to this Agreement, the limited warranty described in this Agreement, or any breach of this Agreement of the limited warranty, shall be settled by binding arbitration submitted to a professional arbitration service under its rules relating to the construction industry and the Kentucky Arbitration Act. The arbitrator(s) decision shall be final and legally binding and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Each party shall be responsible for its share of the arbitration fees in accordance with the applicable rules of the arbitration service selected. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award or fails to comply with the arbitrator's award, the other party is entitled to recover its costs, including a reasonable attorney fee, for having to compel arbitration or defend or enforce the award. Notwithstanding any other provision in this Agreement, Buyer shall give Builder an adequate opportunity to repair, replace or pay for any defective construction.

- 13) Possession of the lot and Residence shall be given on the closing date. After completion of construction and before closing, Buyer and Builder shall thoroughly inspect the lot and interior and exterior of the Residence (the "Inspection") At the closing, Buyer shall submit to Builder a list of all items not completed, or requiring correction, that were observed, or that reasonably could have been observed, at the time of the Inspection (the "Punch List Items"). At the closing, Buyer shall execute and deliver, in form satisfactory to Builder, an acknowledgement that Buyer has performed its Inspection and that construction of all items observed, or that reasonably could have been observed at the

Buyer's Initials: _____

Builder's Initials: _____

time of the Inspection is complete, except for the punch List Items (the “Acknowledgement”). Builder shall complete all undisputed Punch List Items within **120 days** after the closing, or, if the Punch List Items cannot reasonably be completed within such period of time, shall commence completion within such period of time and shall diligently pursue the Punch List Items to completion. Buyer’s Acknowledgement shall constitute a complete release of all obligations and liabilities of Builder with respect to the construction, completion, and delivery of all items that were observed, or reasonably could have been observed, during the Inspection, except for the Punch List Items.

- 14) If either party defaults on any obligation under this Agreement, the non-defaulting party may pursue any legal or equitable remedy available. If Buyer causes a postponement of the closing beyond the closing date, then in addition to all other damages to which Builder may be entitled, Buyer shall pay to Builder for the postponement, an amount equal to **3%** over prime lending rate as established by Fifth Third Bank of Louisville, Kentucky, per annum of the unpaid purchase price for the period of delay. Each party agrees to indemnify and hold Builder harmless from any and all loss, expense, costs, including but not limited to reasonable attorney fees, that such other party incurs which arise out of any default by Buyer in the timely performance of its obligations under this Agreement.
- 15) The rights and obligations granted and assumed under this Agreement shall apply to the heirs, administrators, executors, successors and assigns of Builder and Buyer.
- 16) Buyer certifies that he/she has read the entire contents of this Agreement and acknowledge receipt of a copy. This is the only Agreement between Builder and Buyer and no verbal agreements of any kind shall be binding.
- 17) If this Agreement is offered through a licensed Realtor or broker, Builder agrees to pay a fixed commission of 0% NONE of the purchase price to upon closing and delivery of deed to Buyer.
- 18) Builder shall attempt to preserve certain trees on the lot. However, Builder gives no assurance that some or all of the trees shall not be damaged or removed during construction or grading of the lot or installation of utilities and pipes. Builder shall not be responsible for the removal of any dead or dying trees after delivery of deed.
- 19) Ceilings of the Residence will be insulated with ___*___ insulation to a thickness of ___*___ inches, which thickness according to the manufacturer will result in a R-value of ___*___. Exterior walls of the Residence will be insulated with ___*___ insulation to a thickness of ___*___ inches, which thickness according to the manufacturer will result in an R-value of ___*___. The floors will be insulated with ___*___ insulation to a thickness of ___*___ inches, which thickness according to the manufacturer will result in an R-value of ___*___ (Characteristics of insulation installed are based upon information received from the manufacturer, installer, or supplier).

Buyer’s Initials: _____

Builder’s Initials: _____

- SEE SPECIFICATIONS WHICH ARE MADE A PART HEREOF:

If any provision and or portion of this Agreement is deemed invalid, void or unenforceable for whatever reason, such invalidity, void or unenforceability shall in no way affect any other provision or any other portion contained in the remainder of this Agreement and the remaining provisions or portions shall be binding upon the parties to the fullest extent of the law.

Builder discloses to Buyer that Builder **IS** or IS NOT (circle one) licensed as a real estate broker or sales associate under Kentucky Revised Statutes, Chapter 324.

20) ADDITIONAL PROVISIONS:

- A. Upon satisfactory financing arrangements made by Buyer, Builder agrees to commence construction on APPROXIMATELY March 28, 2006.
- B. If lot is in Buyers name, Buyer shall deed subject property to Builder to allow for Builder to obtain a construction loan from Builder's lending institution, or see item C below. (Not applicable.)
- C. ***However; if a construction loan is secured by the Buyer or is secured in the Buyer's name, Builder will provide a draw sheet showing a list of completed labor and or materials in place, on the above described lot, to be provided to the lending institution, or buyer, by Builder, and Buyer will deposit, with Builder, these costs to be used to pay for the labor and material in place. These deposits will be drawn from the Buyer's construction loan, or cash funds, and or Buyer's lending institution. Buyer agrees to have their lending institution make all checks jointly to both the Buyer and the Builder. The Buyer agrees to endorse all checks to the Builder, upon receipt from their lending institution. Builder will place a mortgage behind the construction loan first mortgage, or behind Buyer's first mortgage, on the subject property, in the amount of the contract. The mortgage will be released when the contract has been fulfilled, and the closing has taken place as described in paragraph 10 above.***
- D. Builder shall make progressive draws on the construction loan, or Buyer's funds, as construction progresses.
- E. All construction loan closing costs, fees and construction loan interest payment associated with Builder of Buyer obtaining a construction loan shall be the responsibility of the Buyer and shall be paid by Buyer, per the attached specifications.

Buyer's Initials: _____

Builder's Initials: _____

- F. Builders Risk and Liability insurance shall be secured by the Builder. Such insurance is to protect both the Builder and Buyer, and any claims, adjustments, or proceeds shall be distributed to make necessary repairs and or adjustments.
- G. This contract is subject to: Permits and Requirements needed to construct the above described residence, being obtained by Builder.
- H. This contract is null and void if not signed and accepted, and deposit paid to Builder, by April 10, 2006.
- I. This contract is contingent upon Buyers obtaining financing, however it will no longer be contingent upon financing once construction has started.

IN WITNESS WHEREOF, Builder and Buyer have signed this agreement on the date set forth below.

BUILDER P. L. Lyons, Inc.

By: _____
Perry D. Lyons, President

Date: _____

Buyer: _____

SSN: _____

Date: _____

Buyer: _____

SSN: _____

Date: _____

This form is approved by the Homebuilders Association of Louisville for use by its Registered Builder and Registered Remodelor Members only. Home Builders Association of Louisville's jurisdiction consists of Jefferson, Bullitt, Oldham, Shelby, Spencer and Trimble Counties.

Buyer's Initials: _____

Builder's Initials: _____